## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6021 Home Health Agency Licensure
**SPONSOR(S):** Rommel
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Health Innovation Subcommittee | 12 Y, 0 N | Roth | Poche |
| 2) Health Care Appropriations Subcommittee | 14 Y, 0 N | Clark | Pridgeon |
| 3) Health & Human Services Committee | | | |

## SUMMARY ANALYSIS

Home health agencies (HHAs) are organizations licensed by the Agency for Healthcare Administration (AHCA) to provide 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. The licensure requirements for HHAs are found in the general health care licensing provisions of part II of ch. 408, F.S., the specific HHA licensure provisions of part III of ch. 400, F.S., and the minimum standards for HHAs in chapter 59A-8, F.A.C.

After the total repeal of the certificate of need (CON) program for HHAs in July 2000, the number of HHAs rapidly increased, as did the amount of Medicare and Medicaid fraud found within HHAs. In June 2008, HB 7083 was signed into law, creating subsection (7) of s. 400.471, F.S., which prohibits the initial licensure of a HHA if another agency owned by the applicant is located within 10 miles of the applicant and in the same county.

HB 6021 repeals the "10-mile" rule found in s. 400.471(7), F.S., thereby permitting an entity that currently owns or has a controlling interest in a licensed HHA to apply for and obtain an initial license to operate a HHA within 10 miles and in the same county as the existing HHA. This would include an entity applying for a change of ownership of a currently licensed HHA. The repeal permits an existing HHA to operate another licensed HHA in the same location.

The bill has an indeterminate, but likely insignificant, fiscal impact that can be managed within existing Agency for Health Care Administration resources.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Home Health Agencies

Home Health Agencies (HHAs) are organizations licensed by the Agency for Health Care Administrations (AHCA) to provide home health services and staffing services.[1] Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services (assistance with daily living such as bathing, dressing, eating, personal hygiene, and ambulation);
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.[2]

Staffing services are provided to health care facilities, schools, or other business entities on a temporary or school-year basis by licensed health care personnel and by certified nursing assistants and home health aides who are employed by, or work under the umbrella of, a licensed HHA.[3]

A HHA may also provide homemaker[4] and companion[5] services without additional licensing or registration. These services do not involve hands-on personal care to a client and typically include housekeeping, meal planning and preparation, shopping assistance, routine household activities, and accompanying the client on outings. Personnel providing homemaker or companion services are employed by or under contract with a HHA.[6]

*Licensure*

Since 1975, HHAs operating in Florida have been required to obtain a state license.[7] HHAs must meet the general health care licensing provisions of part II of ch. 408, F.S., the specific HHA licensure provisions in part III of ch. 400, F.S., and the minimum standards for HHAs in chapter 59A-8, F.A.C. A HHA license is valid for 2 years, unless revoked.[8] If a HHA operates related offices, each related office outside the health service planning district where the main office is located must be separately licensed.[9] As of February 27, 2017, there are 1,948 licensed HHAs in Florida.[10]

A HHA may obtain an initial license by submitting to AHCA a signed, complete, and accurate application and the $1,705 licensure fee.[11] The HHA must also submit the results of a survey conducted

[1] S. 400.462(12), F.S.
[2] S. 400.462(14), F.S.
[3] S. 400.462(30), F.S.
[4] S. 400.462(16), F.S.
[5] S. 400.462(7), F.S.
[6] S. 400.462(13), F.S.
[7] SS. 36 – 51 of ch. 75-233, Laws of Fla.
[8] S. 408.808(1), F.S.
[9] S. 400.464(2), F.S. There are eleven health service planning districts grouped by county.
[10] Florida Health Finder, *Facility/Provider Search Results-Home Health Agencies*, available at http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (report generated February 27, 2017).
[11] S. 400.471(5) and 59A-8.003(12).

by AHCA.[12] The application must identify the geographic service areas[13] and counties in which the HHA will provide services.

An applicant for initial or renewal licensure must file with the application:

- A listing of services to be provided.
- The number and discipline of professional staff to be employed.
- Information concerning volume data on the renewal application, as determined by rule.
- A business plan, which details the HHAs methods to obtain patients and its plan to recruit and maintain staff.
- Evidence of contingency funding equal to 1 month's average operating expenses during the first year of operation.
- A balance sheet, income and expense statement, and statement of cash flow for the first 2 years of operation showing evidence of sufficient assets, credit, and projected revenues to cover liabilities and expenses.
- All other ownership interests in health care entities for each controlling interest, as defined in part II of chapter 408.
- For initial licensure, documentation of accreditation, or an application for accreditation, from an accrediting organization that is recognized by the agency as having standards comparable to those required by this part and part II of chapter 408.[14]

A HHA must obtain malpractice and liability insurance for at least $250,000 per claim, and submit proof of coverage with its initial application for renewal.[15]

Section 400.464, F.S., exempts certain entities, individuals, and services from the HHA licensure requirements, including:

- A HHA operated by the Federal Government.
- A home health aide or certified nursing assistant who is acting in his or her individual capacity, within the definitions and standards of his or her occupation, and who provides hands-on care to patients in their homes.
- The delivery of nursing home services for which the nursing home is licensed under part II of Chapter 400, F.S., to serve its residents.
- A not-for-profit, community-based agency that provides early intervention services to infants and toddlers.[16]

For licensure renewal, the HHA must submit a signed renewal application and licensure fee.[17] AHCA may not issue a renewal license to a HHA in any county where there is at least one licensed HHA and that has more than one HHA per 5,000 persons, if the applicant has been sanctioned by AHCA within 2 years prior to submitting the license renewal application for one or more of the following acts:

- An intentional or negligent act that materially affects the health or safety of a client;
- Preparing or maintaining fraudulent patient records, such as, but not limited to, charting ahead, recording vital signs or symptoms which were not personally obtained or observed by the HHA's staff at the time indicated, borrowing patients or patient records from other HHAs to pass a survey or inspection, or falsifying signatures;

[12] Id.
[13] S. 408.032(5), F.S. lists the eleven health service planning districts grouped by county.
[14] S. 400.471(2), F.S.
[15] S. 400.471(3), F.S.
[16] S. 400.464(5)(a)-(n), F.S.
[17] Rules 59A-8.003(2) and (12), F.A.C.

- Demonstrating a pattern of falsifying documents relating to the training of home health aides or certified nursing assistants or demonstrating a pattern of falsifying health statements for staff who provide direct care to patients; and
- Giving cash, or its equivalent, to a Medicare or Medicaid beneficiary.[18]

AHCA conducts unannounced licensure surveys every 36.9 months, unless a HHA has requested an exemption from such surveys based on accreditation by an approved accrediting organization.[19] The Home Health Agency State Regulation Set that is used in conducting surveys contains over 100 standards and surveyor guidelines, which are based on Rule 59A-8, F.A.C.[20] AHCA also conducts inspections related to complaints.[21]

Each HHA is required to employ an administrator.[22] The administrator[23] must be a licensed physician, physician assistant, or registered nurse licensed to practice in this state or an individual having at least one year of supervisory or administrative experience in home health care in a facility licensed under ch. 395, F.S.,[24] part II of ch. 400, F.S.,[25] or part I of ch. 429, F.S.[26] The administrator may manage a maximum of five licensed HHAs if the HHAs have identical controlling interests and are located within one geographic service area or within an immediately contiguous county.[27] An employee of a retirement community that provides multiple levels of care may administer a HHA and up to a maximum of four entities licensed under ch. 400, F.S.,[28] or ch. 429, F.S.,[29] if they are owned, operated, or managed by the same corporate entity. The administrator must designate an alternate administrator to serve during the administrator's absence. [30]

A HHA providing skilled services is required to employ a director of nursing[31] who is a Florida licensed registered nurse with at least 1 year of supervisory experience.[32] The director of nursing is responsible for overseeing the delivery of professional nursing and home health aide services[33] and must be readily available at the HHA or by phone for any 8 consecutive hours between 7 a.m. to 6 p.m.[34] The director of nursing is also responsible for establishing and conducting an ongoing quality assurance program for services provided by the HHA.[35]

A director of nursing may be the director for a maximum of five licensed HHAs if the HHAs have identical controlling interests, are located within one geographic service area or within an immediately contiguous county, and each HHA has a registered nurse who meets the qualifications of a director of nursing and has been delegated by the director of nursing to serve in the stead of the director. An employee of a retirement community that provides multiple levels of care may serve as the director of nursing of a HHA and of up to four entities licensed under ch. 400, F.S., or ch. 429, F.S., if they are owned, operated, or managed by the same corporate entity.[36]

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[18] S. 400.471(10), F.S.
[19] Rule 59A-8.003(3)(a), F.A.C.
[20] Agency for Health Care Administration, *ASPEN: Regulation Set (RS): Home Health Agencies*, available at, http://ahca.myflorida.com/MCHQ/Current_Reg_Files/Home_Health_Agencies_ST_H.pdf (last viewed March 1, 2017).
[21] Rule 59A-8.003(4), F.A.C.
[22] S. 400.476(1)(a), F.S.
[23] S. 400.462(1), F.S.
[24] Facilities licensed under ch. 395, F.S., include hospitals, ambulatory surgical centers, and mobile surgical facilities.
[25] Facilities licensed under part II of ch. 400, F.S., include nursing homes.
[26] Facilities licensed under part I of ch. 429, F.S., include assisted living facilities.
[27] S. 400.476(1), F.S.
[28] Entities licensed under ch. 400, F.S., include nursing homes, home health agencies, nurse registries, hospices, intermediate care facilities, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for developmentally disabled persons, health care services pools, and health care clinics.
[29] Entities licensed under ch. 429, F.S., include assisted living facilities, adult family care homes, and adult day care centers.
[30] S. 400.476(1)(a), F.S.
[31] S. 400.462(10), F.S.
[32] S. 400.476(2), F.S.
[33] S. 400.462(10), F.S.
[34] Rule 59A-8.003(11)(a), F.A.C.
[35] Rule 59A-8.0095(2)(e), F.A.C.
[36] S. 400.476(2), F.S.

Repeal of CON Program and Licensed HHA Growth[37]

HHAs were made subject to certificate of need (CON) regulation in 1977.[38] Under the CON program, a HHA was required to submit to the Department of Health (DOH) its application for a CON, along with a statement of the purpose and need for the project and the reasons for the proposed:

- Construction;
- Expansion;
- Renovations;
- Substantial change in service;
- Conversion;
- Acquisition; or
- Establishment of a new HHA.[39]

DOH would not issue a license to a HHA which failed to receive a CON.[40]

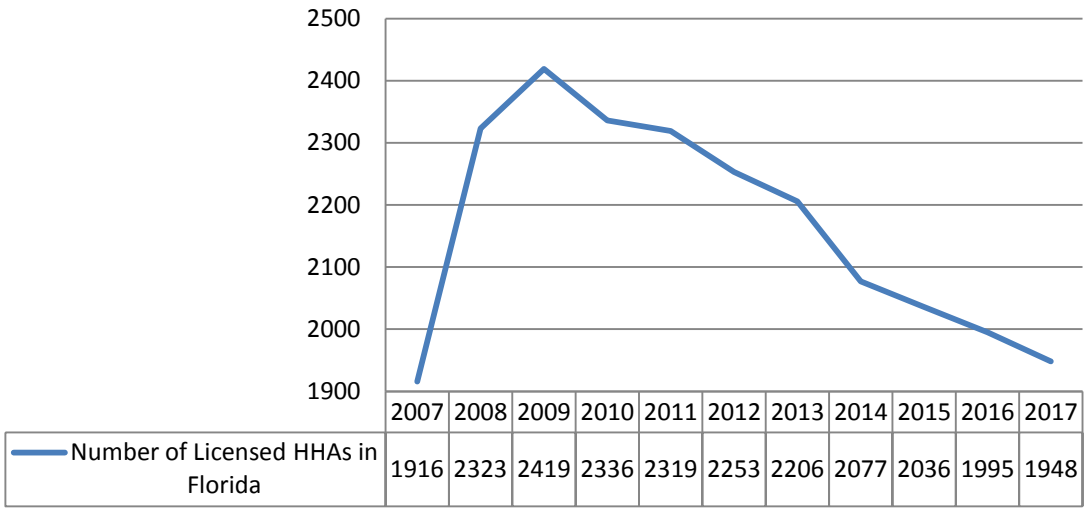
In 1983, the CON requirement was repealed for HHAs that were not certified or seeking certification as a Medicare home health service provider.[41] The Legislature later repealed the requirement that Medicare-certified HHAs receive CON approval, effective July 1, 2000.[42]

After the total repeal of the CON program for HHAs in July 2000, the number of HHAs rapidly increased. For example, in Miami-Dade County, the number of licensed HHAs increased from 216 in August 1999 to 733 by December 31, 2007, which was a 239 percent increase. The increase in Miami-Dade County represented 64 percent of the statewide increase in licensed HHAs over the same time period.

In 2007, Miami-Dade and Broward counties comprised 19 percent of the state's population of persons over age 64, yet hosted 46 percent of the licensed HHAs in the state.[43] Although home health services are not limited to persons over the age of 64, this population dominates the market. Based on population data from 2007 and the number of licensed HHAs in each geographic service area on December 31, 2007, in Miami-Dade County, there was one licensed HHA for every 505 residents over the age of 64; for Broward County, the ratio was one agency for every 1,196 residents over the age of 64. For all other counties in Florida, the average was one HHA for every 2,571 residents over the age of 64.

In 2007, there were 1,916 licensed HHAs in Florida.[44] The number of licensed HHAs grew to 2,419 HHAs by 2009 before gradually decreasing each year to the current amount of 1,948 licensed HHAs.[45]

[37] The Florida Senate, *Review Regulatory Requirements for Home Health Agencies*, November 2007, pgs. 4-5, available at http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf (last viewed March 1, 2017).
[38] S. 2 of ch. 77-400, Laws of Fla.
[39] Supra, FN 37
[40] S. 7 of ch. 77-400, Laws of Fla.
[41] S. 1 of ch. 83-244, Laws of Fla.
[42] S. 7 of ch. 2000-256, Laws of Fla., and s. 8 of ch. 2000-318, Laws of Fla.
[43] Source of population data: Office of Economic & Demographic Research website on 9/11/2007; Source of licensee data: AHCA Home Care Unit, Bureau of Health Facility Regulation, as of 8/23/2007.
[44] Email from Orlando Pryor, Legislative Affairs Director, Agency for Health Care Administration, RE: HB 6021/HHA (March 1, 2017)(on file with the Health Innovation Subcommittee staff).
[45] Id.




Some of the factors contributing to the decline of licensed HHAs since 2009 are the implementation of legislative regulatory reforms focused on fraud and abuse prevention in 2008 and 2009 and the Centers for Medicare and Medicaid Services (CMS) moratoria on new enrollment of HHAs in Miami-Dade County in 2013, Broward County in 2014, and statewide in 2016.[46]

Medicare and Medicaid Fraud[47]

AHCA's Bureau of Medicaid Program Integrity (MPI) is responsible for preventing and detecting fraud and abuse and performing inspections and investigations related to the Florida Medicaid program. If MPI suspects fraud, or another criminal violation of state law, the case is referred to the Office of the Attorney General Medicaid Fraud Control Unit (MFCU) for further investigation and prosecution, if appropriate.[48]

The MFCU has two primary areas of enforcement responsibility: fraud perpetrated against the Medicaid program and Patient Abuse, Neglect and Exploitation (PANE). Enforcement activities in these areas, which includes both criminal and civil enforcement actions, helps prevent, detect, prosecute, and deter misconduct.[49] MFCU's Control and Enforcement Strategy focuses on the following:

- Medicaid provider fraud;
- PANE investigations;
- Civil recoveries;
- Community outreach; and
- Intelligence.[50]

[46] Id.
[47] Supra, FN 37 at pgs. 4-5.
[48] Joint Report by the Agency for Health Care Administration and the Medicaid Fraud Control Unit with the Office of the Attorney General, *The State's Efforts to Control Medicaid Fraud and Abuse FY 2015-16*, December 16, 2016, pg. 1, available at http://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2015-16_MedicaidFraudandAbuseAnnualReport.pdf (last viewed March 1, 2017).
[49] Id.
[50] Id. at pgs. 1-2.

In an effort to mitigate Medicaid fraud, rule 59G-4.130, F.A.C., requires all providers of home health visit services to Medicaid recipients to comply with the provisions of the Medicaid Home Health Visit Service Coverage Policy (Policy). Under the Policy, Medicaid reimburses providers for:

- Four intermittent home health visits per day for qualifying recipients younger than 21 years and pregnant recipients who are 21 years or older; or
- Three intermittent home health visits per day for non-pregnant recipients age 21 years or older.[51]

In order to qualify for home health services, a recipient must be under the care of a physician, have a physician's order for such services, and require services that can be safely provided in the home.[52] Medicaid does not reimburse for other services provided in the home, including:

- Services provided at a skill level other than what is prescribed in the physician order and approved plan of care;
- Assistance with homework;
- Babysitting;
- Care, grooming, or feeding of pets;
- Companion sitting or leisure activities; and
- Intermittent home health visits rendered less than an hour apart.[53]

In 2007, the MFCU reported that the type of fraudulent activities and schemes seen in Florida related to both Medicaid and Medicare home health services included:[54]

- Kickbacks to physicians to sign plans of treatment;
- Recruiting recipients to fake or exaggerate symptoms to qualify for home health services;
- Paying recipients for participating in billing of unnecessary or non-rendered services; and
- Collaborative arrangements between Medicare and Medicaid certified HHAs to pass off some services (primarily home health aide services) provided to dually eligible recipients to providers enrolled in Medicaid.

Additionally, MPI reported that investigations of HHA providers rose from 47 in FY 2005-2006 to 144 in FY 2006-2007. MPI identified an increase in overpayments during the same time period, from about $10,000 in FY 2004-2005 to about $1.3 million in FY 2006-2007.[55]

In 2008 the Legislature passed, and the Governor signed HB 7083, which created s. 400.471(7), F.S., prohibiting the initial licensure of a HHA if another HHA owned by the applicant is located within 10 miles of the applicant and in the same county. The statute was intended to slow the sharp growth in the number of licensure applicants and new licensees during a time when Medicaid and Medicare HHA fraud investigations were on the rise.[56]

In 2009, the Legislature passed SB 1986 addressing regulatory reforms and fraud and abuse prevention. AHCA reports to the Senate detailing the implementation of provisions within SB 1986. The June 2016 report stated that, in the past, HHAs which have demonstrated a pattern of billing the Medicaid program for medically unnecessary services have either received an administrative penalty or were denied a renewal application. However, in FY 2015-16, no HHAs were identified as being

[51] Agency for Health Care Administration, *Florida Medicaid Home Health Visit Services Coverage Policy*, November 2016, pg. 3, available at https://www.flrules.org/Gateway/reference.asp?No=Ref-07500 (last viewed March 1, 2017).
[52] Id.
[53] Id. at pg. 4.
[54] MFCU's report to the Florida House of Representatives on October 2, 2007.
[55] Florida House of Representatives Bill Analysis for CS/HB 7083, April 10, 2008 (on file with the Health Innovation Subcommittee staff).
[56] Id.

penalized or denied a renewal for licensure because of a pattern of billing for medically unnecessary services.[57]

In FY 2015-2016, HHAs were sixth on the list of Medicaid provider types with the most MFCU fraud cases.[58] An example of a recent MFCU case concerning a HHA occurred in February 2015. Two individuals in Miami were arrested for Medicare and Medicaid fraud totaling more than $2.4 million. The defendants were charged with receiving kickbacks in return for providing false and fraudulent home health prescriptions and plans of care to patient recruiters.[59]

Also in FY 2015-2016, twenty-four HHAs were terminated from participation in the Medicaid program as a result of fraud and abuse,[60] and twenty-six HHAs were denied enrollment or reenrollment in the Medicaid program because of suspected fraud and abuse.[61]

Federal Moratoria on HHAs in Medicare and Medicaid

In July 2013, in an effort to target fraud, CMS implemented a moratorium on the enrollment of new HHAs in the Miami area. CMS extended the moratorium in 2014 to the metropolitan areas of Fort Lauderdale. The moratoria have since been extended at 6 month intervals and remain in place in both Miami and Ft. Lauderdale.[62]

Since implementing the moratoria, CMS has been able to identify and evaluate problems with their effectiveness. Because the current moratoria are geographically defined by county, providers and suppliers are not prohibited from opening new locations or creating a new enrollment outside of the areas under the moratoria and moving it into the area to provide services. Moreover, CMS is unable to prevent existing providers and suppliers from outside of a moratoria area from servicing beneficiaries within that area. CMS has analyzed data showing that providers and suppliers who are located several hundred miles outside of a moratorium area are billing for services provided to beneficiaries located within that moratorium area. In order to mitigate the vulnerabilities of the moratoria, CMS expanded the moratoria statewide on HHA providers in Medicare, Medicaid, and the Children's Health Insurance Program, effective July 29, 2016.[63] [64]

**Effect of Proposed Changes**

HB 6021 repeals the "10-mile" rule found in s. 400.471(7), F.S., thereby permitting an entity that currently owns or has a controlling interest in a licensed HHA to apply for and obtain an initial license to operate a HHA within 10 miles and in the same county as the existing agency. Also, an entity applying for a change of ownership of an existing HHA will no longer be subject to "10-mile" rule.

The removal of the restriction will allow an existing HHA to establish additional locations, under the same ownership or controlling interest, within the same city or county as the HHA. Such concentration of HHAs may allow for greater access to services for consumers. The repeal will allow an existing HHA to operate another licensed HHA in the same location to provide services to different patient populations with different payer mixes. For example, one HHA may provide services to Medicare patients while the other HHA may provide services solely to private pay patients.

[57] Supra, FN 44.
[58] Supra, FN 48 at pg. 3.
[59] Id. at pg. 8.
[60] Id. at pg. 57.
[61] Id. at pg. 58.
[62] Centers for Medicare and Medicaid Services, *Provider Enrollment Moratorium*, August 2016, available at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html (last viewed February 27, 2017).
[63] Id.
[64] Agency for Healthcare Administration, *Medicare/Medicaid*, available at http://www.fdhc.state.fl.us/mchq/health_facility_regulation/home_care/hha/medicare_medicaid.shtml (last viewed March 1, 2017).

Though the removal of the restriction may increase the number of HHAs, it is not likely that there will be a surge of HHAs, like after the repeal of the CON program, because of the statewide moratoria on new enrollments to provide services to Medicare, Medicaid, and CHIP beneficiaries. In addition, the active role of MPI and MFCU is likely to deter and prevent the types and volume of fraud seen after the repeal of the CON program.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 400.471, F.S., relating to application for license; fee.
**Section 2:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may result in an increase of licensure fees to AHCA for new HHAs within 10 miles of another HHA owned by the same entity. However, the number of licenses that AHCA will receive and the impact to license revenue is indeterminate.

2. Expenditures:

   The bill may result in a minimal increase in licensure application reviews, inspections, and legal cases handled by AHCA. The increase in application reviews, inspections, and legal costs is indeterminate, but likely insignificant, as is the fiscal impact to AHCA resulting from those activities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill permits HHAs to establish additional locations in smaller areas, such as cities and counties. As a result, there may be business growth, additional job opportunities for home health service providers, and greater access to home health services.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES