

**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 Committee on Health Policy

**BILL:** CS/SB 1094

**INTRODUCER:** Health Policy Committee and Senator Flores

**SUBJECT:** Home Health Agencies

**DATE:** April 2, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.			GO	
3.				
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| 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:**

CS/SB 1094 reduces the mandatory fine amount levied against Home Health Agencies (HHA) that fail to file a quarterly report to the Agency for Health Care Administration (AHCA) from the current fine of \$5,000 to a fine of \$200 per day up to a maximum of \$5,000 per quarter. The bill also exempts HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

This bill substantially amends section 400.474 of the Florida Statutes.

**II. Present Situation:**

An HHA is an organization that provides home health services and staffing services.<sup>1</sup> Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.<sup>2</sup> Home health agencies are regulated by the AHCA pursuant to ch. 400, part III, F.S.

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

<sup>2</sup> S. 400.462(14)(a)-(c), F.S.

In 2008 the Florida Legislature passed chapter 2008-246, L.O.F., with anti-fraud measures including the requirement for an HHA quarterly report to be submitted to the Agency within 15 days following the end of each quarter. The Legislature passed chapter 2008-246, L.O.F., to combat an increase in Medicaid fraud in HHAs during the early to mid 2000s. In fiscal year 2004-2005, the AHCA's Bureau of Medicare Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in fiscal year 2005-2006, and 144 in fiscal year 2006-2007.<sup>3</sup> Between 2004 and 2007, nineteen HHAs were terminated from the Medicaid program in Miami-Dade County alone.<sup>4</sup>

Section 400.474(6)(f), F.S., enacted in chapter 2008-246, L.O.F., requires HHAs to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. These items include:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of \$25,000 during the quarter.

The Agency is required to impose a fine of \$5,000 if the report is not submitted within the first 15 days following the close of the quarter. From January 1, 2009 through December 31, 2012, there have been a total of 1,407 fines imposed.<sup>5</sup> For the most recent state fiscal year, July 1, 2011 to June 30, 2012, fines of \$932,750 were imposed by final order. Also, the number of HHAs that fail to submit the reports each quarter has decreased. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.<sup>6</sup>

The data from each quarter's reports is shared with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' (CMS), MPI, Miami Satellite Division, the Medicare Fraud Investigations Manager at SafeGuard Services, LLC, the CMS contractor, and the Agency's Medicaid Program Integrity office. Their investigators use multiple sources of information to identify fraudulent activities.<sup>7</sup>

The Agency also uses the data on the number of patients on the last day of the quarter as an indicator of the number of patients when a home health agency is closing. In addition, the data on number of patients is used as an indicator that the home health agency may not be operational, along with other information. Failing to provide at least one service directly for a period of 60 days is grounds to deny or revoke a license in s. 400.474(1)(2)(e), F.S. The Agency already

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<sup>3</sup>Staff analysis of SB 1374 (2008), dated Mar. 7, 2008, on file with the Senate Health Policy Committee.

<sup>4</sup>Id.

<sup>5</sup>Agency for Health Care Administration, HQA\_ENFORCEMENT\GenCounsel\DASHBOARD REPORTS\FinesFees\_Recommend\_vs\_Actual\_NotSurveys.imr

<sup>6</sup> AHCA analysis of HB 4031 (SB 1094), dated Mar. 14, 2013, on file with the Senate Health Policy Committee.

<sup>7</sup>Id.

collects the number of patients admitted over a 12-month period, from each home health agency on the biennial license renewal application as required by s. 400.471(2)(c), F.S.<sup>8</sup>

### III. Effect of Proposed Changes:

CS/SB 1094 amends s. 400.474, F.S., to:

- Move language requiring HHAs to submit a quarterly written report to the AHCA<sup>9</sup> to a new subsection (7);
- Reduce the fine amount levied against HHAs that fail to file a quarterly report within 15 days after the end of each calendar quarter to the AHCA from the current fine of \$5,000 to a fine of \$200 per day up to a maximum of \$5,000 per quarter; and
- Exempt HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

The bill provides an effective of July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

CS/SB 1094 reduces the fine amount for failing to submit the quarterly report which may have a positive fiscal impact on HHAs due to reduced administrative costs and avoidance of the \$5,000 fine for failing to file the required report.

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<sup>8</sup>Id.

<sup>9</sup> The report must include data as it existed at the end of the quarter on the number of insulin-dependent diabetic patients receiving insulin injection services, the number of patients receiving both home health services from the HHA and a hospice services, the number of patients receiving HHA services, and the name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of \$25,000 during the quarter.

C. **Government Sector Impact:**

The AHCA generated \$932,750 in revenue in fiscal year 2011-2012, from imposing the required \$5,000 fines on HHAs that did not file the required reports. The AHCA may see a negative fiscal impact from a reduction in that revenue from the reduction in the fine amount.

VI. **Technical Deficiencies:**

Lines 141 and 142 of the bill refer to entities licensed, registered, or certified under ch. 408, part II, F.S. Though ch. 408, part II, F.S., provides the general licensing provisions for the AHCA, each individual health care entity is licensed, registered, or certified under its own separate chapter or part of the Florida Statutes. A more accurate reference would be “licensees as defined in s. 408.803, F.S.”

VII. **Related Issues:**

The bill exempts certain HHAs from the fine imposed for failing to file the required quarterly report, but does not exempt them from the requirement to file the report. It is unclear what, if any, action the AHCA may take against those exempt HHAs that do not file the report.

Also, it is unclear whether the AHCA still has authority to take licensure actions against any HHAs that fail to file the required quarterly reports.

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 Health Policy on April 2, 2013:**

The CS substantially amends SB 1094 to:

- Reinstate the requirement for HHAs to submit a quarterly report to the AHCA under a new subsection (7);
- Reduce the fine amount levied against HHAs that fail to file the quarterly report; and
- Exempt HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

B. **Amendments:**

None.