

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 Fiscal Policy

BILL: CS/SB 816

INTRODUCER: Fiscal Policy Committee and Senator Grimsley

SUBJECT: Home Health Agencies

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

I. Summary:

CS/SB 816 provides an exemption from a certificate-of-need review for applicants that were previously licensed within a specified time period as a health care facility or provider and that meet certain criteria. The bill provides an exception for an applicant whose license expired during a specified time period to apply for an exemption.

The bill repeals the requirement for a home health agency (HHA) to provide a quarterly report to the Agency for Health Care Administration (AHCA) and the requirement that the AHCA fine an HHA who fails to submit the report \$200 per day, up to a maximum of \$5,000 per quarter.

The bill requires an HHA when renewing a license to submit to the AHCA the number of patients who received home health services from the HHA on the day that that the licensure renewal application is filed.

This bill has an indeterminate negative fiscal impact on the AHCA.

II. Present Situation:

Home Health Agency

A home health agency (HHA) is an organization that provides home health services and staffing services.¹ 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.² Home health agencies are regulated by the Agency for Health Care Administration (AHCA) pursuant to ch. 400, part III, F.S.

¹ Section 400.462(12), F.S.

² Section 400.462(14)(a)-(c), F.S.

In 2008, the Legislature passed ch. 2008-246, L.O.F., to reduce Medicaid fraud and improve quality and accountability of HHAs.³ The law provided HHA anti-fraud measures, including the requirement for an HHA quarterly report to be submitted to the AHCA within 15 days following the end of each quarter.⁴ In Fiscal Year 2004-2005, the AHCA's Bureau of Medicaid Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in Fiscal Year 2005-2006, and 144 in Fiscal Year 2006-2007.⁵ Between 2004 and 2007, 19 HHAs were terminated from the Medicaid program in Miami-Dade County.⁶

In 2013, the Legislature passed ch. 2013-133, L.O.F., which reduced the fine assessed against HHAs that violate the reporting requirements and exempted HHAs that are not, or do not share a controlling interest with a licensee that is, Medicaid or Medicare providers.

Currently, HHAs are required to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. The quarterly report must detail:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and hospice services;
- The number of patients receiving HHA services; and
- The names and license numbers 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.⁷

The AHCA is required to impose a fine of \$200 per day up to a maximum of \$5,000 per quarter if the report is not submitted within the first 15 days following the close of the quarter.⁸ From July 1, 2008, to date, \$8,317,650 in fines have been assessed and \$5,635,108 in fines have been collected.⁹ The number of HHAs that fail to submit the reports each quarter has decreased since the passage of ch. 2013-133, L.O.F. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.¹⁰

The AHCA uses the data on the number of patients on the last day of the quarter as an indicator of when an HHA is closing or that an HHA may not be operational, along with other information.¹¹ Failing to provide at least one service for a period of 60 days is grounds to deny or revoke a license under s. 400.474(2)(e), F.S. The AHCA collects the number of patients admitted over a 12-month period, from each HHA on the biennial license renewal application as required by s. 400.471(2)(c), F.S.

³ House of Representatives Bill Analysis, *CS/HB 7083*, April 17, 2008.

⁴ Chapter 2008-246, L.O.F. See s. 400.474(7), F.S.

⁵ Senate Bill Analysis, *CS/CS/CS/SB 1374*, March 7, 2008.

⁶ *Id.*

⁷ Section 400.474(7), F.S.

⁸ *Id.*

⁹ AHCA, *2015 Agency Bill Analysis SB 816* (Jan. 23, 2015) (on file with the Senate Committee on Health Policy).

¹⁰ AHCA, *Agency Bill Analysis HB 4031* (submitted for SB 1094) (Mar. 14, 2013) (on file with the Senate Committee on Health Policy).

¹¹ *Id.*

Certificate of Need

All health care related projects are subject to review and must file an application for a certificate of need (CON) with the AHCA.¹² A CON is required for hospices, skilled nursing facilities, intermediate care facilities for the developmentally disabled, new hospitals, and certain hospital services. A CON is not required for outpatient services, home health services, purchases of major medical equipment or assisted living facilities.¹³

The AHCA reviews CON applications in context with the following criteria:

- The need for the health care facilities and health services being proposed.
- The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant.
- The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.
- The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.
- The extent to which the proposed services will enhance access to health care for residents of the service district.
- The immediate and long-term financial feasibility of the proposal.
- The extent to which the proposal will foster competition that promotes quality and cost-effectiveness.
- The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.
- The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.
- The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.¹⁴

Upon request, the following projects are exempt from the CON review:

- Hospice services and hospital beds in a rural areas;
- Nursing home beds at skilled nursing facilities;
- Health care facilities for the Department of Corrections;
- Mobile surgical facilities;
- State veterans' nursing homes;
- Nursing home beds that meet certain criteria;
- Additional mental health services beds;
- Hospitals and hospital services that meet certain criteria.¹⁵

¹² Section 408.036, F.S.

¹³ Rule 59C-1.004, F.A.C., and Agency for Health Care Administration, *Certificate of Need Program Overview*, available at http://www.fdhc.state.fl.us/MCHQ/CON_FA/ (last visited April 16, 2015).

¹⁴ 408.035, F.S.

¹⁵ Section 408.036(3), F.S.

III. Effect of Proposed Changes:

Section 1 repeals the requirement for an HHA to provide the quarterly report to the AHCA.

The bill also repeals the requirement that the AHCA fine HHAs who fail to submit the report \$200 per day, up to a maximum of \$5,000 per quarter.

The bill requires HHAs, when renewing their license, to submit to the AHCA the number of patients who received home health services from the HHA on the day that that the licensure renewal application is filed.

Section 2 provides an exemption from a certificate-of-need review for applicants that meet the following criteria:

- Previously licensed within the past 21 days as a health care facility or provider;
- Failed to submit a renewal application and the license expired on or after January 1, 2015;
- Does not have a license denial or revocation action pending with the agency at the time of the request;
- Requests a license for the same service type, district, service area, and site for which the applicant was previously licensed;
- Requests a license for the same number and type of beds as were previously licensed;
- Agrees to the same conditions that were previously imposed on the certificate of need or on an exemption related to the applicant's previously licensed health care facility or project; and
- Applies for initial licensure as required under s. 408.806 within 21 days after the agency approves the exemption request. If the applicant fails to apply in a timely manner, the exemption expires on the 22nd day following the agency's approval of the exemption.

The bill provides an exception for an applicant whose license expired during a specified time period to apply for an exemption.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A special or local law is a law:

relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.¹⁶

Article 3, section 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Because the bill states that an applicant whose license expired between January 1, 2015, and the effective date of this act may apply for an exemption within 30 days of this act becoming law, it is possible the bill may be considered a local bill and therefore be subject to special law requirements in the Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

HHAs may see an indeterminate positive fiscal impact by not having to prepare and file the quarterly report. Additionally, HHAs who would have failed to provide the quarterly report to the AHCA will see an indeterminate positive fiscal impact due to the elimination of the fine currently assessed.

The new CON exception may have a positive fiscal impact on certain eligible projects.

¹⁶ *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1st DCA 2007) *affirmed by* 990 So. 2d 503 (Fla. 2008) (finding that the reorganization granted a privilege to a private corporation, the Florida Supreme Court did not reach the impairment of contracts issue; the appellate court, however, ruled that provisions changing the governance of the medical facility violated the impairment of contracts clause of the state constitution).

C. **Government Sector Impact:**

The AHCA will see an indeterminate negative fiscal impact due to the loss of revenue from the elimination of the fine assessed on HHAs who fail to submit their quarterly report.¹⁷

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

The bill substantially amends sections 400.474 and 408.036 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Fiscal Policy on April 15, 2015:

The committee substitute provides an exemption from a certificate-of-need review for applicants that were previously licensed within a specified time period as a health care facility or provider and that meet certain criteria. The bill provides an exception for an applicant whose license expired during a specified time period to apply for an exemption.

B. **Amendments:**

None.

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

¹⁷ *Supra* note 9.