

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 2214

INTRODUCER: Children and Families Committee and Senator Saunders

SUBJECT: Licensure of Health Care Providers

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/6 amendments</u>
2.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2214 divides ch. 408, F.S., “Health Care Administration,” into parts I-IV and consolidates core licensure requirements for health care providers licensed by the Agency for Health Care Administration (AHCA or agency) in part II of ch. 408, F.S., consisting of newly created ss. 408.801-408.820 and existing s. 408.831, F.S., titled “Health Care Licensing: General Provisions.” The bill provides legislative findings, purpose and applicability. The bill specifies the legislative intent to eliminate unnecessary duplication and variation in licensure requirements for health care providers regulated by the agency. The bill defines and standardizes common terminology. The bill specifies the facilities and services that require licensure. The bill establishes license fees and provides a method for calculating the annual adjustment of fees. The bill provides a license application process, which requires specified information to be included on the application. It requires the payment of late fees under certain circumstances, authorizes inspections, and authorizes AHCA to establish procedures and rules for the electronic transmission of required information.

The bill provides procedures for a change in ownership by a licensee requiring the transferor to notify the agency in writing within a specified period. The bill requires providers to have and display a license from AHCA. The bill identifies licensure categories and conditions for issuance. Background screening must be conducted for certain employees. The bill prohibits unlicensed activity and authorizes administrative fines to be imposed. The bill outlines the agency authorization for a moratorium or emergency suspension if conditions present a threat to clients’ health, safety, or welfare. The bill outlines circumstances in which a license may be denied or revoked. The agency is authorized to seek injunctive proceedings under certain circumstances. The bill requires that all fees and fines collected under part II of ch. 408, F.S., be

deposited in the Health Care Trust Fund. The bill authorizes AHCA to adopt rules to implement part II of ch. 408, F.S. The bill provides for certain exemptions.

The CS exempts from the prohibition against use of conduction anesthesia in birth centers for a period of three years to a specific birthing center meeting certain criteria. It directs AHCA to review safety and outcome data for patients served at this center to determine the viability of extending the exemption statewide.

The bill provides a certificate-of-need exemption for the creation of a single nursing home under specific circumstances. This exemption ends upon the expiration of the nursing home certificate-of-need moratorium.

The bill amends the definition of “Home for Special Services.” The bill modifies the definition of an entity that is exempt from licensure as a health care clinic. The bill specifies that the provisions of this bill prevail over health care provider authorizing statutes when there is a conflict. For biennial licenses the fee for an annual license may be doubled. The bill requires the Division of Statutory Revision to assist relevant substantive legislative committees to prepare draft conforming legislation. This bill allows for staggering of expiration dates for licenses as providers change from annual to biennial licenses.

The CS exempts from definition of a health clinic certain entities that provide physical therapy services under physician orders and entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395. Documentation demonstrating compliance with this requirement must be provided to the agency. A requirement that an exempt entity provide only oncology or radiation therapy services is also deleted. It also prohibits the granting of a health care clinic license to an entity owned by an insurance entity regulated by ch. 627 or 641, F.S.

The bill amends ss. 383.335, 400.801, 400.9905, 400.991, 408.036, and 408.831 of the Florida Statutes.

The bill creates part I of chapter 408, F.S., entitled “Health Facility and Services Planning,” consisting of the following existing sections of the Florida Statutes: 408.031, 408.032, 408.033, 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045, 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08, 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20, 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057, and 408.7071.

The bill creates part II of chapter 408, F.S., entitled “Health Care Licensing: General Provisions,” consisting of the following newly created sections of the Florida Statutes: 408.801, 408.802, 408.803, 408.804, 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811, 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818, 408.819, and 408.820, and existing statutory section 408.831.

The bill creates part III of chapter 408, F.S., entitled “Health Insurance Access,” consisting of the following existing sections of Florida Statutes: 408.90, 408.901, 408.902, 408.903, 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909.

The bill creates part IV of chapter 408, F.S., entitled “Health and Human Services Eligibility Access System,” consisting of the following existing sections of the Florida Statutes: 408.911, 408.913, 408.914, 408.915, 408.916, 408.917, and 408.918.

II. Present Situation:

Chapter 408, F.S., is titled “Health Care Administration” and contains the general statutory provisions assigned to the agency. The agency is created in s. 20.42, F.S., and is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate-of-need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in pt. III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

Health care providers that are regulated by AHCA include drug-free workplace laboratories, birth centers, abortion clinics, crisis-stabilization units, short-term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family-care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for persons with developmental disabilities, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

The licensure statutes for the various health care providers regulated by AHCA contain duplication and variation in certain basic licensing standards. These standards include the application process, changes of ownership, licensure categories, background screening, changes of administrator, right of inspection, inspection reports, unlicensed activity, administrative fines, moratoriums, and license denial and revocation. The majority of licenses are required to be renewed annually, although some programs call for biennial licensure. Each of these regulatory statutes has evolved independently and, as such, they vary in how similar requirements are defined. Licensure processing occurs within the broad requirements of licensure under the Administrative Procedure Act, s. 120.60, F.S., and many unique requirements within each specific health care provider’s statutes or rules.

The Department of Elderly Affairs currently has the rule-writing authority for the assisted living facility, adult family care home, adult day care center, and hospice programs. The agency has

rule-writing authority for the majority of other programs it licenses including hospitals, nursing homes, home health agencies, and others.

III. Effect of Proposed Changes:

Section 1 amends s. 383.335, F.S., relating to the licensure of birth centers, providing an exemption from the prohibition against use of conduction anesthesia in birth centers. The exemption is extended for a period of three years and applies only to a licensed facility in trauma district 17, owned and operated by a board eligible obstetrician and located within one mile of a neonatal intensive care unit with which the center has a written transfer agreement. The agency is directed to review the safety and outcome data for patients served at this center to determine the viability of extending the exemption statewide.

Section 2 creates part I of ch. 408, F.S., consisting of the following existing statutory sections: 408.031, 408.032, 408.033, 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045, 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08, 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20, 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057, and 408.7071, F.S., entitled “Health Facility and Services Planning.”

Section 3 creates part II of chapter 408, F.S., consisting of the following newly created statutory sections: 408.801, 408.802, 408.803, 408.804, 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811, 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818, 408.819, and 408.820, and existing statutory section 408.831, F.S., entitled “Health Care Licensing: General Provisions.”

Section 4 creates part III of chapter 408, F.S., consisting of the following existing statutory sections: 408.90, 408.901, 408.902, 408.903, 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909, F.S., entitled “Health Insurance Access.”

Section 5 creates part IV of chapter 408, F.S., consisting of the following existing statutory sections: 408.911, 408.913, 408.914, 408.915, 408.916, 408.917, and 408.918, F.S., entitled “Health and Human Services Eligibility Access System.”

Section 6 amends s. 408.036, F.S., providing a certificate-of-need exemption for the creation of a single nursing home when a nursing home is created by combining licensed beds from two or more nursing homes within a district, regardless of subdistrict boundaries, if 50 percent of the beds came from the only nursing home in one county and its occupancy was below 75 percent, for the 12 month period ending 90 days before the request for the exemption. The paragraph repeals upon the expiration of the nursing home certificate-of-need moratorium.

Section 7 creates sections 408.801 – 408.820, F.S., to consolidate licensing requirements for facilities and services licensed by the agency.

Section 408.801, F.S., provides that part II of chapter 408, F.S., may be cited as the “Health Care Licensing Procedures Act.” The Legislature finds that there is unnecessary duplication in the

requirements for licensure by the agency, and it is the intent of the Legislature to streamline the requirements in order to minimize confusion and standardize terminology.

Section 408.802, F.S., specifies the facilities and services requiring licensure, registration, or certification with the agency pursuant to part II of chapter 408, F.S., as described in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The entities include drug-free workplace laboratories, birth centers, abortion clinics, crisis-stabilization units, short-term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family-care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for persons with developmental disabilities, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

Section 408.803, F.S., defines the following terms to be used for licensure, certification, or registration: agency, applicant, authorizing statute, certification, change of ownership, client, controlling interest, license, licensee, moratorium, provider, services that require licensure, and voluntary board member

- *Agency* means the Agency for Health Care Administration;
- *Applicant* means an individual, corporation, partnership, firm, association, or governmental entity that submits an application to the agency for a license;
- *Authorizing statute* means the statute authorizing the licensed operation of a provider listed in s. 408.802, including chs. 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S.;
- *Certification* means certification as a Medicare or Medicaid provider of the services that necessitate licensure, or certification pursuant to the federal Clinical Laboratory Improvement Amendments (CLIA);
- *Change of Ownership* means an event in which the licensee changes to a different legal entity or in which 45 percent or more of the ownership, voting shares, or controlling interest in a corporation that is not publicly traded is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments over a two-year period which cumulatively total 45 percent or greater. However, a change solely in the management company is not a change of ownership;
- *Client* means any person receiving services from a provider listed in s. 408.802, F.S.;
- *Controlling interest* means (a) the applicant or a licensee, or (b) a person or entity that serves as an officer of, is on the board of directors of, or has a five percent or greater ownership interest in the applicant or licensee, or (c) a person or entity that serves as an

officer of, is on the board of directors of, or has a five percent or greater ownership interest in the management company or other entity, related or unrelated, which the applicant or licensee contracts with to operate the provider. The term does not include a voluntary board member;

- *License* means any permit, registration, certificate, or license issued by the agency;
- *Licensee* means an individual, corporation, partnership, firm, association, or governmental entity that is issued a permit, registration, certificate, or license by the agency;
- *Moratorium* means a prohibition on the acceptance of new clients;
- *Provider* means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.;
- *Services that require licensure* means those services, including residential services, that require a valid license before those services may be provided in accordance with authorizing statutes and agency rules;
- *Voluntary board member* means a board member of a not-for-profit corporation or organization who serves solely in a voluntary capacity, does not receive any remuneration for his or her services on the board of directors, and has no financial interest in the corporation or organization. AHCA must recognize a person as a voluntary board member following submission of a statement to AHCA by the board member and the not-for-profit corporation or organization, which affirms that the board member conforms to this definition. The statement affirming the status of the board member must be submitted to AHCA on a form provided by AHCA.

Section 408.804, F.S., requires each facility that is subject to licensure to have a license from the agency and have it displayed in a conspicuous place at the address on the license. A license is not subject to sale, assignment or transfer.

Section 408.805, F.S., requires the agency to collect fees that cover the cost of regulation and enforcement unless otherwise limited by statute. The bill:

- Requires the adjustment of licensure fees for biennial licensure in agency rule;
- Requires annual licensure fee adjustments, including fees paid per bed, not to exceed the change in the consumer price index;
- Requires payment of inspection fees as required in authorizing statutes;
- Specifies that fees are nonrefundable;
- Allows fee assessments for changes resulting in the issuance of a license by the agency;
- Allows fee assessments for issuance of a duplicate license not to exceed duplication and postage costs; and
- Provides that total fees collected may not exceed the cost of administering the licensure provisions.

Section 408.806, F.S., requires the agency to provide forms for licensure application. The application must be submitted under oath and submitted with the appropriate fees. The application must contain:

- The name, address, and social security number of the applicant and each controlling interest if the applicant or controlling interest is an individual;
- The name, address, federal employer identification number or taxpayer identification number of the applicant and each controlling interest if the applicant or controlling interest is not an individual;
- The provider name;
- The requested beds or capacity;
- The name of the person or persons managing the operation of the provider and the administrator's name if required;
- A certificate of authority as required under chapter 651, F.S., if the applicant offers continuing care agreements; and
- Other necessary information under part II of chapter 408, F.S., authorizing statutes, and applicable rules, including satisfactory inspection results.

This section requires an applicant to submit:

- A licensure renewal application, which must be received by AHCA at least 60 days prior to license expiration;
- A change of ownership application, which must be received by AHCA at least 60 days prior to the change of ownership date; and
- Other applications or requests, which must be received by AHCA at least 60 days prior to the requested effective date, unless otherwise specified by authorizing statutes or rules.

The bill requires the agency to notify a licensee by mail or electronically at least 90 days before the expiration of a license. The agency is authorized to assess late fees for late-filed applications.

This bill requires AHCA to review licensure applications and notify the applicant in writing of errors or omitted information within 30 days of receipt. Information that was omitted from a licensure, renewal, or change of ownership application must be filed with AHCA within 21 days of AHCA's request, or the application will be deemed incomplete with no further consideration. The agency must approve or deny a license within 60 days after the receipt of a complete application.

Licenses are issued for a two-year period, unless the conditions of licensure specify a shorter period, such as the issuance of a provisional license. As provided in section 12 of the bill, between October 1, 2006, and September 30, 2008, AHCA may issue licenses for less than two years, charging a prorated fee, and adjusting the renewal date for the purpose of transitioning affected providers from a one-year to two-year licensure cycle.

The bill requires that licenses include the licensee's name, the provider type or service authorized, the effective and expiration dates, maximum capacity of licensed premises if applicable, and other information required or deemed necessary by AHCA.

In accordance with authorizing statutes and applicable rules, proof of compliance with minimum licensure requirements as specified in s. 408.810, F.S., must be submitted with a licensure application. The agency may not issue an initial license to a health care provider that is subject to certificate-of-need review under pt. I of ch. 408, F.S., unless the provider has been issued a certificate of need (CON) or a CON exemption. Failure to apply for a renewal license before the expiration date of a license renders the license void.

The bill requires an applicant to demonstrate compliance with pt. II of ch. 408, F.S., authorizing statutes, and applicable rules during an inspection if one is required by authorizing statutes. An initial survey is not required for companion services or homemaker services providers, or health care services pools. All inspections other than initial inspections are unannounced except for inspections of birth centers under s. 383.324(3), F.S.; hospitals, ambulatory surgical centers, and mobile surgical facilities under s. 395.0161(4), F.S.; and clinical laboratories under s. 483.061(2), F.S. Hospitals, ambulatory surgical centers, birth centers and mobile surgical facilities are exempt from unannounced inspections because AHCA is required under current law to coordinate inspections to minimize disruption of services for these providers. If the provider is unavailable at the time of inspection the application will be denied.

The bill authorizes AHCA to develop, by rule, requirements for electronic submission of applications, required signatures, payment of fees, application notarization, and any other required documents or information required by pt. II of ch. 408, F.S., or authorizing statutes.

Section 408.807, F.S., specifies that during changes of ownership the transferor (licensee/seller) must notify AHCA in writing a minimum of 60 days before the transfer of ownership date and the transferee (applicant/buyer) must submit a change of ownership application to AHCA at least 60 days prior to the change of ownership date. The transferor is responsible for the lawful operation of the provider and the welfare of the clients served until the date the transferee is licensed by AHCA. The transferor is also responsible for all penalties imposed against the transferor before the change of ownership date. License restrictions, such as a conditional license during change of ownership, remain in place until AHCA determines that the grounds for the restriction are corrected. The new owner must maintain required records of the previous owner including all client records, inspection reports, and all records required to be maintained on Medicaid recipients, if applicable.

Section 408.808, F.S., identifies licensure categories, conditions for issuance, and licensure time periods. The agency may issue a standard license to an applicant at the time of initial, renewal, or change of ownership when the applicant is in compliance with all statutory requirements and agency rules. Standard licenses must be issued for a two-year period, unless sooner revoked.

The bill allows AHCA to issue a provisional license to an applicant when individuals required to undergo background screening have met screening requirements through the Florida Department of Law Enforcement and are pending the results from the Federal Bureau of Investigation.

Pending a licensure denial or revocation proceeding, a provisional license may be issued until final agency decision.

The bill allows for the issuance of an inactive license to a health care provider subject to the CON provisions in ss. 408.031 – 408.045, F.S. (defined as pt. I of ch. 408, F.S., in the bill), when the provider is currently licensed, does not have a provisional license, and is temporarily unable to provide services but will resume services within 12 months. Inactive licenses are not to exceed 12 months but can be renewed for up to 12 additional months based on the provider's progress toward reopening. Written submissions to AHCA from the licensee for inactive license status or to extend the inactive period must include a justification, beginning and ending dates of inactivity, plan for transferring clients to other providers, and required licensure fees. Inactive license requests received by AHCA after the provider has initiated closure, suspension of service, or client notification of closure or suspension cannot be accepted unless the action is a result of a disaster. For the purposes of this section, "disaster" is defined as sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade, which renders the provider inoperable at the premises. Providers approved for inactive license status must notify each client of any necessary discharge or transfer pursuant to authorizing statutes or applicable rules. The inactive license begins the date the provider ceases operation. The provider's license expires at the end of the inactive license period, and all licensure fees must be paid and may be prorated. To reactivate an inactive license, a renewal application must be submitted with appropriate fees and agency inspections indicating that all requirements of pt. II of ch. 408, F.S., authorizing statutes, and applicable rules are met.

The bill allows the issuance of other licensure types pursuant to authorizing statutes and applicable rules.

Section 408.809, F.S., requires employee background screening standards pursuant to ch. 435, F.S. The bill states that level 2 background screening must be conducted through AHCA on the following:

- The licensee, if an individual;
- The administrator or similar person responsible for day-to-day operation of the provider;
- The financial officer or similar person responsible for financial operation of the licensee or provider; and
- Any person who is a controlling interest if AHCA has reason to believe such person has been convicted of any offense prohibited by s. 435.04, F.S. The licensee must submit a description and explanation of the conviction with the license application.

The bill provides that documentation submitted of a satisfactory level 2 background screening conducted within the previous five years to meet AHCA, Department of Health, Agency for Persons with Disabilities, or Department of Children and Family Services provider or professional licensure requirements satisfies the background screening requirements, if such proof is accompanied by an affidavit of current compliance with ch. 435, F.S., using forms provided by AHCA. Proof of compliance with background screening requirements submitted within the last five years to operate a continuing care retirement community under ch. 651, F.S., satisfies the level 2 background check.

This bill authorizes AHCA to issue a provisional license upon satisfactory compliance with the Florida Department of Law Enforcement background check for persons required to be screened pending the screening results of the Federal Bureau of Investigation. A standard license may be issued when AHCA receives a satisfactory Federal Bureau of Investigation background screening report or upon AHCA granting a disqualification exemption pursuant to ch. 435, F.S.

When a change of any person required to undergo level 2 background screening occurs, the licensee must report the change to AHCA within the timeframe specified in authorizing statutes or rules and must submit to AHCA information necessary to conduct level 2 screening or provide evidence of background screening compliance. The person may serve in his or her capacity pending AHCA's receipt of the report from the Federal Bureau of Investigation if he or she has met the standards for the Department of Law Enforcement background check. However, the person may not continue to serve if the report indicates any violation of background screening standards unless an exemption from disqualification has been granted by AHCA as set forth in ch. 435, F.S.

Background screening is not required to obtain a Certificate of Exemption authorizing a clinical lab to perform waived tests, issued under s. 483.106, F.S.

Section 408.810, F.S., specifies requirements for obtaining and maintaining a license issued by AHCA. In addition to the licensure requirements in pt. II of ch. 408, F.S., authorizing statutes, and applicable rules, each applicant and licensee must comply with requirements for background screening and disclosure of exclusion, suspensions, or terminations from Medicare, Medicaid, or CLIA programs. Unless specified differently in pt. II of ch. 408, F.S., authorizing statutes, or rules, any information required to be reported must be submitted to AHCA within 21 calendar days after the report period or effective date of information.

When a licensee discontinues operation of a provider, the licensee must inform AHCA at least 30 days before discontinuance of operation, inform clients of discharge in accordance with authorizing statutes, and surrender the license to AHCA for cancellation. Upon closure of a provider, the licensee is responsible for retention and distribution of all records within timeframes specified in authorizing statutes and rules. Upon a licensee's death or dissolution of a licensee, the estate or agent of the licensee must provide copies of records to clients or their representative, physician, or health care provider, or publish a notice in the newspaper of greatest general circulation in the county where the provider was located, which notifies clients of the death or dissolution. The notice must advise clients that copies of their records may be obtained and must include the name address and telephone number of the person from whom the copies may be obtained. The notice shall appear at least once a week for four consecutive weeks. Failure to comply is a second-degree misdemeanor.

The bill requires that, on or before the first day of services, each licensee must provide clients notice of the right to report complaints to AHCA and to report abuse, neglect, or exploitation to the central abuse hotline. The licensee must provide notice of toll-free telephone numbers for reporting and the agency must publish changes in toll-free telephone numbers at least 90 days before the change occurs. A licensee must establish policies and procedures for notifying clients of the changes in toll-free telephone numbers.

The bill requires applicants to submit proof of their legal right to occupy the property. If proof of liability insurance is required, the insurance must be in compliance with ch. 624, 626, 627, or 628, F.S. The applicant must provide proof of financial ability to operate for initial licensure or change of ownership applications in accordance with authorizing statutes and applicable rules. The agency must establish standards for determining financial ability to operate, including information concerning the applicant's controlling interests, documentation showing anticipated revenues and expenditures, the basis for financing anticipated cash-flow, and access to contingency financing. A current certificate of authority under ch. 651, F.S., may be submitted to AHCA as proof of financial ability to operate. The bill allows AHCA to require the licensee to submit proof of financial stability when evidence of financial instability exists.

The bill prohibits a controlling interest from withholding from AHCA evidence of financial instability and provides that it is a second-degree misdemeanor to do so.

The bill prohibits AHCA from issuing a license to a provider that is subject to CON review unless the licensee has obtained a CON or an exemption from CON review. Upon initial licensure, the authorization contained in the CON will be considered fully implemented and merged into the license, and the authorization in the CON will have no effect upon the termination of the license for any reason. Those health care facilities required to obtain a CON include hospitals, nursing homes, hospices, and intermediate care facilities for persons with developmental disabilities.

Section 408.811, F.S., authorizes AHCA to conduct inspections and investigations to determine compliance with pt. II of ch. 408, F.S., authorizing statutes, and rules. The right of inspection extends to businesses AHCA believes are being operated without the appropriate license, but such inspection of a suspected unlicensed entity requires permission of the owner or person in charge, unless a warrant is obtained from circuit court. An application for a license gives AHCA the right to conduct appropriate inspections in connection with the application. Inspections will be unannounced except for initial licensure inspections and inspections of birth centers, hospitals, ambulatory surgical centers, mobile surgical facilities, and clinical laboratories, as provided in s. 408.806, F.S., which is created in this bill. Re-licensure inspections must be conducted biennially unless otherwise specified in authorizing statutes or applicable rules.

The bill allows for certification inspections in lieu of complete licensure inspections. If certain licensure requirements are not included in the certification inspection, a licensure inspection may also be conducted. The agency must have access to all required records, and the licensee must provide copies of required records to AHCA at no cost.

A licensee must maintain and make available to the public all inspection reports filed with, or issued by, any governmental agency unless those reports are exempt from, or contain information that is exempt from, s. 119.07(1), F.S., or is otherwise made confidential by law. Effective October 1, 2005, such reports must be retained in the provider's records for at least five years from the date the reports were filed and issued. At the request of any person who has completed an admissions application to the provider or anyone who is a client of the provider, a licensee must provide that person or that person's relative, spouse, or guardian, a copy of the last inspection report issued by AHCA or an accrediting organization if such report is used in lieu of a licensure inspection.

Section 408.812, F.S., prohibits persons or entities from offering or advertising services that require licensure without first obtaining a valid license from AHCA. A licensee is prohibited from advertising or holding out to the public a license other than the license actually held.

The bill specifies that operating or maintaining an unlicensed provider or providing services necessitating licensure without such licensure is unlawful. Unlicensed activity constitutes harm materially affecting clients' health, safety and welfare. The bill allows AHCA, or any state attorney, to file an injunction to cease unlicensed activity or enjoin future operation, maintenance, or provision of services until compliance with licensure requirements has been determined by AHCA.

An unlicensed provider owner or operator failing to cease operation after agency notification may be fined \$1,000 for each day of noncompliance. Each day the provider continues to operate is a separate offense.

When a licensee or controlling interest has an interest in more than one provider and fails to license any of the providers requiring licensure, AHCA can revoke all licenses, impose a moratorium, and impose fines pursuant to the authorizing statutes until such time as the appropriate license is obtained for the unlicensed operation. In addition to an injunction, an owner of an unlicensed provider is subject to the same actions and fines imposed against a licensed provider if AHCA determines that a condition exists that poses a threat to client health, safety, or welfare. Persons aware of the operation of an unlicensed provider must report that provider and operator to AHCA.

Section 408.813, F.S., authorizes AHCA to impose an administrative fine for any violations of pt. II of ch. 408, F.S., authorizing statutes, and rules. Fines may be imposed both in lieu of, and in addition to, other penalties provided for in pt. II, ch. 408, F.S. The fine amount imposed must be in accordance with authorizing statutes or applicable rules. If the fine amount is not specified in authorizing statutes or applicable rules, AHCA may establish criteria for the fine amount. Each day of violation constitutes a separate violation and is subject to a separate fine. If fines are imposed by final agency action, the violator must pay the fine plus interest for each day beyond the original date for payment.

Section 408.814, F.S., authorizes AHCA to impose an immediate moratorium or emergency suspension on a provider or licensee if conditions present a threat to clients' health, safety, or welfare. A provider whose license is denied or revoked may be subject to moratorium or emergency suspension to run concurrent with licensure denial, revocation, or injunction. A moratorium or emergency suspension will remain in effect during a change of ownership unless AHCA determines that conditions resulting in the moratorium or emergency suspension or denial have been corrected. Moratorium or emergency suspension notices must be posted and visible to the public at the provider's location until the moratorium or emergency suspension has been removed by AHCA.

Section 408.815, F.S., authorizes AHCA to deny or revoke a license or application for violations and actions by a controlling interest that include:

- False representation or omission of material fact in the application;
- An intentional or negligent act affecting client health, safety, or welfare;
- A violation of pt. II of ch. 408, F.S., authorizing statutes, and rules;
- A pattern of deficient performance; and
- Exclusion, suspension, termination, or involuntary withdrawal of an applicant, licensee, or controlling interest from Medicaid or Medicare or other governmental or private health care or health insurance program.

A licensee must continue to meet licensure requirements including submission of a license renewal application and fee while lawfully operating pending litigation for license denial or revocation. The bill allows AHCA to withhold final decisions on any application or request filed with AHCA pending final agency action in pending litigation.

A moratorium, emergency suspension, or license denial against a transferor may be grounds for license denial of a change of ownership to the transferee.

Section 408.816, F.S., authorizes AHCA to seek injunctive proceedings in court to restrain or prevent operation or establishment of an unlicensed provider or a provider that is in violation of regulations. The agency may seek injunctive relief when violations result in an emergency immediately affecting clients' health, safety, or welfare. An injunction may be sought by AHCA when AHCA's imposition of administrative sanctions against the provider have failed to correct a violation or when the violation materially affects client health, safety, or welfare or involves any operation of an unlicensed provider. Injunctions may be temporary or permanent.

If action is necessary to protect clients of a provider from a life-threatening situation, the court may allow a temporary injunction without bond, upon proper proof being made.

Section 408.817, F.S., requires administrative proceedings challenging agency actions to be reviewed on the facts and conditions resulting in agency action.

Section 408.818, F.S., requires all fees and fines collected under pt. II of ch. 408, F.S., authorizing statutes, and rules to be deposited into the Health Care Trust Fund and used to offset agency regulatory costs, unless otherwise specified in authorizing statutes.

Section 408.419, F.S., authorizes AHCA to adopt rules to implement pt. II of ch. 408, F.S., and requires that licensed providers operating at the time of rule adoption be given reasonable time not to exceed six months after the effective date of the rule to comply with such rule, unless otherwise specified by rule.

Section 408.420, F.S., specifies that, except as prescribed in authorizing statutes, the following exemptions apply to specified requirements of part II of chapter 408, F.S.:

- Drug-free workplace laboratories, as provided under ss. 112.0455 and 440.102, F.S., are exempt from providing clients notice of the right to report complaints to the agency, providing clients notice to report abuse, neglect, or exploitation to the central abuse hotline; notice of toll-free telephone numbers and establishing policies for notifying clients of the changes in toll-free telephone numbers; submitting proof of their legal right to occupy the

property; providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.

- Birth centers, as provided under chapter 383, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Abortion clinics, as provided under chapter 390, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Crisis-stabilization units, as provided under parts I and IV of chapter 394, F.S., are exempt from providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Short-term residential treatment units, as provided under parts I and IV of chapter 394, F.S., are exempt from providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Residential treatment facilities, as provided under part IV of chapter 394, F.S., are exempt from providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Residential treatment centers for children and adolescents, as provided under part IV of chapter 394, F.S., are exempt from providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Hospitals, as provided under part I of chapter 395, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; and prohibition against a controlling interest withholding from the agency evidence of financial instability.
- Ambulatory surgical centers, as provided under part I of chapter 395, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Mobile surgical facilities, as provided under part I of chapter 395, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate;

prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.

- Private review agents, as provided under part I of chapter 395, F.S., are exempt from inspection requirements pursuant to section 408.806(7), F.S.; minimum licensure requirements pursuant to section 408.810, F.S.; and right of agency entry and inspection, copies, and inspection reports as specified in section 408.811, F.S.
- Health care risk managers, as provided under part I of chapter 395, F.S., are exempt from inspection requirements pursuant to section 408.806(7), F.S.; minimum licensure requirements pursuant to section 408.810, F.S.; and right of agency entry and inspection, copies, and inspection reports as specified in section 408.811, F.S.
- Nursing homes, as provided under part II of chapter 400, F.S., are exempt from providing proof of liability insurance.
- Assisted living facilities, as provided under part III of chapter 400, F.S., are exempt from a CON prior to licensure.
- Home health agencies, as provided under part IV of chapter 400, F.S., are exempt from a CON prior to licensure.
- Nurse registries, as provided under part IV of chapter 400, F.S., are exempt from providing proof of legal right to occupy the property and having a CON prior to licensure.
- Companion services or homemaker services providers, as provided under part IV of chapter 400, F.S., are exempt from providing proof of legal right to occupy the property; providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Adult day care centers, as provided under part V of chapter 400, F.S., are exempt from a CON prior to licensure.
- Adult family-care homes, as provided under part VII of chapter 400, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Homes for special services, as provided under part VIII of chapter 400, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Transitional living facilities, as provided under part VIII of chapter 400, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate;

prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.

- Prescribed pediatric extended care centers, as provided under part IX of chapter 400, F.S., are exempt from a CON prior to licensure.
- Home medical equipment providers, as provided under part X of chapter 400, F.S., are exempt from a CON prior to licensure.
- Intermediate care facilities for persons with developmental disabilities, as provided under part XI of chapter 400, F.S., are exempt from proof of liability insurance.
- Health care services pools, as provided under part XII of chapter 400, F.S., are exempt from providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Health care clinics, as provided under part XIII of chapter 400, F.S., are exempt from background screening requirements; providing proof of legal right to occupy the property; providing proof of liability insurance; and a CON prior to licensure.
- Clinical laboratories, as provided under part I of chapter 483, F.S., are exempt from providing clients notice of the right to report complaints to the agency; providing clients notice to report abuse, neglect, or exploitation to the central abuse hotline; notice of toll-free telephone numbers; establishing policies for notifying clients of the changes in toll-free telephone numbers; submitting proof of their legal right to occupy the property; providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Multiphasic health testing centers, as provided under part II of chapter 483, F.S., are exempt from providing clients notice of the right to report complaints to the agency; providing clients notice to report abuse, neglect, or exploitation to the central abuse hotline; notice of toll-free telephone numbers; establishing policies for notifying clients of the changes in toll-free telephone numbers; submitting proof of their legal right to occupy the property; providing proof of liability insurance; providing proof of financial ability to operate; prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.
- Organ and tissue procurement agencies as provided under chapter 765, F.S., are exempt from providing clients notice of the right to report complaints to the agency; providing clients notice to report abuse, neglect, or exploitation to the central abuse hotline; notice of toll-free telephone numbers; establishing policies for notifying clients of the changes in toll-free telephone numbers; submitting proof of their legal right to occupy the property; providing proof of liability insurance; providing proof of financial ability to operate;

prohibition against a controlling interest withholding from the agency evidence of financial instability; and a CON prior to licensure.

Section 8 amends the definition of “Home for special services” to mean a site licensed by the agency prior to January 1, 2006, where specialized health care services are provided.

Section 9 amends s. 400.9905, F.S., to modify the definition of an entity that is exempt from licensure as a Health Care Clinic to include certain entities that provide physical therapy services under physician orders and entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and which derive at least 90 percent of their gross annual revenues from these services. Documentation demonstrating compliance with this requirement must be provided to the agency. A requirement that an exempt entity provide only oncology or radiation therapy services is deleted.

Section 10 amends s. 408.831(1), F.S., to authorize the agency to deny any application or suspend or revoke any license when a licensee subject to part II of chapter 408, F.S., shares a common controlling interest with the applicant and has failed to pay all outstanding monies due the agency.

Section 11 amends s.400.991, F.S., to prohibit the granting of a license to a clinic owned by an insurance entity regulated by ch. 627 or 641, F.S.

Section 12 specifies that the provisions of part II of chapter 408, F.S., prevail over health care provider authorizing statutes in case of a conflict.

Section 13 authorizes the agency to double current annual licensure fees to provide for biennial licensure.]

Section 14 requires the Division of Statutory Revision of the Office of Legislative Services to assist substantive committees of the Senate and House of Representatives in the preparation of draft legislation to conform the Florida Statutes and any legislation enacted during 2006 to the act.

Section 15 allows the agency between October 1, 2006 and September 30, 2008, to issue any license for less than two years by charging a prorated licensure fee and specifying a different renewal date. This will allow for staggering of expiration dates as providers change from annual to biennial licensure.

Section 16 provides an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Licensure fees may be adjusted annually based on the change in the consumer price index within existing maximum levels if increases are necessary to support the actual cost of regulation. This authority already exists for some provider types, including assisted living facilities, adult family care homes and adult day care centers, but would now apply to all licensees.

B. Private Sector Impact:

Licensure fees may be adjusted if necessary. There could be benefits from common definitions and streamlined licensure processes for various health care provider types within the same corporation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
