

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

**BILL:** CS/SB 2360

**SPONSOR:** Health, Aging and Long-Term Care Committee and Senator Thomas

**SUBJECT:** Home Health Agencies

**DATE:** March 31, 1999                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 2360 substantially revises provisions relating to licensure of home health agencies and nurse registries, and registration requirements for homemaker, companion and sitter service providers. Generally, the bill: (1) creates several new definitions, many containing substantive language, and revises several existing definitions; (2) authorizes continuing care facilities or certain residential facilities serving retired military personnel to request one home health agency license for provision of services to their residents and for provision of non-Medicare reimbursed home health services to persons in one or more counties within the Agency for Health Care Administration (AHCA) service district in which that the facility has been licensed to provide home health services to its residents; (3) revises the list of entities and professionals exempted from home health agency licensure; (4) revises licensure application requirements relating to documentation; (5) subjects a home health agency to disciplinary action if it, or its employees, fail to provide at least one of the statutorily defined home health services to patients for 6 consecutive months; (6) delineates regulatory deficiencies within a classification structure with a class I deficiency designated the most egregious and a class IV the least egregious; (7) revises requirements relating to patient care plans, distinguishing between patients receiving skilled care and those who are not receiving that level of care; (8) adds authority for an unlicensed person to assist patients with self-administration of medication under certain specified circumstances; (9) provides supervision requirements for all home health agency personnel and authorizes AHCA to establish the curriculum and instructor qualifications for home health aide training and permits home health agencies to provide such training; (10) requires nurse registries to license each operational site, unless there is more than one such site within a county and authorizes nurse registries to refer home health aides who meet certain training requirements under the same circumstances and limitations that nurse registries refer certified nursing assistants; (11) exempts domestic maid services and sitter services from registration requirements while retaining the registration requirement for homemaker and companion services providers; (12) deletes sitters from employment screening requirements, requires contractor screening, and establishes alternative proofs of compliance with employment screening requirements; and (13)

creates a task force on home health agency licensure that is to submit its report to the Legislature by December 31, 1999.

This bill amends the following sections of the Florida Statutes (F.S.): 400.462, 400.464, 400.484, 400.487, 400.497, 400.509, and 400.512; and ss. 400.471, 400.474, 400.491, and 400.506, 1998 Supplement.

This bill creates section 400.488, Florida Statutes, and one undesignated section of law.

## **II. Present Situation:**

### **Home Health Agencies**

The Agency for Health Care Administration licenses home health agencies. The agency must process a licensure application, complete with its supporting documentation, within 60 days of receipt. As of March, 1999, there are 1,216 licensed home health agencies in Florida. It is unclear which individuals or organizations need to be licensed as home health agencies. Ambiguity arises from a July, 1996, First District Court of Appeals ruling concluding that the Legislature imposed obligations from Florida Statutes, Chapter 400, Part IV, only upon those providing home health services who hold themselves out to the public as licensed home health agency personnel. In other words, persons who deliver health-related care in private residences and do not identify themselves as being employed by a home health agency, may not be regulated. Part IV of chapter 400, F.S., was amended in 1998 by chapter 98-171, *Laws of Florida*, to require background screening of home health agency personnel.

The Agency for Health Care Administration reports that there is a problem regarding contractual relationships between home health agencies and the companies from which they are contracting personnel. This problem includes identifying who maintains control of the case management and can include Medicare and Medicaid fraud. There have also been concerns about agencies providing services solely as pass-through agencies and not providing any services. As a result of widespread fraud, Operation Restore Trust was initiated by the federal Health Care Financing Administration to investigate fraud by Medicare providers, including home health agencies; Florida was one of the states targeted for investigation. Operation Restore Trust fraud detection recommendations have been incorporated into the licensure and Medicare certification survey processes currently conducted by AHCA. These measures have increased survey inspection time by 25 percent due to billing reviews and interviews of certain patients.

### **Nurse Registries**

As of March, 1999, there were 48 licensed nurse registries in Florida. Nurse registries are licensed by AHCA under s. 400.506, F.S., 1998 Supplement, for a period of 1 year. As provided under Rule 59A-18.002, *Florida Administrative Code* (F.A.C.), nurse registries are businesses that refer registered nurses, licensed practical nurses, certified nursing assistants, homemakers, companions, or sitters to individuals receiving health care services in their home, or in a hospital, ambulatory surgical center, nursing home, assisted living facility, or hospice. A nurse registry is any person that procures, offers, promises, or attempts to secure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, sitters, companions, or

homemakers, who are compensated by fees as independent contractors, including both contracts for the provision of services to patients and contracts to provide private duty or staffing at health care facilities. Nurse registry services include health care related services provided to a person by an individual compensated by fees as an independent contractor referred through a nurse registry. Such services are limited to: (1) nursing care provided by licensed registered nurses or licensed practical nurses; (2) care and services provided by certified nursing assistants; and (3) homemaker, companion, or sitter services. Section 400.506, F.S., 1998 Supplement, contains revisions to the regulation of nurse registries that require employment screening of person referred by such entities.

### **Homemakers, Companions, and Sitters**

As of March, 1999, there were 695 registered homemakers, companions, and sitters in Florida. The law governing homemakers, companions, and sitters is s. 400.509, F.S., which provides that any person that provides domestic maid services, sitter services, companion services, or homemaker services and *does not provide a home health service* to a person is exempt from licensure. Any person, however, that provides sitter services for adults, companion services, or homemaker services must *register* with AHCA. Registration consists of paying a \$25 registration fee annually and filing with AHCA, under oath: (1) the name, address, date of birth, and social security number of the individual, or the name and address of the person, providing the service; (2) if the registrant is a firm or partnership, the name, address, date of birth, and social security number of every member; (3) if the registrant is a corporation or association, its name and address, the name, address, date of birth, and social security number of each of its directors and officers, and the name and address of each person having at least a 10 percent interest in the corporation or association; and (4) the name, address, date of birth, and social security number of each person employed or under contract.

When employed by a home health agency, a homemaker must, under Rule 59A-8.0095, F.A.C.: (1) receive at least 16 hours of training in topics related to human development and interpersonal relationships, nutrition, marketing, food storage, use of equipment and supplies, planning and organizing of household tasks and principles of cleanliness and safety; (2) maintain the home in an optimum state of cleanliness and safety depending upon family resources; (3) perform the functions generally undertaken by the customary homemaker, including such duties as preparation of meals, laundry, shopping and care of children; (4) report to the appropriate supervisor any incidents or problems related to work or to the family; (5) report any unusual incidents or changes in the patient's behavior to the case manager; and (6) maintain appropriate work records. As provided under Rule 59A-8.0095, F.A.C., sitters and companions employed by home health agencies must: (1) provide companionship for the patient; (2) provide escort services such as accompanying the patient to doctors' appointments; (3) provide light housekeeping tasks such as preparation of a meal or laundering the patient's personal garments; (4) maintain a chronological written record of services; and (5) report any unusual incidents or changes in the patient's behavior to the case manager.

The Agency for Health Care Administration reports on-going problems with respect to homemakers, companions, and sitters that provide hands-on care. Such care appears to be beyond the scope of services that they are authorized to provide. In fact, subsection 59A-8.0095(11), F.A.C., relating to home health agency personnel, expressly prohibits homemakers, companions

and sitters from performing any hands-on personal care services, when they are employed by home health agencies. Further, AHCA outlines that some agencies do not pay the administrative fines levied against them and current law does not provide recourse in such situations.

### **Agency for Health Care Administration**

Chapter 92-33, Laws of Florida, transferred health facility regulation from the Department of Health and Rehabilitative Services (HRS) to the Agency for Health Care Administration (AHCA or agency), which was created by s. 1 of chapter 92-33, Laws of Florida. Effective July 1, 1994, regulatory jurisdiction over health care professionals was transferred to the agency from the Department of Business and Professional Regulation. However, effective July 1, 1997, chapter 96-403, Laws of Florida, moved the Division of Medical Quality Assurance, which is responsible for 28 regulatory boards and councils from the agency to the Department of Health. The Department of Health is required to contract with AHCA for consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance or its regulatory boards or councils.

The agency administers 25 regulatory programs relating to health care facilities and health care services, totaling approximately 15,500 licensed providers. Licensure for these providers occurs either annually or biennially. Most facilities and programs that are subject to licensure regulation by AHCA are required, by statute, to undergo on-site survey inspections to determine compliance with minimum quality-of-care standards.

### **Employment Background Screening**

The public is at risk from providers who have a history of fraud, abuse, or other crimes that may form a pattern of behavior and a mode of doing business that is continuously repeated. Most licensed facilities and services currently comply with background screening requirements for certain employees and owners.

The law requires that, for Florida Department of Law Enforcement (FDLE) background screenings that result in reports of criminal offenses, an explanation be provided to AHCA in writing giving the circumstances regarding the offense, the outcome of the legal action, any court documents regarding the offense, information as to the injury to any victim, and any other facts relevant to an offense. Section 415.107, F.S., requires that “hits” (a finding of a reported incident) resulting from abuse background screenings that are proposed confirmed (this means a report of abuse, neglect, or exploitation is made and the adult protective investigator alleges that there is a preponderance of evidence that abuse, neglect, or exploitation occurred and the alleged perpetrator is identified) be explained in writing. The person identified must provide information regarding the circumstances surrounding the incident, the nature of the situation, any harm to the victim, and the history of the person since the incident, or other information that indicates the person is not a danger to the safety or well-being of aged persons or disabled adults. Failure, on the part of the person identified, to satisfactorily resolve the background screening issues can result in denial of an assisted living facility, adult day care center, or adult family care home license. Confirmed reports of abuse, neglect, or exploitation can result in denial of an assisted living facility, adult day care center, or adult family care home license.

Section 400.512, F.S., states that all staff who enter a patient's home and the administrator of the home health agency delivering services to the patient must be screened by FDLE and the Department of Children and Family Services through the central abuse registry. Homemakers, companions, sitters, and nurse registries also fall under s. 400.512, F.S., screening requirements. When direct-care staff fail to meet screening requirements in home health agencies, nurse registries, and homemaker, companion, and adult sitter services agencies, those individuals must be barred from employment.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 400.462, F.S., providing definitions used in the Home Health Services Act, to: (1) define the additional terms "administrator," "agency," "client," "director of nursing," "home health aide," "home infusion therapy provider," "home infusion therapy," "organization," "personal care," "physician," and "skilled care;" and (2) revise the meaning of "certified nursing assistant," "companion" or "sitter," "department," "home health agency," "home health services," "homemaker," "nurse registry," "screening," and "staffing services."

In the definition of "Administrator," after defining the term, additional substantive provisions are included that: establish the qualifications of an administrator; limit the number of home health agencies that an administrator may manage to five, within one agency service district or within an immediately contiguous county; authorize an employee of a retirement community that provides multiple levels of care to administer the home health agency and up to a maximum of four entities licensed under chapter 400 that are owned, operated, or managed by the same corporate entity; and require an administrator to designate, in writing, a qualified alternate administrator for each licensed entity.

The definition of "Certified nursing assistant" is changed to require a licensed home health agency or licensed nurse registry to ensure that certified nursing assistants employed under contract are adequately trained to perform the tasks of a home health aide in the home setting.

"Client" is defined as an individual who receives personal care services, companion services, or homemaker services in his or her home or place of residence. This is to differentiate such individuals from "patients," who receive home health services in their place of residence.

The definition of "Companion" or "sitter" is amended to prohibit companions and sitters from providing hands-on care to a client.

In the definition of "Director of nursing," after defining the term, additional substantive provisions are included that: limit the number of home health agencies in which an individual can be a director of nursing to five, operated by a related business entity and located within one agency service district or within an immediately contiguous county; authorize an employee of a retirement community that provides multiple levels of care to be the director of nursing of the home health agency and up to a maximum of four entities licensed under chapter 400 that are owned, operated, or managed by the same corporate entity; and require a director of nursing to designate, in writing, a qualified alternate registered nurse to serve in the absence of the director of nursing for each licensed entity.

The definition of “Home health agency” is amended to permit home health agencies to provide services in settings other than health care facilities.

The definition of “Home health services” is amended to include services provided by an organization and to replace the term nutritional guidance with dietetics and nutrition practice and nutrition counseling.

The definition of “Homemaker” is amended to prohibit a homemaker from providing hands-on personal care to a client.

The definition of “Nurse registry” is amended to permit registries to secure health-care-related contracts for home health aides and not for sitters. Nurse registries are also authorized to secure contracts for the specified health care providers to provide services in business entities other than hospitals or facilities licensed under ch. 400, F.S.

“Organization” is defined to mean 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 or a health care professional and a home health aide or certified nursing assistant. The term does not include an entity using only volunteers or only individuals related by blood or marriage to the patient or client. The term organization is part of the definition of home health agency and home health services.

The definition of “Screening” is amended to include contractual history checks.

The definition of “Staffing services” is amended to include services provided in business entities other than health care facilities and to include services provided by home health aides who are employed by a home health agency or who are registered with a licensed nurse registry.

**Section 2.** Amends s. 400.464, F.S., relating to licensure of home health agencies, to: rearrange the placement of several provisions within this section; to authorize a continuing care facility certified under ch. 651, F.S., a retirement community as defined in s. 400.404(2)(g), F.S., or a residential facility that serves only retired military personnel to request one home health agency license to provide Medicare and non-Medicare home health services to residents of the facility and non-Medicare services to persons in one or more counties within the agency service district in which the home health agency is located; limit infusion therapy providers that must be licensed as a home health agency to home infusion therapy providers, as defined in section 1 of the bill; and require an organization that offers or advertises to the public *any service for which licensure or registration is required under this part* to include in the advertisement its license number or regulation number, with failure to do so being subject to an administrative fine of not less than \$100, in addition to other sanctions already in existence. The following are exempted from home health agency licensure requirements: (1) a home health agency that is operated by the federal government; (2) certain home health services provided by certain specified state agencies, including services directly provided through a program or contract of the Department of Elderly Affairs, any program offered through the Department of Health, a community health center, or a rural health network which relates to environmental assessments, case management, health education, personal care services, family planning, or follow-up treatment or for purposes of monitoring and tracking disease; and services provided to certain persons who have

developmental disabilities; (3) certain specified health care professionals, whether incorporated or not, *who are acting alone within the scope of their professional license* to provide care to patients at home; (4) a home health aide or certified nursing assistant, who acts within occupational guidelines and who provides hands-on care to patients at home; (5) individuals acting alone and not employed by or affiliated with a licensed home health agency or registered with a licensed nurse registry; (6) the delivery of instructional services in home dialysis and home dialysis supplies or equipment; (7) delivery of nursing home services to facility residents by a licensed nursing home; (8) delivery of assisted living facility services to facility residents by a licensed assisted living facility; (9) delivery of hospice services to hospice patients by a licensed hospice; (10) hospitals for services that they are licensed to deliver; (11) delivery of community residential services by a licensed community residential home; (12) a not-for-profit, community-based agency that provides early intervention services to infants and toddlers; (13) certified rehabilitation agencies and comprehensive outpatient rehabilitation facilities that are Medicare certified; and (14) delivery of adult family-care home services by a licensed adult family-care home to the residents of its facility.

**Section 3.** Amends s. 400.471, F.S., 1998 Supplement, relating to home health agency licensure, to: authorize an applicant for an initial license, or for renewal of an existing license, that has applied for a certificate of need within the preceding 12-month period to submit proof submitted for the CON process along with an attestation that there has been no substantial change in facts and circumstances underlying the original submission instead of submitting new proof; clarify that only the financial statement must be signed by a certified public accountant; require submission of proof of the statutorily minimum amount of \$250,000 per claim of malpractice insurance (covering the medical, negligence, and economic interests of clients) and liability insurance (covering death, injury, or disability of a human being and property) with an initial application for licensure and each annual licensure renewal application; require an application for license renewal to be submitted 90 days, rather than 60 days, before the expiration date of the current license; restrict when a home health agency must submit satisfactory proof of its financial ability to comply with licensure requirements to when *there is evidence of financial instability*; require satisfaction of a Medicare certification survey, in addition to obtaining a CON, before AHCA may issue a license to a home health agency that authorizes it to receive Medicare reimbursement; and require payment of all administrative fines assessed against it under the home health agency licensure law before AHCA may issue a home health agency a license.

**Section 4.** Amends s. 400.474, F.S., 1998 Supplement, providing for disciplinary actions relating to home health agency licensure, to authorize AHCA to impose penalties on an applicant for licensure or an owner of a home health agency for operating without a home health agency license, if that applicant or owner has in the past operated or currently operates a licensed home health agency. Operation of an unlicensed home health agency is designated a third degree felony. The Agency for Health Care Administration is authorized to issue a cease and desist order for activities of unlicensed home health agencies and may impose a moratorium. When AHCA determines that an unlicensed home health agency has received government reimbursement for services provided, it is required to make a fraud referral to the appropriate government reimbursement program. The Agency for Health Care Administration may deny, revoke, or suspend the license of a home health agency, or may impose an administrative fine of up to \$5,000 on a home health agency when: (1) AHCA is unable to obtain entry to the home health agency for purposes of a licensure survey, complaint investigation, surveillance visit, or monitoring visit;

(2) a licensure applicant or licensed home health agency has falsely represented a material fact in its application, or has omitted any material fact from its application; (3) an applicant, owner, or person who has a 5 percent or greater interest in a licensed entity has been previously found by a regulatory authority to have violated standards or conditions that relate to home health-related licensure or certification or to the quality of home health-related services provided, or has been or is currently excluded, suspended or terminated from, or has involuntarily withdrawn from, participation in the Medicaid program of any state, the Medicare program, or any other governmental health care or health insurance program.

**Section 5.** Amends s. 400.484, F.S., providing for AHCA's right to inspect home health agencies, to establish an inspection deficiency structure that would classify a deficiency as either: class I (following patient death, injury, or determination of imminent patient harm) sanctionable by levying an administrative fine of \$5,000 for each occurrence and each day that the deficiency exists and immediate revocation of the license or imposition of a moratorium on acquiring new patients until the deficiency is corrected; class II (based on a finding of direct adverse effect on patient health, safety, or security) sanctionable by levying an administrative fine of \$1,000 for each occurrence and each day that the deficiency exists and suspension of the license or imposition of a moratorium on acquiring new patients; class III (based on a finding of indirect adverse effect on patient health, safety, or security) sanctionable by levying an administrative fine of up to \$500 for each occurrence and each day that an uncorrected or repeated deficiency exists; and class IV (due to an act, omission, or practice related to a required report, form, or document which does not have the potential to negatively affect a patient) sanctionable by levying an administrative fine of up to \$200 for each occurrence and each day that the uncorrected or repeated deficiency exists.

**Section 6.** Amends s. 400.487, F.S., providing for patient assessment, establishment and review of a plan of care, and provision of services to home health agency patients, to require an assessment of a patient's needs within 48 hours after start of services only for home health agencies providing skilled care and to clarify that a home health agency providing skilled care must have the attending physician for the patient establish treatment orders that are signed by the physician within 24 days after the start of care. For clients in need of home health aide services, homemaker services, or companion services when the services do not require a physician's order, the home health agency must establish a service-provision plan and maintain a record of the services provided, made available to the client upon request. The requirement that home health services must be evaluated in the patient's home by a physician or registered nurse is deleted. Additionally, the home health agency to which a patient is admitted for care that is to provide nursing services must provide the initial admission visit, all service evaluation visits, and the discharge visit using qualified personnel on its payroll. All services provided to patients by others under contractual arrangements must be managed by the admitting home health agency, which is made fully responsible for ensuring that all care provided through its employees or contract staff is in compliance with licensure requirements. Skilled care provided, directly or under contract, must be supervised and coordinated in keeping with the plan of care.

**Section 7.** Creates s. 400.488, F.S., relating to assistance with self-administration of medication, 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. This section specifies what assistance with self-administration of medication



includes and what it does not include. The agency is authorized to establish by rule procedures and interpret terms as necessary to administer this section.

**Section 8.** Amends s. 400.491, F.S., 1998 Supplement, relating to clinical records for patients of home health agencies, to require a clinical record for each such patient that receives skilled care, and for each client that receives nonskilled care a service-provision plan which must be maintained by the home health agency for 1 year following termination of services. Extraneous language is deleted and a cross reference is corrected.

**Section 9.** Amends s. 400.497, F.S., requiring AHCA to adopt rules establishing minimum standards for home health agencies, nurse registries, and homemaker and companion services, to: (1) require that the rules include supervision requirements of all home health agency personnel; (2) require AHCA to establish the curriculum and instructor qualifications for home health aide training and allow licensed home health agencies to provide the training; (3) require AHCA to allow shared staffing, if the home health agency is licensed, is part of a retirement community that provides multiple levels of care, and is located on one campus; and (4) include requirements for verification of employment history for prospective employees and contractors, onsite and electronic accessibility of supervisory personnel, and treatment orders for each patient for whom physician orders are required.

**Section 10.** Amends s. 400.506, F.S., 1998 Supplement, providing for licensure of nurse registries, to require licensure of each operational site, unless there is more than one site within a county. Licensed nurse registries are authorized to refer home health aides, who meet certain training requirements, under the same circumstances and subject to the same limitations as certified nursing assistants. Additionally, persons referred by a nurse registry are required to provide current documentation that they are free from any communicable disease. (To whom the documentation is to be provided is not stated.) Language relating to nurse registry referrals to private residences is deleted.

**Section 11.** Amends s. 400.509, F.S., providing for registration of persons providing domestic maid services, companion services, or homemaker services, but who do not provide a home health service, to make the registration requirements apply only to companion services and homemaker services, not domestic maid services and sitter services. The information required for registration is modified. This section is amended to establish background screening requirements for companion services and homemaker services. Level 1 screening under chapter 435, F.S., is required for every individual who will have contact with clients. Level 2 screening under chapter 435, F.S., is required for the managing employee and the financial officer. Registrants must also obtain the contract history of persons under contract with the organization who will have contact with patients or clients. Additionally, persons or business entities that register under this section on or after October 1, 1994, are required to screen their personnel in accordance with requirements for the screening of home health personnel, nurse registry personnel, companions, and homemakers, as provided under s. 400.512, F.S.

**Section 12.** Amends s. 400.512, F.S., relating to background screening of home health agency personnel, nurse registry personnel, and companions and homemakers, to delete sitters from the screening requirements of this section, require contractor screening, establish alternative proofs of

compliance with background screening requirements and delete language repetitive of provisions contained in chapter 435, F.S.

**Section 13.** Creates a task force on home health licensure provisions, composed of representatives from the Agency for Health Care Administration, Department of Elderly Affairs, Department of Health, and Associated Home Health Industries, which will recommend additional legislative revisions to part IV of chapter 400, Florida Statutes, the Home Health Services Act. The task force must consider whether Adult Abuse Registry screening should continue to be mandated, whether individuals who provide home health services should be exempted from all state regulatory oversight, and whether mandatory registration for organizations that provide companion and homemaker services should continue. The task force must submit a report to the Legislature by December 31, 1999.

**Section 14.** Provides an October 1, 1999, effective date.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

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.

##### **B. Private Sector Impact:**

The provisions in the bill relating to personal care services may have the effect of limiting consumer options to such an extent that prices for such services will increase dramatically and will be even more difficult than present to influence through market dynamics. As provided in the bill, personal care services, such as bathing, dressing, or assisting a person

with eating, may be provided, offered, or advertised by only a home health agency licensed by the state with some very limited exceptions.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

On page 7, line 26, reference is made to s. 408.0366, F.S. There is no such section of statute. The proper cross reference should be to s. 408.036(3)(h).

On page 9, line 20, the bill refers to a “regulation number,” but on line 23 the reference is to a “registration number.” The proper term is “registration number.”

Section 1 of the bill, provides for the regulation of personal care services as a home health service through a combination of definitions. However, the manner in which the regulation is set up is circuitous, and possibly not achieved. Personal care services are not explicitly designated in the definition of the term “home health services.” Apparently the intent is to subsume personal care services under home health services through home health aide services which includes *hands-on personal care* as one of the listed services attributed to a home health aide. Home health aide services is a listed home health service. It is not clear whether *hands-on personal care is being used as if it is synonymous to personal care services*, but it is the only comparable reference to personal care services staff is able to locate that could reasonably provide a premise for language exempting certain state agencies from home health licensure for the provision of personal care services. The bill creates a definition of “personal care” to mean, but is not limited to, *assisting a patient in the activities of daily living, such as dressing, grooming, bathing, eating, or personal hygiene; assisting in physical transfer and ambulation; and supervising the self-administration of medications*. Since a new subsection 400.464(5), F.S., provides that *an organization may not provide, offer, or advertise home health services to the public unless the organization has a valid license or is specifically exempt under this part*, consumers are limited to obtaining personal care services from home health agencies, with some very limited exceptions.

Additionally, the term “organization” is defined in section 44 of the bill to mean *a corporation, government or governmental subdivision or agency, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. The term does not include an entity that provides services using only volunteers*. The underlined clause highlights a concept that is within the general usage of the term “organization,” but raises some problematic implications as the term “organization” is used in the bill.

Because *persons*, in the legal sense of the word, may include natural and corporate beings, it would apply to non-professional and professional individuals. Since professionals may incorporate themselves, individually or jointly with others, as a professional association, inclusion of the clause underlined above within the meaning of “organization” and the use of the word “organization” in the definition of “home health services” appears to have the effect of requiring two or more family members, friends, licensed physicians, nurses, therapists, or other health care professionals or allied workers such as home health aides or certified nursing assistants (CNAs), to obtain a home

health agency license to provide personal care once the provisions of the bill become law, even though the health care professionals may currently provide services, defined in the bill as home health services, in a patient's or client's home, so long as the service rendered falls within their scope of practice or training. Thus, two or more physicians or two or more CNAs working together, whether or not they are set up as a business entity, will be required to be licensed as a home health agency to provide personal care and other home health services, as specified in the bill. If they provide services individually, as allowed under an exemption provided in the bill, they are limited to 12 patients or clients, individuals or families, in a 12-month period.

One explanation for the all-encompassing scope of the changes made in the bill to the home health agency licensure law is the background screening required. However, physicians and CNAs are already subject to such screening. Of concern, also, is the ability for other health care services to be added to the list of home health services that will further restrict who can provide an increasingly wider array of health care services to consumers.

## **VII. Related Issues:**

The restrictions placed on the provision of personal care, as created in this bill, may violate state and federal antitrust laws. Antitrust law regulation seeks to ensure that sufficient competitiveness exists in the marketplace so that, the reasoning goes, a rational market-determined price will emerge. This bill appears to relegate the delivery of personal care through an oligopolistic market structure, if not an outright industry monopoly, whereby the home health industry dominates the commercial market to an extent that it will be able to control costs. Since exemptions in the bill limit other potential competitors to providing home health services to only the patients or clientele who come to them for services, prohibits open-market availability, and limits the availability of personal care provided by natural persons, who are also prohibited from commercially advertising their services, the bill appears to have the effect of setting up the home health industry as the sole legitimate provider of personal care in the state.

## **VIII. Amendments:**

None.