

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 739 Health Care
SPONSOR(S): Grimsley
TIED BILLS: **IDEN./SIM. BILLS:** SB 484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee		Hamrick	Mitchell
2) Criminal Justice Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

HB 739 revises chapter 400, part IV, F.S., to change licensure and supervisory standards for home health agencies and nurse registries. The bill revises nurse supervision requirements by eliminating required monthly home visits. It provides a 2-year home health agency license and nurse registry, instead of the current 1-year license. A physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services.

The bill alters the due date for receipt of applications for renewal of licenses from 90 days to 60 days prior to expiration of the license. The bill allows AHCA to accept a survey from an AHCA-recognized accrediting agency in lieu of the required agency survey.

This bill provides that a home health agency licensee, must provide the information demonstrating the applicant's financial ability to operate be compiled, rather than signed by, a certified public accountant.

The bill provides AHCA the authority to deny or revoke a license if the applicant has falsely represented a material fact or has omitted a material fact from the application.

The bill reduces the storage time for patient records.

The bill increases the fines, penalties, and enforcement abilities of AHCA.

This act shall take effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Increase government-The bill clarifies and provides new regulations to the home health agencies, nurse registries, homemaker and companion agencies.

Safeguard individual liberty- The bill provides more enforcement authority, fines, and sanctions to the Agency for Health Care Administration.

B. EFFECT OF PROPOSED CHANGES:

Definitions

HB 739 makes a technical change to the purpose of Chapter 400 stating that a nurse registry must be licensed.

The bill changes the definition of companion or sitter refer to “someone who spends time with” instead of “cares for”. This narrows their scope of practice such that they would not be authorized to provide any personal care to their clients. The bill alters the definition of “client” by removing the ability to receive personal care services. These two changes limit homemaker and companion agencies from providing activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications to a person who is elderly, handicapped, or convalescent at home in a place of residence.

The bill alters the definition of director of nursing, to not require specialized training in the home health industry, and deletes the requirement that the director designate a qualified alternate registered nurse to serve during their absence. The bill allows a director of nursing to oversee operations for a maximum of 5 licensed home health agencies located within a service district or immediately neighboring county.

Licensure

The bill establishes a 2-year home health agency license and nurse registry, instead of the current 1-year license.

A home health agency licensee is required to file all documents demonstrating the applicant’s financial ability to operate. The bill provides that information must be compiled by, rather than signed by, a certified public accountant. Applicants for renewal of a license will be required to complete questions concerning volume data on the renewal application.

The bill provides AHCA the authority to deny or revoke a license if the applicant has falsely represented a material fact or has omitted a material fact from the application. The bill alters the due date for receipt of applications for renewal of licenses from 90 days to 60 days prior to expiration of the license.

In lieu of its own periodic licensure survey, the bill allows AHCA to accept a survey from an AHCA-recognized accrediting agency. AHCA must receive the accreditation report and the home health agency must authorize the release of the report to AHCA.

Care

The bill clarifies the sources of payment for home health services to include Medicaid, Medicare, private insurance, personal funds, or a combination thereof.

The bill establishes that a physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services.

The bill deletes the requirement that the treatment orders must be reviewed within 30 days of the start of care. Currently, home health agencies are required to send a registered nurse to perform a supervisory visit to the home of a patient receiving home health aide services. The bill deletes the requirement for monthly supervisory visits by an RN to nurse registry patients receiving services from a certified nursing assistant or a home health aide, and instead requires a nurse registry to advise a patient, patient's family, or a person acting on behalf of the patient of the availability of registered nurses to make visits to the patient's home at an additional cost.

Patient Records

The bill establishes that a licensed home health agency that ceases to remain in business is required to notify each patient, whose clinical records it has in its possession and provide each patient 15 calendar days to retrieve his or her clinical record at a specified location within 2 hours' driving time of the patient's residence and, at a minimum, between the hours of 10 a.m. and 3 p.m., Monday through Friday.

The bill designates the records as patient records under s. 400.494, F.S., which provides a public record exemption for information about patients of a home health agency.

The bill increases from 5 years to 6 the period during which a home health agency must maintain records for a patient who receives skilled care. The bill deletes the requirement that a home health agency must keep a service provision plan on clients who receive non-skilled care.

The bill requires that patient information can only be disclosed under the provisions of federal regulations, except in the specified instances.

Fines

The bill provides authority to AHCA to assess fines against a licensee that fails to include the nurse registry's license number in any advertisement in print or broadcast media. The fine for first offense is \$100; second and subsequent offenses are \$500.

The penalty for unlicensed activities is increased from a second-degree misdemeanor to a third-degree felony. A third-degree felony is punishable with 1-5 year prison term and/or a \$5,000 fine.

The bill establishes a fine of \$500 for a second or subsequent offense of operating without a home health agency license or nurse registry.

Unlicensed activity of a home health agency is declared a nuisance, detrimental to public health, welfare and safety. AHCA and the state attorneys are permitted to bring action for an injunction to stop unlicensed activity.

The bill provides that employees who have been continuously employed since October 1, 2000 may not be required to undergo criminal background screening. The bill deletes "September 30, 1990," the current date by which an employee must have been employed in order to be exempt from background screening.

Understanding the professionals within the home health industry

Currently, the home health industry is undergoing change, and competition is occurring among different types of providers. The parties involved are the home health agencies, nurse registries, and homemaker and companion agencies.

HOME HEALTH AIDES, HOMEMAKERS AND COMPANIONS

- **Home Health Aide** is a person who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, or assists in administering medications as permitted in rule and for which the person has received training established by the Agency for Health Care Administration (AHCA).
- **Homemaker** is a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance, and routine household activities for an elderly, handicapped, or convalescent individual. A homemaker may not provide hands-on personal care to a client. A homemaker must register with AHCA. The registration fee is \$25.00 annually.¹
- **Companion** or **Sitter** is a person who cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual. A companion may not provide hands-on personal care to a client. A companion must register with AHCA.

Types of services provided in the home health setting

- **Personal care** provides assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.
- **Skilled care** provides nursing services or therapeutic services delivered by a health care professional who is licensed under part I of chapter 464; part I, part III, or part V of chapter 468; or chapter 486 and who is employed by or under contract with a licensed home health agency or is referred by a licensed nurse registry.

HOME HEALTH AGENCIES

Home health agencies primarily provide skilled care. Care that home health agencies provide are nursing care; physical, speech, occupational, respiratory and IV therapy; home health aide services; homemaker and companion services; home medical equipment; nutritional guidance; and medical social services in the patient's home or place of residence.

A home health agency employs direct employees and contracts out to patients to provide services. The patients may have different staff providing those services in order to make adjustments with staffing issues such as when staff are on vacation or sick.

There are 1,283 licensed home health agencies in Florida as of December 18, 2004. From July 1, 2003-June 30, 2004, 241 applications were processed for new home health agencies. Licenses are issued for a 1-year period and currently cost approximately \$830.00².

The Agency for Health Care Administration (AHCA) currently permits the exemption of accredited home health agencies from licensure surveys in its state rules at 59A-8.003(3), F.A.C., with the condition that

¹ See s. 400.509 (3), F.S.

² See s. 400.471 (8), F.S.

the home health agency requests an exemption and provides a survey report from an accrediting body that shows the home health agency is in compliance with state licensing requirements.

As of December 27, 2004, 62 of the 209 accredited home health agencies were exempt from having a state licensure survey conducted by AHCA. Currently, 16.3% of home health agencies are accredited.

Home health agency treatment orders

Section 400.487(2), F.S., requires treatment orders to be signed by the attending physician for a patient who receives skilled care within 30 days from the first date of care. Most orders are received by telephone from the physician's office and some home health agencies are having difficulty obtaining signed orders from physicians within the required 30 days. Federal regulations specify that the physician's orders must be signed prior to billing for services³.

Home health agency supervisory visits

Section 400.487(3), F.S., requires a home health agency to arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services per the direction and approval of the patient. These visits are not mandatory and can be waived by the patient.

Currently, home health agencies are inconsistent in their interpretation of this statute. Some home health agencies are absorbing the cost of the home visit and others are billing the patient for this service. The cost of a home visit by a registered nurse is approximately \$31 per visit.

NURSE REGISTRIES

Nurse registries provide skilled and personal care. Nurse registries are set-up differently than home health agencies in that they hire independent contractors that are registered nurses, certified nurse assistants (CNA), home health aides, licensed practical nurses, homemakers, or companions to provide services to patients in their homes. These individuals are not direct employees of the nurse registry, but are independent contractors. A patient contracts with a nurse registry and the independent contractors for services. The patient makes a direct contract with the individual contractor sent from the nurse registry.

A nurse registry is required to obtain the following information from the independent contractors they refer: name, address, date of birth, and social security number; educational background, and employment history; number and date of the applicable license or certification and renewal information.

As of December 18, 2004 there were 2,218 licensed nurse registries in Florida. Nurse registries are licensed annually and licensure costs \$1,000.

Nurse registry supervisory visits and care contracts

Persons who receive care from a home health aide or a certified nurse assistant (CNA) must have a physician and the physician must be notified within 48 hours after the contract for care is completed.

A registered nurse must make a monthly visit to each patient who receives services from a home health aide or a CNA to assess the quality of care provided.⁴

The home health agency statutes do not require the same type of supervision for similar care. The cost of a home visit by a registered nurse is approximately \$31 per visit.

³ See 42 CFR, Part 484, Medicare Home Health Agency Regulation and Policy; CMS publication 11, Medicare Home Health Agency Manual.

⁴ See s. 400.506 (10), F.S.

Unlicensed Activity within the Home Health Industry

For the period July 1, 2003-June 30, 2004, AHCA received 28 complaints of activity by unlicensed home health agencies, 4 complaints of activity by unlicensed nurse registries, and 10 complaints of activity by unregistered homemaker or companion service. Businesses that are found to be providing services without a license or registration are given a notice of violation and are instructed to obtain a license. Some disregard the notices and continue to operate illegally. The existing laws in chapter 400, F.S., do not provide AHCA with sufficient enforcement authority to require these business entities to either get a license or cease operations. AHCA may seek an injunction when there is an emergency affecting the immediate health and safety of a patient or client.⁵

C. SECTION DIRECTORY:

- Section 1.** Amends s. 400.461, F.S., to add the licensing of nurse registries to the purpose of the chapter.
- Section 2.** Amends s. 400.462, F.S., to add new definitions for advanced registered nurse practitioner, direct employee, physician assistant, and admission and amends current definitions.
- Section 3.** Amends s. 400.464, F.S., regarding home health agencies licensure, to increase renewal to every 2 years.
- Section 4.** Amends s. 400.471, F.S., regarding the license application for a home health agency, to provide authority to administer fines and revoke license.
- Section 5.** Amends s. 400.487, F.S., revising requirements for home health service agreements and treatment orders.
- Section 6.** Amends s. 400.491, F.S., regarding clinical records, to revise ownership and maintenance of patient records.
- Section 7.** Amends s. 400.494, F.S., to add references to federal requirements for the confidentiality of patient information and delete requirement for written consent for disclosure of patient information and to delete an exemption.
- Section 8.** Amends s. 400.506, F.S., regarding the licensing of nurse registries, to increase licensing fees, period of licensure, and revise penalties and sanctions.
- Section 9.** Amends s. 400.512, F.S., relating to employment screening, to update the date in the affidavit signed by the administrator of each agency or registry, attesting that screening of personnel hired since 2000 has been done.
- Section 10.** Amends s. 400.515, F.S., to provide additional circumstances under which the agency may petition for an injunction.
- Section 11.** Provides that the bill will take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
See comments below.

⁵ See s. 400.515, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill doubles the maximum licensing fees for home health agencies and nurse registries, but the time period for the license is also doubled, from one to two years. Thus, there is no increase in costs per year for licensing of home health agencies and nurse registries.

D. FISCAL COMMENTS:

Since the license fees and licensure periods are doubled and the receipt of the renewals will continue to be staggered based on the date of issuance, there should be no depletion of the Health Care Trust Fund. The staff time needed to review and compile data on renewal applications will be offset by the reduction in staff time required to renew licenses biennially instead of annually.

The bill increases the licensure time period for home health agencies and nurse registries. The bill increases the licensure fees based on longer time periods. The application changes will reduce the number of licensing surveys by a small percentage. Applicants requesting to start home health agencies continue to increase yearly.

AHCA will still investigate complaints of exempt agencies and will continue to conduct the Medicare and Medicaid recertification surveys at most agencies.

AHCA feels that there will not be a negative fiscal impact and all other fiscal impact can be absorbed by utilizing existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes. According to AHCA, they need new authority to promulgate rules for implementing the completion and collection of volume of data (such as admission data) on renewal application for home health agency licenses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bills sponsor is drafting amendments to address the following concerns:

Concerns were raised by AHCA, that on page, 4 on line 98 in the definition for certified nursing assistant, the bill adds "home health aide" as if to make home health aides subject to the training requirements for certified nursing assistants. AHCA requested a technical change to the definition of "home health aide" to add training requirements to clarify that training is a requirement for home health aides.

Concerns were raised by AHCA, that on line 688, the bill removes the requirement for nurse registries to make patient assessments and replaces it with the requirement that a nurse shall be available to make visits. The use of "The assessment" may be substituted with "A record of the nurse's visit."

Concern was raised by AHCA that under the definition of "admission", on line 88, should be revised since it only covers the home health agency's decision process to accept the patient and does not include the responsibility to provide the care as agreed to with the patient. In section 400.487(1), F.S., home health agency must have a written agreement with the patient or legal representative to provide services. According to AHCA, this process should be considered part of the admission process and included in the definition.

Concern was raised by AHCA that on lines 298-299, the stricken language should be restored to current law. The information on whether services are provided directly or through contractors is needed to review the financial projections and determine financial ability to operate, which is required in s. 400.471(2)(c) and (3), F.S. The contractors' information is needed to assure that an application is not approved where the provider relies on unlicensed contractors or the use of contractors that do not have a license for the specific geographic service area.

A concern was raised that in the event that a home health agency closes a patient has 15 calendar days (Monday-Friday from 10-3 pm) to retrieve their records at a location within 2 hours driving time. Current statute provides the patient 1 year. The shortened time frame may be difficult for patients to meet.

Concern has also been raised that increasing the penalty for violating the licensure requirements to a third degree felony carries 1-5 year prison term and/or \$5,000 fine may have unintended consequences.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES