

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1039 Home Health Services
SPONSOR(S): Health & Human Services Committee; Health Innovation Subcommittee; Stone
TIED BILLS: **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Langston	Poche
2) Health & Human Services Committee	16 Y, 0 N, As CS	Langston	Calamas

SUMMARY ANALYSIS

In Florida, a nurse registry is a business, akin to an employment agency, that is licensed to secure temporary employment for nurses, home health aides, certified nursing assistants, homemakers, and companions in a patient's home or with health care facilities or other entities. Nurse registries are licensed under Part III of ch. 400, F.S., and are regulated by the Agency for Health Care Administration (AHCA). Currently, each operational site of a nurse registry must be licensed unless all locations are within a single county; in that case, all those locations are listed on a license. If offices are located in multiple counties within a service area, then a separate license is required for each county in which an office is located.

Home health agencies (HHAs) are organizations that employ health care professionals to provide health and medical services and medical supplies to an individual in the individual's home or place of residence. HHAs are licensed under Part III of ch. 400, F.S., and are regulated by AHCA. Currently, each related office of an HHA must be licensed unless all locations are within a single county; in that case, all related office locations are listed on a license. If related offices are located in multiple counties within a service area, then a separate license is required for each county in which an office is located.

CS/CS/HB 1039 amends s. 400.462, F.S., to define the term "satellite office" as a secondary office of a nurse registry within the same health service planning district is the operational site. Eleven health service planning districts are defined in s. 408.032(5), F.S., consisting of between one and sixteen counties. The bill permits a nurse registry to operate an unlimited number of satellite offices within a health service planning district if there is a nurse registry operational site also located in the health service planning district.

The bill amends s. 400.506, F.S., to limit the activities that can take place at a nurse registry satellite office. The satellite office may store supplies and records, register and process contractors, and conduct business by telephone. The operational site must administer the satellite office and maintain all original records.

Additionally, the bill expands the requirements for a nurse registry relocating an existing office or opening a new satellite office. A nurse registry must advise the AHCA in writing of its intent and submit evidence of its legal right to occupy the proposed site and evidence that the property is zoned for use as a nurse registry.

The bill also amends s. 400.464(2), F.S., to allow HHAs to operate an unlimited number of related offices within a health service planning district in which the main office is located under a single license.

There is an insignificant negative fiscal impact to state government. There is no fiscal impact to local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Nurse Registries

A nurse registry is a business that procures, offers, promises, or attempts to procure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers and companions to provide services to patients in their homes and temporary staff to health care facilities or other business entities.¹ Nurse registries are governed by part II of chapter 408, F.S.,² associated rules in Chapter 59A-35, F.A.C., and the nurse registry rules in Chapter 59A-18, F.A.C. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA), pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.³

A nurse registry has several responsibilities established by statute and rule, including:

- Confirming and annually reconfirming the licensure or certification of independent contractors;⁴
- Establishing a system for recording and following-up on complaints involving independent contractors referred for contract;⁵
- Preparing and maintaining a written comprehensive emergency management plan;⁶ and
- Complying with the background screening requirements in s. 400.512, F.S., which require a level II background check for all employees and contractors.⁷

The workers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or other business entities.⁸ This is a key defining feature of a nurse registry; it cannot have any employees except for the administrator, alternate administrator and office staff – all individuals who enter the home of patients to provide direct care must be independent contractors.⁹

Licensing of Nurse Registries

Nurse registries are licensed by AHCA. All nurse registries must apply for the licensure in the geographic service area in which the main office is located.¹⁰ The license permits the nurse registry to refer its independent contractors to provide services to patients or clients in their homes or to provide staffing in facilities located throughout the specified geographic service area.¹¹ Geographic service areas are defined in the rule as “AHCA area boundaries,” which are the same as the “health service planning districts” in s. 408.032(5), F.S., and most contain multiple counties.

Nurse registries may apply for a license in one or more of the counties within a specific geographic service area.¹² While only one license is needed to provide services within a geographic area, a separate license is required for each office in a different county, even within the same geographic service area. If all office locations are in the same county, only one license is required; in that case the

¹ S. 400.642(21), F.S.

² S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

³ S. 400.506(1), F.S.

⁴ Rule 59A-18.005(3) and (4), F.A.C.

⁵ Rule 59A-18.017(4), F.A.C.

⁶ Rule 59A-18.018(1), F.A.C.

⁷ S. 400.506(9), F.S.

⁸ Id.

⁹ Agency for Health Care Administration, *Frequently Asked Questions Nurse Registries: What is a nurse registry?* http://ahca.myflorida.com/mchq/Health_Facility_Regulation/Home_Care/NR_FAQS/section1.shtml (last visited March 13, 2015).

¹⁰ Rule 59A-18.004(4), F.A.C.

¹¹ S. 408.032(5), F.S.; Rule 59A-18.002(7), F.A.C.

¹² Rule 59A-18.004(4), F.A.C.

additional locations are listed on the license for the main office.¹³ However, additional offices located in counties other than the county in which the main office is located require a separate license.¹⁴

A nurse registry must provide 21 to 120 days advance notification of any change in the address of the licensed main or principal office.¹⁵

AHCA Area Boundaries (“Health Service Planning Districts”)

Area/ District	Counties
1	Escambia, Walton, Santa Rosa and Okaloosa
2	Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla and Washington
3	Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee and Union
4	Baker, Clay, Duval, Flagler, Nassau, St. Johns and Volusia
5	Pasco and Pinellas
6	Hardee, Highlands, Hillsborough, Manatee and Polk
7	Brevard, Orange, Osceola and Seminole
8	Charlotte, Collier, Desoto, Glades, Hendry, Lee and Sarasota
9	Indian River, Martin, Okeechobee, Palm Beach and St. Lucie
10	Broward
11	Dade and Monroe

In July 2014, there were 517 nurse registries, 114 of which were in Broward County, and 112 of which were in Palm Beach County.¹⁶ By January 2015, that number had grown to 541 licensed nurse registries with 367 different ownerships consisting of corporations, limited liability companies, and one sole proprietor (companies).¹⁷ A total of 62 companies, or 17 percent, owned two or more licensed nurse registries.¹⁸ Of those 62 companies, eight companies have multiple nurse registries within one of the eleven health service planning districts.¹⁹ There are currently 548 licensed nurse registries in the state.²⁰ Currently, nurse registries do not have authority under statute or rule to operate satellite offices.

Home Health Agencies

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual’s home or place of residence.²¹ HHAs are governed by part II of chapter 408, F.S.,²² associated rules in Chapter 59A-35, F.A.C., and Chapter 59A-8, F.A.C. Like a nurse registry, an HHA must be licensed by AHCA, pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.²³

HHAs provide home health services to individuals, such as:

- Nursing care;

¹³ S. 400.506(1), F.S.

¹⁴ Id.

¹⁵ Rule 59A-35.040(2)(b)5., F.A.C.

¹⁶ Anne Menard, Power Point Presentation: *AHCA Nurse Registry Regulatory Update*, July 22, 2014, available at http://ahca.myflorida.com/mchq/Health_Facility_Regulation/Home_Care/docs/2014_NR_Regulatory_Update.pptx (last visited on March 13, 2015).

¹⁷ Agency for Health Care Administration, *2015 Agency Legislative Bill Analysis*, February 17, 2015 (on file with Health and Human Services Committee Staff).

¹⁸ Id.

¹⁹ Id.

²⁰ Agency for Health Care Administration, *Facility/Provider Search Results-Nurse Registries*, report generated March 15, 2015, available at <http://www.floridahealthfinder.gov/FacilityLocator/ListFacilities.aspx>.

²¹ S. 400.462(12), (14), F.S.

²² S. 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.

²³ Id.

- Physical, occupational, respiratory, and speech therapy;
- Home health aide services by an individual who is trained or qualified to provide hands-on personal care, perform simple procedures as an extension of therapy or nursing services, assist in ambulation or exercises, and assist in administering medications as permitted in rule;
- Dietetics and nutrition practice and nutrition counseling; and
- Providing medical supplies prescribed by a physician.²⁴

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with an HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and an HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; an HHA qualifies for such reimbursement.²⁵

Licensing of HHAs

HHAs are licensed by AHCA.²⁶ HHAs are required to apply for a license within a single geographic service area.²⁷ At the time of initial licensure, an HHA must indicate on the application how many counties within a geographic service area it wishes to serve.²⁸ If the HHA operates related offices, each related office of an HHA must be separately licensed unless all locations are within the same county as the main office; in that case, all related office locations are listed on a license.²⁹

Licensed HHAs may have satellite, or secondary, offices in the same county as their main offices.³⁰ The HHA may store supplies and records at the satellite office and phone business can be conducted the same as it would in the main office.³¹ The satellite office shares administration with the main office and is not separately licensed.³²

Additionally, licensed HHAs may operate a drop-off site in any county within the geographic service area specified on the license.³³ A drop-off site is not required to be licensed because it is not an HHA office; it is a work station for direct care staff in large areas where the distance prevents employees from frequently returning to the HHA office.³⁴

Effect of Proposed Changes

Satellite Offices for Nurse Registries

CS/CS/HB 1039 amends s. 400.462, F.S., to add and define the term “satellite office” as a secondary office of a nurse registry within the same health service planning district, as defined in s. 408.032, F.S., as a licensed nurse registry operational site.

The bill creates s. 400.506(1)(b), F.S., which describes what activities can occur at a satellite office. A satellite office may:

- Store supplies and records;
- Register and process contractors; and

²⁴ S. 400.462(14)-(15), F.S.

²⁵ *Supra*, note 9.

²⁶ S. 400.464, F.S.

²⁷ Rule 59A-8.007, F.A.C.

²⁸ Agency for Health Care Administration, *FAQs Section 5: Home health agency location requirements*, http://www.fdhc.state.fl.us/MCHQ/Health_Facility_Regulation/Home_Care/HHA/FAQ/section5.shtml (last visited March 26, 2015).

²⁹ S. 400.464(2), F.S.

³⁰ Rules 59A-8.002(33); 59A-8.003(7) F.A.C.

³¹ Rule 59A-8.003(7), F.A.C.

³² *Id.*

³³ Rule 59A-8.003(8), F.A.C.

³⁴ *Id.*

- Conduct business by telephone.

The bill prohibits a satellite office from keeping any original records. The operational site must administer all satellite offices and keep the original records.

Licensing

Licensing of Nurse Registries

The bill amends s. 400.506(1), F.S., to allow a single license for more than one office within a health planning service district. This provision reduces the number of licenses required of a nurse registry. It expands the coverage of the operational site license from all offices within a county to all operational sites and satellite offices located in a health service planning district, which usually consists of more than one county.³⁵

Licensing of HHAs

The bill amends s. 400.464(2), F.S., to allow an HHA to operate related offices with a health service planning district under one license. This provision reduces the number of licenses required of an HHA. It expands the coverage of the license from all related offices within a county to all related offices located in a health service planning district, which usually consists of more than one county.³⁶

Notification of Change of Address for Nurse Registries

The bill requires nurse registries to notify AHCA in writing of a proposed change of address for the operational site or the opening of a satellite office. This is consistent with what is presently required by rule. In addition, the bill requires that, prior to relocating an operational site or opening a satellite office, the nurse registry must submit:

- Evidence of its legal right to use the property; and
- Evidence that the property is zoned for use by the nurse registry.

The bill provides an effective date of July 1, 2015

B. SECTION DIRECTORY:

Section 1: Amends s. 400.462, F.S., relating to definitions.

Section 2: Amends s. 400.464, F.S., relating to home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.

Section 3: Amends s. 400.506, F.S., relating to licensure of nurse registries; requirements; penalties.

Section 4: Reenacts s. 400.497, F.S., relating to rules establishing minimum standards; reenacts s. 400.506(3), F.S., relating to licensing of nurse registries; and s. 817.505(3)(h), F.S., relating to patient brokering prohibited; exceptions; penalties.

Section 5: Provides for an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

AHCA may realize an indeterminate loss of revenue from licensing fees since nurse registries can set up multiple satellite offices throughout the health service planning district without paying license fees for offices located outside of the county where its main office is located. Similarly, ACHA may

³⁵ Health Service Planning District 10, consisting of Broward County, is the only single county district.

³⁶ Id.

realize an indeterminate loss of revenue from licensing fees since HHAS can set up multiple related offices throughout the health service planning district without paying license fees for offices located outside of the county where its main office is located.

2. Expenditures:

There is an insignificant negative fiscal impact on AHCA associated with rulemaking activities necessary to implement the provisions of the bill. These costs are nonrecurring and can be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nurse registries and HHAs will see reduced license fees as only one license is required for each, typically multi-county, health service planning district. Nurse registries will be able to set up unlimited satellite offices in a health service planning district at no additional licensing cost. HHAs will be able to set up unlimited related offices in a health service planning district at no additional licensing cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Health Innovation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Replaced the term “geographic service area” with “health service planning district;” health service planning district is currently defined in statute.
- Removed the deletion of the exemption from penalties for improper remunerations of certain persons for nurse registries that bill the Florida Medicaid Program.

On March 26, 2015, the Health & Human Services Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Allowed HHAs to operate related offices within a health service planning district in which the main office is located under a single license. Related offices outside the health service planning district of the main office must have separate licenses.
- Clarified the documents necessary to demonstrate that the property is zoned for use by the nurse registry by deleting the reference to a certificate of occupancy and certificate of use.
- Changed the title of the bill to "home health services."

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.