

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1025

Nurse Registries and Companion-Homemaker Organizations

SPONSOR(S): Holder

TIED BILLS:

IDEN./SIM. BILLS: SB 1592

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Elder & Family Services Policy Committee	10 Y, 0 N, As CS	Cicccone	Cicccone
2)	Health & Family Services Policy Council			
3)	Full Appropriations Council on General Government & Health Care			
4)				
5)				

SUMMARY ANALYSIS

CS/HB 1025 requires nurse registries and organizations that offer companion or homemaker services, to provide notice of information to patients or clients who contract to use such services. Specifically, these organizations would be required to:

- Identify the nurse registry or organization as the referring entity providing the service; and,
- Identify the individual or entity who is responsible for:
  - Patient supervision;
  - Assigning duties;
  - Hiring, firing and disciplining;
  - Providing equipment or necessary materials;
  - Checking references; and,
  - Withholding social security taxes.

The notice must be signed by the patient, client or legal representative no later than the date the contract for health care services was executed and must be retained by the nurse registry or organization for at least three years. The bill directs the Agency for Health Care Administration (AHCA or "the department") to develop the consumer notice.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation:**

##### Home Health Agencies:

Home health agencies are licensed by AHCA pursuant to s. 400.464, F.S. Home health agencies provide health services<sup>1</sup> and staffing services<sup>2</sup> to a client in the client's home or place of residence such as an assisted living facility, adult family care home, nursing home, or hospital. Home health agency personnel are persons who are employed by or under contract with the agency and who enter the patient's home or place of residence at any time in the course of their employment or contract.<sup>3</sup> Home health services may include nursing care, physical occupational service, respiratory or speech therapy, home health aide services, dietetics and nutrition practice and nutrition counseling, and medical supplies that are prescribed by a physician. According to AHCA, there are 1,225 home health agencies in Florida as of December 2008.

##### Nurse Registries:

Nurse registries are licensed by AHCA pursuant to s. 400.506, F.S. A nurse registry acts as an employment agency between an individual patient and a nurse, nursing assistant, home health aide, companion or homemaker, to provide services to a patient or client in the patient or client's home or place of residence. The nurse registry contracts with each health care worker—as an independent contractor<sup>4</sup>—and, unlike a home health agency, a nurse registry is not required to carry liability insurance. Nurse registry services are limited to nursing care provided by a licensed registered nurse or licensed practical nurse; care and services provided by certified nursing assistants<sup>5</sup> or home health aides; or homemaker or companion services.<sup>6</sup> Nurse registry services may also contract to provide private duty or staffing services to health care facilities such hospitals, nursing homes, assisted living facilities, adult family-care homes, and other entities.<sup>7</sup> According to AHCA, there are 314 licensed nurse registries in Florida as of February 2009.

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<sup>1</sup>s. 400.462(12), F.S.

<sup>2</sup>s. 400.462(14), F.S.

<sup>3</sup>s. 400.462(13), F.S.

<sup>4</sup>s. 400.462(21), F.S.

<sup>5</sup>Part I, ch. 464, F.S., Nurse Practice Act, and Part II, Ch.464, F.S., Certified Nursing Assistants

<sup>6</sup>Part III, ch. 400, F.S., Home Health Agencies

<sup>7</sup>s. 400.462(21), F.S.

## Homemaker and Companion Service Organizations:

Homemaker and companion service organizations are registered *not licensed* by AHCA pursuant to s. 400.509, F.S. A homemaker and companion service organization provides limited services by “homemakers” defined as a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance and routine household activities for an elderly, handicapped, or convalescent individual,<sup>8</sup> and “companion” or “sitter” who is defined as a person who spends time with or cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual.<sup>9</sup> Neither a homemaker, a companion, nor a sitter can provide hands-on personal care such as bathing, dressing, or personal hygiene, ambulation, or administer medication to a client.<sup>10</sup> According to AHCA, there are 1,921 registered organizations providing homemaker and companion services in Florida as of February 2009.

## Patient or Client Information Notice

A nurse registry is required to inform the patient, his family or guardian that the nurse or other worker that is hired to provide services to the patient or client, is an independent contractor of the nurse registry as required in 59A-18.011(7)(d), Florida Administrative Code. Nurse registries are required to instruct these independent contractors that it is their responsibility to pay self-employment estimated taxes, as part of their contract with the registry as required in 59A-18.005(7), Florida Administrative Code. Currently, there is no requirement for home health agencies or homemaker and companion service organizations to provide such instructions.

AHCA has no legal authority regarding the payment of employer Social Security taxes—the Internal Revenue Service is responsible for regulating employer payment of Social Security taxes. AHCA also has no statutory authority regarding the supervision, assigning duties, hiring, firing and discipline, or providing of equipment and materials by nurse registries and organizations providing homemaker companion services.<sup>11</sup>

## **Effect of Proposed Changes:**

CS/HB 1025 requires nurse registries and organizations that offer companion or homemaker services to provide notice of certain information to patients or clients who contract to use such services. Specifically, these organizations would be required to:

- Identify the nurse registry or organization as the referring entity providing the service; and,
- Identify the individual or entity who is responsible for:
  - Patient supervision;
  - Assigning duties;
  - Hiring, firing and disciplining;
  - Providing equipment or necessary materials;
  - Checking references; and,
  - Withholding social security taxes.

The notice must be signed by the patient, client or legal representative no later than the date the contract for services was executed and must be retained by the nurse registry or organization for at least three years.

The bill directs the Agency for Health Care Administration (AHCA or “the department”) to develop the consumer notice.

This bill does not appear to have a fiscal impact on state or local governments.

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<sup>8</sup> s. 400.462(16), F.S.

<sup>9</sup> s. 400.462(7), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Information provided by the Agency for Health Care Administration’s Senate Bill 1592 (companion bill) Analysis, March, 2009.

The effect of this bill would be to provide additional consumer information to patients or clients relating to the patient or client's caregiver. Such information would clarify the responsibilities of each party as they relate to the caregiver's contract with the individual or the organization.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 400.510, F.S., establishes notice requirements of nurse registries and organizations that provide homemaker and companion services to the patient, client, or legal representative; specifies contents of the notice; requires a 3-year notice retention term; provides an exception; and requires the Agency for Health Care Administration to develop the notice form.

Section 2. Provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Some costs may be incurred by the organizations identified in the bill to develop and provide notices to patients or clients.

**D. FISCAL COMMENTS:**

The Agency for Health Care Administration (AHCA) notes in their Staff Analysis of Senate Bill 1592,<sup>12</sup> the companion bill to House Bill 1025, that AHCA can implement the provisions of this bill within existing resources.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

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<sup>12</sup> Agency for Health Care Administration, Senate Companion Bill 1592, on file with the committee.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2009, the Elder and Family Services Policy Committee adopted one amendment by the bill sponsor. This amendment clarified that the notice of information must be signed by the patient, the client, or the legal representative of the patient or client no later than the date the contract for services was executed, and must be retained by the nurse registry or organization for at least three years.

The bill was reported favorably as a Committee Substitute. The analysis reflects the Committee Substitute.