

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 880

INTRODUCER: Senator Baxley

SUBJECT: Nurse Registry

DATE: January 14, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Arnold | Knudson | BI | Pre-meeting |
| 2. | | | HP | |
| 3. | | | RC | |

I. Summary:

SB 880 specifies that authorized, compensable attendant care services for the benefit of an injured worker under the Workers' Compensation Law includes services provided by a licensed nurse registry.

The bill takes effect July 1, 2020.

II. Present Situation:

Workers' Compensation Attendant Care Benefits

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.¹ Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.² Medical services must be provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).³

There are several types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope

¹ Section 440.09(1), F.S.

² Section 440.13(2)(a), F.S.

³ Section 440.13(3)(a), F.S.

of household duties.⁴ Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.⁵

Providing in-home attendant care has significant advantages for both the injured worker and the carrier. The injured worker can be more comfortable than in an institution and realize better outcomes, both physically and mentally, concurrent with the carrier achieving significant cost savings.⁶ Carriers may use a nurse registry or a home health agency to obtain professional and non-professional attendant care for the injured worker.

Placement of Attendant Care Services Through Nurse Registries and Home Health Agencies

A nurse registry is a business that procures, offers, promises, or attempts to procure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers and companions to provide services to patients in their homes and temporary staff to health care facilities or other business entities.⁷ Nurse registries are governed by part II of ch. 408, F.S.,⁸ associated rules in 59A-35, F.A.C., and the nurse registry rules in 59A-19, F.A.C. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA), pursuant to part III of ch. 400, F.S., to offer contracts in Florida.⁹

The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity (e.g., a workers' compensation carrier).¹⁰ This is a key defining feature of a nurse registry: it cannot have any employees except for the administrator, alternate administrator, and office staff. All individuals who enter the home of patients to provide direct care must be independent contractors.

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual's home or place of residence.¹¹ HHAs are governed by part II of ch. 408, F.S.,¹² associated rules in ch. 59A-35, F.A.C., and ch. 59A-8, F.A.C. Like a nurse registry, an HHA must be licensed by AHCA, pursuant to part III of ch. 400, F.S., to offer contracts in Florida.¹³

⁴ Section 440.13(1)(b), F.S. Attendant care must be medically necessary and performed at the direction and control of an authorized treating physician pursuant to a written prescription. Section 440.13(2)(b), F.S.

⁵ The valuation of family-member provided attendant care is limited in both duration and cost. Section 440.13(2)(b), F.S.

⁶ A home health care study performed by the Cleveland Clinic found average per patient savings of \$6,433 in the first year after discharge, decrease in readmissions by 18 percent, and decrease in deaths by 20 percent. Roy Xiao et al., *Impact of Home Health Care on Health Care Resource Utilization Following Hospital Discharge: A Cohort Study*, *The American Journal of Medicine*, April 2018, Volume 131, Issue 4, pp.395-407, e35.

⁷ Section 400.462(21), F.S.

⁸ Section 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

⁹ Section 400.506(1), F.S.

¹⁰ See *supra* Note 7

¹¹ Section 400.462(12), (14), F.S.

¹² Section 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.

¹³ *Id.*

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with an HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and an HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; an HHA qualifies for such reimbursement.¹⁴

The Workers' Compensation Law is silent regarding how attendant care providers are selected to provide authorized compensable care for injured workers. A workers' compensation carrier has the discretion to choose attendant care providers directly or to use a nurse registry or HHA to place attendant care providers for the benefit of an injured worker.

III. Effect of Proposed Changes:

Section 1 amends s. 440.13, F.S., to revise the definition of "attendant care" to specify that authorized, compensable attendant care services for the benefit of an injured worker under the Workers' Compensation Law includes services provided by a licensed nurse registry.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹⁴ Centers for Medicare & Medicaid Services, *Medicare & Home Health Care*, <https://www.medicare.gov/sites/default/files/2018-07/10969-medicare-and-home-health-care.pdf> (last visited December 19, 2019).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill inaccurately refers to a licensed nurse registry “providing” attendant care services. Nurse registries utilize only independent contractors, thus the independent contractor nurse is providing the attendant care services. The bill should be amended to refer to the function of a nurse registry, which is to place independent contractor nurses with patients or other health care providers.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 440.13 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.