

FINAL BILL ANALYSIS

BILL #: CS/HB 843

FINAL HOUSE FLOOR ACTION:

115 Y's 0 N's

SPONSOR: Rep. Diaz

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 1158

SUMMARY ANALYSIS

CS/HB 843 passed the House on April 29, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-172, Laws of Florida, and takes effect July 1, 2011.

The bill creates s. 430.81, F.S., which authorizes the Department of Elder 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 defines the term "teaching agency for home and community-based care" as a home health agency licensed under part III of chapter 400, F.S. that has access to a resident population of sufficient size to support education, training, and research relating to geriatric care.

The bill provides that home health agencies seeking designation as a teaching agency for home and community based care may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g), F.S., in lieu of general and professional liability insurance coverage.

Finally, the bill authorizes a teaching agency to be affiliated with an academic research university in the state that meets certain criteria.

The bill does not appear to have a fiscal impact.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Lead Agencies

The Department of Elder Affairs administers programs and services through designated planning and service areas. The department is designated as the state unit on aging as defined in the federal Older Americans Act (the act) and must exercise all responsibilities pursuant to the act.¹ The Older Americans Act requires the department to fund a service delivery system through designated area agencies on aging in each of the state's 11 planning and service areas. In addition, chapter 430, F.S., requires the department to fund service-delivery lead agencies that coordinate and deliver care at the consumer level in the counties comprising each planning and service area.

Lead agencies are designated by Area Agencies on Aging once every six years through a competitive procurement process.² Lead agencies provide and coordinate services for elders in designated areas. There are 58 lead agencies serving all of Florida's 67 counties.³ Lead agency providers are either non-profit corporations or county government agencies. Lead agencies are the only entities that can provide fee-for-service case management on an ongoing basis.⁴ Lead agency services include:

- Care Management
- Adult Day Care
- Adult Day Health Care
- Home Delivered Meals
- Case Aide
- Chore Service
- Companionship
- Consumer Medical Supplies
- Counseling
- Escort
- Emergency Alert Response
- Emergency Home Repair
- Home Health Aide
- Homemaker
- Home Nursing
- Information and Referral
- Legal Assistance
- Medical Therapeutic Services

¹ S. 20.41(5), F.S.

² S. 430.203(9), F.S.

³ Department 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 April 1, 2011).

⁴ *Id.*

- Personal Care – help with bathing, eating and dressing.
- Respite Care
- Shopping Assistance
- Transportation

Home Health Agencies

“Home health agency” is defined in part III of chapter 400, F.S., as an organization that provides home health services and staffing services. Home health services are health and medical services and medical supplies furnished to an individual in the individual’s home or place of residence. 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.

There are 2,317 licensed home health agencies in Florida as of February 23, 2011. Home health agencies must be licensed by the Agency for Health Care Administration. The licensure requirements for home health agencies are in the general provisions of part II of chapter 408, F.S., the specific home health agency provisions of part II of chapter 400, F.S., and chapter 59A-8 of the Florida Administrative Code. 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.⁵ Unlicensed activity is a second-degree misdemeanor and each day of continued operation is a separate offense.⁶

The requirements for training of health care professionals are under the Department of Education and the requirements for licensing and continuing education are determined by the Board of Nursing and other boards under the Department of Health. Section 400.497(1), F.S., permits home health agencies to train their own home health aides. However, home health agencies must become licensed by the Department of Education as a career education school in order to train any home health aides that will be employed by other home health agencies to train certified nursing assistants or others.⁷

Home health agencies can become certified for Medicare and/or Medicaid, but they must meet the Medicare Conditions of Participation in 42 Code of Federal Regulations, Part 484 prior to certification. The federal regulations require applicants to comply with a complex comprehensive assessment prior to an initial certification survey.

Academic Health and Science Centers

Academic Health and Science Centers in the State University System have three primary purposes:

⁵ S. 408.464(4)(b) and (f), F.S.

⁶ S. 408.464(4)(e), F.S.

⁷ Florida Agency for Health Care Administration Bill Analysis, Economic Statement and Fiscal Note, House Bill 843 (March 22, 2011).

- Teach students going into healthcare professions;
- Conduct research to advance healthcare knowledge; and
- Serve patients with health care problems.

These centers provide facilities, faculty and staff, curriculum, and opportunities for health science students to train in the various health science areas and get practical experience in their disciplines during their training. There are two state Academic Health and Science Centers in Florida. These centers are located at the University of Florida and the University of South Florida. Currently, there are two other medical education programs in the State University System however they are not as extensive as health centers, which include multiple health education programs.⁸

Funding for the Academic Health and Science Centers is provided annually by the Legislature in the form of specific appropriations in the General Appropriations Act to the two centers. For Fiscal Year 2009-10, the program received a total of \$222.3 million from legislative appropriations, \$143.7 million in general revenue, and \$14.2 million in revenue from lottery, and \$52.6 million from the student fee budget authority.⁹

Teaching Nursing Home Pilot Project

Section 430.80, F.S., was created by the Legislature in 1999 to establish a pilot project, allowing AHCA to implement a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility designated by AHCA as a teaching nursing home. Currently, there is no statute that provides a similar program for home and community-based care.

Pursuant to s. 430.80(3), F.S., nursing home licensees must meet the following requirements to be designated as a teaching nursing home:

- 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;
- 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 pursuant to s. 400.141(1)(s) or proof of financial responsibility in a minimum amount of \$750,000.¹⁰

Special Insurance Provision

Section 400.141(1)(s), F.S., requires all licensed nursing home facilities to maintain general and professional liability insurance coverage that is in force at all times. In lieu of general and

⁸ "Board of Governors, State University System of Florida Academic Health and Science Centers," Office of Program Policy Analysis and Government Accountability, Government Program Summaries. February 25, 2011.

⁹ Id.

¹⁰ S. 430.80(3), F.S.

professional liability insurance coverage, a state-designated teaching nursing home and its affiliated assisted living facilities created under s. 430.80, F.S., may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g), F.S.

In providing proof of financial ability to operate in the required minimum amount of \$750,000, such proof may include:

- Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52, F.S., or;
- Obtaining and maintaining pursuant to chapter 675, F.S., an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of Florida or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized to receive deposits in this state.

Effect of Changes

The bill creates s. 430.81, F.S., which authorizes the Department of Elder Affairs to designate a home health agency as a teaching agency for home and community-based care. The requirements to receive designation as a teaching agency for home and community-based care are similar to the requirements for nursing homes seeking designation as a teaching nursing home under the teaching nursing home pilot project.¹¹ In order to receive this designation, home health agencies must:

- Have 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;
- Participate in a nationally recognized accreditation program and hold valid accreditation;
- Have been in business in Florida for a minimum of 20 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;
- Have a formalized affiliation agreement with at least one established academic research university with a nationally accredited health professions program in Florida;
- Have salaried academic faculty from a nationally accredited health professions program;
- Be 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
- Maintain insurance coverage pursuant to s. 400.141(1)(s), F.S., 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 non-assignable 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.

¹¹ S. 430.80, F.S.

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

Finally, the bill 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 the frail and elderly population. The bill provides that 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 the frail and elderly persons.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.