

STORAGE NAME: s1232.hcr

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS AND REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 1232

RELATING TO: Rulemaking Authority of the Agency for Health Care Administration (RAB)

SPONSOR(S): Senator Brown-Waite

COMPANION BILL(S): N/A

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE STANDARDS AND REGULATORY REFORM
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/SB 1410 authorizes the Agency for Health Care Administration (agency) to adopt rules that allow for a one-time extension of the deadline for a health care facility to file reports relating to data collection, finances, physician charges, and other requirements under chapter 408, F.S., including assessments on hospitals and nursing homes for purposes of funding the data collection and analyses responsibilities of the agency.

There is no fiscal impact on state and local government, or the private sector in general.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 Legislative Session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provisions for periodic review of rules by agencies having rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had a wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

A new standard is provided in the revised APA in s. 120.536, F.S., which effectively overturns this line of cases and imposes a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary, but not enough by itself, for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of power and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the delegated rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the **Florida Administrative Code (FAC)**. However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process, that of legislative review. The subsection provides:

“The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.”

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions of rules which the agency deems necessary, but which

currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to JAPC, there are 3,500-3,600 grants of rulemaking authority in the **Florida Statutes** falling roughly into two categories: (1) specific grants; and (2) general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority delegate rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is not apparent in the statute. The "character" of the referenced rules are a degree of specificity that is too narrow to be an articulation of the general agency mission or the purpose of the enabling legislation so as to fall within the Legislature's grant of general rulemaking authority.

Section 408.061, F.S., delegates to AHCA the authority to collect data, financial reports, and information relating to physician charges from health care facilities, health care providers, and health insurers necessary for it to carry out its duties. Under s. 408.08(13), F.S., AHCA is authorized to impose and collect a fine of up to \$1,000 per day for each day of violation on an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or a nursing home component within a continuing care facility for: refusing to file a report, failing to timely file a report, filing a false report, or filing an incomplete report relating to audited financial statements, data or financial reports or information about physician charges, as provided under s. 408.061, F.S.; failure of a hospital or nursing home to meet assessment obligations under s. 408.20, F.S.; or failure to provide documents or records requested by the agency under a provision of chapter 408, F.S. The agency is also delegated authority to assess fees on hospitals and nursing homes, pursuant to s. 408.20, F.S., for purposes of financing its data collection and analyses activities under s. 408.061, F.S.

These duties were delegated to AHCA by chapter 92-33, Laws of Florida, when the Health Care Cost Containment Board was abolished. However the report filing extension authority that the board had been delegated was not transferred to AHCA. Without such authority, AHCA would have no discretion to exercise regarding the imposition of the administrative fine of up to \$1,000 per day when a health care facility fails to meet report filing deadlines and other commitments established under chapter 408, F.S. AHCA has been extending such deadlines pursuant to Rule 59E-2.017, FAC, which the agency adopted under its general rulemaking authority as provided in subsection 408.15(8), F.S. Neither the Joint Administrative Procedures Committee nor any health care facility has challenged AHCA's authority to grant such extensions or Rule 59E-2.017, F.S.

B. EFFECT OF PROPOSED CHANGES:

Authorizes the Agency for Health Care Administration to fine health care facilities up to \$1,000 per day for each day of violation for failure to comply with various requirements imposed under chapter 408, F.S., to authorize AHCA, upon a showing of good cause, to grant to a health care facility a one-time extension of any deadline for a health care facility to timely file a required report relating to data collection, financial reporting, physician charges, or audited financial statements, and assessments on hospitals and nursing homes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the authority to make rules.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 408.08, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 408.08(13), F.S., to authorize the Agency for Health Care Administration, pursuant to rules adopted by the agency, upon a showing of good cause, to grant a one-time extension of any deadline for a health care facility to timely file a report by this section, s. 408.061, F.S., s. 408.072, F.S., or s. 408.20, F.S.

Section 2. Provides for an effective date of upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

STORAGE NAME: s1232.hcr

DATE: April 6, 1998

PAGE 9

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS AND REGULATORY REFORM:

Prepared by:

Legislative Research Director:

TERRI L. PADDON

ROBERT W. COGGINS