

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 651 Agency for Health Care Administration
SPONSOR(S): Health Care Regulation Policy Committee, Hudson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2286

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	7 Y, 0 N, As CS	Ciccone/Calamas	Calamas
2)	Health & Family Services Policy Council		Calamas	Calamas
3)	Health Care Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

House Bill 651 amends several sections of law relating to the regulation, reporting, accessibility and service delivery of health care to individuals in Florida under the jurisdiction of the Agency for Health Care Administration. Specifically, the bill:

- Eliminates regulation of private utilization review agents;
- Eliminates regulation of clinical laboratories that only perform tests waived by the federal Clinical Laboratory Improvement Amendment program;
- Revises long term care risk management to focus on incidents involving provider liability;
- Eliminates duplicative census reporting and quarterly monitoring visits of nursing homes;
- Eliminates certain workgroups and annual reports;
- Authorizes interim licensure for health care clinics replacing equipment;
- Eliminates assisted living directives related to residency and consultation;
- Eliminates certain activities related to unlicensed activity;
- Allows electronic access to information;
- Revises criteria for provisional licenses;
- Authorizes uniform rules for emergency preparedness and inspections;
- Revises disqualifying criminal offenses for persons who work in health care;
- Attaches certain background screening forms to licensure renewal; and
- Makes numerous conforming changes.

The bill will have a significant positive fiscal impact to the Health Care Trust Fund in the Agency for Health Care Administration (see Fiscal Comments).

The bill provides an effective date of upon becoming a law.

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:

House Bill 651 amends or deletes duplicative and possibly unnecessary regulatory and reporting requirements. The bill also repeals or revises redundant or obsolete statutory language.

Background

The Agency for Health Care Administration, (agency) was statutorily created by s. 20.42, F.S., as the chief health policy and planning entity for the state. As such, the agency oversees the regulation of over 36,000 health care providers through the Division of Health Quality Assurance ("the division").¹ The division is charged with the task of protecting the health, safety and welfare of Florida citizens through regulation and oversight of health care service providers. The division has 630 staff and is funded with more than \$64 million in state and federal funds.²

The division is charged with licensure or certification of 29 types of health care service providers, including abortion clinics, adult family care homes, adult day care centers, ambulatory surgical centers, assisted living facilities, birth centers, clinical laboratories, health care clinics, health care services pools, home health agencies, home medical equipment programs, hospices, hospitals, nursing homes, nurse registries, organ and tissue procurement, residential treatment centers for adolescents, risk managers, and other entities. In addition, the agency provides regulatory oversight for 11 other health care provider types including health maintenance organizations, rural health clinics, community mental health programs, and worker's compensation managed care and comprehensive outpatient rehab facilities.

Current Situation: Health Care Licensing Procedures Act

In 2006, the Legislature established the Health Care Licensing Procedures Act (Act).³ The Act was created to address unnecessary duplication and variation in the requirements for licensure by the agency.⁴ The Act was intended to streamline and create a consistent set of basic licensing requirements for all providers in order to minimize confusion, standardize terminology, and include

¹ The Agency for Health Care Administration: General Overview February, 2009, on file with the Health Care Policy Committee staff.

² *Id.*

³ Ch. 2006-192, Laws of Florida.

⁴ S. 408.801(2), F.S.

issues that are otherwise not adequately addressed in the Florida Statutes pertaining to specific providers.⁵

The Act, part II of ch. 408, F.S., provides uniform licensing standards for health care providers regulated by the agency. These standards include licensure application information and processing, facility ownership disclosure, management and personnel background screening, inspections, unlicensed activity and applied sanctions. In addition to the uniform standards established by rule or in law, individual provider types are subject to a set of independent licensing criteria specific to the health care service provided. The Act applies to certain laboratories, birth centers, abortion clinics, crisis stabilization units, short-term residential treatment facilities, 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.⁶

The Act requires applicants for license to submit an application under oath including the name, address and social security number of the applicant and each controlling interest.⁷ “Controlling interest” means the applicant (if a person), officers and members of the board of directors, and persons with a five percent or greater ownership interest in the applicant.⁸ Applicants are not required to submit this information for the administrator or the financial officer. According to the agency, the lack of this information makes it difficult to assess those individuals’ licensure and Medicaid standing, if any.

The Act defines a change of provider ownership as an event in which the licensee changes to a different entity, or in which 45 percent or more of the ownership changes hands over a two-year period.⁹ According to the agency, this requirement has been difficult to manage and has resulted in the agency missing changes of ownership. The Act allows the agency to issue a provisional license to an applicant when the required background screening by the Florida Department of Law Enforcement has been accomplished, but the agency is waiting for screening results from the Federal Bureau of Investigation.¹⁰

The Act requires applicants for license renewal to submit an application to be received by the agency at least 60 days prior to the statutory expiration of the license.¹¹

The Act governs inspections required for licensure applications. Current law requires that inspections for licensure, other than those conducted for initial applications, be unannounced. The Act provides exceptions to unannounced licensure inspections for birth centers, hospitals and clinical laboratories.¹² In addition, the Act provides that the agency may accept a facility’s inspection conducted in conjunction with certification in lieu of a complete licensure inspection.¹³

The Act provides for Level 2 background screening for each of the following individuals of the facilities and providers¹⁴:

- the licensee, if an individual;
- the administrator or a similarly-titled person who is responsible for the day-to-day operation of the provider;

⁵ *Id.*

⁶ S. 408.802, F.S.

⁷ S. 408.809(1), F.S.

⁸ S. 408.803(7), F.S.

⁹ S. 408.803(5), F.S.

¹⁰ Ss. 408.809(3), 402.808, F.S.

¹¹ S. 408.806(1), F.S.

¹² S. 408.806(7), F.S.

¹³ S. 408.811(2), F.S.

¹⁴ S. 408.809, F.S.

- the financial officer or similarly-titled individual who is responsible for the financial operation of the licensee or provider; and
- any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04, F.S.

The Act governs administrative actions by the agency. It provides that the agency may impose an administrative fine for any violations of the Act, and authorizes the agency to make rules to set fine amounts.¹⁵

Effect of Proposed Changes: Health Care Licensing Procedures Act

The bill requires the applicant for a license to submit the name, address and social security number of the administrator and the financial officer.

The bill amends the definition of “change of ownership” to mean an event in which the licensee changes to a different entity, or in which 51 percent or more of the ownership changes in any manner, over any period of time. The bill also allows the agency to issue a provisional license to an applicant for a change of ownership, if the required background screening by the Florida Department of Law Enforcement has been accomplished, but the agency is waiting for screening results from the Federal Bureau of Investigation. Such provisional licenses are limited to a duration specified by the agency, not to exceed 12 months.

The bill prohibits applicants for license renewal from submitting an application more than 120 days prior to the statutory expiration of the license, and requires the agency to return applications submitted earlier than 120 days. The bill applies the same time frame to all other applications and requests, counted back from the requested effective date. The bill provides that applicants and licensees may submit required documents by providing the agency electronic access to the information. The bill also requires licensees to report changes in licensing information within 21 days of the change, and requires licensees to report changes in required insurance or bonds.

The bill provides an exemption from unannounced licensure inspections for adult family care homes. According to the agency, adult family care homes are private homes that care for a small number of persons, and do not have regular business hours like other facilities. The bill also allows the agency to accept inspections conducted in conjunction with comparable licensure requirements or an approved accrediting organization in lieu of full licensure inspections by the agency. The bill authorizes the agency to require an applicant or licensee to submit a plan of correction for deficiencies found in an inspection, and to set a timeframe for plan submission. The bill also requires applicants or licensees to correct deficiencies within the time set by the agency.

The bill adds additional disqualifying offenses for persons requiring background screening and provides uniformity among provider types. The additional disqualifying offenses include certain types of assault, battery, Medicaid fraud, stalking, theft, fraud, forgery, grand theft, identity theft and robbery. These new offenses apply to persons hired after October 1, 2009. The bill also ties the requirement to submit certain background screening forms due annually to the biennial licensure renewal process.

The bill establishes a uniform statutory structure for classifying violations of the Act. The bill establishes definitions for “isolated deficiency”, “patterned deficiency” and “widespread deficiency”, and for four classes of violations, setting correction and fining requirements for each class.

The bill creates a new section of the Act related to emergency management. The new section requires licensees to designate a primary contact person for emergency operations, and provides for licensees to temporarily exceed their licensed capacity in emergency situations

¹⁵ Section 408.813, F.S.

and under certain circumstances. In addition, the bill requires licensees providing residential or inpatient services to use the agency's online data reporting system to report on the licensee's status in an emergency.¹⁶ The bill authorizes the agency to make rules for licensees related to emergency planning requirements, and moves existing provisions governing inactive license status caused by emergency-related damage to this new section.

Current Situation: Utilization Review

According to the agency, private utilization review agents perform utilization review services for third-party payers on a contractual basis for outpatient or inpatient hospital services. Section 395.0199(3), F.S., provides several exemptions to the registration requirements including health insurers, health maintenance organizations or hospitals, or subsidiaries under common ownership, and certain persons who contract with government agencies. There are currently 111 registered utilization review agents, 75 of which are located in states outside Florida. Currently, private utilization review agents incur no regulatory penalties for non-compliance. In addition, no inspections are conducted, and the registration offers no regulatory protections.¹⁷ Registered private utilization review agents pay a \$514 biennial registration fee.

Effect of Proposed Changes: Utilization Review

The bill eliminates the requirement that private utilization review agents register with the agency and repeals the registration program. The registration elimination would save the 111 registered providers approximately \$57,054 in fees.¹⁸

Current Situation: Clinical Laboratories

All facilities, including physician offices, performing any clinical laboratory testing, are required to obtain a state clinical laboratory license *and* a federal Clinical Laboratory Improvement Amendment (CLIA) certificate. The state clinical laboratory license is issued before the laboratory is authorized to perform testing. The Laboratory Licensure Unit at the agency handles applications and changes for both the state laboratory licensure and federal CLIA certification programs. Initial and biennial inspections are required for these facilities.¹⁹

A "waived test" is a test that the federal Centers for Medicare and Medicaid (CMS) have determined qualify for a certificate of waiver under the federal Clinical Laboratory Improvement Amendments of 1988, and the federal rules.²⁰ Tests performed using a microscope are not waived.²¹ Laboratories that only do "waived" testing are issued a Certificate of Exemption by the State of Florida and a Certificate of Waiver by the CLIA program. Initial and biennial inspections are not required for these facilities that only perform "waived" tests.

Applications for both types of laboratories must be submitted to the Laboratory Licensure Unit. According to the agency, approximately 8,500 of the 12,800 licensed clinical laboratories perform only waived testing, such labs include physicians' offices (4,000+), hospitals (150), long term care facilities (659) and home health agencies.²² According to the agency, the number of clinical laboratories has continued to grow without the addition of staff, which has affected limited agency resources.

Effect of Proposed Changes: Clinical Laboratories

¹⁶ See, http://ahca.myflorida.com/MCHQ/Emergency_Activities/index.shtml and <http://ess.myflorida.com/>, Agency for Health Care Administration Emergency Status System.

¹⁷ Agency for Health Care Administration: 2009 Bill Analysis & Economic Impact Statement of HB 651.

¹⁸ Agency for Health Care Administration: 2009 Bill Analysis & Economic Impact Statement of the Proposed Strike-all Amendment to HB 651.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Agency for Health Care Administration, Division of Health Quality Assurance, Health Facility Regulation: Laboratory Licensure Unit. (2009) Available online at: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Laboratory_Licensure/index.shtml (last viewed March 17, 2009). Non-waived test means any test system, assay, or examination that has not been found to meet the statutory criteria specified at section 353(d)(3) of the Public Health Service Act (42 C.F.R. 493.2).

²² Agency for Health Care Administration: 2009 Bill Analysis & Economic Impact Statement of HB 651.

The bill repeals the requirement that waived laboratories apply for a certificate of exemption from the agency. The elimination of licensure for *waived* laboratories would save providers between \$800,000 and \$900,000 in biennial licensure fees and application processing, and would avoid duplication of federal requirements.²³

Current Situation: Nursing Homes

Nursing home facilities are regulated by the agency pursuant to part II of chapter 400, F.S. Nursing home facilities must notify the agency in writing within one business day of any adverse incident, as defined by statute.²⁴ Subsequently, the facility must initiate an investigation and provide a complete report to the agency within 15 calendar days of the event. If the facility's risk manager determines that the event in question does not constitute an "adverse incident", the facility must include this information in report submitted to the agency.

At least every 15 months, the agency is required to evaluate each nursing home facility to determine the degree of compliance with state licensure requirements. Following this evaluation, a nursing home is assigned either a standard or conditional licensure status. A "standard" licensure indicates that a facility has no class I or II deficiencies, and has successfully corrected all class III deficiencies within the time established by the agency. A "conditional" license is provided to a nursing facility that is not in substantial compliance with licensure standards at the time of the survey, due to the presence of one or more class I or II deficiencies, or to class III deficiencies left uncorrected within the time prescribed by the agency.²⁵ The various classes of deficiencies are as follows:²⁶

- Class I – a deficiency that the agency determines requires immediate corrective action because the nursing home's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the nursing home.
- Class II – a deficiency that the agency determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class III – a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident, or one that has the potential to compromise a resident's ability to maintain or reach his or her highest practicable physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class IV – a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a resident.

A facility may be placed on a six-month survey cycle for a period of two years if it has been cited for a class I deficiency, two or more class II deficiencies from separate surveys/investigations within a 60-day period, or has received three substantiated complaints within a six-month period, each resulting in at least one class I or II deficiency.

Current law requires the agency to monitor nursing homes quarterly with unannounced visits by nurse monitors, who assess the overall quality of care in the facility.²⁷ These monitors function independently from regular agency surveyors, and report both positive and negative findings to the facility administrator.²⁸ According to the agency, the monitor visits are not regulatory in nature, have no measurable outcomes, and reports are confidential.

²³ Agency for Health Care Administration, email to committee staff March 16, 2009, on file with the Health Regulation Policy Committee.

²⁴ S. 400.147(7), F.S.

²⁵ S. 400.23(7), F.S.

²⁶ S. 400.23(8), F.S.

²⁷ S. 400.118, F.S.

²⁸ *Id.*

Current law provides that “adverse incidents” in nursing homes must be reported to the agency.²⁹ Adverse incidents include events reported to law enforcement, resident elopement, and abuse, neglect and exploitation of residents.³⁰ Florida law also requires instances of abuse, neglect and exploitation to be reported to the Department of Children and Family Services.³¹ Similarly, federal long term care regulation requires nursing homes to report mistreatment, neglect or abuse “in accordance with state law”.³² The agency is required to submit an annual report to the Legislature on nursing home adverse incidents, including a listing of liability claims.³³ According to AHCA, this report is an aggregate data report that does not appear to be used.

Current law also requires nursing homes to submit a monthly report to the agency on the number of vacant beds in the facility which are available for resident occupancy.³⁴ Nursing homes are also required to post facility policies related to residents’ personal property, and to present a copy to the resident upon admission.³⁵ Current law requires the agency to adopt rules allowing certain staff to assist residents with eating.³⁶ According to the agency, federal legislation has implemented a dining assistant program addressing all the components of the agency’s current rules on assisted eating.

Effect of Proposed Changes: Nursing Homes

The bill eliminates the quarterly nurse monitoring function.

The bill amends adverse incident reporting requirements for nursing homes. Regarding reports of events reported to law enforcement, the bill provides that nursing homes need report only those events it they were reported to law enforcement “for investigation”. The bill limits reports of resident elopement to those in which the elopement places the resident at risk of harm or injury. The bill requires facilities to report abuse, neglect or exploitation to the agency as required by federal regulations, and to the Department of Children and Family Services as required by state law. The bill eliminates the requirement for the agency to submit an annual report on nursing home adverse incidents and liability claims to the Legislature.

The bill eliminates the monthly bed vacancy report requirement. The bill also eliminates the requirement to post facility policies related to residents’ personal property, and adds a requirement to give a copy of the policy to the resident’s representative, if appropriate, and to provide new copies upon revision. The bill eliminates the agency’s rulemaking authority to allow certain staff to assist residents with eating.

Current Situation: Assisted Living Facilities

Part I of chapter 429, F.S., provides for the licensure and oversight of assisted living facilities (ALFs) by the agency.

Current law authorizes the agency to take administrative action for ALF violations of part II of chapter 408 (the Health Care Licensing Procedures Act) and of part I of chapter 429 (the authorizing statute for ALF licensure and regulation).³⁷ Violations are categorized by law into four classes, each subject to different levels of fines.³⁸

²⁹ S. 400.147(8), F.S.

³⁰ S. 400.147(5), F.S.

³¹ S. 415.1034, F.S. Similarly, Florida law also requires “any person” who knows of an instance of abuse, abandonment or neglect of a child to report it to the Department of Children and Family Services. Section 39.201, F.S.

³² 42 C.F.R. 483.13(c) (2008).

³³ S. 400.147(14), F.S.

³⁴ S. 400.141(16), F.S.

³⁵ S. 400.162, F.S.

³⁶ S. 400.23(3), F.S.

³⁷ S. 429.19(1), F.S.

³⁸ S. 429.19(2), F.S.

Current law requires that the agency order or perform assessments to determine client residency needs and provide corrective suggestions prior to issuing a deficiency.³⁹ According to the agency, these exams are not currently ordered or performed by the agency, these requirements place the agency in the position of directing provider operations, and corrective action is best identified by the caregivers based on resident needs.⁴⁰

Current law contains several provisions addressing unlicensed ALFs. The agency is required to provide a list of licensed ALFs, by county, to the Department of Elder Affairs and the Department of Children and Families to assist people in finding a licensed ALF.⁴¹ The agency is also required to host work groups related to unlicensed activities.⁴² In addition, current law prohibits referral of people to unlicensed ALFs, and prohibits hospitals and community mental health centers from discharging a patient to an unlicensed ALF. The agency must provide annual notices of this prohibition to persons responsible for referring patients, including physicians, hospitals, nursing homes, and the Departments of Elder Affairs and Children and Families.⁴³ According to the agency, unlicensed activity is well integrated into the full spectrum of compliance monitoring and no longer requires special handling; reports and citations for unlicensed activity have been stable for the last several years.⁴⁴

Current law requires assisted living facilities to report “adverse incidents”.⁴⁵ Adverse incidents include events reported to law enforcement, resident elopement, and abuse, neglect and exploitation of residents.⁴⁶ Florida law also requires instances of abuse, neglect and exploitation to be reported to the Department of Children and Family Services.⁴⁷ The agency is required to submit an annual report to the Legislature on ALF adverse incidents, including a listing of liability claims.⁴⁸ According to AHCA, this report is an aggregate data report that does not appear to be used.

In 2005, the Legislature established a pilot program to create an intergenerational assisted living facility and directed the agency to report on its effectiveness.⁴⁹ To date, the agency has received no requests to participate in the pilot.

Effect of Proposed Changes: Assisted Living Facilities

The bill eliminates the current statutory classification structure for ALF violations, and replaces it with the uniform structure created in the bill as part of the Health Care Licensing Procedures Act. That part of the bill establishes definitions for “isolated deficiency”, “patterned deficiency” and “widespread deficiency”, and for four classes of violations. The bill maintains the fining levels for ALF violations in current law.

The bill eliminates the requirement for Agency to order or perform an assessment to determine client residency needs for a decision of a person’s continued residency, and the requirement for the agency to offer correction suggestions prior to providing a written deficiency statement.

The bill eliminates the requirement for the agency to submit a list of licensed ALFs to the Departments of Elder Affairs and Children and Families, and replaces it with a requirement to publish that information on the agency’s website. The bill imposes the prohibition on referral to unlicensed ALFs on all providers governed by s. 408.803 (see above), and eliminates the requirement for the agency to notify providers of this requirement. The bill also eliminates the

³⁹ S. 429.19(8), F.S.

⁴⁰ Agency for Health Care Administration: 2009 Bill Analysis & Economic Impact Statement of HB 651.

⁴¹ Ss. 429.08(1)(e), 429.08(2)(e), F.S.

⁴² S. 429.08(2), F.S.

⁴³ S. 429.08(2), F.S.

⁴⁴ *Id.*

⁴⁵ S. 429.23(2), F.S.

⁴⁶ S. 429.23(2)(a), F.S.

⁴⁷ S. 415.1034, F.S. Similarly, Florida law also requires “any person” who knows of an instance of abuse, abandonment or neglect of a child to report it to the Department of Children and Family Services. Section 39.201, F.S.

⁴⁸ S. 429.23(6), F.S.

⁴⁹ S. 429.071, F.S.

requirement for the agency to conduct an unlicensed activity work group at each local agency office.

The bill amends adverse incident reporting requirements for ALFs. Regarding reports of events reported to law enforcement, the bill provides that ALFs need report only those events it they were reported to law enforcement “for investigation”. The bill limits reports of resident elopement to those in which the elopement places the resident at risk of harm or injury. The bill requires facilities to report abuse, neglect or exploitation to the Department of Children and Family Services as required by state law. The bill eliminates the requirement for the agency to submit an annual report on ALF adverse incidents and liability claims to the Legislature.

The bill repeals the pilot project for an intergenerational assisted living facility.

Current Situation: Health Care Clinics

The agency licenses and regulates health care clinics under part X of chapter 400, F.S., the Health Care Clinic Act (Act). The Act was passed in 2003 to reduce fraud and abuse occurring in the personal injury protection (PIP) insurance system. Section 409.991, F.S., provides licensure requirements to ensure that clinics meet basic standards, and provides administrative oversight. An entity that meets the definition of a “clinic” must be licensed as such and must maintain a valid license with the agency. Each clinic location must be licensed separately.

Section 400.9935, F.S., prohibits the medical director of a licensed clinic from making referring a patient from his or her own practice to the clinic, if the clinic provides magnetic resonance imaging (MRI), static radiographs, computed tomography, or positron emission tomography. That section makes such referrals third degree felonies.

Section 400.995, F.S. requires the agency to make a reasonable attempt to discuss clinic law violations with the clinic owner and recommended corrective action prior to taking disciplinary action.

Effect of Proposed Changes: Health Care Clinics

The bill authorizes interim licensure for health care clinics replacing MRI equipment; eliminates the prohibition on medical director referral to clinics that perform MRIs and other diagnostic imaging, and eliminates the requirement for the agency to provide corrective suggestions prior to issuing a written deficiency statement.

Current Situation: Nurse Registries

The agency licenses and regulates nurse registries under section 400.506, F.S. A nurse registry is any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors.⁵⁰

Current law prohibits a nurse registry from giving remuneration to a case manager, discharge planner, facility-based staff member, or third-party vendor who is involved in the discharge planning process of certain facilities, and from whom the nurse registry receives referrals. The agency may deny, suspend, or revoke the license of a nurse registry, and shall impose a fine of \$5,000 against a nurse registry which violates that prohibition.⁵¹

Effect of Proposed Changes: Nurse Registries

The bill amends the prohibition on a nurse registry giving remuneration to persons involved in discharge planning for facilities from whom the nurse registry receives referrals: this

⁵⁰ Section 400.462(21), F.S.

⁵¹ Section 400.506(15), F.S.

prohibition does not apply to nurse registries that do not participate in the Medicaid or Medicare programs.

Current Situation: Medicaid Provider Change of Ownership

In addition to the regulatory functions described above, the agency is the single state agency that administers the state Medicaid plan under federal law.⁵² The Medicaid program is required by federal law to contract with any willing, qualified health care provider, but may set the qualifications for enrolling providers.⁵³ Provider contracting is governed by s. 409.907, F.S., and by rules promulgated by the agency. Current law permits Medicaid to terminate the provider contract as the result of a change in ownership, requires providers involved in a change of ownership to notify Medicaid and submit a new provider contract application, and provides for successor liability.⁵⁴ A “change of ownership” is an event in which the provider changes to a different entity or in which 45 percent or more of the ownership changes over a two-year period.⁵⁵ This is consistent with current law governing licensure of many provider types.⁵⁶

Effect of Proposed Changes: Medicaid Provider Change of Ownership

The bill amends the definition of “change of ownership” to mean an event in which the licensee changes to a different entity, or in which 51 percent or more of the ownership changes in any manner, over any period of time. This matches the new definition in the bill governing licensure of many provider types.

B. SECTION DIRECTORY:

Section 1. Repeals s. 395.0199, F.S., relating to private utilization review of health care services.

Section 2. Amends s. 395.405, F.S., relating to agency rulemaking authority.

Section 3. Amends s. 400.0712, F.S., relating to inactive licenses for nursing home facilities.

Section 4. Amends s. 400.118, F.S., relating to nursing home quality assurance.

Section 5. Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

Section 6. Amends s. 400.147, F.S., relating to internal risk management of nursing homes.

Section 7. Amends s. 400.162, F.S., relating to property and personal affairs of residents.

Section 8. Amends s. 400.195, F.S., relating to agency reporting requirements.

Section 9. Amends s. 400.23, F.S., relating to rules, evaluation and deficiencies, licensure status.

Section 10. Amends s. 400.506, F.S., relating to licensure of nurse registries.

Section 11. Amends s. 400.9935, F.S., relating to health care clinic responsibilities.

Section 12. Amends s. 400.995, F.S., relating to administrative penalties.

Section 13. Amends s. 408.803, F.S., providing definitions.

⁵² Sections 409.901(2) and (14), F.S. The Medicaid DME and medical supplies program is authorized by Title XIX of the Social Security Act and 42 C.F.R. Part 440.70. The program was implemented through ch. 409, F.S., and Chapter 59G, F.A.C.

⁵³ Section 409.907(6), F.S.

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⁵⁵ Section 409.901(5), F.S.

⁵⁶ Section 408.803(5), F.S.

- Section 14. Amends s. 408.806, F.S., relating to licensure application processes.
- Section 15. Amends s. 408.808, F.S., relating to licensure categories.
- Section 16. Amends s. 408.809, F.S., relating to background screening for health care providers.
- Section 17. Amends s. 408.810, F.S., relating to licensure requirements.
- Section 18. Amends s. 408.811, F.S., relating to licensure inspections.
- Section 19. Amends s. 408.813, F.S., relating to administrative fines.
- Section 20. Amends s 408.820, F.S., relating to exemptions.
- Section 21. Creates s. 408.821, F.S., relating to emergency management planning and operations for health care providers.
- Section 22. Amends s. 408.831, F.S., relating to denial, suspension, or revocation of a license.
- Section 23. Amends s. 409.221, F.S., relating to consumer-directed care.
- Section 24. Amends s. 409.901, F.S., providing definitions.
- Section 25. Repeals s. 429.071, F.S., relating to intergenerational respite care assisted living facility pilot program.
- Section 26. Amends s. 429.08, F.S., relating to unlicensed assisted living facilities.
- Section 27. Amends s. 429.14, F.S., relating to administrative penalties.
- Section 28. Amends s. 429.19, F.S., relating to administrative fines.
- Section 29. Amends s. 429.23, F.S., relating to internal risk management of assisted living facilities.
- Section 30. Amends s. 429.26, F.S., relating to placements and examination of assisted living facility residents.
- Section 31. Amends s. 430.80, F.S., relating to a teaching nursing home pilot project.
- Section 32. Amends s. 435.04, F.S., relating to level 2 background screening standards.
- Section 33. Amends s. 435.05, F.S., relating to background screening requirements for employees.
- Section 34. Amends s. 483.031, F.S., relating to clinical laboratories.
- Section 35. Amends s. 483.041, F.S., providing definitions.
- Section 36. Repeals s. 483.106, F.S., relating to clinical laboratory certificate of exemption.
- Section 37. Amends s. 483.172, F.S., relating to clinical laboratory licensure fees.
- Section 38. Amends s. 651.118, F.S., relating to certificates of need.
- Section 39. Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See fiscal comments.
2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill deletes duplicate regulatory and reporting requirements positively impacting businesses that have to pay fees to support the cost of regulation.

D. FISCAL COMMENTS:

The bill would create an annual reduction of \$817,383 in the agency's expenditures in the in Health Care Trust Fund by the elimination of nurse monitor positions. Costs savings would also be realized through the implementation of electronic notifications and publication of documents. This would greatly cut mailing costs and staff time to prepare documents for distribution. The elimination of duplicative reporting would allow more efficient processing of licensure applications and enforcement activities.

The bill would also create a reduction in annual fee collections of \$428,700 that are deposited into Health Care Trust Fund due to deregulating the private review agents, homemaker/companion registries, and waived laboratories.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Health Regulation Policy Committee adopted a strike-all amendment and two amendments to the strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment, as amended:

- Eliminates regulation of private utilization review agents;
- Eliminates regulation of clinical laboratories that only perform tests waived by the federal Clinical Laboratory Improvement Amendment program;
- Revises long term care risk management to focus on incidents involving provider liability;
- Eliminates duplicative census reporting and quarterly monitoring visits of nursing homes;
- Eliminates certain workgroups and annual reports;
- Authorizes interim licensure for health care clinics replacing equipment;
- Eliminates assisted living directives related to residency and consultation;
- Eliminates certain activities related to unlicensed activity;
- Clarifies application time frames;
- Allows electronic access to information;
- Revises criteria for provisional licenses;
- Authorizes uniform rules for emergency preparedness and inspections;
- Revises disqualifying criminal offenses for persons who work in health care;
- Attaches certain background screening forms to licensure renewal and
- Makes numerous conforming changes.

The analysis is drafted to the committee substitute.