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 2132

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

SUBJECT: Agency for Health Care Administration; Reorganization

DATE: April 20, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carter	Wilson	HC	Favorable/CS
2.	Rhea	Wilson	GO	Favorable
3.			FP	
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 2132 designates the Agency for Health Care Administration (AHCA or agency) a department named the Agency for Health Care Administration and deletes language that places AHCA within the Department of Business and Professional Regulation. The head of the department is the Secretary of Health Care Administration who is appointed by the Governor, subject to Senate confirmation, and will serve at the pleasure of and report to the Governor. The bill deletes language that provided for the internal organizational structure of AHCA and creates the department without a delineated internal organizational structure, but establishes certain programs and activities over which AHCA has administrative jurisdiction. The agency is delegated exclusive jurisdiction over workers' compensation managed care arrangements and exclusive jurisdiction over investigations of medical services provided under such arrangements.

The statutory authority for the Florida Health Purchasing Cooperative is repealed effective December 31, 2000, or upon dissolution of the cooperative as a corporate entity, whichever occurs first.

The bill provides for a type one transfer of resources from the Department of Business and Professional Regulation to AHCA, relating to AHCA's designation as a department. The bill, also, provides for a type two transfer of certain workers' compensation managed care arrangement resources from the Department of Labor and Employment Security to AHCA.

This bill substantially amends the following sections of the Florida Statutes (F.S.): 20.42, 120.80, 215.5601, 381.0602, 381.6023, 381.90, 395.0163, 395.10972, 400.0067, 400.235, 400.4415, 400.967, 408.036, 408.05, 408.902, 409.8132, 430.710, 440.134, 478.44, 627.4236, 641.454, 641.60, 641.70, 732.9216. The bill repeals s. 408.001, F.S., and creates two undesignated sections of law.

II. Present Situation:

Organization and Operation of the Executive Branch of State Government

Constitutional Structure

Article IV, s. 6 of the State Constitution provides for the functions of the executive branch of state government. This provision limits the number of departments in Florida. Article IV, s. 6 of the State Constitution, states in part:

> All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, *exclusive* of those specifically provided for or authorized in this constitution *[emphasis added]*.

The term *department* is not defined in the State Constitution, but is defined statutorily. Section 20.04(1), F.S., defines *department* to mean ". . . the principle administrative unit of the executive branch." There are currently 24 entities that are specifically designated as departments in the *Florida Statutes*.

24 DESIGNATED DEPARTMENTS	
DEPARTMENT	**STATUTE CREATING**
Agriculture and Consumer Services	Section 20.14, F.S.
Banking and Finance	Section 20.12, F.S.
Business and Professional Regulation	Section 20.165, F.S.
Children and Family Services	Section 20.19, F.S.
Citrus	Section 20.29, F.S.
Community Affairs	Section 20.18, F.S.
Corrections	Section 20.315, F.S.
Education	Section 20.15, F.S.
Elderly Affairs (in State Constitution)	Section 20.41, F.S.
Environmental Protection	Section 20.255, F.S.
Health	Section 20.43, F.S.
Highway Safety and Motor Vehicles	Section 20.24, F.S.
Insurance	Section 20.13, F.S.
Juvenile Justice	Section 20.316, F.S.
Labor and Employment Security	Section 20.171, F.S.
Law Enforcement	Section 20.201, F.S.
Legal Affairs	Section 20.11, F.S.
Lottery	Section 20.17, F.S.

Management Services	Section 20.22, F.S.
Military Affairs	Section 250.05, F.S.
Revenue	Section 20.21, F.S.
State	Section 20.10, F.S.
Transportation	Section 20.23, F.S.
Veterans' Affairs (in State Constitution)	Section 20.37, F.S.

While there are 24 entities that are statutorily-designated as departments, there is, nevertheless, some debate regarding the exact number of departments that exist because of the wording of the constitutional limitation and because of the definitional requirements of ch. 20, F.S. Historically, there has been an issue regarding whether it is a *department* that is created or authorized in the State Constitution that does not need to be counted toward the authorized 25 departments or whether it is a *function* that is authorized or created that does not need to be counted. The issue is further complicated by the placement in departments of independent entities that themselves have the characteristics of departments. Case law on the subject is limited.[1]

Given the constitutional language, the limitation on the number of executive departments can be broadly construed as exempting any executive entity created for a constitutionally authorized function or more narrowly construed as exempting only an entity which is specifically authorized by the constitution. As explained in the Notes to the 1968 Revision to the State Constitution contained in the Florida Statutes Annotated:

> Excluded from organization into the twenty-five (or less) departments are those *functions* or those *departments* specifically provided for or authorized in the Constitution. The question as to whether it is *functions* or *departments* which are excluded may be of some importance. The structure of the first sentence of this section technically excluded *functions*, as the subject of the sentence, from the requirements of the section. Since there are many *functions* provided in the Constitution and no departments (unless the Game and Fresh Water Fish Commission and the Board of Administration, for example, are to be considered *departments*), it can be reasoned that the Constitution was intended to allow exclusion from organization into departments only those *functions* specifically provided or authorized in the new Constitution. *This is unclear and the Governmental Organization Act of 1969 did not resolve the question.*

A narrower approach was examined in a Senate interim project report entitled, *A Review of SS. 20.02-20.05 and 20.06, F.S., Relating to the Organizational Structure of the Executive Branch of State Government,*[2] in which it was stated:

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[1]Over the years, the Attorney General has issued a number of formal opinions concerning the number of departments within the executive branch, exclusive of those in the State Constitution. See, AGO 69-11; AGO 72-153; and AGO 74-291. These opinions do not provide a current number of departments. Further, the opinion of the Attorney General is not binding on the courts, but is persuasive only. *Leadership Housing, Inc. v. Department of Revenue*, 336 So.2d 1239 (Fla. 4th DCA 1976); *Beverly v. Division of Bev. of Dept. of Business Regulation*, 282 So.2d 657, 660 (Fla. 1st DCA 1973).

[2] Staff of the Senate Committee on Governmental Operations, Senator Robert T. Harden, Chairman, January 1993, pp. 41-42.

> If the constitution were meant to exempt departments from the cap of 25 departments if the function is provided for or authorized in the constitution, departments created with reference to a constitutionally-authorized function would not be subject to the limitation. Thus, departments such as the Lottery (created statutorily; constitution provides, at Art. X, s. 15, "Lotteries may be operated by the state . . . ") and the Department of Military Affairs (created statutorily; constitution provides, at Art. X, s. 2, for a militia) would not be calculated among the departments subject to the numerical limitation. . . . This is likely not the interpretation that courts would give the constitutional limitation, however, as the Supreme Court has stated:
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> > The Constitution of 1968 must be given effect according to its plain meaning and what the people must have understood it to mean at the time they adopted it.
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> *In re Advisory Opinion to the Governor*, 223 So.2d 35 (Fla. 1969), published for public distribution prior to the 1968 ratification vote, described the provision thus:
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> > This entirely new provision would reduce the number of executive departments to no more than 25 plus those specifically provided for in the Constitution. . . .

The interim project report concluded that since the term *functions* was not even mentioned in this opinion, it is strongly arguable that it is *departments* that must be specifically constitutionally authorized in order not to be included within the constitutional numerical limitation. The report further noted that the Governmental Reorganization Act of 1969, at the time of its enactment, " . . . was considered to have created 22 of the 25 authorized departments."[3] Chapter 94-235, L.O.F., which was the result of this interim project report, modified s. 20.02(2), F.S., to clarify that the more conservative construction of Art. IV, s. 6 of the State Constitution, applies. Section 20.02(2), F.S., now states:

> Within constitutional limitations, *the agencies[4] that compose the executive branch must be consolidated into no more than 25 departments*, exclusive of those specifically provided for or authorized in the State Constitution, consistent with executive capacity to administer effectively at all levels. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by s. 6, Art. IV of the State Constitution *[emphasis added]*.

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[3]The departments established in the 1969 law are as follows: (1) Department of State; (2) Department of Legal Affairs; (3) Department of Banking and Finance; (4) Department of Insurance; (5) Department of Agriculture and Consumer Services; (6) Department of Education; (7) Department of Business Regulation; (8) Department of Commerce; (9) Department of Community Affairs; (10) Department of Health and Rehabilitative Services; (11) Department of Law Enforcement; (12) Department of Revenue; (13) Department of General Services; (14) Department of Transportation; (15) Department of Highway Safety and Motor Vehicles; (16) Department of Natural Resources; (17) Department of Air and Water Pollution Control; (18) Board of Trustees of the Internal Improvement Trust Fund; (19) Department of Citrus; (20) Department of Occupational and Professional Regulation; (21) Department of Administration; (22) Probation and Parole Commission. *See, A Review of ss. 20.02-20.05 and 20.06, F.S., Relating to the Organizational Structure of the Executive Branch of State Government*, by staff of the Senate Committee on Governmental Operations, Senator Robert T. Harden, Chairman, January 1993.

[4]Section 20.03, F.S., defines *agency* to mean, as the context requires, an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.

The State Constitution presently authorizes: (1) the Department of Elderly Affairs[5]; (2) the Department of Veterans Affairs[6]; (3) the Parole Commission;[7] (4) the Fish and Wildlife Conservation Commission;[8]and (5) the State Board of Administration.[9] As such, these entities should not be calculated in the limited number of departments.

The Legislature has created a number of independent agencies within departments. The issue of whether such an independent agency within a department is subject to the limitation of 25 executive departments has been addressed by the courts. In *Agency for Health Care Administration v. Associated Industries of Florida, Inc.*,[10] Associated Industries of Florida (AIF) argued that the Agency for Health Care Administration (AHCA) constituted a 26th executive department in violation of the Constitution.[11] According to AIF, even though AHCA was statutorily placed within the Department of Professional Regulation (DPR), it effectively operated as a department because it reported directly to the governor and was not subject to DPR's supervision.[12]

Without addressing the number of constitutional departments which exist in this state, the Supreme Court held that it is within the Legislature's prerogative to create an agency within a department which reports directly to the governor *so long as that agency is functionally related to the department* in which it is placed.[13] The Court explained that AHCA's responsibilities to regulate state health care activities were similar to DPR's functions, and thus, AHCA was not a department subject to the limitation of 25.[14] The Court cautioned, however, that the Legislature is not free to create numerous independent agencies within departments with the result that these departments would ". . . resemble hodgepodges."[15]

A number of agencies, commissions, authorities, and divisions have been identified which are placed within a department, but which operate independently of it.[16] Under the Supreme Court's

[5]Article IV, s. 12 of the State Constitution.

[6]Article IV, s. 11 of the State Constitution.

[7]Article IV, s. 8(c) of the State Constitution.

[8]Article IV, s. 9 of the State Constitution.

[9]Article XII, s. 9 of the State Constitution.

[10]678 So.2d 1239 (Fla. 1996).

[11]*Id*. at 1246.

[12]*Id*. at 1247.

[13]*Id*. at 1248

[14]*Id*.

[15]*Id*.

[16](1) Agency for Health Care Administration - s. 20.42, F.S.; (2) Correctional Medical Authority - s. 945.601, F.S.; (3) Division of Administrative Hearings - s. 20.22, F.S.; (4) Division of Bond Finance - s. 215.62, F.S.; (5) Division of Retirement - s. 20.22, F.S.; (6) Education Practices Commission - s. 231.261, F.S.; (7) Florida Commission on Human Relations - s. 760.03, F.S.; (8)

holding in *Agency for Health Care Administration*, discussed *supra*, these entities do not have to be calculated in the limited number of departments so long as each entity's functions are related to the department in which it was placed.

Two executive entities are created by statute which are not created as, or connected to, departments, but which are organized and function as principal administrative units of the executive branch. As a result, they could be arguably counted as departments. The first agency in this category is the Executive Office of the Governor (EOG). The EOG was created by the Legislature and it possesses the characteristics of a department outlined by ch. 20, F.S.[17] The EOG is composed of a variety of administrative sub-units under the direction of the Governor, consistent with the requirement for the supervision of departments which is also provided in Art. IV, s. 6 of the State Constitution.[18]Additionally, the EOG performs a variety of executive functions that are not constitutional duties.

It might also be argued that the Board of Trustees of the Internal Improvement Trust Fund[19]should be counted as a department, though less persuasively. The board, while performing executive functions, has no administrative units underneath it and further, it is arguably adjunct to the Department of Environmental Protection.

In summary, applying the analyses of the constitutional limitation on executive departments discussed above, it appears that currently there are at least 22 departments[20] that count toward the constitutional limit of 25, though it is possible that the number could be as high as 24 departments. The State Constitution presently authorizes five entities that should not count

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Florida Elections Commission - s. 106.24, F.S.; (9) Information Resource Commission - s. 216.235, F.S.; (10) Public Employees Relations Commission - s. 20.171, F.S.; (11) Division of Community Colleges; and (12) Division of Universities.

[17]The Executive Office of the Governor (EOG) was created by ch. 79-190, L.O.F. That chapter transferred the Division of Planning and Budgeting and the Administration Commission from the Department of Administration, as well as other offices and commissions, to the newly-created EOG. Statutory authorization for the EOG is found in s. 14.201, F.S.

[18]Section 14.2015, F.S., places the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor (EOG); s. 14.23(2), F.S., creates the Office of State-Federal Relations within the EOG; s. 14.25, F.S., creates within the EOG the Florida State Commission on Hispanic Affairs, and the statute creating it states that the commission ". . . is not an executive department or agency for purposes of assignment under s. 6 of Article IV of the State Constitution, nor is it an agency within the legislative intent of chapter 216 or chapter 287;" s. 14.26, F.S., creates the Citizen's Assistance Office within the EOG; s. 14.27, F.S., creates the Florida Commission on African-American Affairs in the EOG; the Florida Commission on Community Services is created within the EOG by s. 14.29, F.S.; and s. 14.32, F.S., places the Office of Chief Inspector General within the EOG.

[19]Section 253.02, F.S.

[20](1) Department of Agriculture and Consumer Services; (2) Department of Banking and Finance; (3) Department of Business and Professional Regulation; (4) Department of Children and Family Services; (5) Department of Citrus; (6) Department of Community Affairs; (7) Department of Corrections; (8) Department of Education; (9) Department of Environmental Protection; (10) Department of Health; (11) Department of Highway Safety and Motor Vehicles; (12) Department of Insurance; (13) Department of Juvenile Justice; (14) Department of Labor and Employment Security; (15) Department of Law Enforcement; (16) Department of Legal Affairs; (17) Department of Lottery; (18) Department of Military Affairs; (19) Department of Management Services; (20) Department of Revenue; (21) Department of State; and (22) Department of Transportation.

toward the limit of 25[21] leaving 22 departments which do count. Further, under the Supreme Court's holding in *Agency for Health Care Administration*, discussed *supra*, those questionable entities which are housed in a department, but which operate independently of it,[22] arguably should not be counted so long as their functions are related to the department in which they are placed.[23] Finally, two questionable entities, the Executive Office of the Governor and the Board of Trustees of the Internal Improvement Trust Fund, might be considered as departments, thereby potentially raising the number to 24. It is impossible, however, to conclusively determine the precise number of departments given the constitutional ambiguity in this area and the lack of judicial construction.

In addition to limiting the number of departments in the executive branch that are permissible, the State Constitution places limitations on who may head a department, what qualifications the Legislature may impose on those agency heads, and whether they can be confirmed. Article IV, s. 6 of the State Constitution, states in part:

> . . . The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:
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> (a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.

Article IV, s. 6 of the State Constitution, prescribes who is authorized to head a department, thereby limiting the authority of the Legislature to designate a department head to those persons or entities specified. The provision permits certain constitutional officers, a collegial body of constitutional officers, a statutory collegial body, or a statutory officer to head a department. The authorized constitutional officers that may head a department are limited to the Governor, the Lieutenant Governor, or a member of the Cabinet. The collegial body of constitutional officers that is authorized by the State Constitution to head a department is the Governor and Cabinet. Another collegial body that is authorized to head a department is a statutorily-created board composed of gubernatorial appointees. Finally, the State Constitution authorizes a statutory officer appointed by the Governor to head a department.

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[21](1) the Department of Elderly Affairs; (2) the Department of Veterans Affairs; (3) the Parole Commission; (4) the Fish and Wildlife Conservation Commission; and (5) the State Board of Administration.

[22](1) Agency for Health Care Administration - s. 20.42, F.S.; (2) Correctional Medical Authority - s. 945.601, F.S.; (3) Division of Administrative Hearings - s. 20.22, F.S.; (4) Division of Bond Finance - s. 215.62, F.S.; (5) Division of Retirement - s. 20.22, F.S.; (6) Education Practices Commission - s. 231.261, F.S.; (7) Florida Commission on Human Relations - s. 760.03, F.S.; (8) Florida Elections Commission - s. 106.24, F.S.; (9) Information Resource Commission - s. 216.235, F.S.; and (10) Public Employees Relations Commission - s. 20.171, F.S.

[23]A functional analysis of each independent agency that is placed in a department was not performed.

CURRENTLY AUTHORIZED DEPARTMENT HEADS			
Constitutional		**Statutory**	
Officer	**Collegial Body**	**Officer**	**Collegial Body**
- Governor - Lt. Governor - Individual Cabinet Officers	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor

Statutory Organization and Structure

Chapter 20, F.S., provides the organizational structure of Florida's state government. Section 20.02(1), F.S., states that the State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

Subsection 20.03(2), F.S., defines the term "department" to mean the principal administrative unit within the executive branch of state government. The term "agency" is defined by subsection 20.03(11), F.S., to mean, as the context requires, an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government. The term "secretary" means an individual who is appointed by the Governor to head a department and who is not otherwise named in the *State Constitution*, as provided in subsection 20.03(5), F.S., and "executive director" is defined in subsection 20.03(6), F.S., to mean the chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet.

Section 20.02, F.S., provides for the composition of the executive branch and articulates the ongoing need for structural reorganization of the executive branch and the overall objectives of achieving maximum efficiency and effectiveness. The constitutional structure of the executive branch is codified in statute as subsection 20.02(2), F.S., which limits the executive branch to a maximum of 25 departments, in addition to any constitutionally established departments or agencies. Reorganization of the executive branch, as provided in subsection 20.02(3), F.S., must be a continuing process pursued through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs. Responsibility for the implementation of programs and policies, within the executive branch, must be clearly fixed and ascertainable, in accordance with subsection 20.02(4), F.S.; and departments must be organized along functional or program lines, as required by subsection 20.02(5), F.S. Subsection 20.02(6), F.S., provides for efficiency by requiring that the management and coordination of state services must be improved and overlapping activities eliminated. When positions are abolished, as a result of reorganization, the affected individuals, when otherwise

qualified, must be given priority consideration for any new positions created by reorganization or for other vacant positions in state government, as provided in subsection 20.02(7), F.S.

The structure of the executive branch is specified under s. 20.04, F.S. As provided in this section of law, departments are recognized as the principal administrative unit of the executive branch and are required to bear a title beginning with the words "State of Florida" followed by "Department of ____." As relates to external organization, departments are authorized to establish district or area offices. Except for the Department of Banking and Finance, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation, all departments are required to conform to an internal structure, as specified in subsection 20.04(3), F.S. The prescribed structure for an executive branch department is:

- Division, as the principal internal unit, headed by a director;
- Bureau, as the principal unit of a division, headed by a chief;
- Section, as the principal unit of a bureau, headed by an administrator; and
- Subsections, when further subdivision is necessary, headed by a supervisor.

Departments are allowed the flexibility to combine division, bureau, section, and subsection functions. Unless explicitly authorized by law, however, the head of a department is prohibited from reallocating duties and functions specifically assigned by law to a specific unit of the department. The head of a department is authorized to reallocate those functions or agencies assigned generally to the department without specific designation to a unit of the department. Most department heads have the authority to recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficiency and effective operation of the department. New bureaus, sections, and subsections of a department may be initiated by the department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

All reorganization requests must be assessed against specific criteria to ascertain the appropriateness of the proposal. The Department of Management Services and the Executive Office of the Governor, respectively, must adopt the criteria used to assess such proposals when considering them for approval. Any bureau that does not meet the criteria for a bureau must be reorganized into a section or other appropriate unit. The Executive Office of the Governor is required to maintain a current organizational chart of each agency of the executive branch. The organizational chart must identify all divisions, bureaus, units, and subunits of the agency. Agencies are required to submit such organizational charts in accordance with guidelines established by the Executive Office of the Governor.

Under s. 20.05, F.S., the duties and powers of heads of departments are specified. Except as otherwise provided in law, each department head: (a) must plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; (b) has authority, without being relieved of responsibility, to execute any of the powers, duties, and functions vested in the department or in any administrative unit of the department through delegation to administrative units and through delegation to assistants and deputies he or she designates, unless the head of the department is explicitly required by law to

exercise the power or perform the duty and function; (c) compile an annual program budget relating to all program and fiscal matters pertaining to operation of the department; and exercise other administrative power or perform various other ministerial functions, as specified by law. The head of a department appointed by the Governor must be confirmed by the Senate, but the Governor may appoint the Lieutenant Governor, without Senate confirmation, to serve as the head of a department. The head of a department may require any officer or employee of the department to give a performance bond to ensure faithful performance of his or her duties.

Agency for Health Care Administration

The Agency for Health Care Administration was created in 1992 by enactment of section 1 of chapter 92-33, *Laws of Florida*. That provision of law was codified in statute as s. 20.42, F.S., which establishes AHCA and provides its organizational structure. The mission of the agency is to work to ensure that all Floridians have access to affordable, quality health care. The agency is located within the Department of Business and Professional Regulation, but is essentially independent of that department. Under its current statutory authority, the agency contains four divisions.

Statutory Internal Organization of AHCA

The Division of Health Quality Assurance regulates and monitors the quality of the state's licensed health care facilities and services. The division also serves as the state survey agency for the federal Health Care Financing Administration, certifying facilities for participation in the Medicare and Medicaid Programs. Through this division, the agency regulates managed care providers; conducts state licensure and federal certification of facilities and services; investigates consumer complaints regarding facilities, services, and practitioners; and provides training to facilities regarding quality of care.

The Division of Health Policy and Cost Control develops health policy, oversees the certificate-of-need program and manages health care information. This division functions through the following sections: health policy; certificate of need/financial analysis; and the State Center for Health Statistics.

The Division of State Health Purchasing consists of four major areas. The largest is Medicaid, the state and federally funded program that pays for health care for certain low income persons, elders and disabled people who meet certain income criteria. The division’s Program Integrity unit pursues possible fraud and abuse in the Medicaid Program. State Health Purchasing also oversees the certification requirements for Community Health Purchasing Alliance (CHPAs) and designates the Accountable Health Partnership (AHPs) that offer health plans to the small businesses which obtain health insurance coverage through CHPAs.

The Division of Administrative Services is AHCA's support arm. Three bureaus assist the other divisions with finance, personnel, and other support services.

De Facto Internal Reorganization of AHCA

Although s. 20.42, F.S., specifies AHCA's organizational structure, the agency changed its internal structure in July 1999, and has not operated under the statutory structure since that time. A January 10, 2000, memorandum from the Director of Health Care Administration addressed to all AHCA employees with a subject line of "agency reorganization" announced a number of personnel moves and job assignments, but no additional changes to AHCA's structure.

As reorganized effective July 1999, the agency essentially has three divisions. Four divisions are represented on its organizational chart, however, the Division of Health Policy and Cost Control is earmarked to be abolished pending statutory revision and is allocated only one full-time equivalent position. The other designated divisions are the Division of Administration and Information Services, the Division of Managed Care and Health Quality, and the Division of Medicaid. All three divisions are to be renamed through statutory change.

A new position, the chief medical officer, is created and is placed at the division level on the agency's organizational chart. The chart indicates that this position is staffed by a senior physician. The January 10, 2000, memorandum from the Director of Health Care Administration states that the chief medical officer "[takes] the lead on the Agency's clinical best practice initiatives as well as leading our physician recruitment and communication efforts."

Workers' Compensation Managed Care Arrangements

The term "workers' compensation managed care arrangement" is defined, in law, at paragraph 444.134(1)(g), F.S. Such arrangements result when a provider of health care; a health care facility; a group of providers of health care; a group of providers of health care and health care facilities; an insurer that has an exclusive provider organization approved under s. 627.6472, F.S., of the Insurance Code; or a health maintenance organization (HMO) licensed under part I of chapter 641, F.S., providing for Department of Insurance regulation of HMO contractual and financial matters, has entered into a written agreement directly or indirectly with an insurer to provide and to manage appropriate remedial treatment, care, and attendance to injured workers in accordance with the state workers' compensation law.

The agency was required, beginning April 1, 1994, to authorize insurers to offer or utilize a workers' compensation managed care arrangement, subject to the insurer submitting a completed application accompanied by a $1,000 application fee and AHCA's satisfaction that the applicant has demonstrated capability to provide the requisite quality of care and compliance with statutory requirements for such arrangements. Beginning January 1, 1997, employers were required to provide their employees medical coverage for work-related injuries exclusively through managed care arrangements. As provided in paragraph 440.134(2)(b), F.S., employers, subject to certain limitations specified elsewhere under the worker's compensation law, are required to furnish to the employee solely through managed care arrangements such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery requires.

Subsection 440.134(18), F.S., authorizes AHCA to suspend the authority of an insurer to offer a workers' compensation managed care arrangement or order compliance within 60 days, if it finds that: (1) the insurer is in substantial violation of its contracts; (2) the insurer is unable to fulfill its obligations under outstanding contracts entered into with its employers; (3) the insurer knowingly

utilizes a provider who is furnishing or has furnished health care services and who does not have an existing license or other authority to practice or furnish health care services in Florida; (4) the insurer no longer meets the requirements for the authorization as originally issued; or (5) the insurer has violated any lawful rule or order of AHCA or any provision of s. 440.134, F.S.

In its report, *Justification Review of the Safety and Workers' Compensation Program*, Report No. 98-76, published March 1999, the Office of Program Policy Analysis and Government Accountability (OPPAGA) describes various aspects of regulatory oversight of medical benefits offered through the state's worker's compensation program. As explained in the report, Florida's Workers' Compensation Law requires employers to provide medically necessary treatment and care to workers with job-related injuries and illnesses. The cost of the medical care is covered by the employer's workers' compensation mandatory managed care arrangements.

The report describes how the Safety and Worker's Compensation Program, within the Division of Workers' Compensation of the Department of Labor and Employment Security (DLES) administers workers' compensation medical benefits to ensure that injured workers receive timely and appropriate medical treatment. It also describes the role that AHCA has in administering the workers' compensation managed care program through which AHCA authorizes insurers to offer or use a managed care arrangement provided either directly by the insurer or through a contracted entity. The agency also approves the insurer's proposed managed care plan of operation. Additionally, the agency is responsible for conducting an on-site survey of each insurer's managed care services within the first year of operation. The agency must evaluate the insurer's compliance with the laws governing workers' compensation medical service requirements every two years after operations commence. The law authorizes AHCA to revoke an insurer's authority to offer a workers' compensation managed care arrangement and to impose administrative fines.

The report states that in Fiscal Year 1997-1998, the Safety and Workers' Compensation Program assigned 42 full-time equivalent positions and expended over $1.9 million from the Workers' Compensation Administration Trust Fund for its medical services regulatory functions. The program transferred an additional $645,000 in trust fund revenue to AHCA to fund AHCA's administrative and regulatory activities relating to workers' compensation medical services. The agency also deposited into its Health Care Trust Fund $144,000 in fees from insurers applying for authority to use a workers' compensation managed care arrangement.

In its report OPPAGA, concludes that state law currently directs the Safety and Workers' Compensation Program to carry out regulatory activities that, with the implementation of managed care, are no longer needed or that should be modified. These activities include health care provider certification, provider dispute resolution, and medical services monitoring and auditing. Furthermore, OPPAGA found that the program's certification activities duplicate those carried out through the insurer's managed care plan of operation and should be discontinued. Certification, the report explains, is intended to ensure that health care professionals receive training in workers' compensation insurance requirements.

The report provides a recommendation that, while acknowledging the efficiency and cost-effectiveness of the shared regulation of workers' compensation medical benefits, calls for better coordination of the program between the Division of Workers' Compensation and AHCA. Specifically, OPPAGA recommended that the Legislature: (1) reduce or eliminate the program's

certification responsibilities and clarify responsibilities related to provider dispute resolution; (2) modify current requirements for medical cost reporting and monitoring; (3) require the program, in conjunction with AHCA, insurers, and other affected parties, to identify the data necessary to oversee, regulate, and monitor medical services provided under workers' compensation managed care; and (4) require the program to coordinate its responsibilities and functions with those of AHCA to eliminate duplicative or overlapping activities and ensure the exchange of data and information. Similarly, staff of the Senate Banking and Insurance Committee recommended that the Legislature consider clarifying the responsibilities of the Division of Workers' Compensation and AHCA regarding the jurisdiction of managed care workers' compensation or possibly transferring the responsibility for the medical component (i.e., collection and reporting of data, dispute resolution, certification of providers) to AHCA. *See Privatization of Functions Within the Division of Workers' Compensation*, Interim Project Summary 98-04, November 1998.

The Florida Health Care Purchasing Cooperative

The Florida Health Care Purchasing Cooperative was created in 1991 to pool the purchasing power for health care services of state and local governmental entities. The statutory authority for the Cooperative is contained in s. 408.001, F.S. The Cooperative is a nonprofit private corporation organized under chapter 617, F.S., and received state start-up funding for the first few years of its operation, but has not received state funding since 1994. The Cooperative has successfully assisted local governments that have used the services of the Cooperative to save money in their employee health benefits purchasing. The reinsurer of the Florida Health Care Purchasing plan has recently made a corporate decision to leave the group health excess risk market and the Board of Directors of the Cooperative has decided to not issue any new plans. This has put the Cooperative in a position of declining revenues.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.42, F.S., to create a department that, notwithstanding the requirement in law that departments must be named "State of Florida, The Department of ___," shall be called the Agency for Health Care Administration. The Secretary of Health Care Administration is designated as the head of the department. The secretary is appointed by the Governor, subject to Senate confirmation, and serves at the pleasure of and reports to the Governor. Language providing for the structure of the Agency for Health Care Administration under the Department of Business and Professional Regulation is deleted.

The department is created without a specific statutory internal structure. The statutorily specified internal structure of AHCA is abolished. Instead, the department's areas of administrative jurisdiction are specified. These include: designation as the chief health policy and planning entity for the state; responsibility for health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; implementation of the certificate-of-need program; operation of the State Center for Health Statistics; administration of the Medicaid program and contracts with the Florida Healthy Kids Corporation; certification of the quality of health services offered by health maintenance organizations and prepaid health clinics; and performance of other duties prescribed by statute or agreement.

Section 2. Amends paragraph 440.134(2)(a), F.S., relating to AHCA authorization for insurers to offer or utilize a workers' compensation managed care arrangement, to delegate to AHCA exclusive jurisdiction over workers' compensation managed care arrangements and exclusive investigative authority of the quality of workers' compensation medical services provided by a workers' compensation managed care arrangement. Clarifying language is added to this paragraph stating: When reviewing the quality of medical services offered by or provided through a workers' compensation managed care arrangement, the agency shall only review issues related to the managed care arrangement as a whole, pertaining to the ability of the managed care arrangement to provide quality of care as required [by s. 440.134, F.S.] The language goes on to provide that: The agency shall not interpret managed care arrangements as they pertain to an individual employee.

Sections 3-24. Amend several statutory provisions to conform references to the head of AHCA made necessary by designation of AHCA as a department headed by a secretary. References to *director* and *Director of Health Care Administration* are replaced with references to *secretary* and *Secretary of Health Care Administration*. References to the *Division of State Health Purchasing* and *Deputy Director for State Health Purchasing* are also deleted to conform to changes made in section 1 of the bill.

Section 25. Repeals s. 408.001, F.S., which authorizes the Florida Health Care Purchasing Cooperative, effective December 31, 2000, or upon dissolution of the Cooperative, whichever occurs first.

Section 26. Transfers, by a type one transfer, all powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of AHCA within the Department of Business and Professional Regulation to AHCA, as created in the bill.

Section 27. Transfers, by a type two transfer, effective October 1, 2000, 20 full-time-equivalent positions and $686,835 in salaries and benefits, and $135,138 in expenses from DLES to AHCA to carry out AHCA's responsibilities relating to medical services and workers' compensation managed care arrangements, as provided in the bill.

Section 31. Provides an October 1, 2000, 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.

D. Other Constitutional Issues:

Article IV, s. 6 of the State Constitution states in part:

> All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, *exclusive* of those specifically provided for or authorized in this constitution *[emphasis added]*.

While there is some uncertainty as to the exact number of departments that exist, it appears that, depending upon whether a functional analysis or a departmental analysis is used, there are 22 to 24 departments. Further, given the inclusion of the Florida Department of Law Enforcement in the State Constitution as a result of recent amendment, it could be argued that an additional departmental opening is available. As a result, it does not appear that the creation of the AHCA as a department would violate the constitutional limitation on the number of departments.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If duplication of regulation is eliminated, greater regulatory efficiencies in the administration of workers' compensation medical services and mandatory managed care arrangement may result. To the extent that efficiency is improved, insurers' and employers may experience reduced financial or opportunity costs relating to regulatory activity.

C. Government Sector Impact:

Since already appropriated funds will be transferred from one department to another, the fiscal impact on the government sector would be revenue neutral.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 20, F.S., establishes the organizational structure of state government. Under the chapter, the "department" is the principal administrative unit within the executive branch of state

government. The principal unit within the department is the “division,” which is headed by a division director. The principal unit of each division is the “bureau,” which is headed by a bureau chief. The principal unit of each bureau is the “section,” which is headed by an administrator. Section 20.04(d), F.S., permits the further subdivision of sections into “subsections” that are headed by supervisors.

The bill does not conform to the established format for departments as no departmental structure is created. There are some departments that currently exist which do not conform to the general organizational structure of departments, such as the Department of Transportation and the Department of Children and Family Services, but usually departments have a legislatively-created structure that contains divisions and subunits or program offices.

VIII. Amendments:

None.