

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

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

**BILL:** CS/SB 1158

**INTRODUCER:** Children, Families, and Elder Affairs Committee and Senator Garcia

**SUBJECT:** Teaching Agency for Home and Community-based Care

**DATE:** March 28, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Fav/CS
2.			HR	
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill creates a new section of law authorizing the Department of Elderly Affairs to designate a home health agency as a teaching agency for home and community-based care if the home health agency meets certain requirements.

The bill also authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons.

This bill creates section 430.81, Florida Statutes.

**II. Present Situation:**

**Home Health Agencies**

A “home health agency” is an organization that provides home health services and staffing

services.<sup>1</sup> Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence.<sup>2</sup> These services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.

A home health agency, as well as all of its related offices, must be licensed by the Agency for Health Care Administration (AHCA or agency) in order to operate in the state.<sup>3</sup> The licensure requirements for home health agencies are found in the general provisions of part II of ch. 408, F.S., the specific home health agency provisions of part III of ch. 400, F.S., and ch. 59A-8 of the Florida Administrative Code.

To obtain a home health agency license, an applicant must submit, among other things, the following:

- An application under oath which includes the name, address, social security number and federal employer identification number or taxpayer identification number of the applicant and each controlling interest, and the name of the person who will manage the provider;
- The total number of beds requested;
- Proof of a certificate of authority in certain cases;
- An affidavit of compliance with the law;
- A description and explanation of any exclusions, suspensions, or terminations of the applicant from the Medicare, Medicaid, or federal Clinical Laboratory Improvement Amendment programs;
- Proof of the applicant's legal right to occupy the property;
- Information identifying the service areas and counties to be served and services to be provided;
- The number and discipline of professional staff to be employed;
- A business plan;
- Evidence of contingency funding;
- Proof of professional and commercial liability insurance of not less than \$250,000 per claim;
- Proof of financial ability to operate; and
- A licensure fee.<sup>4</sup>

Additionally, an applicant must comply with background screening requirements and pass a survey by AHCA inspectors.<sup>5</sup>

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

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

<sup>3</sup> Section 400.464(1) and (2), F.S.

<sup>4</sup> See ss. 400.471, 408.806, 408.810, F.S.

<sup>5</sup> See s. 408.810(1), F.S., and ch. 59A-8.003, F.A.C.

Prior to 2008, AHCA saw significant growth in the number of applications and new licenses of home health care agencies.<sup>6</sup> The agency received 431 new licensure applications for home health agencies during 2007.<sup>7</sup> In 2008, the Legislature significantly strengthened the home health agency license requirements to address fraud and abuse in the Medicaid and Medicare programs. According to AHCA, the new accreditation requirements have slowed the growth in new licenses, but the agency continues to receive a high volume of applications.<sup>8</sup> As of February 23, 2011, there were 2,317 licensed home health agencies in the state of Florida.<sup>9</sup>

Florida law prohibits unlicensed activity and authorizes AHCA to fine unlicensed providers \$500 for each day of noncompliance, and authorizes state attorneys and AHCA to bring an action to enjoin unlicensed providers.<sup>10</sup> Unlicensed activity is a second-degree misdemeanor and each day of continued operation is a separate offense.<sup>11</sup>

### Lead Agencies

The Department of Elder Affairs (DOEA or department) is created in s. 20.41, F.S. This section directs the department to plan and administer its programs and services through planning and service areas designated by the department. The department is designated as the state unit on aging as defined in the federal Older Americans Act (the act).<sup>12</sup>

The department serves as the primary state agency responsible for administering human services programs for the elderly and for developing policy recommendations for long-term care;<sup>13</sup> recommends state and local level organizational models for the planning, coordination, implementation, and evaluation of programs serving the elderly population;<sup>14</sup> and oversees implementation of federally funded and state funded programs and services for the state's elderly population.<sup>15</sup>

Federal law directs the department to administer the act using Florida's 11 Area Agencies on Aging (AAA).<sup>16</sup> Contractual agreements to implement the department's programs are executed at three levels:

- Contracts between DOEA and the AAAs for each major program;

<sup>6</sup> Comm. on Health Regulation, The Florida Senate, *Review Regulatory Requirements for Home Health Agencies* (Interim Project Report 2008-135) (Nov. 2007), available at [http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim\\_reports/pdf/2008-135hr.pdf](http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf) (last visited Mar. 23, 2011).

<sup>7</sup> Comm. on Health and Human Servs. Appropriations, The Florida Senate, *Bill Analysis and Fiscal Impact Statement CS/CS/SB 1986* (April 16, 2009), available at <http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s1986.ha.pdf> (last visited Mar. 23, 2011).

<sup>8</sup> *Id.*

<sup>9</sup> Agency for Health Care Admin., *2011 Bill Analysis & Economic Impact Statement SB 1158* (rcv'd Mar. 22, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>10</sup> Section 408.464(4)(b) and (f), F.S.

<sup>11</sup> Section 408.464(4)(e), F.S.

<sup>12</sup> Section 20.41(5), F.S.

<sup>13</sup> Section 430.03(1), F.S.

<sup>14</sup> Section 430.03(6), F.S.

<sup>15</sup> Section 430.03(7), F.S.

<sup>16</sup> 42 U.S.C. s. 3025, codified in s. 20.41, F.S.

- Contracts between the AAAs and lead agencies or service providers; and
- Contracts between lead agencies and local service providers.

The department works closely with the 11 AAAs in Florida. The AAAs administer funds locally and contract with a variety of provider agencies to offer a wide array of services designed to address the needs of their senior constituencies. Some of the services offered through AAAs are congregate and home delivered meals; Senior Center activities and adult day care; case management; and information and referral.

A lead agency is an agency designated at least once every six years by a AAA as a result of a request for proposal process.<sup>17</sup> Lead agencies provide and coordinate services for elders in designated areas. There are 58 lead agencies serving all of Florida's 67 counties.<sup>18</sup> Lead agency providers are either non-profit corporations or county government agencies, and are the only entities that can provide fee-for-service case management on an ongoing basis.<sup>19</sup>

### **Teaching Nursing Home Pilot Project**

Section 430.80, F.S., authorizes the implementation of a teaching nursing home pilot project. The statute defines a "teaching nursing home" as a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 400 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally-funded, accredited geriatric research center in Florida.

To be designated as a teaching nursing home, a nursing home licensee must:

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accreditation program and hold a valid accreditation;
- Have been in business in Florida for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;<sup>20</sup>
- Have a formalized contractual relationship with at least one accredited health profession education program located in Florida;
- Have senior staff members who hold formal faculty appointments at universities that have at least one accredited health profession education program; and
- Maintain insurance coverage or proof of financial responsibility in a minimum amount of \$750,000.<sup>21</sup>

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<sup>17</sup> Section 430.203(9), F.S.

<sup>18</sup> Some lead agencies provide services in more than one county due to the scarcity of providers in some rural counties

<sup>19</sup> Dep't of Elder Affairs, *Elder Services Network Components and Their Roles*, available at <http://elderaffairs.state.fl.us/english/pubs/pubs/sops2007/Files/Elder%20Services%20Network%20Components%20and%20their%20roles.pdf> (last visited Mar. 24, 2011).

<sup>20</sup> Gerontology is defined as "the comprehensive study of aging and the problems of the aged." Merriam-Webster, *gerontology*, <http://www.merriam-webster.com/dictionary/gerontology> (last visited Mar. 23, 2011).

<sup>21</sup> Section 430.80(3), F.S.

A teaching nursing home may be affiliated with a medical school in Florida and a federally funded center of excellence in geriatric research and education, in order to foster the development of methods for improving and expanding the capability of health care facilities to respond to the medical, psychological, and social needs of frail and elderly persons by providing the most effective and appropriate services.

Section 430.80, F.S., provides that the Legislature may appropriate funds to the nursing home facility designated as a teaching nursing home, and a teaching nursing home may not expend any funds received for any purpose other than operating and maintaining a teaching nursing home and conducting geriatric research.<sup>22</sup>

### III. Effect of Proposed Changes:

This bill creates s. 430.81, F.S., which authorizes the Department of Elderly Affairs (DOEA or department) to designate a home health agency as a teaching agency for home and community-based care if the home health agency:

- Has been a not-for-profit, designated community care for the elderly lead agency for home and community-based services for more than 10 consecutive years;
- Participates in a nationally recognized accreditation program and holds valid accreditation;
- Has been in business in Florida for a minimum of 20 consecutive years;
- Demonstrates an active program in multidisciplinary education and research that relates to gerontology;
- Has a formalized affiliation agreement with at least one established academic research university with a nationally accredited health professions program in Florida;
- Has salaried academic faculty from a nationally accredited health professions program;
- Is a Medicare and Medicaid certified home health agency that has participated in the nursing home diversion program for a minimum of five consecutive years; and
- Maintains insurance coverage pursuant to s. 400.141(1)(s), F.S.,<sup>23</sup> or proof of financial responsibility in a minimum amount of \$750,000.

Proof of financial responsibility may include maintaining an escrow account or obtaining and maintaining an unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in the state. The bill provides that the letter of credit is to be used to satisfy the obligation of the agency to a claimant upon presentation of a final judgment against the facility or upon presentation of a settlement agreement signed by all parties to the agreement when the final judgment or settlement is a result of a liability claim against the agency.

The bill defines the term “teaching agency for home and community-based care” as “a home health agency that is licensed under part III of chapter 400 and has access to a resident population of sufficient size to support education, training, and research related to geriatric care.”

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<sup>22</sup> Sections 430.80(5) and (7), F.S.

<sup>23</sup> Section 400.141, F.S., relates to the administration and management of nursing home facilities.

The bill also authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons. A teaching agency for home and community-based care is to serve as a resource for research and for training health care professionals in providing health care services in homes and community-based settings to frail and elderly persons.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, section 10 of the Florida Constitution prohibits a special law from being passed unless notice of intention to seek enactment of the law has been published. Twenty-one categories of special laws and general laws of local application are forbidden by the constitution.<sup>24</sup> A special law operates only upon designated persons or discrete regions, and bears no reasonable relationship to differences in population or other legitimate criteria.<sup>25</sup> Even if a bill is enacted as a “general law,” a court will treat it as a special law if its effect is essentially that of a special law.<sup>26</sup>

This bill provides very specific criteria for a home health agency desiring to be a teaching agency for home and community-based care, and to the extent the bill is seen as applying to only a limited number of home health agencies, it could be subject to a constitutional challenge under article III, section 10 of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>24</sup> FLA. CONST. art. III, s. 11.

<sup>25</sup> *Housing Authority v. City of St. Petersburg*, 287 So. 2d 307, 310 (Fla. 1973).

<sup>26</sup> *Anderson v. Board of Public Instruction for Hillsborough County*, 136 So. 334 (Fla. 1931).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Board of Governors (board), the bill “appears to have little fiscal impact to the state universities.” However, one of the bill’s requirements (that the teaching agency must have salaried academic faculty from a nationally accredited health professions program) is not specific as to the source of the salary. According to the board, “it is not clear if that portion of the faculty member’s time devoted to the teaching agency would be funded by the state university, from teaching agency funds, or a combination of the two sources. Clarification of this point will be necessary to assess any potential costs to the universities.”<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Children, Families, and Elder Affairs on March 28, 2011:**

The committee substitute:

- Changes the governmental entity that is authorized to designate a home health agency as a teaching agency for home and community-based care (teaching agency) from the Agency for Health Care Administration (AHCA) to the Department of Elderly Affairs;
- Expands the eligibility criteria for becoming a teaching agency by removing the limitations that the home health agency serve a geographic area with a minimum of 200,000 adults age 60 or older and that the home health agency be in business in the state for a minimum of 30 consecutive years (the committee substitute changes it to 20 consecutive years); and
- Removes language authorizing AHCA to collect a fee of up to \$250 from home health agencies seeking to become a teaching agency.

**B. Amendments:**

None.

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<sup>27</sup> Board of Governors, *2011 Legislative Bill Analysis SB 1158* (Mar. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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

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