

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 12, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
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The statutory authority for the Florida Health Purchasing Cooperative is repealed effective December 31, 2000, or upon dissolution of the cooperative as a corporate entity, whichever occurs first.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. The executive branch is restricted to distributing its functions among up to 25 departments, exclusive of those specifically established by the *State Constitution*. Furthermore, the *State Constitution* provides that the administration of each department must 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, unless otherwise constitutionally provided for, subject to two exceptions. One exception relating to supervision of executive branch departments provides that the administration of a department or statutory office of the executive branch of state government may be placed under the supervision of a gubernatorial appointee, when provided by law, who is confirmed by the Senate or approved by three members of the Cabinet. The other exception is that boards authorized to grant and revoke licenses to engage in regulated occupations must be assigned to appropriate departments and their members appointed to fixed terms. Members of such boards are subject to removal only for cause.

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.

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:

Given the 25-department constitutional limit on executive branch departments, the 23 statutorily established departments provided for under chapter 20, F.S., allows sufficient availability for establishment of AHCA as an independent department within constitutional limits.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
