

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1273

Home Health Services

SPONSOR(S): Cusack

TIED BILLS:

IDEN./SIM. BILLS: SB 1926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	4 Y, 4 N	DePalma	Walsh
2) Health Care Appropriations Committee			
3) Health & Families Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1273 exempts entities providing personal care services through certified nursing assistants or home health aides from certain licensure requirements. The bill provides that such entities are required to register with the Agency for Health Care Administration.

The bill specifies that organizations providing personal care services must obtain and maintain liability insurance coverage and submit proof of coverage with an initial application for registration, and with each annual application for registration renewal.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government --- The bill authorizes home health aides and certified nursing assistants to provide personal care services through unlicensed homemaker and companion service organizations.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Licensed Home Health Agencies

Part IV of chapter 400, F.S., governs home health agencies, which are defined in s. 400.462(8), F.S., as organizations providing home health services and staffing services. Home health agencies provide 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 a patient's home or place of residence.

Home health agencies are licensed by the Agency for Health Care Administration (AHCA) for two-year periods. The initial application for licensure must include a listing of services to be provided, the number and discipline of professional staff to be employed, and proof of financial ability to operate, including submission of a balance sheet and income and expense statement for the first two years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses.¹

Home health agencies also must obtain and maintain malpractice and liability insurance in an amount not less than \$250,000 per claim, and must submit proof of coverage with an initial application for licensure and with each application for license renewal.²

In addition to these extensive licensure requirements, home health agencies are subject to periodic unannounced surveys, as determined by AHCA.³

A home health aide (HHA) or certified nursing assistant (CNA) employed by a home health agency is required to provide personal care services assigned by and under the supervision of a registered nurse.⁴ A home health agency is required to maintain a copy of the State of Florida certification for each CNA it employs, and documentation that each HHA it employs has successfully completed at least 40 hours of training in certain specified subject areas.⁵

The "assistance with activities of daily living" provided in a home health agency by a HHA or CNA includes assistance with ambulation, bathing, dressing, eating, personal hygiene, toileting, physical

¹ S. 400.471(2), F.S.

² S. 400.471(6), F.S.

³ Rule 59A-8.003, F.A.C.; survey frequency is determined by the extent of compliance with administrative rules and state laws observed in previous surveys.

⁴ Rule 59A-8.0095, F.A.C.; pursuant to s. 400.487(3), F.S., a home health agency is required to arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.

⁵ Rule 59A-8.0095, F.A.C.

transfer, and self-administration of medication.⁶ Other responsibilities of a HHA or CNA include the maintenance of a clean, safe and healthy living environment, performance of other activities as taught by a licensed health professional or contractor of the home health agency,⁷ keeping records of personal health care activities, and observing appearance and gross behavioral changes in patients.

A HHA or CNA is authorized to supervise a patient's self-administration of medication in the home, but is limited to the following:⁸

- obtaining the medication container from the storage area for the patient;
- ensuring that the medication is prescribed for the patient;
- reminding the patient that it is time to take the medication as prescribed;
- preparing necessary items such as juice, water, cups, or spoons;
- opening and closing the medication container, or tearing the foil of prepackaged medications;
- steadying the patient's arm, hand, or other body parts;
- observing the patient self-administering the medication; and
- assisting the patient by placing unused doses of solid medication back into the medication container.

As of March 30, 2006, there are 1,473 licensed home health agencies in the state.⁹ The Agency for Health Care Administration reports that telephone inquiries are received daily from individuals interested in starting new home health agencies.

Nurse Registries

Nurse registries arrange for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, and companions or homemakers --- acting as independent contractors --- to provide services to patients in their homes, and private duty and staffing services in health care facilities. A nurse registry is exempt from the licensing requirements of a home health agency, but must be licensed as a nurse registry, and licenses are issued for a two-year period.¹⁰

AHCA is authorized to inspect and investigate nurse registries pursuant to a complaint, and to determine the state of compliance with Part IV of chapter 400 and other applicable rules.¹¹ Unlike home health agencies, licensed nurse registries are not required to obtain insurance coverage as a condition of licensure.

A HHA or CNA may be referred by a nurse registry for a contract to provide care to a patient in his or her home only if that patient is under a physician's care, and a HHA or CNA referred for contract in a private residence shall be limited to assisting a patient with "bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself were he or she physically capable." A HHA or CNA is prohibited from providing medical or other health care services requiring specialized training and that may be performed only by licensed health care professionals, and a nurse registry is required to obtain the name and address of the attending physician and send written notification to the physician within 48 hours after a contract is concluded that a HHA or CNA will be providing care for that patient. Also, when a HHA or CNA is referred to a

⁶ *Ibid.*

⁷ Per Rule 59A-8.0095, F.A.C., such activities must be patient-specific, and are restricted to: assisting with the change of a colostomy bag and reinforcement of dressing; assisting with the use of devices for aid to daily living, such as a wheelchair or walker; assisting with prescribed range of motion exercises; assisting with prescribed ice cap or collar; doing simple urine tests for sugar, acetone or albumin; measuring and preparing special diets; measuring intake and output of fluids; and measuring temperature, pulse, respiration or blood pressure.

⁸ *Ibid.*

⁹ According to the Agency for Health Care Administration, there were 350 complaints pertaining to home health agencies received by the agency in 2005.

¹⁰ S. 400.506, F.S.

¹¹ *Ibid.*

patient's home by a nurse registry, the nurse registry is required to advise the patient, the patient's family, or any other person acting on behalf of the patient at the time the contract for services is made that registered nurses are available to make visits to the patient's home for an additional cost.¹²

A HHA or CNA referred for contract by a nurse registry shall:¹³

- be limited to assisting a patient in accordance with s. 400.506(10)(b), F.S.;
- be responsible for documenting services provided to the patient or client, and for filing said documentation with the nurse registry on a regular basis;
- be responsible for observing appearance and gross behavioral changes in the patient, and reporting these changes to the caregiver and the nurse registry or the registered nurse responsible for assessing the case when giving care in the home or to the responsible facility employee if staffing in a facility;
- be responsible to maintain a clean, safe and healthy living environment, which may include light cleaning and straightening of the bathroom, straightening the sleeping and living areas, washing the patient's dishes and laundry, and such tasks to maintain cleanliness and safety for the patient; and
- perform other activities as taught and documented by a registered nurse.¹⁴

Nowhere in either the Florida Statutes or Florida Administrative Code is explicit reference made to the ability of a HHA or CNA working for a nurse registry to assist in the patient's self-administration of medication. A home health agency is required to maintain a copy of the State of Florida certification for each CNA it employs, and documentation that each HHA it employs has successfully completed at least 40 hours of training in certain specified subject areas.¹⁵

Section 400.506(11), F.S., provides that providing services beyond the scope authorized in s. 400.506, F.S., constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act, and is punishable as provided under chapter 458, 459, or part I of chapter 464, F.S.

As of March 30, 2006, there are 230 licensed nurse registries in the state.¹⁶

Home Health Aides and Certified Nursing Assistants

Pursuant to s. 400.464(5)(d), both a home health aide and a certified nursing assistant --- acting in his or her individual capacity within the definitions and standards of his or her occupation, and who provides hands-on care to patients in their homes --- are exempt from agency licensure requirements.

Homemaker and Companion Services

A "companion" is defined as an individual who spends time with or cares for an elderly, handicapped, or convalescent individual and who accompanies such individual on trips and outings and may prepare and serve meals.¹⁷ Similarly, a "homemaker" is a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance, and routine household activities

¹² *Ibid.*

¹³ Rule 59A-18.0081, F.A.C.

¹⁴ Per Chapter 59A-18.0081, F.A.C., such activities must be patient-specific, and are restricted to: assisting with the change of a colostomy bag and reinforcement of dressing; assisting with the use of devices for aid to daily living, such as a wheelchair or walker; assisting with prescribed range of motion exercises; assisting with prescribed ice cap or collar; doing simple urine tests for sugar, acetone or albumin; measuring and preparing special diets; measuring intake and output of fluids; and measuring temperature, pulse, respiration or blood pressure.

¹⁵ *Ibid.*

¹⁶ AHCA reports that there were 32 complaints relating to nurse registries received by the agency in 2005.

¹⁷ S. 400.462(7), F.S.

for an elderly, handicapped, or convalescent individual.¹⁸ Neither a companion nor a homemaker is allowed to provide “hands-on” personal care services to a client.

Entities providing only homemaker and companion services to persons are not licensed by AHCA, but still are required to register with the agency for a one-year period.¹⁹

Duly-authorized officers or employees of AHCA have the right to make such inspections and investigations as are necessary in order to respond to complaints; however, the agency has no authority to inspect businesses prior to registration, or to survey them, absent receipt of a complaint, once they are registered.

On March 30, 2006, there were 999 organizations registered to provide homemaker and companion services in the state.²⁰

AHCA has reported that homemaker and companion service chains and other businesses have sought to have personal care services added to the scope of service that their businesses can provide. “Personal care” is defined in s. 400.462(21), F.S., as 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. Personal care is provided by home health aides and certified nursing assistants, and businesses providing personal care are to be licensed as home health agencies or nurse registries, unless exempt from licensing under s. 400.464(5), F.S.

In 1999, the Task Force on Home Health Services Licensure Provisions, established by the Legislature, reviewed information regarding programs in other states and found that 11 other states regulated personal care as a simpler form of licensing than Florida’s home health agency and nurse registry licensing. The Task Force recommended in its report to the Legislature that personal care services be added to services authorized to be provided by homemakers and companions. However, the report noted that it was important that personnel providing personal care to be trained in lifting, transferring, and bathing disabled persons for the safety of the clients.

Unlicensed Activity

AHCA receives complaints of unlicensed home health activity throughout the state. In 2005, the agency received 20 complaints of unlicensed home health agencies, 3 complaints of unlicensed nurse registries, and 7 complaints relating to unregistered homemaker companion service providers. Although businesses determined to be providing services without a license or registration are given a notice of violation and are directed to obtain a license, many disregard the notices and continue operating. AHCA may seek an injunction under s. 400.515, F.S., only where there is an emergency affecting the immediate health and safety of a patient.

EFFECT OF PROPOSED CHANGES

HB 1273 amends s. 400.509, F.S., by exempting from licensure organizations providing personal care services through employed certified nursing assistants or through home health aides who are trained and qualified in providing personal care as determined by AHCA under s. 400.497(1), F.S. The bill specifies that the only home health services which may be provided are the bathing, dressing, toileting, grooming, eating, and physical transfer of a patient, as well as “those normal daily routines the patient could perform for himself or herself if he or she was physically capable. Organizations providing personal care services are required to register with AHCA.

¹⁸ S. 400.462(15), F.S.

¹⁹ S. 400.509(1), F.S.

²⁰ AHCA reports that there were 58 complaints relating to organizations providing homemaker and companion services received by the agency in 2005.

The bill requires organizations providing personal care services to obtain and maintain liability insurance coverage as defined in s. 624.605(1)(b), F.S., in an amount not less than \$250,000 per claim, and must further submit proof of liability insurance coverage with an initial application for registration and with each annual application for registration renewal.

Below is a table illustrating the licensure and registration requirements specific to licensed home health agencies, nurse registries, and unlicensed homemaker and companion service organizations under current law and proposed HB 1273:

	Home Health Agencies	Nurse Registries	Homemaker and Companion Service Organizations (under current law)	Homemaker and Companion Service Organizations (under HB 1273)
Is entity licensed?	Licensed (2 years)	Licensed (2 years)	No, registered (1 year).	No, registered (1 year).
Required background screening	Level 2 for administrator and financial officer.	Level 2 for managing employee and financial officer.	Level 1 for individuals having contact with clients; level 2 for managing employee and financial officer.	Level 1 for individuals having contact with clients; level 2 for managing employee and financial officer.
Authorized AHCA inspections and investigations	AHCA may perform unannounced surveys.	AHCA may inspect or investigate as necessary to respond to a complaint or determine compliance with laws/rules.	AHCA may inspect or investigate as necessary to respond to a complaint or determine compliance with laws/rules.	AHCA may inspect or investigate as necessary to respond to a complaint or determine compliance with laws/rules.
Insurance coverage required?	Yes; malpractice and liability insurance coverage in an amount of not less than \$250,000 per claim.	No	No	Yes; liability insurance coverage in an amount of not less than \$250,000 per claim.
Authorized to provide personal care services through HHA or CNA?	Yes, under the supervision of a registered nurse.	Yes, but only if a patient is under a physician's care.	No, personal care services cannot be provided by an organization providing homemaker and companion services.	Yes, a HHA or CNA may assist with "bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself if he or she were physically capable."
Responsibilities and duties of HHA and CNA	Performing personal care activities in a written assignment, maintaining a clean environment, keeping records of personal health care activities, observing patient appearance, performing other activities as taught by a licensed health professional employee or contractor of a home health agency, as specified in chapter 59A-8.0093, F.A.C.	Documenting services provided, observing patient appearance, maintaining a clean environment, performing other activities as taught and documented by a registered nurse, as specified in chapter 59A-18.0081, F.A.C.	N/A; personal care services cannot be provided by an organization providing homemaker and companion services.	Assisting a patient with "bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself if he or she were physically capable."
HHA/CNA assistance with administration or self-administration of medication	May obtain medication container, ensure medication is properly prescribed, remind patient it is time to take medication, and observe patient self-administer medication.	Unspecified.	N/A; personal care services cannot be provided by an organization providing homemaker and companion services.	Although not specifically indicated, the "normal daily routines the patient could perform for himself or herself" may be read to infer an ability to assist administration.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.509, F.S., exempting organizations providing personal care services to patients from certain licensure requirements; providing a description of the home health services which may be performed by an organization providing personal care services; requiring an organization providing personal care services to register with the Agency for Health Care Administration; requiring an organization providing personal care services to obtain and maintain liability insurance coverage, and to submit proof of liability insurance coverage with an initial application for registration and with each annual application for registration renewal.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments", below.

2. Expenditures:

See "Fiscal Comments", below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments", below.

D. FISCAL COMMENTS:

Although it is staff's understanding that the bill will have some fiscal impact on the Agency for Health Care Administration, the agency had not provided fiscal commentary or legislative analysis outlining the bill's impact as of publication.

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:

Although rulemaking authority is not provided in the legislation, s. 400.509, F.S., provides AHCA with rulemaking authority to administer the registration of homemaker and companion service organizations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 4, 2006 meeting, the Elder and Long-Term Care Committee voted 4-4 on HB 1273, and the bill was reported unfavorably.²¹

²¹ Pursuant to House Rule 13.5, "all action by the House or its councils, committees, or subcommittees shall be by majority vote of those members present and voting. When the body is equally divided, the question is defeated."