

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1736

INTRODUCER: Senator Latvala

SUBJECT: Health Care

DATE: March 19, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Stovall | Stovall | HR | Pre-meeting |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill repeals obsolete and redundant provisions, defines and corrects references to the Joint Commission, updates references to a variety of organizations and state agencies to reflect current titles or responsibilities related to facilities regulated by the Agency for Health Care Administration (AHCA), and streamlines reporting by licensed facilities and state agencies.

The bill makes the following substantive changes:

- Revises provisions affecting nursing homes as follows:
 - Expands the authorized staffing of a geriatric outpatient clinic in a nursing home to include a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician;
 - Eliminates the requirement for a resident care plan to be signed by certain persons;
 - Authorizes a \$1,000 fine per day if a nursing home fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements;
 - Eliminates the requirement for a newly hired nursing home surveyor to observe a facility's operations as a part of basic training;
 - Removes the one-year exception for the annual assessment related to Medicaid overpayments for leased nursing homes since the provision has expired;
 - Eliminates the requirement that an "incident" be reported within one-day and only requires reporting if the investigation, which must be completed within 15 days, indicates the incident qualifies as an adverse incident;
 - Requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age;
 - Eliminates the reporting of staffing ratios, staff turnover, and staff stability; and

- Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility;
- Revises provisions affecting assisted living facilities (ALFs) as follows:
 - Repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an ALF with a standard license;
 - Increases the per-bed fee for a standard-licensed ALF for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the loss of revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard license fee is increased;
 - Requires additional monitoring, either onsite or by a desk review, for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended congregate care (ECC) specialty license;
 - Requires all ALFs to report electronically to the AHCA, at least semiannually, certain aggregated data related to the residents and staff of the facility;
 - Modifies the AHCA's consultation responsibilities; and
 - Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility;
- Expands the definition of a portable equipment provider within the requirements for a health care clinic license to include a portable *health service* or equipment provider;
- Provides additional exemptions for licensure and regulation as a health care clinic for the following:
 - Pediatric cardiology or perinatology clinic facilities;
 - Certain corporate entities with \$250 million or more in annual sales of health care services provided by licensed health care practitioners; and
 - Certain publicly traded entities;
- Enhances the general licensing provisions of part II of ch. 408, F.S., to:
 - Provide that the license renewal notice that the AHCA sends is a *courtesy* notice;
 - Authorize the AHCA to impose an administrative fine, not to exceed \$500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations;
 - Authorize the AHCA to extend the license expiration date for up to 30 days and impose other conditions during that extension period in order to accomplish the safe and orderly discharge of clients or residents; and
 - Prohibit activities related to altering, defacing, or falsifying a license certificate;
- Authorizes the AHCA to impose an administrative fine for class IV violations that are uncorrected or repeated by a licensed intermediate care facility for developmentally disabled persons;
- Requires a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements;
- Transfers responsibilities for Federally Qualified Health Centers from the Department of Health (DOH) to the AHCA;
- Authorizes group or individual health plans to offer rewards and incentives for persons participating in voluntary wellness or health improvement programs; and
- Includes licensed orthotists and prosthetists in the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

This bill amends the following sections of the Florida Statutes: 154.11, 394.4787, 394.741, 395.002, 395.003, 395.0193, 395.1023, 395.1041, 395.1055, 395.10972, 395.2050, 395.3036, 395.3038, 395.602, 400.021, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.147, 400.162, 400.19, 400.23, 400.275, 400.484, 400.606, 400.607, 400.915, 400.925, 400.931, 400.932, 400.967, 400.9905, 400.991, 400.9935, 408.034, 408.036, 408.043, 408.05, 408.061, 408.07, 408.10, 408.804, 408.806, 408.810, 408.813, 408.815, 409.91196, 409.912, 409.91255, 429.07, 429.11, 429.17, 429.19, 429.255, 429.35, 429.41, 429.53, 429.54, 429.71, 429.915, 430.80, 440.13, 483.294, 626.9541, 627.645, 627.668, 627.669, 627.736, 641.495, 651.118, 766.1015, and 766.202.

The bill repeals the following sections of the Florida Statutes: 112.0455(10)(e) and (12)(d), 383.325, 395.1046, 395.3037, 400.148, 400.179(2)(e), 400.195, 408.802(11), 429.12(2), 429.23(5), 429.28(3), and 440.102(9)(d).

II. Present Situation:

Health Care Licensing

The AHCA regulates over 41,000 health care providers under several regulatory programs based upon individual licensing statutes and the general licensing provisions in part II of ch. 408, F.S. The health care providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102, F.S.;
- Birth centers, as provided under ch. 383, F.S.;
- Abortion clinics, as provided under ch. 390, F.S.;
- Crisis stabilization units, as provided under parts I and IV of ch. 394, F.S.;
- Short-term residential treatment facilities, as provided under parts I and IV of ch. 394, F.S.;
- Residential treatment facilities, as provided under part IV of ch. 394, F.S.;
- Residential treatment centers for children and adolescents, as provided under part IV of ch. 394, F.S.;
- Hospitals, as provided under part I of ch. 395, F.S.;
- Ambulatory surgical centers, as provided under part I of ch. 395, F.S.;
- Mobile surgical facilities, as provided under part I of ch. 395, F.S.;
- Health care risk managers, as provided under part I of ch. 395, F.S.;
- Nursing homes, as provided under part II of ch. 400, F.S.;
- Assisted living facilities, as provided under part I of ch. 429, F.S.;
- Home health agencies, as provided under part III of ch. 400, F.S.;
- Nurse registries, as provided under part III of ch. 400, F.S.;
- Companion services or homemaker services providers, as provided under part III of ch. 400, F.S.;
- Adult day care centers, as provided under part III of ch. 429, F.S.;
- Hospices, as provided under part IV of ch. 400, F.S.;
- Adult family-care homes, as provided under part II of ch. 429, F.S.;
- Homes for special services, as provided under part V of ch. 400, F.S.;
- Transitional living facilities, as provided under part V of ch. 400, F.S.;

- Prescribed pediatric extended care centers, as provided under part VI of ch. 400, F.S.;
- Home medical equipment providers, as provided under part VII of ch. 400, F.S.;
- Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of ch. 400, F.S.;
- Health care services pools, as provided under part IX of ch. 400, F.S.;
- Health care clinics, as provided under part X of ch. 400, F.S.;
- Clinical laboratories, as provided under part I of ch. 483, F.S.;
- Multiphasic health testing centers, as provided under part II of ch. 483, F.S.; and
- Organ, tissue, and eye procurement organizations, as provided under part V of ch. 765, F.S.

The general licensing provisions contain standards for licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions. Each provider type has an authorizing statute (as listed above) that includes unique provisions for licensure beyond the general licensing provisions. If a conflict exists between the general licensing provisions and the authorizing statute, s. 408.832, F.S., provides that the general licensing provisions prevail.

There are several references in the authorizing statutes that conflict or duplicate regulations in the general licensing provisions, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements, and plans of corrections from providers.

Nursing Homes

Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*.¹ This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs. Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida. Among other things, this law established a monthly reporting requirement of liability claims filed against

¹ The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*, may be found at <http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf> (Last visited on March 19, 2011).

nursing homes. This data, as well as other data related to nursing homes was included in a Semi-annual Report on Nursing Homes that the AHCA was required to submit to the Governor and Legislature. This statutory reporting obligation in s. 400.195, F.S., expired on June 30, 2005. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.²

Assisted Living Facilities

An assisted living facility (ALF) provides housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. ALFs are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, an ALF provides supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications.

As of December 2009, there were 2,830 ALFs licensed with a standard license by the AHCA in this state, for a total of 80,539 beds.³ In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health services,⁴ and ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.⁵

LNS Specialty License

An LNS license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. As of December 2009, there were 977 ALFs licensed with an LNS specialty license.⁶

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,⁷ may only be provided as authorized by a health care provider's order, and

² See: <http://www.fdhc.state.fl.us/MCHO/Long_Term_Care/FDAU/docs/LiabilityClaims/NH_Chart.pdf> (Last visited on March 19, 2011).

³ Source: The AHCA 2010 Bill Analysis & Economic Impact Statement for SPB 7018, on file with the Senate Health Regulation Committee.

⁴ An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

⁵ Source: The AHCA in an email to committee professional staff dated September 23, 2009.

⁶ *Id.*, fn 5. The AHCA does not track the number of LNS beds.

⁷ Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident’s health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.⁸

The biennial fee for an LNS license is \$296 per license with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.⁹ Ostensibly, this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

Licensure Fees

The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect, for licenses expiring on or after August 1, 2010.¹⁰

| Fee Description | Per s. 429.07(4), F.S. | CPI adjusted (current fee) |
|--------------------------------------|-------------------------------|-----------------------------------|
| Standard ALF Application Fee | \$300 | \$366 |
| Standard ALF Per-Bed Fee (non-OSS) | \$50 | \$61 |
| Total Licensure fee for Standard ALF | \$10,000 | \$13,443 |
| ECC Application Fee | \$400 | \$515 |
| ECC Per-Bed Fee (licensed capacity) | \$10 | \$10 |
| LNS Application Fee | \$250 | \$304 |
| LNS Per-Bed Fee (licensed capacity) | \$10 | \$10 |

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident

⁸ s. 429.07(3)(c), F.S.

⁹ s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

¹⁰ Found on the AHCA website at:

<http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf>, (Last visited on March 19, 2010).

population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

Liability Claims Reporting

Chapter 2001-45, L.O.F.,¹¹ also established a monthly reporting requirement of liability claims filed against assisted living facilities. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.¹²

Adult Family-Care Homes

An adult family-care home is a full-time family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The adult family-care home provider must live in the home. Adult family-care homes are licensed and regulated under part II of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 58A-14, F.A.C., unless the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation, or for only his or her relatives. A frail elder is a functionally impaired person who is 60 years of age or older and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and impede the person's capacity to live independently.

Federally Qualified Health Centers

Federally Qualified Health Centers (FQHCs)¹³ are also referred to as rural health clinics. They are certified by the CMS to participate in the Medicare and Medicaid programs and receive federal grant funding. They primarily operate in areas designated as rural areas, having a shortage of personal health services, and having medically underserved populations.

Since 1981, the Florida Association of Community Health Centers, Inc. (FACHC) has been the leading state advocate for community-based health care programs. Focusing on Florida's Federally Qualified Community Health Centers, the Association plays a vital role in educating federal, state and local policymakers about issues relating to health care and the role of the health centers. The primary mission of FACHC is to improve access to quality health services by bringing together agencies, legislators and key persons able to affect health care services.¹⁴

¹¹ s. 36, ch. 2001-45, L.O.F., creating s. 400.423, F.S.

¹² See: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf> (Last visited on March 19, 2011).

¹³ See: 42 C.F.R. 491.

¹⁴ For additional information see: <<http://www.fachc.org/about-welcome.php>>, (Last visited on March 19, 2011).

Wellness or Health Improvement Programs

Chapter 626, F.S., governs the practices of insurance agents and the operations of insurance companies.¹⁵ Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.¹⁶ Among the prohibited acts relating to rates that may be charged to policyholders are: “unfair discrimination,” which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;¹⁷ and “unlawful rebates,” which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.¹⁸

III. Effect of Proposed Changes:

Sections 1, 3, 11, 16, 30, 31, 53, 63, 66, 68, and 76 repeal the following sections of the Florida Statutes:

- s. 112.0455(10)(e) and (12)d), F.S., to remove an obsolete provision concerning drug testing within the Drug-Free Workplace Act. The Division of Statutory Revision requested clarification of this provision. Also this bill repeals a monthly reporting requirement for a laboratory to notify the AHCA of statistical information regarding drug testing;
- s. 383.325, F.S., related to public access to governmental inspection reports for birth centers, since this is required in the general licensing provisions in part II of ch. 408, F.S.;
- s. 395.1046, F.S., related to the AHCA’s investigation procedures for complaints against a hospital for violations of the access to emergency services and care provisions under s. 395.1041, F.S. Complaint procedures exist in the general licensing provisions in part II of ch. 408, F.S. The federal process for emergency access complaints dictates that access to emergency services and care complaints be handled similarly to routine complaints;
- s. 395.3037, F.S., related to definitions of Department and Agency as they pertain to stroke centers. These terms are already defined in s. 395.002, F.S., which provides definitions for all of ch. 395, F.S.;
- s. 400.148, F.S., related to the obsolete Medicaid “Up-or-Out” Quality of Care Contract Management Program;
- s. 400.179(2)(e), F.S., related to a one-year exemption to nursing home leasehold bond payments;
- s. 400.195, F.S., related to an obsolete requirement for the AHCA to report on lawsuits against and deficiencies in nursing homes. The statutory reporting requirement was for the period June 30, 2001 through June 30, 2005;
- s. 408.802(11), F.S., related to the general licensure provisions, to delete reference to private review agents. The regulation of private review agents was repealed by the Legislature in 2009;
- s. 429.12(2), F.S., related to change of ownership for assisted living facilities, since this is addressed under the general licensing provisions in part II of ch. 408, F.S.;

¹⁵ See ss. 626.011 through 626.99296, F.S.

¹⁶ See s. 626.9541(1)(a) through (ff), F.S.

¹⁷ See s. 626.9541(1)(g), F.S.

¹⁸ See s. 626.9541(1)(h), F.S.

- s. 429.23(5), F.S., to repeal the requirement for an assisted living facility to report monthly to the AHCA any liability claim filed against it, which is currently published in the aggregate on the AHCA's website;
- s. 429.28(3), F.S., to eliminate duplicative provisions related to inspections and monitoring facilities that have been cited with violations. The provision requiring the AHCA to determine whether an ALF licensee is adequately protecting residents' rights in its biennial survey is transferred to s. 429.07, in section 68 of this bill; and
- s. 440.102(9)(d), F.S., to remove a monthly reporting requirement for a laboratory to notify the AHCA of statistical information regarding drug testing under workers' compensation provisions.

Sections 2, 5, 17, 39, 45, 49, 75, 77, 80, 81, 82, 83, 84, and 86 amend the following sections of the Florida Statutes to update the name of certain accrediting organizations, including the Joint Commission:

- s. 154.11, F.S., related to facilities owned and operated by the board of trustees of each public health trust;
- s. 394.741, F.S., related to providers of behavioral health care services;
- s. 395.3038, F.S., related to stroke centers;
- s. 400.925, F.S., related to home medical equipment providers;
- s. 400.9935, F.S., related to health care clinics;
- s. 408.05, F.S., related to health care quality measures that are reported by the AHCA;
- s. 430.80, F.S., related to the teaching nursing home pilot project;
- s. 440.13, F.S., related to workers' compensation;
- s. 627.645, F.S., related to health insurance;
- s. 627.668, F.S., related to insurance coverage for mental and nervous disorders;
- s. 627.669, F.S., related to insurance for substance abuse impaired persons;
- s. 627.736, F.S., related to personal injury protection automobile insurance;
- s. 641.495, F.S., related to health maintenance organizations and prepaid health clinics; and
- s. 766.1015, F.S., related to boards or other groups established for quality improvement purposes.

Section 4 amends s. 394.4787, F.S., to correct a cross-reference concerning licensure of a specialty psychiatric hospital.

Section 6 amends s. 395.002, F.S., to redefine the term "accrediting organizations" as it relates to hospitals and other licensed facilities to delete the list of four organizations that are identified in statute. The term is redefined to mean nationally recognized or approved accrediting organizations whose standards incorporate comparable licensure requirements as determined by the AHCA. In addition, the following obsolete definitions are repealed: "initial denial determination," "private review agent," "utilization review," and "utilization review plan."

Section 7 amends s. 395.003, F.S., to remove obsolete language concerning emergency departments located off-site from a licensed hospital.

Section 8 amends s. 395.0193, F.S., related to peer review of physicians within hospitals and licensed facilities, to correct references to the Division of Medical Quality Assurance of the DOH.

Section 9 amends s. 395.1023, F.S., related to reporting actual or suspected cases of child abuse, abandonment, or neglect by hospitals and licensed facilities, to clarify that references to the Department mean the Department of Children and Family Services (DCF).

Section 10 amends s. 395.1041, F.S., to remove obsolete language pertaining to services within a hospital's service capability. The Division of Statutory Revision requested clarification of this provision.

Section 12 amends s. 395.1055, F.S., to require that the AHCA's rulemaking concerning licensed facility beds conform to standards specified by the AHCA, the Florida Building Code, and the Florida Fire Prevention Code.

Section 13 amends s. 395.10972, F.S., to update the reference to the current name of the Florida Society for Healthcare Risk Management and Patient Safety.

Section 14 amends s. 395.2050, F.S., to update the reference to the current name of the Centers for Medicare and Medicaid Services.

Section 15 amends s. 395.3036, F.S., to correct a cross-reference concerning the confidentiality of records and meetings of corporations that lease public health care facilities. The Division of Statutory Revision requested clarification of this provision.

Section 18 amends s. 395.602, F.S., to eliminate one of the conditions that qualifies a hospital as a rural hospital. This condition is a hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax, in an area that was directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency, has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits, and a Medicaid inpatient utilization rate greater than 15 percent. No hospitals meet this condition.

Section 19 amends s. 400.021, F.S., to expand the definition of a geriatric outpatient clinic in a nursing home, to add that it may be staffed by a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician. Currently, the definition of a geriatric outpatient clinic provides that it is to be staffed by a registered nurse or a physician assistant.

The bill also amends the definition of a resident care plan to remove the requirement that the resident care plan be signed by the director of nursing or alternate and the resident or the resident's designee or legal representative.

Section 20 amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

Section 21 amends s. 400.0255, F.S., to correct an obsolete cross-reference to an administrative rule concerning fair hearings requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

Section 22 amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced was repealed. The Division of Statutory Revision requested clarification of this provision.

Section 23 amends s. 400.071, F.S., to repeal disclosure of certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. The bill amends s. 400.111, F.S., to require certain disclosures to replace these requirements. This section also repeals the requirement for a nursing home licensure applicant to identify the number of beds and number of Medicare and Medicaid certified beds since this is required in the general licensing provisions in s. 408.806(1)(d), F.S.

Section 24 amends s. 400.0712, F.S., to make technical changes to move into another subsection the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

Section 25 amends s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA instead of a mandatory submission for all nursing home licensure applications.

Section 26 amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility; instead, requiring the nursing home to maintain a log of the grievances for the AHCA's inspection.

Section 27 amends s. 400.141, F.S., to authorize a nursing home with a standard licensure status or one that has been awarded a Gold Seal, to provide respite care for a maximum of 14 days per stay pursuant to an abbreviated plan of care. The abbreviated plan of care must, at a minimum, include nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. A contract must be executed for each person admitted under the respite care program that specifies the services to be provided and the charges for those services. This contract may be used for subsequent admissions for that person within one year after the date of execution. A respite resident may receive a total of 60 days of respite care within a 12-month period. A prospective respite resident must provide medical information from one of the specified practitioners along with an order for respite care. Provisions are made for the respite resident to use his or her personal medications and the nursing home must arrange for transportation to certain health care services to ensure continuity of care and services while the resident is receiving the respite care. A person admitted to the nursing home under the respite care program is exempt from requirements related to discharge planning and is covered by certain residents' rights.

A nursing home is required to maintain complete clinical records on each resident that are readily accessible and systematically organized.

The bill eliminates the nursing home reporting requirements pertaining to staffing ratios, staff turnover, and staff stability.

The bill eliminates the requirement for a licensed nursing facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

The bill requires the AHCA to fine a nursing facility \$1,000 if it fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements.

The bill repeals the requirement for a licensed nursing home to report to the AHCA information concerning filing for bankruptcy, divestiture of assets, or corporate reorganization. A similar provision is amended into the general licensing provisions in s. 408.810, F.S., in this bill.

Section 28 amends s. 400.142, F.S., to eliminate the requirement for the AHCA to adopt rules related to nursing facility staff implementing an order to withhold or withdraw cardiopulmonary resuscitation inasmuch as statutory provisions exist in s. 401.45, F.S., for emergency medical responders.

Section 29 amends s. 400.147, F.S., to remove the 1-day notification requirement to the AHCA when a risk manager in a nursing home receives an incident report. The risk manager for the nursing home is only required to report to the AHCA if, after the investigation, it is determined that the incident was an adverse incident. The investigation must be completed within 15 days.

This section also repeals the requirement for a licensed nursing home to report to the AHCA, monthly, any notice of claims against the facility for violation of a resident's rights or negligence. This information has been required to be submitted since 2001. It was included in the AHCA's Semi-Annual Report on Nursing Homes, which is repealed in another section of this bill. Currently this information is published in the aggregate on the AHCA's website;

Section 32 amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

Section 33 amends s. 400.23, F.S., to update the reference to the current name of the Division of Children's Medical Services Network of the DOH. The Division of Statutory Revision requested clarification of this provision.

In addition, the bill requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age. These rules are to be adopted in collaboration with the DOH Division of Children's Medical Services Network and must require, at a minimum, 3.9 hours of direct care per resident per day for residents requiring skilled care and 5 hours of direct care per resident per day for residents who are fragile.

Section 34 amends s. 400.275, F.S., to eliminate the requirement for the AHCA to assign each newly hired nursing home surveyor to observe a facility's operations as a part of basic training.

The AHCA nursing home staff must be qualified under the federal requirements for the Surveyor Minimum Qualifications Test.

Section 35 amends s. 400.484, F.S., related to violations by home health agencies, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section.

Section 36 amends s. 400.606, F.S., to eliminate the requirement for an applicant for a hospice license to submit the projected annual operating cost of the hospice. Under the general licensing provisions, in part II of ch. 408, F.S., an applicant for licensure must submit information pertaining to the applicant's financial ability to operate.

Section 37 amends s. 400.607, F.S., to clarify the grounds for administrative action by the AHCA against a hospice and eliminate duplicative provisions found in the general licensing provisions in part II of ch. 408, F.S.

Section 38 amends s. 400.915, F.S., to correct an obsolete cross-reference to an administrative rule concerning the construction or renovation of a prescribed pediatric extended care center. This correction was requested by the Joint Administrative Procedures Committee.

Section 40 amends s. 400.931, F.S., to repeal the option for an applicant for a home medical equipment provider license to submit a \$50,000 surety bond in lieu of proof of financial ability to operate.

Section 41 amends s. 400.932, F.S., to clarify the grounds for administrative action by the AHCA against a home medical equipment provider.

Section 42 amends s. 400.967, F.S., related to violations by intermediate care facilities for developmentally disabled persons, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. In addition, the bill requires the AHCA to impose an administrative fine not to exceed \$500 for each occurrence and each day that an uncorrected or repeated class IV violation exists.

Section 43 amends s. 400.9905, F.S., to revise the definitions related to the health care clinic act. This includes an entity that contracts with or employs a person to provide portable *health care services or* equipment to multiple locations, which bills third-party payors for those services, and that otherwise, meets the definition of a clinic.

The bill also exempts the following entities from the definition and regulation as a health care clinic:

- A pediatric cardiology or perinatology clinic facility that is a publicly traded corporation or that is wholly owned by a publicly traded corporation;
- Entities that are owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners if at least one of the owners is a Florida-licensed health care practitioner who is responsible for supervising the

business activities and legally responsible for compliance with state law for purposes of this section of law; and

- Entities that are owned or controlled, directly or indirectly, by a publicly traded entity with \$100 million or more in total annual revenues derived from providing health care services by licensed health care practitioners who are employed with or contracted by the entity.

Section 44 amends s. 400.991, F.S., to repeal the option for an applicant for a health care clinic license to submit a \$500,000 surety bond in lieu of proof of financial ability to operate. Another cross-reference is added to reflect an existing provision concerning proof of financial ability to operate for an applicant for a health care clinic license.

Section 46 amends s. 408.034, F.S., to correct a reference to the AHCA's authority to issue licenses to intermediate care facilities for developmentally disabled persons under part VIII of ch. 400, F.S., without the facility first obtaining a certificate of need as required by s. 408.036(1)(a), F.S.

Section 47 amends s. 408.036, F.S., to eliminate a cross-reference to an exception to the certificate-of-need requirements for a hospice. No exceptions are currently provided in s. 408.043, F.S.

Section 48 amends s. 408.043, F.S., to remove the term "primarily" to clarify that a certificate of need is required to establish or expand an inpatient hospice facility unless the facility is licensed as a health care facility, such as a hospital or skilled nursing facility.

Section 50 amends s. 408.061, F.S., to remove an inappropriate reference to an administrative rule that describes data reporting.

Section 51 amends s. 408.07, F.S., to conform the definition of a rural hospital to the provisions related to licensure of rural hospitals in s. 395.602, F.S., as amended in this bill.

Section 52 amends s. 408.10, F.S., to eliminate the requirement for the AHCA to investigate consumer complaints related to health care facilities' billing practices and publish related reports.

Section 54 amends s. 408.804, F.S., related to the general licensing provisions. The act of, or causing another to alter, deface, or falsify a license certificate is a misdemeanor of the second degree. A licensee or provider who displays an altered, defaced, or falsified license certificate is subject to an administrative fine of \$1,000 for each day of illegal display and a license or application for a license is subject to revocation or denial.

Section 55 amends s. 408.806, F.S., related to general licensing provisions, to require the AHCA to send a courtesy notice to the licensee 90 days before renewal. However, the AHCA's failure to do so or the licensee's failure to receive the notice does not excuse the licensee's responsibility to timely submit the renewal application and fee. Submission of the renewal application, application fee, and any applicable late fees is required to renew the license.

Section 56 amends s. 408.813, F.S., related to general licensing provisions, to authorize the AHCA to impose an administrative fine, not to exceed \$500 per violation, for violations that do

not qualify within the classification scheme of class I – class IV violations. Unclassified violations might include: violating any term or condition of a license; violating any provision of the general licensing provisions, authorizing statutes, or applicable rules; exceeding licensed capacity without authorization; providing services beyond the scope of the license; or violating a moratorium.

Section 57 amends s. 408.815, F.S., related to general licensing provisions, to authorize the AHCA to extend the license expiration date for up to 30 days and to impose other conditions during that 30-day extension in order to accomplish the safe and orderly discharge of clients. The authority to extend is at the discretion of the AHCA after considering the nature and number of clients, the availability and location of acceptable alternative placements, and the ability of the licensee to continue providing care to the clients. This authority does not create any right or entitlement to an extension of a license expiration date.

Section 58 amends s. 409.91196, F.S., related to Medicaid supplemental rebate agreements, to conform a cross-reference due to an amendment in another section of this bill.

Section 59 amends s. 409.912, F.S., to require a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements and be billed at the actual acquisition cost.

Section 60 amends s. 409.91255 to transfer the FQHCs from the DOH to the AHCA and to require the Florida Association of Community Health Centers to develop a 5-year statewide assessment and strategic plan for FQHCs.

Section 61 amends s. 429.07, F.S., to repeal the LNS specialty license and its requirements and the quarterly monitoring requirements related to ALFs that are licensed to provide ECC services. The bill requires an ALF that has been cited within the previous 24 months for a class I or class II violation to be subject to unannounced monitoring. This monitoring may occur through a desk review or onsite, unless a cited violation relates to providing or failing to provide nursing care. In that case, a registered nurse is required to participate in at least two onsite monitoring visits within a 12-month period. The monitoring requirement applies regardless of the status of the enforcement or disciplinary action for the cited violation.

The biennial facility licensure fee is set at \$371 and the per-bed licensure fee for a standard license is increased to \$71 (an increase of \$10) from the current per-bed licensure fee (CPI adjusted) of \$61. The other licensure fees in this section are amended to reflect the current CPI adjusted fee, only. The total standard licensure fee is increased from the current fee (CPI adjusted) of \$13,443 to \$18,000.

Section 62 amends s. 429.11, F.S., to remove language related to provisional licenses within the authorizing statutes for the ALFs since provisional licenses are authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 64 amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license. This section of law is also amended to remove the

requirement for a plan of correction as a part of issuing a conditional license for an ALF since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 65 amends s. 429.19, F.S., to clarify that a monitoring fee may be assessed against an ALF in addition to an administrative fine.

Section 67 amends s. 429.255, F.S., to eliminate the authorization for an ALF to use volunteers to provide certain health-related services, including: administering medications, taking residents' vital signs, managing individual pill organizers for residents who self-administer medication, giving prepackaged enemas, observing residents and documenting observations on the resident's record or reporting observations to the resident's physician, and performing all duties within the scope of their license or certification in a facility licensed to provide ECC services.

In addition, this section authorizes contracted personnel or facility staff who are licensed under the nurse practice act to provide LNS to residents in a standard-licensed ALF. The licensee is responsible for maintaining documentation of health-related services provided as required by rule and ensuring that staff are adequately trained to monitor residents who have received these health-related services.

Section 69 amends s. 429.35, F.S., to authorize the AHCA to provide the results of an inspection of an ALF to the local ombudsman council and others electronically or through the AHCA's website.

Section 70 amends s. 429.41, F.S., to conform provisions related to rulemaking for ALFs to changes made in this bill.

Section 71 amends s. 429.53, F.S., related to consultation by the agency pertaining to an ALF. The bill expands the staff who may provide consultation and eliminates the requirement for the AHCA to consult in areas that are beyond its jurisdiction and areas of expertise.

Section 72 amends s. 429.54, F.S., to require licensed ALFs to report electronically to the AHCA, semiannually, certain data related to the facility's residents and staffing. This data includes, but is not limited to the:

- Number of residents;
- Number of residents receiving LMH services;
- Number of residents receiving ECC services;
- Number of residents receiving LNS; and
- Professional personnel providing resident services.

The DOEA, in consultation with the AHCA, is required to adopt rules related to these reporting requirements.

Section 73 amends s. 429.71, F.S., related to violations by adult family-care homes, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. The provisions within the section related to the plan of correction are removed since it is also addressed in the general licensing provisions.

Section 74 amends s. 429.915, F.S., to remove the requirement for a plan of correction as a part of issuing a conditional license for an adult day care facility since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 78 amends s. 483.294, F.S., to correct the inspection frequency for licensed multiphasic health testing centers to biennially, consistent with the general licensing provisions in part II of ch. 408, F.S.

Section 79 amends s. 626.9541, F.S., to authorize group or individual health plans to offer rewards and incentives to members participating in voluntary wellness or health improvement programs.

Section 85 amends s. 651.118, F.S., related to nursing homes in continuing care communities, to conform a cross-reference to changes made in another section of this bill.

Section 87 amends s. 766.202, F.S., to add licensed orthotists and prosthetists to the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

Section 88 provides an effective date of July 1, 2011.

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 Art. I, s. 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill authorizes an ALF to provide LNS without obtaining an additional specialty license at a fee of \$304 plus \$10 per-bed fee based on the total licensed resident capacity of the facility. The per-bed licensure fee for all ALFs is increased \$10 biennially for non-OSS beds to offset the loss of revenue currently generated from the LNS license and will be used to fund monitoring of any ALF that has been cited with a class I or class II deficiency. The maximum amount that an ALF is required to pay biennially for the

licensure fees associated with the standard license is increased by \$4,557 to accommodate the increased per-bed licensure fee increase.

B. Private Sector Impact:

This bill streamlines regulations for 29 provider types regulated by the AHCA through repeal of obsolete or duplicative provisions in licensing laws and reform of regulations related to inspections, electronic publication of documents and reports, timeframes for reporting licensure changes, and financial information and bonds.

The bill does not require an ALF to provide LNS, but an ALF may choose to do so with appropriate nursing personnel without the requirement to obtain an additional specialty license. All ALFs are required to report electronically, at least semiannually, certain information about the facility's residents and professional staffing. Monitoring inspections will be tied to performance rather than requiring a set number of monitoring inspections for each specialty license.

C. Government Sector Impact:

Same as comment for the private sector impact. The AHCA estimated in a similar bill in the 2010 Session, that \$55,700 will be saved in certified mail costs as a result of the courtesy notice for license renewal. An analysis for SB 1736 from the AHCA is not available. The AHCA will be able to target its monitoring resources on facilities that have been cited for certain violations rather than whether a facility has a particular type of specialty license. This should generate efficiencies and focus resources on resident protection activities.

The AHCA and the DOH are required to adopt rules, some of which require collaboration with other state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DCF noted in its bill analysis that in seven counties, the Sheriff's Office conducts the child protective investigation, not CDF. Accordingly, the DCF recommends the following amendment: Strike lines 526 through 528 and insert:

Department of Children and Family Services, or their authorized agent, a staff physician to act a liaison between the hospital and the Department of Children and Family Services or Sheriff's Office which is investigating the