HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1503 Health Care
SPONSOR(S): Health & Family Services Policy Council; Health Care Regulation Policy Committee; Flores
TIED BILLS: **IDEN./SIM. BILLS:** SB 2138

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	12 Y, 0 N, As CS	Holt	Calamas
2)	Health & Family Services Policy Council	10 Y, 5 N, As CS	Holt	Gormley
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill repeals obsolete or duplicative provisions in licensing laws, to include expired reports and unnecessary documentation requirements regulated by the Agency for Health Care Administration (AHCA).

The bill makes various changes to the regulation of home health agencies. The bill provides a home health agency patient a bill of rights. Home health agency administrators are required to direct the operation of the home health agency and have qualified alternate administrators. The director of nursing must be available during the hours the home health agency is open. The bill specifies the duties of the director of nursing, registered nurse, licensed practical nurse, therapists and therapist's assistants in providing home health care and supervision. Home health aides must be competent to provide care to patients. Skilled services must be performed in compliance with state practice acts and the patient's plan of care. The plan of care is to be reviewed and updated according to specified time frames. The home health agency must provide one type of service directly and may provide other services through arrangements with others if they have a written contract.

The bill creates a rebuttable presumption against a claim of negligence or malpractice by a hospital, its employees, or independent contractors related to a health care-associated infection, if a hospital implements a comprehensive plan to reduce health care-associated infections prior to a patient becoming infected.

The bill eliminates an exemption to the normal Medicaid Managed Care enrollment process for Miami-Dade County. The bill transfers the administration for the Community Health Center Access Program from the Department of Health (DOH) to AHCA.

The bill establishes a new requirement that dentists and dental hygienist complete a dental workforce survey at the time of licensure renewal. Beginning with the 2014 licensure renewal cycle, individuals will not be permitted to renew their license if they do not complete the survey. The bill requires DOH to assume responsibilities for collecting, updating, and disseminating dental workforce data and serve as the coordinating and strategic planning body. The bill creates a dental workforce advisory body. The bill exempts licensed dentists who are part of a professional corporation or Limited Liability Company comprised of dentists from having to obtain a health care clinic establishment permit. The bill provides that the dentist is deemed the purchaser and owner of the prescription drugs. The bill adds a representative of the Florida Dental Association to the Florida Healthy Kids Corporation board of directors.

The bill creates a physician advisory council. The bill creates a physician workforce graduate medical education innovation pilot project. The bill allows DOH to issue temporary licenses to retired military physicians.

This bill appears to have an insignificant fiscal impact to AHCA (See Fiscal Comments).

The bill has an effective date of July 1, 2010.

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:

Health Care Licensing Procedures Act

The Agency for Health Care Administration (AHCA) regulates over 41,000 health care providers under various regulatory programs. Regulated providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act (ss. 112.0455, 440.102, F.S.)
- Birth centers (Ch. 383, F.S.).
- Abortion clinics (Ch. 390, F.S.).
- Crisis stabilization units (Pts. I and IV of Ch. 394, F.S.).
- Short-term residential treatment facilities (Pt. I and IV of Ch. 394, F.S.).
- Residential treatment facilities (Pt. IV of Ch. 394, F.S.).
- Residential treatment centers for children and adolescents (Pt. IV of Ch. 394, F.S.).
- Hospitals (Part I of Ch. 395, F.S.).
- Ambulatory surgical centers (Pt. I of Ch. 395, F.S.).
- Mobile surgical facilities (Pt. I of Ch. 395, F.S.).
- Health care risk managers (Pt. I of Ch. 395, F.S.).
- Nursing homes (Pt. II of Ch. 400, F.S.).
- Assisted living facilities (Pt. I of Ch. 429, F.S.).
- Home health agencies (Pt. III of Ch. 400, F.S.).
- Nurse registries (Pt. III of Ch. 400, F.S.).
- Companion services or homemaker services providers (Pt. III of Ch. 400, F.S.).
- Adult day care centers (Pt. III of Ch. 429, F.S.).
- Hospices (Pt. IV of Ch. 400, F.S.).
- Adult family-care homes (Pt. II of Ch. 429, F.S.).
- Homes for special services (Pt. V of Ch. 400, F.S.).
- Transitional living facilities (Pt. V of Ch. 400, F.S.).
- Prescribed pediatric extended care centers (Pt. VI of Ch. 400, F.S.).
- Home medical equipment providers (Pt. VII of Ch. 400, F.S.).
- Intermediate care facilities for persons with developmental disabilities (Pt. VIII of Ch. 400, F.S.).
- Health care services pools (Pt. IX of Ch. 400, F.S.).
- Health care clinics (Pt. X of Ch. 400, F.S.).

- Clinical laboratories (Pt. I of Ch. 483, F.S.).
- Multiphasic health testing centers (Pt. II of Ch. 483, F.S.).
- Organ, tissue, and eye procurement organizations (Pt. V of Ch. 765, F.S.).

Providers are regulated under individual licensing statutes and the Health Care Licensing Procedures Act (Act) in Part II of Chapter 408, Florida Statutes. The Act provides uniform licensing procedures and standards applicable to most AHCA-regulated entities. The Act contains basic licensing standards for 29 provider types in areas such as licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions, license renewal notices, and bankruptcy and eviction notices.

Hospital Licensure

Currently, Florida law allows AHCA to consider and use hospital accreditation by certain accrediting organizations for various purposes, including accepting accreditation surveys in lieu of AHCA survey, requiring accreditation for designation as certain specialty hospitals, and setting standards for quality improvement programs. Section 395.002, F.S., defines "accrediting organizations" as the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc.

Complaint investigation procedures for hospitals exist in the hospital authorizing chapter as well as in the Act. Section 395.1046, F.S., provides special procedures for hospital complaints regarding emergency access issues. For example, AHCA must: investigate emergency access complaints even if the complaint is withdrawn; prepare an investigative report; and make a probable cause determination. According to AHCA, the federal process for emergency access complaints dictates that these complaints should not be handled any differently from other types of complaints, thereby creating two separate processes for emergency access complaints, one state and one federal.

The bill broadens the definition of "accrediting organizations" for hospitals and ambulatory surgery centers to include any nationally recognized accrediting organization which has standards comparable to AHCA's licensure standards, as determined by AHCA. This gives AHCA and providers greater flexibility to accept new or improving accrediting organizations, and reconsider existing ones based on current statutory and rule-based standards.

The bill repeals s. 395.1046, F.S., which modifies the procedures for investigations in hospital emergency access complaints. Under the bill, AHCA would use existing hospital complaint investigation procedures used for all other types of complaints.

Hospital Internal Risk Management Program

Healthcare-associated infections are infections that patients acquire during the course of receiving treatment for other conditions within a healthcare setting.[1] Healthcare-associated infections are one of the top ten leading causes of death in the United States.[2] According to the Centers for Disease Control and Prevention, healthcare-associated infections account for an estimated 1.7 million infections and 99,000 associated deaths per year in U.S. hospitals.[3] Of these infections:[4]

- 32 percent of all healthcare-associated infection are urinary tract infections;
- 22 percent are surgical site infections;
- 15 percent are pneumonia (lung infections); and
- 14 percent are bloodstream infections.

[1] Centers for Disease Control and Prevention, Healthcare-Associated Infections, *available* at: http://www.cdc.gov/ncidod/dhqp/healthDis.html (last viewed April 20, 2010).
[2] *Id.*
[3] Centers for Disease Control and Prevention, Estimates of Healthcare-Associated Infections, *available* at: http://www.cdc.gov/ncidod/dhqp/hai.html (last viewed April 20, 2010).
[4] *Id.*

Section 395.0197, F.S., requires every licensed hospital to establish as part of its administrative functions, an internal risk management[5] program. An internal risk management program is the responsibility of the governing board of the health care facility.[6] Each licensed hospital is required to hire a risk manager. A risk management program requires hospitals to report to AHCA within 15 calendar days of any occurrence that results in an adverse incident.[7]

The bill amends s. 395.0197, F.S., creating a rebuttable presumption against a claim of negligence or malpractice by a hospital, its employees, or independent contractors related to a health care-associated infection if a hospital implements a comprehensive plan to reduce health care-associated infections prior to a patient becoming infected. A rebuttable presumption in the law of evidence shifts the burden of proof to the defendant and the burden to go forward with evidence must contradict or rebut presumed facts.[8] The bill provides that a comprehensive plan must include:

- A baseline measurement of health care-associated infections that uses the National Healthcare Safety Network and Centers for Disease Control and Prevention surveillance definitions and reports the number of infections by category.
- A goal for reducing the incidence of infections by a specific amount in a specific time. The goal must be commensurate with national goals for reducing health care-associated infections.
- An action plan for reducing each type of infection using infection surveillance or prevention technology.
- Methods for making information available to patients and the public regarding the hospital's progress in improving.

Home Health Agency Licensure

Currently, services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient's legal representative. The agreement must specify the services being provided, rates or charges for services paid with private funds, and sources of payment.[9] The bill provides that the home health agency must provide a copy of the agreement to the patient or patient's representative.

Patient Rights

In addition, the bill creates new provisions requiring a home health agency to protect and promote the rights of each individual under its care. The home health agency is required to provide the patient a written notice of the patients rights prior to the initiation of treatment. The provisions are:

- The patient has the right to exercise their rights as a patient;
- The patient has the right to have their property treated with respect;
- The patient has the right to voice grievances regarding treatment, care, or lack of respect for personal property;
- The patient must be informed of the right to report complaints via the statewide toll-free telephone number;
- The patient has the right to be informed prior to receiving care and any changes in the plan of care; and
- The patient has the right to participate in the planning of care and they must be advised in advance.

The home health agency must investigate any complaint about patient care and failure to respect the patient's property and document both the existence and resolution of the complaint. The patient must

[5] "Risk management" means the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing or eliminating identifiable risks. *See* 59A-10.002, F.A.C.
[6] s. 397.0197(2), F.S.
[7] 59A-10.0065, F.A.C.
[8] *Black's Law Dictionary*. (6th ed., West 1990).
[9] s. 400.487(1), F.S.

be informed of the disciplines (such as registered nurse, home health aide, physical therapist) that will provide the care; notified in advance of the individuals who will provide treatment and care; and the frequency of visits.

Personnel

The bill amends s. 400.476, F.S., to provide additional requirements and limitations of staffing services for home health agencies.

The bill amends the responsibilities of a home health agency administrator. It requires that an alternate administrator meet the same qualifications as an administrator which includes not working for multiple unrelated home health agencies. It prohibits delegation of supervisory and administrative functions to another agency or organization.

The bill requires the director of nursing or a similarly qualified alternate to be available at all times during operating hours; to oversee the assignment of personnel and nursing services, home health aides and certified nursing assistants; and to participate in all activities related to the provision of professional services by the home health agency.

The bill provides that a home health agency's professional staff must comply with applicable state practice acts, accepted professional standards and principles, and the home health agency's policies and procedures. According to AHCA, by referencing the professional practice acts in state law, AHCA surveyors can cite for non-compliance, and follow up to see if a correction is made.[10]

The bill provides that a home health agency may not use a home health aide unless the individual has successfully completed a training and competency evaluation program to ensure they are adequately trained. All aides must be competent and cannot perform tasks for which they received an unsatisfactory evaluation except under direct supervision of a licensed practical nurse.

The bill amends s. 400.487, F.S., to require home health aides and certified nursing assistants to be supervised by a registered nurse. However, supervision may be provided by therapists if therapy services are only provided. The bill requires that a supervisory visit be made to the home of a patient at least once every 60 days while the home health aide or certified nursing is providing care to a patient. If a patient receiving skilled nursing or therapy services a nurse or therapist is required to visit at least once every two weeks, however, the visit does not have to be made while the aide or certified nursing assistant is providing care. The bill requires that home health aides and certified nursing assistants to receive written patient care instructions from their supervisors.

Provision of Services

The bill provides in s. 400.476, F.S., that a home health agency must provide at least one of the types of services directly. The services provided by individuals that are not direct employees and by other organizations under arrangements must have a written contract that specifies the services to be provided, procedures for scheduling visits, submitting notes, evaluating patients, and payment for services.

The bill specifies in s. 400.487, F.S., the services to be provided by a registered nurse, licensed practical nurse, home health aide, certified nursing assistant, therapist and therapist assistant are specified. All personnel serving patients must coordinate their efforts to provide care and show this communication in the patient's record. Verbal orders must be put in writing and plans of care are to be reviewed every 60 days or more frequently if there is a significant change in the patient's condition. The bill specifies that drugs and treatments can only be provided as ordered by a physician, or advanced registered nurse practitioner or physician's assistant who works under the supervision of a physician. Flu and pneumonia vaccines may be administered to patients in accordance with home health agency policy that is developed in consultation with a physician.

[10] Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Statement of House Bill 1503 (March 24, 2010).

The bill amends the definition of “admission” in s. 400.462, F.S., so that the evaluation of the patient does not have to occur when the patient gets home, but can be done while the patient is still at a hospital or rehabilitation facility. In addition, “home health services” is revised to include the provision of durable medical equipment. The bill provides a new definition for “primary home health agency” designating the agency that is responsible for the services provided as well as the plan of care since many home health agencies contract with other agencies for services.

Nursing Home Licensure

Litigation Notices

Since 2001, nursing homes have been required by s. 400.147(10), F.S., to report civil notices of intent to litigate (required by s. 400.0233, F.S.) and civil complaints filed with clerks of courts by a resident or representative of a resident. This information has been used to produce the Semi-Annual Report on Nursing Homes required by s. 400.195, F.S. Information is reported in aggregate for all facilities.

The bill eliminates the requirement to report notices of intent to litigate and civil complaints.

Assisted Living Facility Licensure

Assisted Living Facilities (ALFs) are not currently required to submit resident population data to AHCA. However, there is a requirement to submit disaster/emergency information electronically via AHCA’s Emergency Status System (ESS).[11] Submission of ESS data was a result of SB 1986 (Ch. 2009-223 L.O.F), and is being required at the time of licensure renewal. Currently, 42.1 percent (1197) of ALFs are currently enrolled in this system.

Section 429.23, F.S., requires each ALF to submit a monthly report on civil liability claims filed against the facility, and provides that the reports are not discoverable on civil or administrative actions.

Medicaid Managed Care Enrollment

Section 409.9122(2)(f), F.S., specifies that Medicaid recipients who are eligible for managed care plan enrollment are subject to mandatory assignment. Recipients who fail to choose Medipass or a managed care plan will be assigned to a managed care plan[12] until an enrollment ratio is reached of 35 percent in MediPass and 65 percent in managed care plans. Once this enrollment ratio is achieved, the assignments are to be divided in such a way as to maintain an enrollment ratio of MediPass and managed care plans of 35 percent and 65 percent, respectively. When making assignments, AHCA is required to take into account the following criteria:[13]

- Whether a managed care plan has sufficient network capacity to meet the need of members.
- Whether the managed care plan or MediPass has previously enrolled the recipient as a member, or one of the managed care plan's primary care providers or MediPass providers has previously provided health care to the recipient.
- Whether AHCA has knowledge that the member has previously expressed a preference for a particular managed care plan or MediPass provider as indicated by Medicaid fee-for-service claims data, but has failed to make a choice.
- Whether the managed care plan's or MediPass primary care providers are geographically accessible to the recipient's residence.

[11] The Emergency Status System is a web-based system for reporting and tracking health care facility status before, during and after an emergency.
[12] "Managed care plans" includes health maintenance organizations, exclusive provider organizations, provider service networks, minority physician networks, Children's Medical Services Network, and pediatric emergency department diversion programs authorized by ch. 409, F.S., or the General Appropriations Act. *See* s. 409.9122(2)(f), F.S.
[13] s. 409.9122(2)(f), F.S.

When more than one managed care plan or MediPass provider meets the enrollment criteria, AHCA is required to make recipient assignments consecutively by family unit.[14] Furthermore, AHCA may not engage in practices that are designed to favor one managed care plan over another.[15]

Section 409.9122(13), F.S., provides an exemption from the normal enrollment process for Medicaid managed prepaid plans operating in Miami-Dade County for at least 8 consecutive years. This provision requires AHCA to adjust the enrollee assignment process for Medicaid managed prepaid plans such that the plans maintain a minimum enrollment level of 15,000 members per month. Furthermore, AHCA is not allowed to make enrollee assignments to a prepaid health plan that has a statewide Medicaid enrollment under 25,000 or more members. The bill deletes this exemption for Medicaid managed prepaid plans operating in Miami-Dade County.

Pilot Projects

The Medicaid "Up-or-Out" Quality of Care Contract Management Program in s. 400.148, F.S., was created as a pilot program in 2001 to improve care in poor performing nursing homes and assisted living facilities by assigning trained medical personnel to facilities in select counties similar to Medicare models for managing the medical and supportive-care needs of long-term nursing home residents. The pilot was subject to appropriation; however, an appropriation was not allocated to this program and it was never implemented. According to AHCA, the criteria specified to identify poor performing facilities has been replaced by more comprehensive information for consumers to make informed choices for care.

The bill repeals the Medicaid Up or Out Pilot Quality of Care Contract Management Program.

Reports

The semi-annual report on nursing homes in s. 400.195, F.S., was provided from December 2002 through June 2005 as a tool to provide information about litigation in Florida nursing homes. The report included demographic and regulatory information about nursing homes in Florida and aggregate numbers of notices of intent to litigate and civil complaints filed with the clerks of courts against Florida nursing homes. The reporting requirement ended June 2005 by law. The statutory obligation to publish this report has been met and by law expired on June 30, 2005.

The Comprehensive Review for Long Term Care Services program report was required to be submitted to the Legislature by July 1, 2005. However, the language requiring the report still exists in s. 409.912(15)(g), F.S.

The bill repeals these two report requirements.

Dental Workforce

In January of 2008, the State Surgeon General established the Florida Health Practitioner Oral Healthcare Workforce Ad Hoc Committee (Ad Hoc Committee).[16] The mission of the Ad Hoc Committee was to evaluate and address the complex range of oral health workforce concerns that impact Florida's ability to recruit or retain available practicing dental providers (dentists, dental hygienists, and dental assistants), especially for Florida's disadvantaged and underserved populations.[17] The Ad Hoc Committee published the Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (report) in February 2009, which provided recommendations on dental workforce and access to oral health care. The 2009 report the committee suggested "monitoring dental workforce trends through surveys that accompany licensure renewal and assessing dental needs of all

[14] s. 409.9122(2)(g), F.S.
[15] s. 409.9122(2)(h), F.S.
[16] Florida Department of Health, Health Practitioner Oral healthcare Workforce Ad Hoc Committee Report, February 2009.
[17] *Id.*

persons in Florida through a statewide oral health needs assessment or a statewide oral health surveillance system."[18]

DOH is conducting a voluntary workforce survey as a part of the current renewal cycle for all Florida licensed dentists and dental hygienists. During the 2010 licensure renewal cycle 10,240 of 11,214 dentists or 91 percent participated in the survey.[19] And 11,026 of 11,710 dental hygienists or 94 percent participated in the survey.[20]

The bill requires that beginning in 2012, at the time of licensure renewal dentist and dental hygienist will be requested to provide information in a dental workforce survey. If the dentist or dental hygienist does not complete the survey within 90 days after renewal, then the Board of Dentistry is required to issue a non-disciplinary citation stating that their license will not be renewed unless the survey is completed. In addition the dentist or dental hygienist must submit a statement that the information they provided in the survey is true and accurate to the best of their knowledge and belief.

The bill provides that DOH:

- Maintain a database to serve as a statewide source of dental workforce data;
- Act as a clearinghouse and coordinator for the collection, and dissemination of dental workforce data;
- Work with stakeholders to assess and share all data collected in a timely fashion;
- Work in conjunction with the Board of Dentistry to develop strategies to maximize federal and state programs that provide incentives for dentists to practice in federally designated shortage areas;
- Work in conjunction with the Board of Dentistry and the advisory body to address matters relating to the state's dental workforce; and
- Adopt rules to administer the provisions of the bill.

The bill creates an advisory body tasked with providing input on the development of questions for the dental workforce survey. The bill provides that the advisory body be comprised of:

- State Surgeon General or designee;
- Dean of each accredited dental school in the state;
- Representative of the Florida Dental Hygiene Association;
- Representative of the Florida Dental Association;
- Representative from the Board of Dentistry;
- A dentist from each of the dental specialties[21] recognized by the American Dental Association's Commission on Dental Accreditation.

The bill provides that DOH create a dental workforce survey that contains, but is not limited, to the following questions that are codified into statute:

- Questions Related to the Licensee:
    - Name of dental school or dental hygiene program that individual graduated from and the year of graduation;
    - Geographic location of the practice;
    - Anticipated plans of the dentist to change license or practice status;
    - Dentists areas of specialty or certification;
    - Year that the dentist completed specialty program recognized by the American Dental Association;

[18] Florida Department of Health, Health Practitioner Oral healthcare Workforce Ad Hoc Committee Report (February 2009).
[19] Telephone conversation with the Executive Director for the Florida Board of Dentistry (March 2010).
[20] Email correspondence with the Executive Director for the Florida Board of Dentistry (April 1, 2010).
[21] Currently there are nine recognized specialties: Dental Public Health, Endodontics, Oral and Maxiofacial Surgery, Oral and Maxiofacial Pathology, Oral and Maxiofacial Radiology, Orthodotics and Dentofacial Orthopedics, Pediatric Dentistry, Periodontics, and Prothodontics.

- Dentist's membership in professional organizations;
- Number of pro bono hours provided by the dentist or dental hygienist during the last biennium;
- Dentists in private practice:
  - Number of full-time dentists and dental hygienists employed by the dentist during the reporting period;
  - Average number of patients treated per week by the dentist during the reporting period;
- For dental hygienists:
  - Average number of patients treated per week during the reporting period; and
  - Settings were dental care was delivered.

- Questions Concerning the Availability and Trends of Critically Needed Services Provided by the Dentist or Dental Hygienist:

  - Dental care to children having special needs;
  - Geriatric dental care;
  - Dental services in emergency departments;
  - Medicaid services; and
  - Other critically needed specialty areas, as determined by the advisory body.

The bill provides that members of the advisory body are required to serve without compensation. The bill provides legislative intent specifying that DOH implement the provisions of the bill within existing resources.

Health Care Clinic Establishment Permit

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S. DOH is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics. The regulatory structure provides for prescription drugs to be under the responsibility of a permit at all times, until a prescription drug is dispensed to a patient.[22]

One of the permits issued by DOH under the Act is the Health Care Clinic Establishment (HCCE) permit. The biennial fee for the HCCE permit is $255[23] and the permit is valid for 2 years, unless suspended or revoked.[24]

The HCCE permit was established in 2008 to enable a business entity to purchase prescription drugs.[25] The HCCE permit is a permit that a medical practice may obtain in order to purchase and own prescription drugs in the business entity's name. The HCCE permit is not required if a practitioner in the clinic or practice wants to purchase and own prescription drugs in his or her own name using his or her professional license that authorizes that practitioner to prescribe prescription drugs.

Under the requirements of the permit, a qualifying practitioner or a veterinarian licensed under ch. 474, F.S., is designated to be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs purchased and possessed by the business entity.[26] Both the qualifying practitioner and the permitted health care clinic must notify DOH within 10 days after any change in the qualifying practitioner.

The bill exempts licensed dentists who are part of a professional corporation or Limited Liability Company comprised of dentists from having to obtain a health care clinic establishment permit. The bill provides that the dentist is deemed the purchaser and owner of the prescription drugs.

[22] s. 499.01, F.S.
[23] The fee for a HCCE permit may not be less than $125 or more than $250 annually. See s. 499.041(2)(c), F.S.
[24] 64F-12.018, F.A.C.
[25] s. 499.01(2)(t), F.S.
[26] s. 499.01(2)(t)1., F.S.

Emergency Related Products

Section 381.00315, F.S., provides the authority for the State Health Officer to declare a public health emergency which continues until the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and the State Health Officer terminates the declaration. A declaration may not continue for longer than 60 days unless the Governor concurs in the renewal of the declaration. The State Health Officer, upon declaration of a public health emergency, may take actions the following actions necessary to protect the public health, but not limited to:

- Directing manufacturers of prescription drugs or over-the-counter drugs to give priority to the shipment of specified drugs to pharmacies and health care providers. The State Health Officer must identify the drugs to be shipped. Manufacturers and wholesalers located in the state must respond to priority shipping directive before shipping the specified drugs.

- Directing pharmacists employed by the department to compound bulk prescription drugs and provide the bulk prescription drugs to physicians and nurses of county health departments or any authorized person for administration to individuals as part of a prophylactic or treatment regimen.

- Temporarily reactivating an unencumbered inactive license to respond to a public health emergency, at the request of the following practitioners: physicians; physician assistants; licensed practical nurses, registered nurses, and advanced registered nurse practitioners; respiratory therapists; emergency medical technicians and paramedics. An inactive license that is reactivated returns to inactive status when the public health emergency ends or prior to the end of the public health emergency if the State Health Officer determines that the health care practitioner is no longer needed. Such licenses may only be reactivated for a period not to exceed 90 days.

- Ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. Individuals, who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be quarantined.

The bill authorizes DOH to accept funds provided by counties, municipalities, and other entities designated in the state emergency management plan for the purpose of participation in contacts and expend funds for the manufacture and delivery of licensable products used in response to a public health emergency. The bill provides that the funds are to be deposited into the Grants and Donations Trust Fund within DOH.

Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation ("Corporation"), under contract with the Agency, performs administrative functions for the overall Florida KidCare program and administers the SCHIP HealthyKids program. The Corporation handles eligibility determination, premium billing and collection, refunds, and customer service for KidCare, except for the large Medicaid component, which is administered by the Agency and the Department of Children and Families.

The corporation is governed by a 12-member board of directors (board) who serve for 3-year terms of office. The current membership includes:[27]

- The Chief Financial Officer, or designee;
- The Secretary of Health Care Administration, or designee;
- One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;

[27] s. 624.91(6), F.S.

- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the Governor, who represents the Children's Medical Services Program;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the Governor, who is an expert on child health policy;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians;
- One member, appointed by the Governor, who represents the state Medicaid program;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties;
- The State Health Officer or designee; and
- The Secretary of Children and Family Services, or designee.

In 2009, the Legislature passed two separate bills that amended the membership to the board.[28] The first bill HB 185, was approved by the Governor on May 20, 2009.[29] This bill added a representative nominated by the Florida Dental Association to the board. The second bill SB 918, was approved by the Governor on June 2, 2009.[30] This bill added the Secretary of Children and Family Services or designee to the board. According to provisions of statutory construction, the law "last passed" by the Legislature is published with a footnote in statute noting the conflict.[31]

The bill adds a representative of the dental community to the Florida Healthy Kids Corporation board of directors. The member will be appointed by the Governor from three candidates nominated by the Florida Dental Association.

Physician Workforce

In 2007, the Legislature directed DOH to serve as the coordinating and strategic planning body to actively assess Florida's current and future physician workforce needs and work with multiple stakeholders to develop strategies and alternatives to address current and projected workforce needs.[32]

DOH is directed to maximize the use of existing programs in DOH and coordinate with other government and nongovernment stakeholders to develop a state physician workforce strategic plan.[33]

Under sections 458.3191 and 459.0081, F.S., all Florida-licensed allopathic and osteopathic physicians are required to participate in a physician survey in conjunction with their biennial licensure renewal. DOH is provided rulemaking authority to develop and administer the physician survey. DOH is required to issue a nondisciplinary citation to any physician licensed under chapters 458 or 459, F.S, who fails to complete the physician workforce survey within 90 days of licensure renewal.[34] The citation notifies a physician who fails to complete the survey that he or she cannot subsequently renew his or her license, until the survey is completed.

Under sections 458.3192 and 459.0082, F.S., DOH is required to analyze the results of the physician surveys and determine, by geographic area and specialty, the number of physicians in Florida who:

- Perform deliveries of children;
- Read mammograms and perform breast-imaging-guiding procedures;
- Perform emergency care on an on-call basis for a hospital emergency department;
- Plan to reduce or increase emergency on-call house in a hospital emergency department; or

[28] *See* chapters 2009-41 and 2009-113, L.O.F.
[29] ch. 2009-41, L.O.F.
[30] ch. 2009-113, L.O.F.
[31] *See* preface to the Florida Statutes, "Statutory Construction."
[32] s. 381.4018(2), F.S.
[33] s. 381.4018(3), F.S.
[34] ss. 458.3191(3)(a) and 459.0081(3)(a), F.S.

- Plan to relocate their allopathic or osteopathic practice outside the state.

The bill modifies the section of law that establishes DOH's responsibility for physician workforce development by providing definitions for "consortium", "council", "department", and "primary care specialty". Additionally, the bill amends the survey requirements to also include the number of physicians, by geographic area and specialty, who practice medicine in this state and plan to reduce or modify the scope of their practice to the current physician survey requirements. The bill provides DOH the authority include Physician Workforce Advisory Council recommendations in the physician survey annual report.

The bill creates a 19-member Physician Workforce Advisory Council (Council) that is directed to:

- Advise the State Surgeon General and DOH on matters concerning current and future physician workforce needs;
- Review survey materials and compilation of survey information;
- Annually review the number, location, cost, and reimbursement of graduate medical education programs and positions;
- Provide recommendations to DOH regarding completed surveys;
- Assist DOH in preparing the statutorily required annual report[35];
- Monitor and provide recommendations regarding the need for an increased number of primary care or other physician specialties to meet projected health and medical services for the state; and
- Monitor and make recommendations regarding the status of the needs relating to graduate medical education.

The bill provides that members of the council are to be appointed by the State Surgeon General for a four year term. Members of the Council are not authorized to receive compensation or reimbursement for per diem or travel expenses. The Council is required to meet at least twice a year in person or by teleconference. According to DOH, the duties of the Council would consolidate some of the responsibilities of the current Community Hospital Education Council, GME Committee, and DOH's Healthcare Practitioner Ad Hoc Committee.[36]

Physician Workforce Graduate Medical Education Innovation Pilot Projects

The bill creates the Physician Workforce Graduate Medical Education (GME) Innovation Pilot Projects program. The bill provides legislative findings relating to GME and establishes a program in DOH to foster Innovative GME Pilot Projects that are designed to promote the expansion of GME programs or positions to prepare physicians to practice in needed specialties and underserved areas or settings and to provide demographic and cultural representation in a manner that addresses current and projected needs for this state's physician workforce. Funds appropriated annually by the Legislature for these purposes are to be distributed to participating hospitals, medical schools, other GME program sponsors, consortia engaged in developing new GME programs or positions in those programs, or pilot projects providing innovative GME in community-based clinical settings. Pilot projects will be selected on a competitive grant basis, subject to available funds.

The pilot projects must be designed to meet one or more of the state's physician workforce needs, including, but not limited to:

- Increasing the number of residencies or fellowships in primary care or other needed specialties;
- Enhancing the retention of primary care physicians or other needed specialties in the state;
- Promoting practice in rural or medically underserved areas of the state;
- Encouraging racial and ethnic diversity within the state's physician workforce;
- Encouraging practice in community health care or other ambulatory care settings;

[35] ss. 458.3192 and 459.0082, F.S.
[36] Department of Health Bill Analysis, Economic Statement, and Fiscal Note to Senate Bill 1256 (February 26, 2010).

- Encouraging practice in clinics operated by DOH, including but not limited to, county health departments, clinics operated by the Department of Veterans' Affairs, prison clinics, or similar settings of need; and
- Encouraging the increased production of geriatricians.

According to the bill, funding priority will be given to pilot project proposals that:

- Demonstrate a collaboration of federal, state, and local entities that are public or private;
- Obtain funding from multiple sources;
- Focus on enhancing GME in rural and underserved areas;
- Focus on enhancing GME in ambulatory or community-based settings other than a hospital environment;
- Include the use of technology, such as electronic medical records, distance consultation, and telemedicine, to ensure that residents are better prepared to care for patients in this state, regardless of the community in which the residents practice;
- Are designed to meet multiple policy needs listed under s. 381.4018(3), F.S.; and
- Use a consortium to provide for GME experiences.

The bill provides that pilot project funding may only be used for the direct cost of providing GME and must be documented in a pilot project annual report. The bill also specifies that state funds will be used to supplement funds from any local government, community, or private sources. The state is authorized to provide up to 50 percent of the funds for a pilot project, and local governmental grants or community or private sources must fund the balance needed for the pilot project.

The bill authorizes DOH to adopt rules for pilot project performance measures to evaluate the effectiveness, safety, and quality of the programs, and the impact of each program on meeting the state's physician workforce needs.

Community Hospital Education Program

Under s. 381.0403, F.S., DOH is responsible for administering the Community Hospital Education Act, to provide additional outpatient and inpatient services, a continuing supply of highly trained physicians, and GME. The Community Hospital Education Act includes: the Community Hospital Education Program (CHEP), the Community Hospital Education Council, the GME Committee, and the Program for GME Innovations. DOH facilitates the Community Hospital Education Council, an 11-member council that offers recommendations and oversight to the Community Hospital Education Program.[37]

According to DOH, this program currently supports 59 primary care residency programs and with over 1,400 residents through a general appropriation of $13.9 million that is transferred to AHCA to draw down additional federal dollars.[38] DOH states that the Council has not met in the past 12 months because the chair and council voted that they no longer had authority to oversee the program since they were not directly awarding the funding.[39] The Council agreed that the oversight of the program's accrediting bodies assured quality and adherence to high standards. Additionally, the Council decided that when the funding is transferred to the Medicaid program to draw down additional funds that it goes directly to the hospital, not the residency program and therefore is difficult to track expenditures or hold a program accountable.[40]

The bill repeals the GME Committee and the GME annual report within the Community Hospital Education Act Program.

[37] s. 381.0403(6), F.S.
[38] Department of Health Bill Analysis, Economic Statement, and Fiscal Note to Senate Bill 1256 (February 26, 2010).
[39] *Id.*
[40] *Id.*

Temporary Certificate for Practice in Areas of Critical Need

Section 458.315, F.S., authorizes the Board of Medicine to authorize a temporary certificate to practice medicine in areas of Florida where there is a critical need for physicians. In order to qualify for this certificate, a physician must have a currently valid license to practice medicine another state and be employed by a health department, corrections facility, community health center, or other entity that provides health care to indigents and that is approved by the State Health Officer.

There is no corresponding authority to offer this type of temporary certificate to Osteopathic physicians. The bill creates s. 459.0076, F.S., to authorize the Board of Osteopathic Medicine to issue a temporary certificate for practice in areas of critical need similar to the authority provided to the Board of Medicine to grant such certificates.

The bill authorizes the Board of Medicine and Board of Osteopathic Medicine, to issue a temporary certificate under Chapters 458 and 459, F.S., respectively, for practice in areas of critical need to military physicians who practiced for at least 10 years and received an honorable discharge from the U.S. military, and for other physician specialty needs as determined by the State Surgeon General.

Federally Qualified Health Center Access Program

Section 409.9125, F.S., establishes the Community Health Center Access Program Act (act). DOH is directed to develop a program for the expansion of federally qualified health centers (FQHC) for the purpose of providing comprehensive primary and preventive health care and urgent care services that reduce the morbidity, mortality, and cost of care among the uninsured population of the state.[41] In addition, the program is required to provide for the distribution of financial assistance to FQHCs that apply and demonstrate a need for assistance in order to sustain or expand the delivery of primary and preventive health care services.[42] The act establishes evaluation standards for financial assistance applications, and requires that a review panel be established to review all assistance applications.[43] Finally, the act provides that DOH may contract with the Florida Association of Community Health Centers, Inc., to administer the program and provide technical assistance to FQHCs selected to receive financial assistance.[44]

The bill transfers administrative responsibility for the "Community Health Centers Access Program Act" from DOH to AHCA. Beginning January 1, 2011, the Florida Association of Community Health Centers, Inc. is required to develop a statewide assessment and strategic plan every 5 years that will be used to assist in the assessment and identification of areas of critical need. AHCA is required to contract with the Florida Association of Community Health Centers, Inc. to develop and coordinate the program. The bill specifies that the contracted entity is responsible for program support and assumes all costs related to the administration of the program.

B. SECTION DIRECTORY:

Section 1. Repeals paragraph (e) of subsection (10) and paragraph (e) of subsection (14) of s. 112.0455, F.S., relating to disciplinary remedies in the drug-free workplace act.
Section 2. Amends s. 381.00315, F.S., relating to public health advisories and public health emergencies.
Section 3. Repeals s. 383.325, F.S., relating to inspection reports.
Section 4. Amends s. 395.0197, F.S., relating to internal risk management program.
Section 5. Repeals s. 395.1046, F.S., relating to complaint investigation procedures.
Section 6. Repeals s. 395.3037, F.S., relating to definitions.
Section 7. Amends s. 400.0239, F.S., relating to quality of long-term care facility improvement trust fund.
Section 8. Repeals subsection (10) of s. 400.147, F.S., relating to required reporting to the internal risk management and quality assurance program.

[41] s. 409.91255(3), F.S.
[42] *Id.*
[43] s. 409.91255(3)-(4), F.S.
[44] s. 409.91255(5), F.S.

Section 9. Repeals s. 400.148, F.S., relating to the Medicaid "Up-or-Out" Quality of Care Contract Management Program.
Section 10. Repeals s. 400.195, F.S., relating to agency reporting requirements for nursing homes.
Section 11. Amends s. 400.476, F.S., relating to staffing requirements, notifications, and limitations on staffing services.
Section 12. Amends s.400.487, F.S., relating to home health agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; and orders not to resuscitate.
Section 13. Repeals subsection (11) of s. 408.802, F.S., relating to applicability of private review agents.
Section 14. Repeals paragraphs (e), (f), and (g) of subsection (15) of s. 409.912, F.S., relating to the report on the CARES program and impact of modifying the level of care to eliminate the Intermediate II level of care.
Section 15. Repeals subsection (13) of s. 409.9122, F.S., relating to mandatory Medicaid Managed Care enrollment, programs and procedures.
Section 16. Amends s. 409.91255, F.S., relating to Community Health Center Access Program Act.
Section 17. Repeals subsection (2) of s. 429.12, F.S., relating to requirement for a plan of corrective action pending sale or transfer of ownership of a facility.
Section 18. Repeals subsection (5) of s. 429.23, F.S., relating to the reporting requirements of any liability claim.
Section 19. Repeals s. 429.911, F.S., relating to adult day care facilities grounds for action when intentional or negligent acts occur that affect the safety and health of a resident.
Section 20. Creates an unnumbered section relating to dental workforce survey.
Section 21. Creates an unnumbered section relating to dental workforce advisory body.
Section 22. Creates an unnumbered section relating to legislative intent.
Section 23. Amends s. 499.01, F.S., relating to health care clinic establishment permit.
Section 24. Amends s. 624.91, F.S., relating to the Florida Healthy Kids Corporation Act.
Section 25. Amends s. 381.0403, F.S., relating to the Community Hospital Education Act.
Section 26. Amends s. 381.4018, F.S., relating to physician workforce assessment and development.
Section 27. Amends s. 458.3192, F.S., relating to analysis of survey results and report.
Section 28. Amends s. 459.0082, F.S., relating to analysis of survey results and report.
Section 29. Amends s. 458.315, F.S., relating to temporary certificate for practice in areas of critical need.
Section 30. Amends s. 459.0076, F.S., relating to temporary certificate for practice in areas of critical need.
Section 31. Provides that the bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to AHCA as of March 31, 2010, 63 percent (1,485) of the 2,361 licensed home health agencies are also Medicare and/or Medicaid certified. Approximately one-third of these agencies are in the process of becoming certified.[45] Certified agencies are already required to meet the new requirements in this bill. Non-certified home health agencies may be impacted if they are not doing the following:[46]

- Supervisory visits for home health aides and certified nursing assistants
- Reviewing plans of care
- Investigating complaints from patients
- Preparing written contracts for individuals not directly employed and other agencies that are providing services under arrangements
- Having a director of nursing or alternate available during operating hours
- Having a registered nurse provide written instructions on patient care to home health aides and certified nursing assistants

D. FISCAL COMMENTS:

AHCA estimates that implementation of the requirement under the Community Health Center Access Program Act would require an expenditure of $92,275 in FY 2010-2011, would have a recurring impact of $89,175 and would require 1 FTE.[47]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:
None.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA and DOH have sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a dental workforce advisory body. The bill is silent on the terms of membership terms and how members will be appointed. However s. 20.052(5), F.S., provides that private citizen members must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer and members must be appointed for 4-year staggered terms. Staff recommends adding a statutory cross reference to s. 20.052, F.S., or providing membership terms and appointment provisions into the bill.

On line 629, the bill provides that the Board of Dentistry is required to issue a non-disciplinary citation or renew a license. This is usually a function of the department, not the board. Staff recommends amending the language to provide this authority to the department

[45] Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Statement of House Bill 1503 (March 24, 2010).
[46] *Id.*
[47] Email correspondence with AHCA on file with the Health Care Regulation Policy Committee staff (April 13, 2010).

According to the proponents for the dental workforce survey, one of the reasons for supporting the legislation was to provide confidentiality to dentist and dental hygienists who provided information concerning their practice in a survey. However, Committee Substitute for HB 1503, does not provide a public records exemption. House Bill 537, which was amended into House Bill 1503, was tied to House bill 539, which provided a public records exemption for the information contained in dental workforce surveys.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 31, 2010, the Health Care Regulation Policy Committee adopted a strike-all amendment and an amendment to the amendment. The bill was reported favorably as a committee substitute. The amendments:

Amendment 1: Conforms to SB 2138.

- Retains original bill's repeals of the Medicaid 'Up or Out' program, AHCA reporting and investigative requirements, and various regulatory functions.
- Eliminates all other bill provisions except those related to home health agencies:
  - Creates a patient bill of rights for home health agency clients;
  - Delineates the duties of the director of nursing and any alternates;
  - Delineates the duties of the administrator;
  - Provides detailed requirements for supervision of various services;
  - Specifies service functions and duties of various professionals;
  - Prohibits employment of home health aides without certain scores on competency tests, as set by rule; and
  - Requires various contracts and contract terms.

Amendment to Amendment:

- Amends the provisions of HB 537, modified, onto the bill.
  - Requires dentists and dental hygienists to complete a dental workforce survey to at the time of licensure renewal;
  - Dentists and hygienists who fail to complete the survey will receive a non-disciplinary citation;
  - Beginning with 2014 licensure renewal cycle, individuals will not be permitted to renew their license if they do not complete the survey;
  - DOH must maintain a database of dental workforce data;
  - Creates an advisory body to provide input in the development of survey questions;
  - Members of the advisory body are required to serve without compensation;
  - DOH must implement the provisions of the bill within existing resources;
  - Exempts dental practices from the health care clinic establishment permit and deems such dentists are the purchaser and owner of prescription drugs (regardless of who pays for the drugs); and
- Adds a member nominated by the Florida Dental Association to the Florida Healthy Kids Corporation Board of Directors.

On April 13, 2010, the Health & Family Services Policy Council adopted five amendments. The bill was reported favorably as a council substitute. The amendments:

- Authorize DOH to accept funds provided by counties, municipalities, and other entities designated in the state emergency management plan for the purpose of participation in contacts and expend funds for the manufacture and delivery of licensable products used in response to a public health emergency. Provides that the funds are to be deposited into the Grants and Donations Trust Fund within DOH.

- Provide a rebuttable presumption against a claim of negligence or malpractice by a hospital, its employees, or independent contractors if a hospital implements a comprehensive plan to reduce health care-associated infections prior to a patient becoming infected.

- Transfer administrative responsibility for the “Community Health Centers Access Program Act” from DOH to AHCA and require the Florida Association of Community Health Centers, Inc., to develop a statewide assessment and strategic plan that will be used to assist in the assessment and identification of areas of critical need.

- Eliminate an exemption to the normal Medicaid Managed Care enrollment process for Miami-Dade County.

- Amend SB 1256 onto the bill:

    - Modifying the section of law that establishes DOH responsibility for physician workforce development. The bill creates a Physician Workforce Advisory Council and a Physician Workforce GME Innovation Pilot Projects program.
    - Repealing the GME Committee and the GME annual report within the Community Hospital Education Act Program.
    - Authorizing the Board of Medicine and Board of Osteopathic Medicine, to issue a temporary certificate under Chapters 458 and 459, F.S., respectively, for practice in areas of critical need to military physicians who practiced for at least 10 years and received an honorable discharge from the U.S. military, and for other physician specialty needs as determined by the State Surgeon General.

This analysis is drafted to the council substitute.