

STORAGE NAME: h1983.hhs

DATE: April 20, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 1983 (PCB HCL 99-08)

RELATING TO: Home Health Agency Regulation

SPONSOR(S): Committee on Health Care Licensing and Regulation; Representative Fasano and others

COMPANION BILL(S): CS/SB 2360 (s), HB 923(c), and SB 2114©

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 5 NAYS 0
- (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1983 (PCB HCL 99-08) requires that any two or more persons providing home health services must be licensed as a home health agency or nurse registry. In July, 1996, the First District Court of Appeals ruled that only home health care providers classified as home health agencies are regulated under current law and that personnel who do not define themselves as home health agency staff are not subject to regulation under Part IV, Chapter 400, Florida Statutes.

The bill also revises and adds definitions regarding home health services and home health agencies. It further clarifies the therapeutic services provided in the home and identifies those providers requiring licensure. The regulation applies to home health care practitioners; however, there are several relevant exemptions, including certain professionals and entities.

The proposed changes allow the Agency for Health Care Administration to enforce home health care regulation on all home health care agencies and nurse registries that are not exempt in the statute.

According to the Agency for Health Care Administration, there is minimal fiscal impact on the Department of Children and Families, the Florida Department of Law Enforcement, and the private sector for the costs of background screening. The bill does not appear to have any fiscal impact on local government.

The bill provides an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

As of March, 1999, there are 1,216 licensed home health agencies, 48 licensed nurse registries, and 695 registered homemakers, companions, and sitters in the State of Florida. Licensure requirements relating to home health care are ambiguous. In *Associated Home Health Industries of Fla., Inc., v. AHCA*, 677 So.2d 60 (Fla. 1st DCA 1996), the court affirmed the final order of the Hearing Officer (now Administrative Law Judge) that denied the challenge to a proposed rule to be promulgated under Chapter 400, F.S. The court approved of the Hearing Officer's reasoning that the rule was consistent with the plain and unambiguous meaning of the statute that the Legislature intended to impose the obligations of Chapter 400, F.S., on only those providing home health services who hold themselves out to the public as licensed home health agency personnel.

The Agency for Health Care Administration (AHCA) and Associated Home Health of Florida Industries (AHHFI) have identified on-going problems with unlicensed activity in the home care services. The absence of clear definitions and direction coupled with minimal penalties for unlicensed home health agency activities contribute to the perpetuance of identified problems. These problems include:

- ❖ Problems with regulating homemakers, companions, and sitters that provide hands-on care.
- ❖ The failure of agencies to pay the administrative fines levied against them and that current law does not provide recourse in such situations.
- ❖ The lack of restrictions against owners or applicants of homemaker and companion agencies that have been excluded, suspended, terminated, or involuntarily withdrawn from any governmental health care or health insurance program.
- ❖ The lack of deficiency classifications that arise from surveys of agencies. Also, no criteria for certain levels of fines that may be imposed for survey deficiencies exists although criteria for other types of health care licensed facilities are available.
- ❖ Problems with contractual relationships between home health agencies and the companies from which personnel is contracted. These problems include identifying who maintains control of the case management and Medicare and Medicaid fraud.
- ❖ Problems with pass-through agencies not providing any services.
- ❖ The Agency for Health Care Administration has identified cases in which mentally competent patients have required nursing home placements for medication assistance. These patients are mentally alert and aware of their medicine regime, but are physically unable to administer medication that normally can be self-administered. Such patients must have licensed personnel administer the medications. This requirement may increase the cost of care for these patients.
- ❖ The absence of communicable disease screening requirements for personnel in nurse registries that have direct contact with patients. Home health personnel are currently required to complete such screening.

B. EFFECT OF PROPOSED CHANGES:

The major provisions of HB 1983 include:

- ❖ Revises and adds definitions for administrator, agency, client, director of nursing, home health aide, home infusion therapy provider, home infusion therapy, organization, personal care, physician, and skilled care.
- ❖ Specifies that a companion or a homemaker cannot provide hands-on personal care.
- ❖ Specifies that an entity receiving a certificate-of-need exemption may request one license to provide Medicare and non-Medicare home health services to the facility and non-Medicare home health services in counties within the agency service districts.

STORAGE NAME: h1983.hhs

DATE: April 20, 1999

PAGE 3

- ❖ Clarifies that infusion therapy providers are those which provide the services in the home and requires that such providers be licensed as home health agencies or opt to be licensed as nurse registries.
- ❖ Requires that licensed or registered organizations must include their license or registration number in advertisements. Authorizes the Agency for Health Care Administration to levy fines of not less than \$100 for failure to meet this requirement.
- ❖ Exempts the following from the licensure requirements of this part:
 - (a) home health agencies operated by the federal government;
 - (b) home health services provided by a state agency, either directly or through a contract with:
 - The Department of Elderly Affairs;
 - The Department of Health, a community health center, or a rural health network which furnishes home visits for the purpose of providing environmental assessments, case management, health education, personal care services, family planning, or follow up treatment, or for the purpose of monitoring and tracking disease; and
 - persons who have a developmental disability.
 - © health care professionals acting within the scope of their professional license to provide care to patients in their homes.
 - (d) home health aides or certified nursing assistants acting within the definitions and standards of their occupations and providing hands-on care to patients in their homes;
 - (e) individuals acting alone;
 - (f) providers of home dialysis instruction, equipment, and supplies;
 - (g) the delivery of nursing home services;
 - (h) the delivery of assisted living facility services;
 - (i) the delivery of hospice services;
 - (j) the delivery of hospital services;
 - (k) the delivery of community residential services;
 - (l) providers in a not-for-profit, community-based agencies providing early intervention services to infants and toddlers;
 - (m) certified rehabilitation agencies and comprehensive outpatient rehabilitation facilities; and
 - (n) the delivery of adult family-care home services.
- ❖ Provides that financial documents prepared for a certificate of need application can be submitted for a licensure application, if done so within 12 months.
- ❖ Specifies that proof of insurance coverage must be submitted for renewal applications and coverage must include both malpractice and liability coverage.
- ❖ Changes the required date for submission of a renewal application from 60 to 90 days prior to expiration of the license.
- ❖ Specifies that a renewal application must include financial documents if there is evidence of financial instability.
- ❖ Provides that the Agency for Health Care Administration may not issue a license to a home health agency which has unpaid fines assessed under this part.
- ❖ Adds disciplinary actions for which the Agency for Health Care Administration can enforce, including failure to provide one service for 6 consecutive months; operating without a license when applicant or owner operates or has operated a home health agency; denying the Agency for Health Care Administration entry to conduct a survey; falsely representing a material fact in the application; and where an applicant, owner, or person who has 5% or greater interest in the agency has violated standards or conditions related to home health licensure or certification or has been excluded, suspended, terminated, or involuntarily withdrawn from any governmental health care or health insurance program.
- ❖ Authorizes the Agency for Health Care Administration to impose fines for various classes of deficiencies.
- ❖ Specifies that treatment orders are required for those receiving skilled care and the order must be signed by the physician directing the orders within 24 days from the start of care.

- ❖ Specifies that for clients receiving non-skilled services and not requiring a physician's order, the home health agency can establish a service provision plan. Further specifies that upon termination of service, records and the service provision plan must be maintained for one year.
- ❖ Specifies that the home health agency to which the patient has been admitted must provide the initial admission, service evaluations, and discharge visits and is fully responsible for the care it provides.
- ❖ Specifies that unlicensed personnel may assist a patient with medications that are intended to be self-administered.
- ❖ Authorizes the Agency for Health Care Administration to establish minimum standards for: supervision requirements, curriculum and instructor qualifications for home health aide training, the sharing of staff within a retirement community, and requirements for on-site and electronic accessibility of supervisory personnel.
- ❖ Adds requirement that each operational site of a nurse registry be licensed, except for additional sites located in the same county as the main office. Also adds that nurse registry personnel must show documentation that they are free from communicable diseases.
- ❖ Removes the dual registry requirements of certified nursing assistants, homemakers, and companions.
- ❖ Deletes the requirement that individuals providing homemaker and companion services must be registered and requires that only the organization be registered.
- ❖ Adds requirements for additional background screening for managing employees and financial officers of homemaker and companion service agencies.
- ❖ Adds criteria for denial or revocation of a homemaker or companion registration, including false representation of material fact in the application or prior action taken against the applicant by Medicare or Medicaid.
- ❖ Permits the sharing of screening results between agencies.
- ❖ Establishes the Task Force on Home Health Services Licensure composed of representatives from the Agency for Health Care Administration, Department of Elderly Affairs, Department of Health, Associated Home Health Industries, and Private Care Association of Florida to review the law and recommend additional legislative revisions to the statute, as necessary.

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 Agency for Health Care Administration may adopt rules for assistance with self-administration of medications, supervision of personnel, on-site and electronic accessibility of supervisory personnel, and shared staffing if the home health agency is part of a retirement community.

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

Yes. The bill permits trained, unlicensed personnel to assist with medications as currently permitted in assisted living facilities. Also, home health agencies are expected to have greater oversight for the care of admitted patients, even though such agencies may contract for the patient's services from another agency. Background screenings

are now required for managing employees and financial officers of homemaker and companion agencies.

(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?

No.

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

Yes. Homemaker and companion agencies must pay for Level 2 screening for administrators and financial officers at a cost of \$45 per person. Presently, only Level 1 screening is required for administrators at a cost of \$21 per person. Financial officers are not subject to screening requirements.

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

No.

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

No.

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

No.

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?

No.

- 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?

The family would continue to make decisions relating to home health care.

- (3) Are private alternatives permitted?

N/A

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

No.

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

No.

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

No.

- 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:

Amends Sections 400.462, 400.464, 400.471, 400.474, 400.484, 400.484, 400.487, 400.491, 400.497, 400.506, 400.509, 400.512, and 408.032, Florida Statutes.

Creates s. 400.488, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.462, Florida Statutes, to add definitions for administrator, client, director of nursing, home health aide, home infusion therapy, organization, personal care, and skilled care. Requires that each licensed home health agency have one administrator and one director of nursing managing no more than five licensed home health agencies located within one agency district or county. The home health agencies managed by the administrator and director of nursing may also include home health agencies part of a retirement community providing multiple levels of care.

Section 2. Amends s. 400.464, Florida Statutes, to establish licensure and exemption requirements. Identifies that an organization is comprised of any two or more persons who act in the capacity as home health personnel. Requires organizations for which licensure or registration is required must include their license number in advertisements. Authorizes the Agency for Health Care Administration to levy a fine of not less than \$100 for failure to meet this requirement.

Section 3. Amends s. 400.471, Florida Statutes, to provide for license, fees, provisional licensure, and temporary permits. A renewal application is to be submitted 90 days prior to the expiration of a license. This is a change from 60 days and conforms with other statutory licensure programs under Chapter 120, F.S. This section further clarifies insurance requirements and adds malpractice insurance to the existing liability insurance requirement. Also provides that the Agency for Health Care Administration may not issue a license to any home health agency that has unpaid fines.

Section 4. Amends s. 400.474, Florida Statutes, to provide grounds for disciplinary action penalties for operating without a license, and grounds for revocation or suspension of the license. The Agency for Health Care Administration may deny, revoke, or suspend a license or may impose a fine if the home health entity does not submit to a monitoring visit or complaint investigation, falsely represents facts in the licensure application, or has been excluded, suspended, or terminated from the Medicaid or Medicare program in Florida or any other state.

Section 5. Amends s. 400.484, Florida Statutes, to establish administrative fines for various classes of deficiencies. These classifications and penalties comport with statutory provisions already in effect for nursing homes and assisted living facilities. The classes and penalties are as follows:

Class I: is an act, omission, or practice that results in a patient's death, disablement, or places patient in an imminent risk. Penalties include a \$5,000 fine per occurrence per day, or a moratorium, and/or revocation of licensure.

Class II: is an act that has a direct adverse effect on the health, safety, or security of the patient. Penalties include a \$1,000 fine per day, and/or moratorium on admissions, and/or suspension of the license.

Class III: is an act that has an indirect adverse effect on the health, safety, or security of the patient. Penalties include up to a \$500 fine for each occurrence and each day that an uncorrected repeated deficiency exists.

Class IV: relates to issues within reports, forms, or documents and does not impact the safety or well-being of patients. Penalties include up to a \$200 fine for each occurrence and each day.

Section 6. Amends s. 400.487, Florida Statutes, to provide for patient assessment plan, establishment, and review of the patient's plan of care. Also establishes that a service provision must be written for home health services, homemaker, or companion services not requiring a physician's order. When nursing services are required, the home health agency must conduct an admission visit, service evaluation visits, and a discharge visit.

Section 7. Creates s. 400.488, Florida Statutes, to permit assistance with self administration of medication. Patients who are capable of self-administering their own medications without assistance are encouraged and allowed to do so. An unlicensed person may assist a patient whose condition is stable, provided the patient has given written consent.

Section 8. Amends s. 400.491, Florida Statutes, to provide for maintenance of a service provision plan, including a plan for non-skilled services. Also clarifies that clinical records must be maintained for persons receiving skilled care from a home health agency.

Section 9. Amends s. 400.497, Florida Statutes, to provide for training qualifications for home health aides. Identifies supervisory qualifications and that the Agency for Health Care Administration will establish curriculum and instructor training. Further identifies that the home health agency may provide the training. This section adds that rulemaking must include requirements for onsite and electronic accessibility of supervisory personnel. Shared staff is permitted if the home health agency is part of a retirement community providing multiple levels of care and is located on one campus.

Section 10. Amends s. 400.506, Florida Statutes, to provide for licensure of nurse registries. Requirements include background screening, submission of pertinent suspensions or terminations from Medicaid or Medicare, and submission of convicted offenses. Establishes penalties for falsifying information.

Section 11. Amends s. 400.509, Florida Statutes, to provide registration requirements of particular service providers. The service providers require a background screening for the agency and all employees working in the agency.

Section 12. Amends 400.512, Florida Statutes, to provide background and pre-employment screening of home health agency personnel. Additionally, permits the sharing of screening information between home health agencies, nurse registries, and homemaker and companion services for the purpose of meeting employment screening requirements. Adds nurse registries to the agencies that are specified as having no monetary liability for terminating the employment or contract of a person with a confirmed report of abuse, neglect, or exploitation.

Section 13. Amends subsection (9) of s. 408.032, Florida Statutes, to cross reference the definition of "home health agency" provided in s.400.462(8), F.S.

Section 14. Creates a Task Force on Home Health Services Licensure that will review Chapter 400, Part IV, and recommend additional legislative revisions to the statute. Specifies the issues and membership of the task force and directs that a report must be submitted to the appropriate legislative committees by December 31, 1999.

Section 15. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Background screening fees collected by the Agency for Health Care Administration will be passed through to the Federal Bureau of Investigation, Florida Department of Law Enforcement and the Department of Children and Family Services to cover their respective processing costs.

Revenues: 1999-00 2000-01

Agency for Health Care Administration
Background screening fees
FBI fingerprint checks for:

350 Existing Administrators @ \$39	\$13,650	
350 Existing Financial Officers @ \$39	\$13,650	
90 Anticipated Administrators @ \$39		\$3,510
90 Anticipated Financial Officers @ \$39		\$3,510

Department of Children & Family Services Abuse Registry screening for:		
350 Existing Financial Officers @ \$6	\$ 2,100	
90 Anticipated Financial Officers @ \$6		\$ 540

Total Revenue	<u>\$ 29,400</u>	<u>\$ 7,560</u>
---------------	------------------	-----------------

Expenditures:

Agency for Health Care Administration Pass through of screening fees to FDLE for FBI and DCF	\$ 29,400	\$ 7,560
--	-----------	----------

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See III. A. 2.

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:

The FBI fingerprint screening of homemaker and companion agency administrators is \$39 per person. The Level 2 screening fee for homemaker and companion agency financial officers is \$45 per person, which is comprised of the \$39 FBI fingerprint check plus the \$6 abuse registry screening. Prior to HB 1983, only a Level 1 screening was required. Level 1 screenings cost \$15 for a FDLE check and \$6 for the abuse registry screening.

\$39 + \$45 = \$84 estimated fees per agency
\$84 x 350 agencies = \$29,400.

The Agency for Health Care Administration estimates the cost of screening for new agencies and changes in personnel will be \$5,880 to \$7,560 in subsequent years.

2. Direct Private Sector Benefits:

The bill saves some money since only one license is required rather than two for Medicare and non-Medicare certificate-of-need exempt home health agencies. Also, individual homemakers, sitters, and companions are not required to be registered or screened. Thus, they will save the \$25 registration fee plus the \$21 in Level 1 screening fees they are currently paying.

According to the Agency for Health Care Administration, this is estimated savings of \$15,870 (\$46 x 345 individuals).

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

The bill clarifies those who must be licensed and exempts more entities from licensure than current law. It also provides for greater penalties for unlicensed activity.

D. FISCAL COMMENTS:

Fees are expected to support the costs of background screening.

The bill adds FBI fingerprint checks for administrators of homemaker and companion agencies and Level 2 screening, which includes abuse registry, FDLE, and FBI fingerprints for financial officers of homemaker and companion agencies. Administrators currently receive abuse screening and FDLE criminal records checks. This is screening for an estimated 700 individuals in the first year, with approximately 70 to 90 individuals in subsequent years. The Agency for Health Care Administration can absorb this workload within the existing resources of its Home Care Unit in the Bureau of Health Facility Compliance.

Fees received for background screening are passed through to the Department of Children and Families and FDLE.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues 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:

The following are comments of the Committee on Health Care Licensing and Regulations:

This bill was initiated by the Associated Home Health Industries of Florida. Similar issues have been addressed in the 1997 and 1998 legislative sessions by the Agency for Health Care Administration.

The Agency for Health Care Administration and Associated Home Health Industries of Florida have done considerable work with other industry associations and state agencies to develop the language contained in HB 1983.

On March 19, 1999, The Department of Education, State Board of Independent Postsecondary Vocational, Technical, Trade and Business Schools, contacted the Committee on Health Care Licensing

and Regulation regarding the establishment of minimum training requirements for home health aides addressed in Section 9 of the bill. According to this board, the establishment of a curriculum framework and program standards, as well as the training of home health aides in an agency, must comply with Chapter 246, Florida Statutes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 8, 1999, the Committee on Governmental Rules and Regulations adopted the following amendments to HB 1983:

- Amendment 1. Provides that language conform to current standards of rulemaking authority pursuant to the provisions of chapter 120, F.S.
- Amendment 2. Provides that language conform to current standards of rulemaking authority pursuant to the provisions of chapter 120, F.S.
- Amendment 3. Provides that midwives, as defined under chapter 467, acting alone to provide care to patients in their home are exempt from licensure requirements pursuant to the provisions of s. 400.464, F.S.
- Amendment 4. Technical amendment. Strikes the word "to" on page 5, line 23.
- Amendment 5. Clarifying amendment. Inserts the phrase "services provided to persons" and strikes the word "persons" from page 11, line 1.
- Amendment 6. Clarifying amendment. Inserts the phrase "through the" before the word "registrant" on page 38, line 4.
- Amendment 7. Provides a revised definition of the term "organization." The amendment language conforms the house version's definition of organization with the definition already provided for in the Senate's companion bill CS/SB 2360.
- Amendment 8. Provides that acupuncturists, as defined under chapter 457, acting alone to provide care to patients in the patient's home are exempt from licensure requirements pursuant to the provisions of s. 400.464, F.S.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

C. Marielle Harvey

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

Veronica P. Alvarez

David M. Greenbaum

**AS FURTHER REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES
APPROPRIATIONS:**

Prepared by:

Staff Director:

Tom Weaver

Lynn Dixon