

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SPB 7012

INTRODUCER: For consideration by the Health Regulation Committee

SUBJECT: Home health care

DATE: January 3, 2008                      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Stovall | Wilson         |           | <b>Pre-meeting</b> |
| 2. |         |                |           |                    |
| 3. |         |                |           |                    |
| 4. |         |                |           |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

**I. Summary:**

The bill revises the regulation of home health services to:

- Require applicants for a new home health agency license to submit and maintain a \$50,000 surety bond or equivalent security;
- Limit the number of new home health agency licensure applications that the Agency for Health Care Administration (AHCA) may accept;
- Increase existing administrative fines and establish administrative fines for additional proscribed activities;
- Impose greater limitations on the span of control for home health agency administrators and directors of nursing;
- Prohibit a home health agency from operating in excess of 30 days without a qualified director of nursing;
- Require notifications to the AHCA within 10 days of termination and replacement of the director of nursing;
- Require a home health agency to ensure that each certified nursing assistant and home health aide used by the home health agency is adequately trained;
- Prohibit a home health agency from providing staffing services to another home health agency or nurse registry; and
- Require home health agencies to maintain the client service provision plan for 3 years.

The bill requires a licensed nurse registry to ensure that each certified nursing assistant and each home health aide that is referred for contract is adequately trained to perform the tasks of a home health aide in the home setting.

The bill requires the AHCA to adopt rules related to the oversight responsibilities of a home health agency's director of nursing for: skilled nursing and personal care services provided by the home health agency; monthly certification of a daily log of services to be prepared by each person providing home health services for the home health agency; and a quality assurance program for home health services provided by the home health agency.

The bill further requires the AHCA to survey newly licensed home health agencies within 15 months after initial licensure, review the precertification process related to the authorization of home health services in excess of 60 visits over a Medicaid recipient's lifetime, and report to the Legislature on the feasibility and costs of accessing the Medicare system in order to deny duplicate Medicaid payments.

This bill substantially amends the following sections of the Florida Statutes: 400.462, 400.471, 400.474, 400.484, 400.491, 400.497, 400.506, and 400.518. The bill creates a new section 400.476, F.S., and three undesignated sections of law.

## II. Present Situation:

### Home Health Services/Home Health Agencies

Home health agencies are organizations that are licensed by the AHCA to provide home health services and staffing services. Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services (assistance with daily living such as bathing, dressing, eating, personal hygiene, and ambulation);
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.<sup>1</sup>

Staffing services are provided to health care facilities or other business entities on a temporary basis by licensed health care personnel and by certified nursing assistants and home health aides who are employed by, or work under the auspices of, a licensed home health agency.<sup>2</sup>

A home health agency may also provide homemaker and companion services without additional licensing or registration. These services do not involve hands-on personal care to a client and typically include housekeeping, meal planning, and preparation, shopping assistance, routine household activities, and accompanying the client on outings.

Home health agency personnel are employed by or under contract with a home health agency.

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<sup>1</sup> Section 400.462(13), Florida Statutes.

<sup>2</sup> S. 400.462(25), F.S.

**Licensure Provisions**

Since 1975, home health agencies operating in Florida have been required to obtain a state license.<sup>3</sup> The licensure requirements for home health agencies are found in the general health care licensing provisions of part II of ch. 408, F.S., the specific home health agency licensure provisions of part III of ch. 400, F.S., and the minimum standards for home health agencies in chapter 59A-8, Florida Administrative Code.

As of December 31, 2007, there were 1,985 licensed home health agencies in Florida.<sup>4</sup> A home health agency license is valid for 2 years, unless sooner suspended or revoked.<sup>5</sup> If a home health agency operates related offices, each related office outside the county where the main office is located must be separately licensed.<sup>6</sup>

The issuance of an initial license to a home health agency is based on the submission of a signed and notarized, complete and accurate home health agency application, submission of the \$1,660 biennial licensure fee, and the results of a survey conducted by the AHCA. The application identifies the geographic service areas and counties in which the home health agency will provide services. For licensure renewal, the home health agency must submit a signed and notarized renewal application and licensure fee of \$1,660.

The AHCA conducts unannounced licensure surveys every 36 months, unless a home health agency has requested an exemption from state licensure surveys based on accreditation by an approved accrediting organization. The Home Health Agency State Regulation Set that is used in conducting surveys contains over 100 standards and surveyor guidelines, which are based on Rule 59A-8, Florida Administrative Code. The AHCA also conducts inspections related to complaints.

Each home health agency is required to employ an administrator. The administrator must be a licensed physician, physician assistant, or registered nurse licensed to practice in this state or an individual having at least one year of supervisory or administrative experience in home health care in a facility licensed under ch. 395, F.S.,<sup>7</sup> part II of ch. 400, F.S.,<sup>8</sup> or part I of ch. 429, F.S.<sup>9</sup> The administrator may manage a maximum of five licensed home health agencies if the home health agencies are located within one geographic service area or within an immediately contiguous county. An employee of a retirement community that provides multiple levels of care may administer a home health agency and up to a maximum of four entities licensed under ch. 400, F.S.,<sup>10</sup> or ch. 429, F.S.,<sup>11</sup> if they are owned, operated, or managed by the same corporate

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<sup>3</sup> Ss. 36 – 51 of ch. 75-233, Laws of Florida (L.O.F.)

<sup>4</sup> Source: AHCA Home Care Unit, Bureau of Health Facility Regulation, reported on 1/2/2008.

<sup>5</sup> S. 408.808(1), F.S.

<sup>6</sup> S. 400.464(2), F.S.

<sup>7</sup> Facilities licensed under ch. 395, F.S., include hospitals, ambulatory surgical centers, and mobile surgical facilities.

<sup>8</sup> Facilities licensed under part II of ch. 400, F.S., include nursing homes.

<sup>9</sup> Facilities licensed under part I of ch. 429, F.S., include assisted living facilities.

<sup>10</sup> Entities licensed under ch. 400, F.S., include nursing homes, home health agencies, nurse registries, hospices, intermediate care facilities, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for developmentally disabled persons, health care services pools, and health care clinics.

<sup>11</sup> Entities licensed under ch. 429, F.S., include assisted living facilities, adult family care homes, and adult day care centers.

entity. The administrator must designate an alternate administrator to serve during the administrator's absence.

A home health agency providing skilled services is required to employ a director of nursing who is a Florida licensed registered nurse with at least 1 year of supervisory experience as a registered nurse.<sup>12</sup> The director of nursing is responsible for overseeing the delivery of professional nursing and home health aide services and must be readily available at the home health agency or by phone for any 8 consecutive hours between 7 a.m. to 6 p.m. The director of nursing is also responsible for establishing and conducting an ongoing quality assurance program for services provided by the home health agency.<sup>13</sup> A home health agency that offers only home health aide and homemaker/companion services is not required to have a director of nursing.<sup>14</sup>

A director of nursing may be the director for a maximum of five licensed home health agencies if the home health agencies are operated by a related business entity and are located within one geographic service area or within an immediately contiguous county. An employee of a retirement community that provides multiple levels of care may serve as the director of nursing of a home health agency and of up to four entities licensed under ch. 400, F.S., or ch. 429, F.S., if they are owned, operated, or managed by the same corporate entity.

A change in the administrator or alternate administrator requires notification to the AHCA prior to or on the date of change and submission of documentation evidencing the statutory qualifications as well as background screening clearance documentation of the replacement.<sup>15</sup> No notification is required for changes in the director of nursing in between renewals of the home health agency's license.<sup>16</sup> The AHCA licensure staff has had conversations with nurses who resigned shortly after the home health agency license was issued. Home health agencies may operate for months, perhaps until license renewal, without a qualified director of nursing.<sup>17</sup>

### **Medicare Certification Requirements**

To receive reimbursement from Medicare, a home health agency must apply to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for certification as a Medicare provider. Certification is based on the home health agency meeting the conditions of participation set forth in 42 Code of Federal Regulations, Ch. IV, Part 484 (Subparts A, B, and C), and demonstrating compliance with minimum standards during an on-site survey inspection. A home health agency must be operational and have a minimum of 10 patients receiving skilled care before the survey is conducted. Historically, the federal government has contracted with the AHCA to perform the certification surveys. However, due to recent funding shortfalls at the federal level, CMS notified the AHCA that CMS would not be able to fund those inspections at this time. In October 2007, the AHCA released guidance to home health agencies explaining the AHCA's discontinuation of initial certification surveys and

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<sup>12</sup> S. 400.462(10), F.S.

<sup>13</sup> Rule 59A-8.0095(2), F.A.C.

<sup>14</sup> Rule 59A-8.0095(5), F.A.C.

<sup>15</sup> Rule 59A-8.0095(1)(b), F.A.C.

<sup>16</sup> Source: AHCA Most Frequently Asked Questions / Home Health Agencies - Question 28c., found at <[http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Home\\_Care/definitions.shtml#a](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Home_Care/definitions.shtml#a)> (Last visited on December 31, 2007).

<sup>17</sup> Source: AHCA Home Health Unit.

provided information for obtaining certification surveys from private accrediting organizations. The initial certification survey generally occurred 9-12 months after the home health agency submitted the application to Medicare. The ongoing Medicare re-certification surveys will continue to be conducted by the AHCA and are usually performed concurrently with a state licensure survey approximately every three years.

As of August 23, 2007, of the 1,865 licensed home health agencies in Florida, 873 were certified for Medicare (47 percent of the licensed home health agencies).

### **Medicaid Provider Enrollment**

To enroll as a Medicaid provider, a home health agency must be licensed under part III of ch. 400, F.S., and meet the Medicare conditions of participation.<sup>18</sup> In addition, the home health agency must meet the general Medicaid provider enrollment requirements contained in the *Florida Medicaid Provider General Handbook*<sup>19</sup> and the specific home health agency qualifications in the *Home Health Services Coverage and Limitations Handbook*. All parent offices, branch offices, and subunits are required to enroll in Medicaid and receive their own unique Medicaid provider numbers. Unless exempt, a surety bond is required for home health agencies if there have been (within the past 5 years) or currently are sanctions or terminations (voluntary or involuntary) involved. It takes approximately 6-9 months from submission of the application for a home health agency to become enrolled as a Medicaid provider.

As of August 23, 2007, there were 524 licensed home health agencies enrolled as providers in the Florida Medicaid program (28 percent of the licensed home health agencies).

### **Growth in the Number of Licensed Home Health Agencies**

As of December 31, 2007, there were 1,985 licensed home health agencies in the state,<sup>20</sup> an increase of 797 (67 percent) new agencies since August 1999. The growth has been uneven around the state. Seventeen counties experienced a reduction in the number of licensed home health agencies during this period. Almost all of these counties are rural. However, despite the reduction in the number of licensed home health agencies in the rural counties, there is no indication that requested home health services are unavailable in these areas as a home health agency licensed in one county may serve clients in multiple counties. The population of persons over the age of 64 increased 16 percent statewide from 1999 – 2007 and 20 percent for all ages during that same period.<sup>21</sup>

In Miami-Dade County, the number of licensed home health agencies increased from 216 in August 1999 to 733 on December 31, 2007 (517 newly licensed home health agencies – a 239 percent increase). The increase in Miami-Dade County represents 65 percent of the statewide increase in licensed home health agencies.

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<sup>18</sup> *Florida Medicaid, Home Health Services Coverage and Limitations Handbook*, Agency for Health Care Administration, found at <[http://floridamedicaid.acs-inc.com/XJContent/CL\\_07\\_070701\\_Home\\_Health\\_ver1.1.pdf?id=000005500052](http://floridamedicaid.acs-inc.com/XJContent/CL_07_070701_Home_Health_ver1.1.pdf?id=000005500052)> (Last visited on December 31, 2007).

<sup>19</sup> *Florida Medicaid, Provider General Handbook*, Agency for Health Care Administration, found at <[http://floridamedicaid.acs-inc.com/XJContent/GH\\_07\\_070101\\_Provider\\_General\\_ver1.1.pdf?id=000004590898](http://floridamedicaid.acs-inc.com/XJContent/GH_07_070101_Provider_General_ver1.1.pdf?id=000004590898)> (Last visited on December 31, 2007).

<sup>20</sup> Source: AHCA Home Care Unit, Bureau of Health Facility Regulation.

<sup>21</sup> Source: Office of Economic & Demographic Research website, found at <<http://edr.state.fl.us/population.htm>> (Last visited on January 2, 2008).

Miami-Dade and Broward counties comprise 19 percent of the state’s population of persons over age 64, yet host 46 percent of the licensed home health agencies in the state.<sup>22</sup> Although home health services are not limited to persons over the age of 64, this population predominates the market. Based on population data for 2007 and the number of licensed home health agencies in each geographic service area on August 23, 2007, in Miami-Dade and Monroe Counties, there was one licensed home health agency for every 529 residents over the age of 64; for Broward County, the ratio was one agency for every 1,205 residents over the age of 64. For all other counties, the average was one home health agency for every 2,609 residents over the age of 64.

The AHCA received 387 new licensure applications for home health agencies during 2007, through November 30, 2007. Two hundred twenty-eight of those were for new home health agency licenses in Miami-Dade County.

**Home Health Agency Deficiencies**

The AHCA received 663 complaints related to various allegations against home health agencies during the 2-year period 2001-2002. During the 2-year period 2005-2006, the AHCA received 897 complaints, a 36-percent increase. Not all of these complaints were confirmed after investigation by the AHCA. The number of home health agencies fined by the AHCA for serious and uncorrected violations of state laws and rules has increased over the past 5 years as follows: 14 in 2001; 25 in 2002; 43 in 2003; 35 in 2004, 43 in 2005; and 50 in 2006.

The AHCA conducts surveys of Florida licensed home health agencies that are enrolled in Medicaid and Medicare for compliance with federal conditions of participation based on the federal set of survey standards. There has been an increasing number of federal conditions of participation not met yearly from 2001 to 2006. Annually the number of federal conditions of participation not met has been 7 in 2001; 31 in 2002; 40 in 2003; 63 in 2004; 68 in 2005; and 84 in 2006. The number of home health agencies in Florida that are enrolled in Medicare has increased from 349 in 2001 to 729 in 2006.

Section 400.484, F.S., requires the AHCA to impose fines for various classes of deficiencies as follows:

| Description  | Current Administrative Fine Authorized |
|--|--|
| Class I – any act, omission, or practice that results in a patient’s death, disablement, or permanent injury, or places a patient at imminent risk of death, disablement, or permanent injury. | \$5,000                                |
| Class II – any act, omission, or practice that has a direct adverse effect on the health, safety, or security of a patient.  | \$1,000                                |

<sup>22</sup> Source of population data: Office of Economic & Demographic Research website on 9/11/2007; Source of licensee data: AHCA Home Care Unit, Bureau of Health Facility Regulation, as of 8/23/2007.

|  |       |
|--|-------|
| Class III – any act, omission, or practice that has an indirect adverse effect on the health, safety, or security of a patient. The fine may be imposed only for an uncorrected or repeated Class III deficiency.                          | \$500 |
| Class IV – any act, omission, or practice related to required reports, forms, or documents, which does not have the potential of negatively affecting patients. There must be a finding of an uncorrected or repeated class IV deficiency. | \$200 |

**Medicare/Medicaid Fraud**

The AHCA’s Bureau of Medicaid Program Integrity (MPI) is responsible for preventing and detecting fraud and abuse and performing inspections and investigations related to the Florida Medicaid program. If the MPI suspects fraud or another criminal violation of state law is involved, the case is referred to the Office of the Attorney General Medicaid Fraud Control Unit (MFCU) for further investigation and prosecution, if appropriate. The following chart depicts the number of investigations relating to home health agencies opened by the MPI for the last 3 state fiscal years.

**Medicaid Program Integrity Investigations**

| County     | 2004-2005 | 2005-2006 | 2006-2007 |
|------------|-----------|-----------|-----------|
| Miami-Dade | 26        | 45        | 113       |
| Broward    | 5         | 6         | 4         |
| All other  | 16        | 21        | 27        |
| Total      | 47        | 72        | 144       |

Nineteen home health agencies have been terminated from the Medicaid program in Miami-Dade County since July 1, 2004.<sup>23</sup>

Any Medicaid recipient requiring more than 60 visits in a lifetime must have the additional visits authorized through a precertification process.<sup>24</sup> The AHCA contracts with a private entity for these precertification determinations. Utilization reports prepared by the AHCA indicate that in Miami–Dade County for fiscal years 2005-06 and 2006-07, Medicaid paid for an average number of visits per recipient by home health aides without associated skilled nursing services of 278.1 and 297.7, respectively. Medicaid paid on average for 124 and 162.6 visits for the same services during the same periods for all other counties in the state.

Some Medicaid-related fraud and abuse observations by the AHCA that could translate into quality of care issues include:

- The same home health aide being employed by multiple home health agencies and cumulative billings for that aide exceed 24 hours per day;
- Home health aides providing services to two recipients at the same time in different locations;

<sup>23</sup> Provided by AHCA’s Medicaid Program Integrity Unit.

<sup>24</sup> *Florida Medicaid, Home Health Services Coverage and Limitations Handbook*, Agency for Health Care Administration, *supra*: note 18.

- Billing for services not rendered; and
- No changes in the patient condition from one assessment/re-certification period to the next.

The AHCA referred 3 cases to the MFCU in 2004, 7 in 2005, 13 in 2006, and 19 in 2007 (through November 30<sup>th</sup>) for suspected Medicaid fraud. The MFCU opened seven home health agency cases in 2004, 17 in 2005, 17 in 2006, and 17 in 2007. The MFCU reports that from 2005–2007, Miami-Dade County centered cases accounted for approximately 70 percent of the new MFCU home health agency cases opened.

### **Senate Interim Project 2008-135**

During the 2007-2008 interim, professional staff of the Senate Committee on Health Regulation reviewed the regulatory requirements for home health agencies. This proposed committee bill addresses the recommendations in the Interim Project Report 2008-135, *Review Regulatory Requirements for Home Health Agencies*,<sup>25</sup> recommendations from the AHCA which were presented to the Health Regulation Committee on December 12, 2007, and committee member's comments during that interim committee meeting.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 400.462, F.S., to remove substantive provisions from the definitions of “administrator,” “certified nursing assistant,” “director of nursing,” “home health aide,” and “staffing services.” The substantive provisions are moved to other sections of the Florida Statutes in the bill. In addition, the definition of “staffing services” is modified to limit where the services may be provided to include health care facilities and schools and exclude other business entities.

**Section 2.** Amends s. 400.471, F.S., to require a bond or other equivalent means of security acceptable to the AHCA in the amount of \$50,000 for applicants for a new home health agency license. The bill provides that other equivalent means of security include an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the AHCA. The articulated purpose of the bond or security is to secure payment of any administrative penalties, costs, or fees imposed or incurred by the AHCA that are not paid by the licensed home health agency to the AHCA by 30 days after the fine or costs become final. The bill also allows the AHCA to make a claim against the bond or security until the later of one year after the license ceases to be valid or 60 days after a proceeding involving the licensed home health agency is concluded, including any appeal.

This section also imposes a cap on the number of applications for a new home health agency license that the AHCA may accept monthly from the effective date of the bill until July 1, 2011. The number of new licensure applications the AHCA may receive each month depends upon the geographic service area in which the home health agency is to be located. If the applicant is located in geographic service area 11, comprised of Miami-Dade County and Monroe County, the AHCA may accept three new home health agency license applications monthly. If the applicant is located in geographic service area 10, comprised of Broward County, the AHCA may accept four new home health agency license applications monthly. If the application is

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<sup>25</sup> The Interim Project Report 2008-135, *Review Regulatory Requirements for Home Health Agencies* is available at <[http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim\\_reports/pdf/2008-135hr.pdf](http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf)> (Last visited on January 2, 2008).

located in one of the geographic service areas 1–9, the AHCA may accept five new home health agency license applications monthly for each geographic service area. These caps were determined as follows:

The geographic service areas were grouped according to the number of residents over the age of 64 per home health agency. The groupings are 0–999; 1000–1999, and 2000–2999. The following table reflects the number of residents over the age of 64 in 2007 in each AHCA geographic service area per licensed home health agency in that geographic service area as of August 23, 2007.

| Geographic Service Area | # residents over age 64 per HHA |
|-------------------------|---------------------------------|
| 1                       | 2943                            |
| 2                       | 2075                            |
| 3                       | 2826                            |
| 4                       | 2603                            |
| 5                       | 2722                            |
| 6                       | 2453                            |

| Geographic Service Area | # residents over age 64 per HHA |
|-------------------------|---------------------------------|
| 7                       | 2909                            |
| 8                       | 2919                            |
| 9                       | 2200                            |
| 10                      | 1205                            |
| 11                      | 529                             |

Geographic service areas 1–9 fall within the 2000–2999 grouping, geographic service area 10 falls within the 1000–1999 grouping, and geographic service area 11 falls within the grouping 0–999.

Staff at the AHCA has indicated that allowing the AHCA to accept five applications monthly for new home health agency licenses in most of the state would be adequate to meet licensure demand based on historical submission patterns of applications for new home health agency licenses. Accordingly, in the bill, the AHCA is authorized to receive five applications for new home health agency licenses monthly in each geographic service area 1–9; four applications for new home health agency licenses monthly in geographic service area 10, and three applications for new home health agency licenses monthly in geographic service area 11. This allows for a controlled number of new home health agencies to enter the market throughout the three-year period that the cap will be in place. It also allows the AHCA staff to devote more time to surveys of already licensed home health agencies in order to ensure the quality of home health services being delivered.

The bill provides for an exemption from the cap for a home health agency, which is part of a retirement community that provides multiple levels of care and that will provide home health services only to residents of that retirement community. If a licensee exempted under this provision provides home health services to persons outside that retirement community, the AHCA is to impose a moratorium on that home health agency and revoke that home health agency license. A home health agency whose license is revoked pursuant to this process is authorized to reapply for a new home health agency license and will be subject to the cap imposed on the AHCA’s acceptance of new licensure applications.

The AHCA is to return to the sender those applications for a new home health agency license that are received in excess of the monthly number allowed to be accepted.

**Section 3.** Amends s. 400.474, F.S., to prohibit a home health agency or its employees from preparing or maintaining fraudulent patient records and subjects the home health agency to disciplinary action for doing so. Examples of fraudulent patient records provided in the bill include charting ahead, recording vital signs or symptoms that were not personally obtained or observed by the home health agency's staff at the time indicated, borrowing patients, or patient records from another home health agency to pass a survey or inspection, and falsifying signatures.

**Section 4.** Creates s. 400.476, F.S., establishing requirements related to staff and staffing services. Currently an administrator may manage a maximum of five licensed home health agencies, if the home health agencies are located within one geographic service area or within an immediately contiguous county. The bill restricts an administrator to managing only one home health agency except that the administrator may manage two home health agencies within the same geographic service area, or within an immediately contiguous county, if they have identical controlling interests.<sup>26</sup> The bill also authorizes an employee of a retirement community that provides multiple levels of care to administer a home health agency and up to a maximum of four entities, other than home health agencies, licensed under ch. 400, F.S., or ch. 429, F.S., if all entities have identical controlling interests.

The bill reinstates two provisions that were removed from the definitions. The first provision requires an administrator to designate in writing an alternate administrator to serve during the administrator's absence. The second provision authorizes a licensed physician, physician assistant, or registered nurse licensed to practice in this state to serve as both an administrator of a home health agency and the director of nursing for that home health agency.

Currently a director of nursing may be the director for a maximum of five licensed home health agencies, if the home health agencies are operated by a related business entity and are located within one geographic service area or within an immediately contiguous county. The bill restricts a director of nursing to serve as the director of a maximum of two home health agencies, if the two agencies are located within the same geographic service area, or within an immediately contiguous county, and have identical controlling interests. The bill also authorizes an employee of a retirement community that provides multiple levels of care to serve as the director of nursing of a home health agency and up to a maximum of four entities, other than home health agencies, licensed under ch. 400, F.S., or ch. 429, F.S., if all entities have identical controlling interests.

The bill prohibits a home health agency from operating more than 30 days without a director of nursing. Both the licensed home health agency and the director of nursing must notify the AHCA within 10 business days after the director of nursing terminates serving as the director of nursing for that home health agency. The home health agency must also notify the AHCA within 10 days of hiring a new director of nursing. The specified notification includes the identity and qualifications of the director of nursing.

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<sup>26</sup> Controlling interest is referenced to and defined in s. 408.803, F.S., to mean the applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member.

The bill reinstates a provision removed from the definitions related to requiring a home health agency to ensure that each certified nursing assistant and each home health aide who is either employed by or under contract with the home health agency is adequately trained to perform the tasks of a home health aide.

Currently the law allows a home health agency to provide staffing services anywhere within the state. This provision is reinstated in this section. In addition, the bill prohibits a home health agency from providing staffing services to another home health agency or nurse registry.

**Section 5.** Amends s. 400.484, F.S., to increase administrative fines as follows:

| Description   | Current Administrative Fine | Administrative Fine in the Bill |
|---|-----------------------------|---------------------------------|
| Class I   | \$5,000                     | \$15,000                        |
| Class II  | \$1,000                     | \$5,000                         |
| Class III – and eliminates the prerequisite finding that the deficiency is uncorrected or repeated. | \$500                       | \$1,000                         |
| Class IV  | \$200                       | \$500                           |

In addition, this section of the bill requires the AHCA to impose fines for the following specific proscribed activity:

- \$1,000 fine for a home health agency falsifying documents of training for home health aides or certified nursing assistants (per document or for each fraudulent entry on a document if multiple staff are included on one document).
- \$1,000 fine for a home health agency falsifying health statements for staff providing direct care to patients (per document or for each fraudulent entry on a document if multiple staff are included on one document).
- \$1,000 fine for a home health agency billing any payer for services not provided (for each incident that is falsely billed). The AHCA is authorized also to require payback of Medicaid funds, revoke the license, or issue a moratorium.
- \$5,000 fine for each instance of a home health agency failing to provide a service that was specified in its agreement with a patient or in the plan of care for that patient. The AHCA is also authorized to impose any additional administrative fine for the direct or indirect harm to patients, which could be a class I, II, or III deficiency.

**Section 6.** Amends s. 400.491, F.S., to extend from one year to three years the record retention period for records related to a client who has a service provision plan for nonskilled care.

**Section 7.** Amends s. 400.497, F.S., to require the AHCA to adopt rules related to standards for a director of nursing. These standards must address oversight responsibilities of skilled nursing and personal care services, monthly certification of a new daily log of home health services provided by each direct employee or contract staff on behalf of the home health agency, and the quality assurance program for home health services provided by the home health agency.

**Section 8.** Amends s. 400.506, F.S., to reinstate a provision removed from the definitions related to requiring a nurse registry to ensure that each certified nursing assistant and each home health aide that is referred by the nurse registry has been adequately trained to perform the tasks of a home health aide.

**Section 9.** Amends s. 400.548, F.S., to prohibit a home health agency from providing nurses, certified nursing assistants, home health aides, or other staff on a complimentary basis to a facility licensed under ch. 429, F.S., in return for patient referrals. The AHCA is required to impose an administrative fine not to exceed \$15,000 for this prohibited action and deposit the collection of these fines into the Health Care Trust Fund.

**Section 10.** Requires the AHCA to conduct an unannounced survey of a new home health agency license within the first 15 months of operation.

**Section 11.** Requires the AHCA to review the Medicaid precertification process and the contractor's performance related to authorizing home health visits in excess of 60 visits over a recipient's lifetime to determine whether opportunities exist to detect and deter payment for home health services that are not medically necessary. The bill further requires the AHCA to amend the contract related to the contractor's performance of precertification determinations if such opportunities exist.

**Section 12.** Requires the AHCA to report to the Legislature by January 1, 2009, on the feasibility and costs of the Medicaid system communicating with the Medicare system so that the Medicaid system can disallow a claim for payment of a home health service that has already been paid for under the Medicare prospective payment system.

**Section 13.** Provides an effective date of July 1, 2008.

#### **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 Article I, Section 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. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill imposes a cap, from 3–5 monthly depending on the locations within the state, on the number of applications for a new home health agency license that the AHCA may accept. This cap will be in place until July 1, 2011, unless otherwise modified by the Legislature. Currently there is no restriction on the number of licensure applications AHCA may accept for processing or the number of licenses that may be issued if all conditions of licensure are satisfied. As a result, it is foreseeable, especially in Miami-Dade and Monroe Counties, that some businesses will not be able to enter the market to provide home health agency services. The cap could also affect the ability of currently licensed home health agencies to sell their businesses since this cap will also apply to changes in ownership<sup>27</sup> of currently licensed home health agencies.

The bill also requires an applicant for a new home health agency license to obtain and maintain throughout the licensure period, including all renewals, a surety bond, or equivalent security of \$50,000. Home health agencies licensed as of June 30, 2007, or applicants that have submitted an application for a new home health agency license by June 30, 2007, are not subject to this requirement.

**C. Government Sector Impact:**

The bill requires the AHCA to conduct a survey of all home health agency licensees within the first 15 months after the home health agency is initially licensed. This requirement will result in increased costs to the AHCA. However, it is likely that some of the additional costs related to the 15-month inspection will be offset by the reduction in the number of pre-licensure surveys that would be conducted if the cap were not in place.

There may be additional costs to the AHCA depending upon the outcome of the review of the Medicaid pre-certification process and the study of the Medicare/Medicaid system interface mandated in sections 11 and 12 of the proposed committee bill. These costs and the potential savings from cost avoidance cannot be determined at this time.

**VI. Technical Deficiencies:**

None.

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<sup>27</sup> A change in ownership is defined in s. 408.803(5), F.S., as 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 whose shares are not publicly traded on a recognized stock exchange is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments over a 2-year period that cumulatively total 45 percent or greater. A change solely in the management company or board of directors is not a change of ownership.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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