

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 731 Agency for Health Care Administration

**SPONSOR(S):** Health Market Reform Subcommittee, Perez

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	11 Y, 1 N, As CS	Guzzo	Calamas
2) Appropriations Committee	24 Y, 3 N	Nobles	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill amends various authorizing and licensing statutes for entities regulated by the Agency for Health Care Administration (AHCA), including, nurse registries, home medical equipment providers, health care clinics, nursing homes, assisted living facilities, diagnostic imaging centers, ambulatory surgical centers (ASCs), and home health agencies. Specifically the bill:

- Creates risk-based licensure inspections for nurse registries, home medical equipment providers, and health care clinics to provide AHCA the flexibility to inspect high-performing providers less frequently than poor performers;
- Allows AHCA to conduct extended inspection periods for other high performing providers that are currently required to be inspected biennially, including hospices and adult day care centers;
- Revises a requirement for AHCA to inspect nursing homes with records of poor performance every six months for a two year period, to instead, require AHCA to conduct one additional inspection;
- Creates an exemption to health care clinic licensure for federally certified providers, community mental health center-partial hospitalization programs, portable x-ray providers, and rural health clinics;
- Repeals licensure of multiphasic health testing centers;
- Allows AHCA to issue a provisional license to all regulated providers/facilities;
- Repeals several statutorily mandated annual reports that are obsolete or rarely used, and instead directs AHCA to publish the information online;
- Repeals an unenforceable annual assessment on diagnostic imaging centers and ASCs;
- Updates requirements for approval of comprehensive emergency management plans for newly licensed facilities to create a consistent approval process across all provider types;
- Removes the ability of a health care clinic to submit a surety bond instead of submitting certain documents as proof of financial ability to operate to satisfy initial licensure requirements;
- Removes outdated language relating to certificate of need, to allow hospital licenses to correctly reflect the actual bed categories provided by a licensee;
- Amends the definition of home health agency by removing staffing services to clarify that a home health agency that provides only home health services, but not staffing services, is required to be licensed as a home health agency; and
- Creates an exemption from health care clinic licensure for all Medicaid providers.

The bill strengthens AHCA's authority to conduct retrospective review of Medicaid hospital payments to allow AHCA to recover all overpayments.

The bill also strengthens AHCA's ability to collect legal fees for Medicaid cases in which AHCA prevails.

The bill has an indeterminate, but likely insignificant, fiscal impact on AHCA (see fiscal comments).

The bill has no fiscal impact to local governments.

Except as otherwise expressly provided, the bill provides an effective date of July 1, 2020

### FULL ANALYSIS

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0731c.APC

**DATE:** 2/18/2020

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Agency for Health Care Administration – Division of Health Quality Assurance**

The Division of Health Quality Assurance (HQA), housed within the Agency for Health Care Administration (AHCA), licenses, certifies, and regulates 40 different types of health care providers. In total, HQA regulates more than 48,000 individual providers.<sup>1</sup> Regulated providers include:

- Laboratories performing testing under the Drug-Free Workplace program, s. 440.102(9), F.S.
- Birth centers, ch. 383, F.S.
- Abortion clinics, ch.390, F.S.
- Crisis stabilization units, parts I and IV of ch. 394, F.S.
- Short-term residential treatment facilities, parts I and IV of ch. 394, F.S.
- Residential treatment facilities, as provided under part IV of ch. 394, F.S.
- Residential treatment centers for children and adolescents, part IV of ch. 394, F.S.
- Hospitals, part I of ch. 395, F.S.
- Ambulatory surgical centers, part I of ch. 395, F.S.
- Nursing homes, part II of ch. 400, F.S.
- Assisted living facilities (ALFs), part I of ch. 429, F.S.
- Home health agencies, part III of ch. 400, F.S.
- Nurse registries, part III of ch. 400, F.S.
- Companion services or homemaker services providers, part III of ch. 400, F.S.
- Adult day care centers, part III of ch. 429, F.S.
- Hospices, part IV of ch. 400, F.S.
- Adult family-care homes, part II of ch. 429, F.S.
- Homes for special services, part V of ch. 400, F.S.
- Transitional living facilities, part XI of ch. 400, F.S.
- Prescribed pediatric extended care centers, part VI of ch. 400, F.S.
- Home medical equipment providers, part VII of ch. 400, F.S.
- Intermediate care facilities for persons with developmental disabilities, part VIII of ch. 400, F.S.
- Health care services pools, part IX of ch. 400, F.S.
- Health care clinics, part X of ch. 400, F.S.
- Multiphasic health testing centers, part II of ch. 483, F.S.
- Organ, tissue, and eye procurement organizations, part V of ch. 765, F.S.

Certain health care providers<sup>2</sup> are regulated under part II of ch. 408, F.S., which is the Health Care Licensing Procedures Act (Act), or core licensing statutes. The Act provides uniform licensing procedures and standards for 26 provider types.<sup>3</sup> In addition to the Act, each provider type has an authorizing statute which includes unique provisions for licensure beyond the uniform criteria. In the case of conflict between the Act and an individual authorizing statute, the Act prevails.<sup>4</sup>

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<sup>1</sup> Agency for Health Care Administration, *Health Quality Assurance*, 2017, available at <http://ahca.myflorida.com/MCHQ/> (last visited January 31, 2020).

<sup>2</sup> "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

<sup>3</sup> S. 408.802, F.S.

<sup>4</sup> S. 408.832, F.S.

## Birth Centers

### Current Situation

A birth center is any facility, institution, or place, which is not an ambulatory surgical center or a hospital, in which births are planned to occur away from the mother's usual residence following a normal, uncomplicated, low-risk pregnancy.<sup>5</sup> Birth centers are licensed and regulated by AHCA under ch. 383, F.S., and part II of ch. 408, F.S.

AHCA is required to adopt rules establishing minimum standards for birth centers, which ensure:

- Sufficient numbers and qualified types of personnel and occupational disciplines are available at all times to provide necessary and adequate patient care and safety;
- Infection control, housekeeping, sanitary conditions, disaster plan, and medical record procedures that will adequately protect patient care and provide safety are established and implemented; and
- Licensed facilities are established, organized, and operated consistent with established programmatic standards.<sup>6</sup>

Section 383.327, F.S., requires birth centers to submit an annual report to AHCA, the contents of which are to be prescribed by AHCA rule. Current law does not expressly authorize AHCA to adopt rules to change the frequency for submission of the report. Rule 59A-11.019, F.A.C., requires birth centers to submit the annual report using an electronic form, which includes reportable data fields on:

- The number of deliveries by birth weight;
- The number of maternity clients accepted for care and length of stay;
- The number of surgical procedures performed at the birth center by type;
- Maternal transfers, including the reason for the transfer, whether it occurred intrapartum or postpartum, and the length of the hospital stay;
- Newborn transfers, including the reason for the transfer, birth weight, days in hospital, and APGAR score<sup>7</sup> at five and ten minutes;
- Newborn deaths; and
- Stillborn/Fetal deaths.<sup>8</sup>

### Effect of the Bill

The bill amends s. 383.327, F.S., to remove the statutory requirement for the report to be submitted annually. Instead, the bill authorizes AHCA to adopt rules to establish the frequency at which the report is submitted. According to AHCA, this will allow the Agency to change the annual reporting requirement in AHCA rule to require more frequent submission.<sup>9</sup>

Birth centers are also required to immediately report each maternal death, newborn death, and stillbirth to the medical examiner. However, current law does not require birth centers to immediately report such deaths to AHCA. The bill requires birth centers to immediately report to AHCA each maternal death, newborn death, and stillbirth.

## Hospital Licensure

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<sup>5</sup> S. 383.302(2), F.S. Section 383.302(8), F.S.

<sup>6</sup> Section 383.309, F.S.; The minimum standards for birth centers are contained in Chapter 59A-11, F.A.C.

<sup>7</sup> The APGAR score is the result of a test given by the delivering physician, midwife or nurse to measure a baby's heart rate, muscle tone, and other signs to determine if extra medical attention is needed. A newborn is scored on a scale of 0 to 2, with 2 being the best score for each of the following: appearance (skin color), pulse (heart rate), grimace response (reflexes), activity (muscle tone), and respiration (breathing rate).

<sup>8</sup> Rule 59A-11.019, F.A.C., and AHCA Form 3130-3004, (Apr. 2019).

<sup>9</sup> Agency for Health Care Administration, 2020 Legislative Bill Analysis-HB 731, January 28, 2020 (on file with Health Market Reform Subcommittee staff).

## Current Situation

In 2019, the Legislature eliminated certificate of need review for general hospitals.<sup>10</sup> Section 395.003, F.S., requires AHCA to include certain information on a license issued to a hospital, including, the service categories and the number of hospital beds in each bed category. Current law in this section includes an outdated CON provision directing AHCA to identify hospital beds as general beds on the face of the hospital's license, when not covered by any specialty-bed-need methodology. Beds covered by a specialty-bed-need methodology include neonatal intensive care beds, comprehensive medical rehabilitation beds, adult psychiatric beds, child/adolescent psychiatric beds, and adult substance abuse beds. Currently, these specialty hospital beds might be incorrectly reported as general beds on the face of the hospital's license.

## Effect of the Bill

The bill removes this obsolete language to allow hospital licenses to correctly reflect the actual bed categories provided by a licensee.

## **Annual Assessments on Health Care Facilities**

### Current Situation

Section 395.7015, F.S., imposes an annual assessment on ambulatory surgical centers and certain diagnostic imaging centers<sup>11</sup>, to be deposited into the Public Medical Assistance Trust Fund (PMATF). These assessments were ruled unconstitutional in 2002, and are no longer collected.<sup>12</sup>

### Effect of the Bill

The bill repeals s. 395.7015, F.S., to remove unenforceable statutory authority for AHCA to collect the annual assessments. The bill also amends s. 395.7016, F.S., to make a conforming change by removing a cross-reference to s. 395.7015, F.S.

## **Nursing Home Inspections**

### Current Situation

Uniform licensing requirements in s. 408.811, F.S., require all facilities licensed by AHCA to be inspected biennially unless otherwise specified in statute or rule.

Section 400.19, F.S., requires AHCA to conduct at least one unannounced inspection of licensed nursing homes every 15 months. Federal law also requires AHCA to inspect nursing homes every 15 months.<sup>13</sup>

Current law in s. 400.19, F.S., also requires AHCA to conduct additional inspections of nursing homes that are cited for multiple deficiencies within specified timeframes. Specifically, AHCA is required to inspect a nursing home every six months for two years if the facility has been cited for a class I deficiency<sup>14</sup>, has been cited for two or more class II deficiencies<sup>15</sup> arising from separate surveys or

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<sup>10</sup> Ch. 2019-136, L.O.F.

<sup>11</sup> Diagnostic imaging centers that are freestanding outpatient facilities that provide specialized services for the identification or determination of a disease through examination and also provide sophisticated radiological services, and in which services are rendered by a licensed physician or a licensed osteopathic physician.

<sup>12</sup> *Agency for Health Care Administration v. Hameroff*, 816 So. 2d 1145, 1149-1150 (Fla. 1<sup>st</sup> DCA 2002).

<sup>13</sup> 42 C.F.R. §. 488.308(a).

<sup>14</sup> S. 408.813(2)(a), F.S. Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine as provided by law for a cited class I violation. A fine shall be levied notwithstanding the correction of the violation.

investigations within a 60-day period, or has had three or more substantiated complaints within a six-month period that resulted in at least one class I or class II deficiency. Current law also requires nursing homes to pay a \$6,000 fine for falling under the additional inspection cycle.

#### Effect of the Bill

The bill amends s. 400.19, F.S., to remove the 15-month inspection requirement. However, AHCA will still be required to inspect nursing homes every 15 months as required by federal law.

The bill revises the requirement for AHCA to additionally inspect nursing homes every six months for two years as detailed above. Instead, the bill requires AHCA to conduct one additional inspection under those circumstances.

### **Hospice Inspections**

#### Current Situation

Section 400.605, F.S., requires AHCA to conduct annual inspections of hospices, with the exception that inspections may be conducted biennially for hospices having a three-year record of substantial compliance.

#### Effect of the Bill

The bill amends s. 400.605, F.S., removing the requirement for AHCA to inspect hospices annually, or biennially for hospices having a three-year record of substantial compliance. Instead, the bill requires AHCA to inspect hospices biennially in accordance with the uniform licensing requirements in s. 408.811, F.S. In addition, the bill authorizes AHCA to conduct inspections less frequently than biennially. The bill requires AHCA to consider certain measures reflective of quality and safety in granting an extended inspection period to a hospice, including whether the facility has:

- A favorable regulatory history of deficiencies, sanctions, complaints, and other regulatory measures;
- Outcome measures that demonstrate quality performance;
- Successful participation in a recognized, quality program; and
- Accreditation status.

The bill requires AHCA to continue to conduct unannounced licensure inspections on at least 10 percent of providers that qualify for the extended inspection period.

### **Adult Day Care Center Inspections**

#### Current Situation

Adult day care centers are inspected biennially by AHCA in accordance with the uniform licensing requirements in s. 408.811, F.S. Adult day care center programs that are collocated in an ALF or a nursing home are also required to be inspected biennially by AHCA pursuant to the adult day care center licensing statute in s. 429.905, F.S.

Section 429.929, F.S., authorizes AHCA to conduct, in lieu of a full inspection, an abbreviated biennial inspection of key quality of care standards if the adult day care center has a record of good performance.

#### Effect of the Bill

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<sup>15</sup> S. 408.813(2)(b), F.S. Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation.

The bill amends s. 429.905, F.S., to remove the biennial inspection requirement for adult day care center programs collocated in an ALF or a nursing home. As a result, AHCA will be required to inspect adult day care center programs collocated in an ALF or a nursing home in accordance with the inspection requirements for ALFs and nursing homes. For nursing homes, the inspection frequency is once every 15 months. For adult day care centers collocated in an ALF, the inspections will be in accordance with the new ALF inspection requirements detailed in the ALF section above. This will have no measurable effect because both settings in which an adult day care center may be collocated will be inspected more frequently than biennially.

The bill removes the authority for AHCA to conduct abbreviated biennial inspections of adult days care centers. Instead, the bill requires AHCA to inspect adult day care centers biennially in accordance with the uniform licensing requirements in s. 408.811, F.S. In addition, the bill authorizes AHCA to conduct inspections less frequently than biennially. The bill requires AHCA to consider certain measures reflective of quality and safety in granting an extended inspection period to an adult day care center, including whether the facility has:

- A favorable regulatory history of deficiencies, sanctions, complaints, and other regulatory measures;
- Outcome measures that demonstrate quality performance;
- Successful participation in a recognized, quality program; and
- Accreditation status.

The bill requires AHCA to continue to conduct unannounced licensure inspections on at least 10 percent of providers that qualify for the extended inspection period.

## **Inspections of Health Care Clinics, Home Medical Equipment Providers and Nurse Registries**

### Current Situation

Health care clinics, home medical equipment providers, and nurse registries are all subject to initial licensure inspections and biennial inspections pursuant to the uniform licensing requirements of s. 408.811, F.S.

According to AHCA, the inspection history for these three provider types have been good compared to other provider types, which indicates to AHCA that they are low-risk providers as compared to other providers.<sup>16</sup>

The results of inspections conducted during fiscal years 2017-18 and 2018-19, for these three provider types found that:

- 87 percent of health care clinics were deficiency free;
- 79 percent of home medical equipment providers were deficiency free; and
- 59 percent of nurse registries were deficiency free.<sup>17</sup>

### Effect of the Bill

The bill exempts health care clinics, home medical equipment providers, and nurse registries from licensure inspections. Instead, the bill authorizes AHCA to conduct verification of compliance inspections for health care clinics, home medical equipment providers, and nurse registries. The bill requires AHCA to continue to conduct unannounced licensure inspections on at least 10 percent of providers to verify regulatory compliance. According to ACHA, this will provide the agency the flexibility to conduct fewer inspection visits to providers with a good regulatory history, and allow them to spend more time and resources inspecting poorly performing providers.<sup>18</sup>

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Supra FN 9.

## Home Health Agencies

### Current Situation

A “home health agency” is an organization that provides home health services and staffing services.<sup>19</sup> According to AHCA, there is concern that the definition could be interpreted to mean a provider is exempt from licensure as a home health agency if they provide home health services but not staffing services.<sup>20</sup>

Home health services are health and medical services and supplies furnished by an organization<sup>21</sup> to an individual in the individual’s home or place of residence, including organizations that provide one or more of the following:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;
- Dietetics and nutrition practice and nutrition counseling; or
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.<sup>22</sup>

According to AHCA, the current definition of organization is problematic because it only refers to entities and does not include an individual person, which creates a loophole for an individual to employ health care personnel for the provision of home health services without having to obtain a license.<sup>23</sup>

Current law, requires an applicant for initial home health agency licensure to provide proof of accreditation and a survey demonstrating compliance with survey standards prior to the addition of skilled care or services. However, current law does include such requirements for a change of ownership or licensure renewal.<sup>24</sup>

### Effect of the Bill

The bill amends the definition of home health agency by removing the reference to staffing services to clarify that a home health agency that provides only home health services, but not staffing services, is required to be licensed as a home health agency.

The bill also deletes the definition of organization to exclude programs that offer home visits for a single profession. According to AHCA, this change will clarify that current law only requires a home health license when an organization offers multiple professional disciplines in the home.<sup>25</sup> The bill amends various sections of home health agency statute to replace the term “organization” with “person or entity.

The bill retains an exemption from home health agency licensure for a person or entity that provides skilled care by health care professionals licensed solely under part I of ch. 464, F.S. (nursing), part I, part III, or part V of ch. 408, F.S. (speech, occupational or respiratory therapy), or ch. 486, F.S. (physical therapy). According to AHCA, this exemption indirectly exists within the current definition of “organization”, which is deleted by the bill.<sup>26</sup> AHCA states that by adding this exemption, a person or

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<sup>19</sup> S. 400.462(12), F.S.

<sup>20</sup> Id.

<sup>21</sup> S. 400.462(22), F.S. Organization means a corporation, government or governmental subdivision or agency, partnership or association, or any other legal or commercial entity, any of which involve more than one health care professional discipline; a health care professional and a home health aide or certified nursing assistant; more than one home health aide; more than one certified nursing assistant; or a home health aide and a certified nursing assistant. The term does not include an entity that provides services using only volunteers or only individuals related by blood or marriage to the patient or client.

<sup>22</sup> S. 400.462(14), F.S.

<sup>23</sup> Supra FN 9.

<sup>24</sup> S. 400.471((2)(g), F.S.

<sup>25</sup> Supra FN 9

<sup>26</sup> Id.

entity would be able to voluntarily apply for a certificate of exemption from home health agency licensure as documentation of exempt status.<sup>27</sup>

The bill requires applicants for, not only initial licensure, but also for a change of ownership or license renewal to provide proof to AHCA of accreditation and a survey demonstrating compliance with survey standards prior to the addition of skilled care or services.

### **Health Care Clinic Act**

The Health Care Clinic Act (Act), ss. 400.990 – 400.995, F.S., was enacted in 2003 to reduce fraud and abuse in the personal injury protection (PIP) insurance system.<sup>28</sup> Pursuant to the Act, AHCA licenses health care clinics, ensures that clinics meet basic business and billing related standards, and provides administrative oversight.

Pursuant to the uniform licensure requirements of part II of ch. 408, F.S., applicants for licensure as a health care clinic are required to demonstrate financial ability to operate by showing that the applicant's assets, credits, and projected revenues will meet or exceed projected liabilities and expense<sup>29</sup> As an alternative to submitting proof of financial ability to operate, s. 400.991, F.S., allows a health care clinic to submit a surety bond to AHCA of at least \$500,000. According to AHCA, no clinic has ever submitted a surety bond instead of submitting proof of financial ability to operate.<sup>30</sup> The bill amends s. 400.991, F.S., to remove the alternative option for a health care clinic to prove their financial ability to operate.

### Healthcare Clinic Exemptions

#### *Federally Certified Providers*

#### Current Situation

Any entity that meets the definition of a health care clinic must be licensed as a health care clinic. Although all clinics must be licensed by AHCA, the Act creates many exceptions from the health care clinic licensure requirements.<sup>31</sup> A health care clinic may voluntarily apply for a certificate of exemption for a fee of \$100.<sup>32</sup> Certificates of exemption are valid for up to two years.<sup>33</sup> Among many other exemptions, certain federally certified entities are exempt from licensure under the Act, including:

- Entities federally certified as end-stage renal disease providers, comprehensive outpatient rehabilitation facilities, outpatient physical therapy and speech-language pathology providers, and clinical laboratories;
- Entities that own, directly or indirectly, entities federally certified as end-stage renal disease providers, comprehensive outpatient rehabilitation facilities, outpatient physical therapy and speech-language pathology providers, and clinical laboratories;
- Entities that are owned, directly or indirectly, by an entity federally certified as end-stage renal disease providers, comprehensive outpatient rehabilitation facilities, outpatient physical therapy and speech-language pathology providers, and clinical laboratories; and
- Entities that are under common ownership, directly or indirectly, with an entity federally certified as end-stage renal disease providers, comprehensive outpatient rehabilitation facilities, outpatient physical therapy and speech-language pathology providers, and clinical laboratories.

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<sup>27</sup> Id.

<sup>28</sup> Chapter 2003-411, Laws of Fla. PIP insurance is no fault auto insurance that provides certain benefits for individuals injured as a result of a motor vehicle accident. All motor vehicles registered in this state must have PIP insurance.

<sup>29</sup> S. 408.8065, F.S., and s. 408.810, F.S.

<sup>30</sup> Supra FN 9.

<sup>31</sup> S. 400.9905(4), F.S.

<sup>32</sup> S. 400.9935(6), F.S.

<sup>33</sup> Id.

Federal certification requirements are more stringent than the licensure standards of the Health Care Clinic Act. Current law does not include exemptions from health care clinic licensure for federally certified community mental health center-partial hospitalization programs<sup>34</sup>, portable x-ray providers<sup>35</sup>, or rural health care clinics<sup>36</sup>.

### Effect of the Bill

The bill creates exemptions for these providers similar to current exemptions for other federally certified providers. Approximately 200 providers will qualify for this exemption.<sup>37</sup>

#### *Entities Owned by a Mutual Insurance Holding Company*

### Current Situation

In 2019, SB 2502 (Implementing the 2019-2020 GAA), provided two exemptions from health care clinic licensure in order to implement specific appropriations 208<sup>38</sup>, 225-236, and 368<sup>39</sup> of the GAA. The exemptions expire on July 1, 2020. Specifically, the bill provided an exemption for entities that are:

- Under the common ownership or control by a mutual insurance holding company with an entity licensed or certified under chapter 624, F.S., or chapter 641, F.S., that has \$1 billion or more in total annual sales in this state; or
- Owned by an entity who is a behavioral health service provider in at least 5 states other than Florida and that, together with its affiliates, have \$90 million or more in total annual revenues associated with the provision of behavioral health care services and where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of part X of chapter 400, F.S.

### Effect of the Bill

The bill creates permanent statutory exemptions for the exemptions above that are set to expire on July 1, 2020.

#### *Medicaid Providers*

### Current Situation

Applied Behavioral Analysis (ABA) is an umbrella term referring to the principles and techniques used to assess, treat, and prevent challenging behaviors while promoting new, desired behaviors. ABA focuses on improving social skills, communication, reading, and academics as well as adaptive learning skills, such as fine motor dexterity, hygiene, grooming, domestic capabilities, punctuality, and job competence. ABA can be effective for children and adults with psychological disorders in a variety of settings, including schools, workplaces, homes, and clinics.<sup>40</sup>

In 2019, AHCA required all ABA provider groups to be licensed as health care clinics under ch. 400, F.S., as a condition of Medicaid enrollment, effective July 1, 2020. This change will also require ABA provider groups to employ a physician to be the medical or clinical director. Consequently, over 30,000

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<sup>34</sup> 42 C.F.R. §§. 485.900-485.920.

<sup>35</sup> 42 C.F.R. §§. 486.100-486.110.

<sup>36</sup> 42 C.F.R. §§. 491.1-491.12.

<sup>37</sup> Supra FN 9.

<sup>38</sup> 2019, HB 5001, General Appropriations Act, Funds in specific appropriation 208 are for the inclusion of freestanding dialysis clinics in the Medicaid Program.

<sup>39</sup> 2019, HB 5001, General Appropriations Act, Funds in specific appropriation 368 are to fund the following projects: Citrus Health Network; Apalachee Center Forensic Treatment Services; Mental Health Care-Forensic Treatment Services; Apalachee Center-Civil Treatment Services; New Horizons of the Treasure Coast-Civil Treatment Services.

<sup>40</sup> "Applied Behavioral Analysis", *Psychology Today*, available at <https://www.psychologytoday.com/us/therapy-types/applied-behavior-analysis> (last accessed January 31, 2020).

Medicaid providers will be required to obtain a health care clinic license or a certificate of exemption from licensure as a health care clinic by July 1, 2020.<sup>41</sup>

### Effect of the Bill

The bill creates an exemption from health care clinic licensure for all Medicaid providers. AHCA estimates that approximately 28,291 ABA providers would qualify for the exemption.<sup>42</sup>

The bill also allows a clinic that exclusively provides behavior analysis services to appoint as a clinic director, a health care practitioner who maintains an active and unencumbered certification as a Board Certified Behavior Analyst.

### Public Posting of a Schedule of Charges

#### Current Situation

Current law in s. 400.9935, F.S., requires health care clinics to publish a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for services by cash, check, credit card, or debit card. The schedule may group services by three price levels, listing services in each price level. The schedule may be a sign that must be at least 15 square feet in size or an electronic messaging board that is at least three square feet in size. A health care clinic that does not publish and post a schedule of charges may be assessed a fine of up to \$1,000 per day.

Further, the statute requires the schedule to be posted in a conspicuous place in the reception area of an urgent care center. The specific reference to an urgent care center complicates the interpretation as to whether the posting requirements apply only to urgent care centers or to all health care clinics. As a result, AHCA only has the authority to enforce the posting requirements on urgent care centers.

#### Effect of the Bill

The bill removes the ambiguity of the current law by specifically requiring an urgent care center to post a schedule of charges in the in their reception area. The bill is silent as to the means by which all other health care clinics will be required to publish a schedule of charges; however, AHCA has indicated that the Agency will require clinics to publish them on the clinic's website, in a document available at the clinic, in a scanned document that can be emailed upon request, or in posted signage of an undetermined size.<sup>43</sup>

## **Legislatively Mandated Reports**

### Hospice Annual Report

#### Current Situation

Section 400.60501, F.S., provides reporting requirements for AHCA on certain hospice data. AHCA is required to make available to the public the national hospice outcome measures and survey data in a format that is comprehensible by a layperson and that allows a consumer to compare such measures of one or more hospices. Further, AHCA is required to develop an annual report that analyzes and evaluates the national hospice outcome measures and survey data.

#### Effect of the Bill

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<sup>41</sup> Supra FN 9.

<sup>42</sup> Id.

<sup>43</sup> Supra FN 9.

The bill removes the requirement for AHCA to develop an annual report, but retains the requirement for AHCA to make the national hospice outcome measures and survey data available to the public. AHCA already publishes the outcome measures and survey data on FloridaHealthFinder.gov.<sup>44</sup>

## Electronic Prescribing Annual Report

### Current Situation

Electronic prescribing is the electronic review of a patient's medication history, the electronic generation of the patient's prescription, and the electronic transmission of the patient's prescription to a pharmacy.<sup>45</sup> Current law requires AHCA to work with electronic prescribing initiatives and relevant stakeholders to create a clearinghouse of information on electronic prescribing for health care practitioners, health care facilities, and pharmacies.<sup>46</sup> AHCA must monitor the implementation of electronic prescribing and provide an annual report on the progress of implementation to the Governor and the Legislature. The report is also required to include information on federal and private sector electronic prescribing initiatives and, to the extent that data is readily available from organizations that operate electronic prescribing networks, the number of health care practitioners using electronic prescribing and the number of prescriptions electronically submitted.<sup>47</sup> AHCA publishes the electronic prescribing data online<sup>48</sup>, and it is updated quarterly.

### Effect of the Bill

The bill removes the requirement for AHCA to provide an annual report on the progress of implementation to the Governor and the Legislature. Instead, the bill requires AHCA to annually publish the report online.

## Emergency Department Utilization Annual Report

### Current Situation

Section 408.062, F.S., requires AHCA to conduct research, analyses, and studies relating to health care costs and access to and quality of health care services, which must include the use of emergency department services by patient acuity level and the implication of increasing hospital cost by providing non-urgent care in emergency departments. Based on this monitoring and assessment, AHCA must submit an annual report to the Governor and the Legislature, and substantive Legislative committees. Most of, but not all, of the information required to be in the annual report is available anytime by using the emergency department query tool on FloridaHealthFinder.gov. Not included on the website is the use of emergency department services by patient acuity level and its impact on increasing hospital cost by providing non-urgent care in emergency departments.

### Effect of the Bill

The bill repeals annual report on emergency department utilization required to be sent to the Governor and the Legislature. Instead, the bill requires AHCA to annually publish online, information on the use of emergency department services by patient acuity level.

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<sup>44</sup> AHCA, FloridaHealthFinder.gov, Hospice Quality Reporting Program, CAHPS (Patient and Family Experience Measures-Consumer Assessment of Healthcare Providers and Systems), and HIS (Quality of Patient Care Measures-Hospice Item Set), available at <https://www.floridahealthfinder.gov/Hospice/Hospice.aspx> (last accessed January 31, 2020).

<sup>45</sup> S. 408.0611(2)(a), F.S.

<sup>46</sup> Ch. 2007-156, Laws of Fla.

<sup>47</sup> S. 408.0611(4), F.S.

<sup>48</sup> AHCA, ePrescribing Dashboard, Quarterly Metrics Summary and Data Charts, available at <http://fhin.net/eprescribing/dashboard/index.shtml> (last accessed January 31, 2020).

## Florida Center for Health Information and Transparency Annual Report

### Current Situation

Section 408.062, F.S., requires AHCA to publish on its website, and make available in a hard copy format upon request, data on patient charges, volumes, length of stay, and performance indicators from data collected from hospitals, for specific procedures, medical conditions, surgeries, and procedures provided in inpatient and outpatient facilities. The data must be updated quarterly. AHCA is also required to submit an annual report on the status of the collection of data and publication of health care quality measures to the Governor and the Legislature, and substantive Legislative committees. All of this information is easily accessible on FloridaHealthFinder.gov<sup>49</sup>, and the data is updated bi-weekly.

### Effect of the Bill

The bill retains the requirement for AHCA to publish data currently contained in the annual report, but removes the requirement for the annual report to be submitted to the Governor, and the Legislature. According to AHCA, if the bill passes, all of the data that is currently required to be published will still be easily accessible for consumers and others.<sup>50</sup>

## State Health Expenditures Annual Report

### Current Situation

Section 408.063, F.S., requires AHCA to annually publish a comprehensive report of state health expenditures, which must identify the contribution of health care dollars made by all payers, and the dollars expended by type of health care service. According to AHCA, the data used to generate the Expenditure Report is not available until several years after the reporting period. AHCA publishes the current year report utilizing the available data from three years prior. The report includes information collected from the Department of Economic Opportunity, the U.S. Census Bureau, CMS, the Florida Office of Insurance Regulation (OIR), and the U.S. Bureau of Economic Analysis. All data is publicly available on relevant government agency websites. The dashboard associated with this report received only 14 website hits over the course of a year.<sup>51</sup>

### Effect of the Bill

The bill removes the requirement for AHCA to publish the State Health Expenditures Annual Report. Should the bill pass, AHCA will no longer collect this information or publish it in any manner.

## Health Flex Plan Annual Report

### Current Situation

The health flex plan began as a pilot program<sup>52</sup> to cover basic and preventative health care services to low-income families not eligible for public assistance programs and not covered by private insurance. Health flex plans are unique compared to the common health insurance plan. A health flex plan may limit or exclude benefits otherwise required by law, or they can cap the total amount of claims paid per year to an enrollee.<sup>53</sup> The pilot program began with three health flex plans in the three areas of the state with the highest number of uninsured individuals. Today, there is only one remaining health flex plan with less than 300 members.<sup>54</sup>

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<sup>49</sup> AHCA, Research Studies and Reports, Florida Center for Health Information and Transparency Annual Report, available at <https://www.floridahealthfinder.gov/researchers/studies-reports.aspx> (last accessed January 31, 2020).

<sup>50</sup> Supra FN 9

<sup>51</sup> Id.

<sup>52</sup> Ch. 2002-389, Laws of Fla.

<sup>53</sup> S. 409.909(3), F.S.

<sup>54</sup> Supra FN 9.

Section 408.909(9), F.S., requires AHCA and OIR to jointly submit an annual report to the Governor and the Legislature, which must include:

- An evaluation of the entities that seek approval as health flex plans;
- The number of enrollees and the scope of health care coverage offered;
- An assessment of the health flex plans and their potential applicability in other settings; and
- Information to evaluate low-income consumer driven benefit packages

According to AHCA, the online report has received no website hits in over a year.<sup>55</sup>

#### Effect of the Bill

The bill repeals the health flex plan evaluation and annual reporting requirements. Should the bill pass, AHCA and OIR will still be required to collect certain data on health flex plans.

### Cover Florida Health Care Access Program Annual Report

#### Current Situation

In 2008, the Legislature created the Cover Florida Health Access Program to provide affordable health care options for uninsured residents. A Cover Florida plan must have two alternate benefit option plans having different cost and benefit levels, including at least one plan that provides catastrophic coverage. Plans without catastrophic coverage must provide coverage options for certain services like preventive health services, behavioral health services, durable medical equipment, inpatient hospital stays, hospital emergency services, urgent care and more.<sup>56</sup>

Section 408.9091, F.S., requires AHCA and OIR to:

- Evaluate the Program and its effect on the entities that seek approval, the number of enrollees, and on the scope of the health care coverage offered;
- Provide an assessment of the plans and their potential applicability in other settings;
- Use plans to gather more information to evaluate low-income, consumer-driven benefit packages; and
- Jointly submit an annual report to the Governor and the Legislature, which must include the gathered information above, and must include recommendations relating to the successful implementation and administration of the program.

Currently, there are no plans participating in the Cover Florida Health Care Access Program, and the last participating plan terminated its coverage policies in 2015.<sup>57</sup>

#### Effect of the Bill

The bill removes the requirement for AHCA and OIR to submit an annual report on the Cover Florida Health Care Access Program to the Governor and the Legislature. The bill retains current law requiring AHCA and OIR to evaluate and assess the program.

### ALF Sanctions Annual Report

#### Current Situation

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<sup>55</sup> Id.

<sup>56</sup> S. 408.9091(4)(a), F.S.

<sup>57</sup> Supra FN 9.

Section 429.19(9), F.S., requires AHCA to annually develop a list of all facilities that were sanctioned or fined, which must include the number and class of violations involved, the penalties imposed, and the current status of the cases. Upon developing the list, AHCA must annually disseminate it to the Department of Elder Affairs, the Department of Health, the Department of Children and Families, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, the State Long-Term Ombudsman Program, and state and local ombudsman councils. The Department of Children and Families must then disseminate the list to their contracted service providers who are responsible for referring individuals to an ALF for residency. The list may be provided electronically or through AHCA's website. The statutory requirement for AHCA to annually disseminate the list of ALF sanctions was adopted in 1993. Since that time, AHCA has committed significant resources towards moving information online that may be used by a consumer in selecting a health care provider, including the history of an ALF's citations and violations. The provider specific information on FloridaHealthFinder.gov is updated nightly to reflect licensure status, inspection details, and legal case activities.<sup>58</sup> However, aggregate data on the ALF industry is not provided on the website.

### Effect of the Bill

The bill repeals s. 419.19(9), F.S. As a result, AHCA would no longer be required to annually compile or disseminate a list on facilities that were sanctioned or fined. Information on sanctions and fines is available online by specific provider.<sup>59</sup> Further, DCF would no longer be required to disseminate the list to their contracted service providers.

## **Background Screening**

### *Current Situation*

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.<sup>60</sup> Designated agencies include AHCA, the Department of Health, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, Vocational Rehabilitation within the Department of Education, and the Department of Juvenile Justice.

Section 408.809(2), F.S., allows providers to provide proof of screening from agencies joining the Clearinghouse to meet screening requirements until such time until such time as the specified agency is fully implemented in the Clearinghouse. Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013.

The Clearinghouse was initially implemented by AHCA on January 1, 2013. It included language that allowed a person currently employed as of June 30, 2014, who was screened and qualified prior to employment, to apply for an exemption in the event that a disqualifying offense, that the employee committed prior to screening, is later added to the law. Because statute still includes the date of June 30, 2014, the exemption is unenforceable.

Section 408.809(5), F.S., provides a background screening schedule for a controlling interest, employee, or individual under contract with a licensee. The background screening schedule is expired.

Section 409.907, F.S., provides background screening requirements for Medicaid providers. According to AHCA, the background screening requirements are only intended to apply to staff having direct

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<sup>58</sup> Id.

<sup>59</sup> AHCA, FloridaHealthFinder.gov, ALF compare, available at <https://www.floridahealthfinder.gov/CompareSC/SCSelectFilters.aspx> (last accessed January 31, 2020).

<sup>60</sup> Ch. 2014-84, Laws of Fla.

access to patients, but some Medicaid managed care plans have been screening all staff beyond those with access to clients.<sup>61</sup>

### Effect of the Bill

The bill allows an employee, who has previously qualified with background screening requirements, to apply for an exemption if the law is changed to add a disqualifying offense for which the employee committed prior to being screened.

The bill amends s. 408.809(2), F.S., to delete expired provisions relating implementation of the Clearinghouse. All specified agencies are now fully implemented in the Clearinghouse.

The bill also amends s. 408.809(5), F.S., to delete an expired background screening schedule.

The bill amends s. 409.907, F.S., clarify that background screening requirements for Medicaid providers apply to individuals who will have direct access to Medicaid recipients, recipient living areas, or the financial, medical, or service records of a Medicaid recipient, or who supervises the delivery of goods or services to a Medicaid recipient.

## **Multiphasic Health Testing Centers**

### Current Situation

Multiphasic health testing centers are regulated by AHCA under part I of ch. 483, F.S. A multiphasic health testing center is a facility where specimens are taken from the human body for delivery to registered clinical laboratories for analysis and certain measurements and tests are taken, such as height and weight, blood pressure, limited audio and visual, and electrocardiograms.<sup>62</sup>

The federal Clinical Laboratory Improvement Amendments Act (CLIA) requires a clinical laboratory to receive CLIA certification if it examines materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, a human being. The federal Centers for Medicare & Medicaid Services (CMS), within the United States Department of Health and Human Services, regulates all laboratory testing performed on humans in the United States through the CLIA.<sup>63</sup> The purpose of the CLIA program is to establish quality standards for all laboratory testing to ensure accuracy, reliability, and timeliness of test results regardless of where the test was performed.<sup>64</sup> The Division of Laboratory Services, within the Survey and Certification Group, under the Center for Clinical Standards and Quality in CMS has the responsibility for implementing the CLIA Program, including laboratory registration, fee collection, onsite inspections, and enforcement.<sup>65</sup> In addition to CLIA inspections, AHCA is required to conduct biennial inspections of all licensed multiphasic health testing centers.

As of January 21, 2020, there were 187 multiphasic health testing centers licensed in Florida. Of these, 180 are CLIA certified, which means they are subject to federal inspections by CMS. The other 7 centers, although currently licensed, are not required to be licensed because they are not providing services that necessitate licensure as a multiphasic health testing center.<sup>66</sup>

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<sup>61</sup> Supra FN 9.

<sup>62</sup> S. 483.288(2), F.S.

<sup>63</sup> Centers for Medicare & Medicaid Services, *Clinical Laboratory Improvement Amendments (CLIA)*, available at [https://www.cms.gov/Regulations-and-Guidance/Legislation/CLIA/index.html?redirect=/CLIA/10\\_Categorization\\_of\\_Tests.asp](https://www.cms.gov/Regulations-and-Guidance/Legislation/CLIA/index.html?redirect=/CLIA/10_Categorization_of_Tests.asp) (last accessed January 31, 2020).

<sup>64</sup> Department of Health and Human Services, Office of the Inspector General, *Enrollment and Certification Processes in the Clinical Laboratory Improvement Amendments Program*, (Aug. 2001), available at <https://oig.hhs.gov/oei/reports/oei-05-00-00251.pdf> (last accessed January 31, 2020)

<sup>65</sup> Id.

<sup>66</sup> Supra FN 9.

Since 2011, AHCA has imposed only six fines against multiphasic health testing centers, and received only 10 complaints, with none substantiated.<sup>67</sup>

### Effect of the Bill

The bill repeals licensure of multiphasic health testing centers. Currently, 180 licensed centers are CLIA certified and will continue to be regulated and inspected by federal CMS.

## **Provisional Licensure**

### Current Situation

Section 408.808, F.S., provides the uniform licensing requirements for all health care facilities regulated by AHCA. There are three types of licenses issued by AHCA, including, standard, inactive, and provisional licenses. A standard license is valid for two years and is issued to an applicant at the time of initial licensure, licensure renewal, or a change of ownership.<sup>68</sup> An inactive license is issued to a health care provider subject to CON review when the provider is licensed, but does not have a provisional license, and will be temporarily unable to provide services but is reasonably expected to resume services within 12 months.<sup>69</sup>

A provisional license is issued to an applicant for licensure renewal when a proceeding is pending to deny or revoke their license.<sup>70</sup> A provisional license may also be issued to an applicant applying for a change of ownership. Provisional licensure must be limited to a specific period of time, up to 12 months, as determined by AHCA. ALF statutes allow AHCA to issue a provisional license to an applicant for initial licensure for a specific period of time not to exceed 6 months. Current law does not allow the issuance of a provisional license for initial licensure for any facility regulated by AHCA.

### Effect of the Bill

The bill amends s. 408.808, F.S., to allow AHCA to issue a provisional license for initial licensure to all regulated providers. According to AHCA, there have been instances when a provider's license is revoked because they forgot to renew their license, so they have to go through the process of applying for initial licensure, which can often take a long time.<sup>71</sup> In such instances, residents or patients have to be moved and other accommodations must be made. Allowing AHCA to issue a provisional license in such instances will allow the provider to go through the licensure process while avoiding an interruption in client services.

## **Comprehensive Emergency Management Plans**

### Current Situation

Different provider types are subject to different comprehensive emergency management plan submission requirements in their authorizing statutes. ALFs are required to get plan approval by local emergency management officials prior to being licensed.<sup>72</sup> According to AHCA, some local jurisdictions refuse to review a plan until the provider is licensed, making it impossible for providers within those jurisdictions to become lawfully licensed.<sup>73</sup>

### Effect of the Bill

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<sup>67</sup> Id.

<sup>68</sup> S. 408.808(1), F.S.

<sup>69</sup> S. 408.808(3), F.S.

<sup>70</sup> S. 408.808(2), F.S.

<sup>71</sup> Supra FN 9.

<sup>72</sup> S. 429.41(1)(b), F.S.

<sup>73</sup> Supra FN 9.

The bill amends s. 408.821, F.S., to require providers that are required by authorizing statutes and AHCA rule to have a comprehensive emergency management plan to:

- Submit the plan within 90 days after initial licensure and change of ownership, and notify AHCA within 30 days after submission of the plan;
- Submit the plan annually and within 30 days after any significant modification to a previously approved plan;
- Respond with necessary plan revisions within 30 days after notification that plan revisions are required; and
- Notify AHCA within 30 days after approval of its plan by the local emergency management agency, county health department, or DOH.

## **Medicaid Program Integrity Hospital Retrospective Review Program**

### Current Situation

Section 409.905(5), F.S., requires AHCA to pay for all covered services for the medical care of a Medicaid recipient who is admitted to a hospital as an inpatient by a licensed physician or dentist. However, AHCA may limit the payment for inpatient hospital services, for a Medicaid recipient 21 years of age or older, to 45 days or the number of days necessary to comply with the General Appropriations Act (GAA). This statute authorizes AHCA to implement reimbursement and utilization management reforms in order to comply with any limitations or directions in the GAA, including:

- Prior authorization for inpatient psychiatric days;
- Prior authorization for non-emergency hospital inpatient admissions for individuals at least 21 years of age;
- Authorization of emergency and urgent-care admissions within 24 hours after admission;
- Enhanced utilization and concurrent review programs for highly utilized services;
- Reduction or elimination of covered days of service;
- Adjusting reimbursement ceilings for variable costs;
- Adjusting reimbursement ceilings for fixed and property costs; and
- Implementing target rates of increase.

Pursuant to s. 409.905(5)(a), F.S., AHCA must discontinue its hospital retrospective review program once it has implemented its prior authorization program for hospital inpatient services.

AHCA's Bureau of Medicaid Program Integrity (MPI) performs routine pre-claim and post-claim reviews to determine the appropriateness of historical, existing, and future provider reimbursement. Since the inception of MPI, AHCA's claim review processes have recovered in excess of one billion dollars.<sup>74</sup>

MPI also conducts provider audits based on probable cause through the Alien Audit Program, which was created in 2010<sup>75</sup>. The Alien Audit Program was developed after an audit report from the Health and Human Services Office of Inspector General directed the state to return the federal share of erroneous payment for certain hospital claims related to Emergent Medicaid. Since its inception, the Alien Audit Program has closed 668 cases and collected \$57,056,455.79.

In February, 2019, the First District Court of Appeal ruled that s. 409.9905(5)(a), F.S., precludes post-payment audits, including the Alien Audit Program audits, to determine the appropriateness of reimbursement, including whether prior authorization was obtained under false pretenses.<sup>76</sup> As a result, AHCA lost \$13,449,595.12 related to 42 cases that have been or will be closed at zero overpayment due to the court ruling.<sup>77</sup>

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<sup>74</sup> Id.

<sup>75</sup> Ch. 2009-223 Laws of Fla.

<sup>76</sup> *Lee Mem'l Health Sys. Gulf Coast Med. Ctr. v. State of Fla., Agency for Health Care Admin.*, 272 So.3d 431 (Fla. 1st DCA 2019).

<sup>77</sup> Supra FN 9.

Federal regulations require AHCA to have a post-payment review process for all Medicaid services.<sup>78</sup> State plans are also required, pursuant to Federal regulations, to have processes relating to identification, investigation, and referral of suspected fraud and abuse cases, which includes the requirement to have a post-payment review process.<sup>79</sup>

### Effect of the Bill

According to AHCA, the directive in s. 409.905(5)(a), F.S., to discontinue an inpatient retrospective review program was intended to refer to a specific program conducted in the Division of Medicaid when the Division shifted to a prior authorization review.<sup>80</sup> The bill removes obsolete language and adds language to clarify that AHCA may conduct reviews to determine fraud, abuse and overpayment in the Medicaid program. As a result, MPI would be able continue conducting retrospective reviews of hospital claims.

## **Medicaid Program Integrity Legal Fees**

### Current Situation

Current law authorizes AHCA to recover legal costs if they prevail in an overpayment case, but does not specifically reference costs for outside legal counsel. However, in 2019, the Division of Administrative Hearings (DOAH) ruled that s. 409.913(23)(a), F.S., does not authorize AHCA to recover full attorney's fees on MPI legal cases involving outside counsel.<sup>81</sup>

### Effect of the Bill

The bill amends s. 409.913(23)(a), F.S., to provide legal authority for AHCA to collect all legal fees incurred while defending a case if AHCA prevails, including the cost of outside counsel.

The bill provides an effective date of July 1, 2020.

## **Statewide Medicaid Managed Care Plan**

### Current Situation

Section 409.967, F.S., requires AHCA to establish a 5-year contract with each managed care plan selected during the procurement process.

Section 409.973, F.S., requires AHCA to establish 5-year contracts with managed care plans in the prepaid dental health program during the procurement process.

### Effect of the Bill

The bill requires AHCA to re-procure contracts with managed care plans in the Statewide Medicaid Managed Care program and the prepaid dental health program every 6 years instead of every 5 years, beginning with the contract procurement process initiated during the 2023 calendar year. The bill requires AHCA to extend the term of existing plan contracts for the prepaid dental health program until December 31, 2024.

Except as otherwise expressly provided in this act and except for section 46, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.

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<sup>78</sup> 42 C.F.R. § 456.23.

<sup>79</sup> 42 C.F.R. § 455.12.

<sup>80</sup> Supra FN 9.

<sup>81</sup> State of Florida, Division of Administrative Hearings, Case No. 18-5986F, June 12, 2019, the case had an overpayment of \$637,973.10 and a sanction of \$127,594.62 and AHCA was seeking fees and costs of \$330,186.14, but DOAH ruled that AHCA has the ability to collect the "costs" but not the "fees".

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 383.327, F.S., relating to birth and death records; reports.
- Section 2:** Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.
- Section 3:** Repeals s. 395.7015, F.S., relating to annual assessment on health care entities.
- Section 4:** Amends s. 395.7016, F.S., relating to annual appropriation.
- Section 5:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 6:** Amends s. 400.462, F.S., relating to definitions.
- Section 7:** Amends s. 400.464, F.S. relating to home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.
- Section 8:** Amends s. 400.471, F.S., relating to application for license; fee.
- Section 9:** Amends s. 400.492, F.S., relating to provision of services during an emergency.
- Section 10:** Amends s. 400.506, F.S., relating to licensure of nurse registries; requirements; penalties.
- Section 11:** Amends s. 400.509, F.S., relating to registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.
- Section 12:** Amends s. 400.605, F.S., relating to administration; forms; fees; rules; inspections; fines.
- Section 13:** Amends s. 400.60501, F.S., relating to outcome measures; adoption of federal quality measures; public reporting.
- Section 14:** Amends s. 400.9905, F.S., relating to definitions.
- Section 15:** Amends s. 400.991, F.S., relating to licensure requirements; background screenings; prohibitions.
- Section 16:** Amends s. 400.9935, F.S., relating to clinic responsibilities.
- Section 17:** Amends s. 408.033, F.S., relating to local and state health planning.
- Section 18:** Amends s. 408.061, F.S., relating to data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.
- Section 19:** Amends s. 408.0611, F.S., relating to electronic prescribing clearinghouse.
- Section 20:** Amends s. 408.062, F.S., relating to research, analyses, studies, and reports.
- Section 21:** Amends s. 408.063, F.S., relating to dissemination of health care information.
- Section 22:** Amends s. 408.802, F.S., relating to applicability.
- Section 23:** Amends s. 408.803, F.S., relating to definitions.
- Section 24:** Amends s. 408.806, F.S., relating to license application process.
- Section 25:** Amends s. 408.808, F.S., relating to license categories.
- Section 26:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 27:** Amends s. 408.811, F.S., relating to right of inspection; copies; inspection reports; plan for correction of deficiencies.
- Section 28:** Amends s. 408.820, F.S., relating to exemptions.
- Section 29:** Amends s. 408.821, F.S., relating to emergency management planning; emergency operations; inactive license.
- Section 30:** Amends s. 408.831, F.S., relating to denial, suspension, or revocation of a license, registration, certificate, or application.
- Section 31:** Amends s. 408.832, F.S., relating to conflicts.
- Section 32:** Amends s. 408.909, F.S., relating to health flex plans.
- Section 33:** Amends s. 408.9091, F.S., relating to Cover Florida Health Care Access Program.
- Section 34:** Amends s. 409.905, F.S., relating to mandatory Medicaid services.
- Section 35:** It is the intent of the Legislature that s. 409.905(5)(a), F.S., as amended by this act, confirm and clarify existing law.
- Section 36:** Amend s. 409.907, F.S., relating to Medicaid provider agreements.
- Section 37:** Amends s. 409.913, F.S., relating to oversight of the integrity of the Medicaid program.
- Section 38:** Amends s. 409.967, F.S., relating to managed care plan accountability.
- Section 39:** Amends s. 409.973, F.S., relating to provision of dental services.
- Section 40:** Amends s. 429.11, F.S., relating to initial application for license; provisional license.
- Section 41:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 42:** Amends s. 429.35, F.S., relating to maintenance of records; reports.
- Section 43:** Amends s. 429.905, F.S., relating to exemptions; monitoring of adult day care center programs collocated with assisted living facilities or licensed nursing home facilities.
- Section 44:** Amends s. 429.929, F.S., relating to rules establishing standards.
- Section 45:** Repeals part I of chapter 483, F.S., relating to multiphasic health testing centers.

**Section 46:** Provides an effective date of July 1, 2020, except as otherwise expressly provided in this act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
(See fiscal comments)
2. Expenditures:  
(See fiscal comments)

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill repeals licensure for multiphasic health testing center. Currently there are 187 licensed multiphasic health testing centers. As a result, multiphasic health testing centers will no longer be required to pay the biennial license renewal fee of \$952.64.

The bill exempts from health care clinic licensure, community mental health partial-hospitalization programs, and portable x-ray providers, and rural health care clinics. These providers will no longer be required to pay the \$2,000 biennial license renewal fee. AHCA estimates that approximately 200 providers would qualify for the exemption.

The bill also exempts Medicaid providers, including behavior analysis providers, from health care clinic licensure. These providers are not currently required to be licensed, but licensure will be required effective July 1, 2020<sup>82</sup>. AHCA expects 28,291 providers to qualify for the exemption. Providers who qualify for the exemption would not have to pay the \$2,000 initial licensure fee.

### D. FISCAL COMMENTS:

If the bill becomes law, AHCA would experience a loss in annual revenue of \$489,071.84 and a commensurate workload reduction, resulting from the repeal of multiphasic health testing center licensure (\$89,071.84), and the new exemptions from health care clinic licensure for community mental health partial-hospitalization programs, portable x-ray providers, and rural health care clinics (\$400,000).

Exempting low-risk Medicaid providers from health care clinic licensure will result in a cost avoidance to AHCA. AHCA previously asked for 13 full-time equivalent positions in a legislative budget request to process the approximately 28,000 anticipated applications that will be submitted by July 1, 2020.<sup>83</sup>

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<sup>82</sup> Florida Medicaid, Provider Enrollment Policy, at pg. 86, available at [https://ahca.myflorida.com/medicaid/review/Rules\\_in\\_Process/Proposed/59G-1.060\\_Enrollment\\_ProposedRule.pdf](https://ahca.myflorida.com/medicaid/review/Rules_in_Process/Proposed/59G-1.060_Enrollment_ProposedRule.pdf) (last accessed January 31, 2020).

<sup>83</sup> Supra FN 9.

AHCA lost approximately \$13.5 million in revenue related to 42 cases that have been or will be closed at zero overpayment due to the court ruling on retrospective hospital audits.<sup>84</sup> The MPI retrospective alien audit case was an isolated example, however, the bill could protect AHCA from not being able to recoup significant amounts of revenue in the future.

The bill provides authority for AHCA to collect all legal fees incurred while defending a Medicaid Program integrity case if AHCA prevails, including the cost of outside counsel. AHCA's tracking system for Medicaid recovery amounts does not distinguish legal fees, so they are unable to determine the future impact of the proposed change; however, AHCA has incurred over \$300,000 in legal fees for a single case.

The net fiscal impact is indeterminate. However, the fiscal impact is expected to be minimal because any loss in revenue will likely be offset by gains in savings and workload reductions. Specifically, the loss of revenue from licensure repeals and exemptions coupled with the potential saving in funds recouped from Medicaid overpayments and attorney fees.

### **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:**

The bill provides sufficient rule-making to AHCA to implement the provisions in the bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Health Market Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Restructures fines for nursing homes that requires additional inspections due to poor performance;
- Redefines "home health agency" to eliminate a requirement to provide staffing services;
- Replaces "organization" with "entity or person" throughout the home health agency act;
- Retains definition of chief financial officer in the Health Care Clinic Act;
- Defines the "low-risk provider" for purposes inspection waivers or delays under the bill;
- Removes outdated language and dates from background screening statutes;
- Provides legislative intent that bill language related to retrospective reviews of Medicaid hospital billing confirm and clarify existing law; and
- Expands background screening requirements for Medicaid providers; requires screening for any person with direct access to recipient financial, medical or service records.

The analysis is drafted to the committee substitute as passed by the health market reform subcommittee.

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<sup>84</sup> Id.