HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #: HB 441

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Rodrigues, R.; and others

106 **Y's** 0 **N's**

COMPANION BILLS: CS/SB 816

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 441 passed the House on April 22, 2015. The bill was amended by the Senate on April 24, 2015, and subsequently passed the House on April 24, 2015.

A home health agency (HHA) is an organization that provides home health services and staffing services. Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services. HHAs are regulated by the Agency for Health Care Administration (AHCA) pursuant to part III of chapter 400, F.S.

An HHA that is a Medicare or Medicaid provider, or shares a common controlling interest with such a provider, must submit a quarterly report to AHCA. An HHA that submits the report late is fined $200 per day until AHCA receives the report, but the total fine imposed may not exceed $5,000 per quarter. The report must include:

- The number of insulin dependent diabetic patients receiving insulin-injection services from the HHA;
- The number of patients receiving home health services from the HHA while also receiving hospice services;
- The number of patients receiving home health services; and
- The name and license number of each nurse who received remuneration from the HHA in excess of $25,000.

The bill removes the HHAs' quarterly reporting requirement, and associated fines. Instead, the bill requires all HHAs to submit the number of patients receiving home health services to AHCA during the licensure renewal process.

The bill also creates an exemption from certificate of need (CON) review for the establishment of a health care facility or project if the applicant was previously licensed within the past 21 days, failed to submit a renewal application, had a license that expired on or after January 1, 2015, and meets the following conditions:

- The applicant must not have a license denial or revocation action pending at the time the exemption is requested;
- The applicant's request for exemption must be for the same service type, district, service area, and site for which the applicant was previously licensed;
- The applicant's request for exemption, if applicable, must include the same number and type of beds as were previously licensed;
- The applicant must agree to the same conditions that were previously imposed on the CON or on an exemption related to the applicant's previously licensed health care facility or project; and
- The applicant must apply for initial licensure within twenty-one days after AHCA approves the exemption request.

The bill permits an applicant whose license expired between January 1, 2015, and the effective date of the bill to apply for a CON exemption within 30 days of the bill becoming a law.

The bill has an indeterminate negative fiscal impact on state government as there will be a reduction in revenues resulting from the elimination of associated fines; however, the impact is expected to be insignificant as prior fine collections have been minimal.

The bill was approved by the Governor on May 14, 2015, ch. 2015-33, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Home Health Agencies

A home health agency (HHA) is an organization that provides home health services and staffing services.[1] Home health services provided by an HHA include health and medical services, such as nursing care, physical and occupational therapy, home health aide services, and medical equipment provided to an individual in his or her home.[2] HHAs are regulated by the Agency for Health Care Administration (AHCA) pursuant to part III of chapter 400, F.S.

Current law[3] requires HHAs that are Medicare or Medicaid providers, or share a common controlling interest with a provider that is a Medicare or Medicaid provider, to submit a quarterly report to AHCA, within 15 days after the end of each calendar quarter. The report must include:

- The number of insulin dependent diabetic patients receiving insulin-injection services from the HHA;
- The number of patients receiving home health services from the HHA while also receiving hospice services;
- The number of patients receiving home health services; and
- The name and license number of each nurse who received remuneration from the HHA in excess of $25,000 during the calendar quarter.

An HHA is exempt from submitting the report if it is not a Medicare or Medicaid provider or does not share a controlling interest with a provider that is a Medicare or Medicaid provider.

Fines for Late or Non-Reporting of Quarterly Report

In 2008, the Legislature authorized AHCA to impose a fine against an HHA that commits certain fraudulent acts.[4] The legislation also required HHAs to submit a quarterly report to AHCA to assist in identifying possible fraudulent activity and authorized AHCA to impose a fine of $5,000 for late or non-reporting. In 2013, the Legislature reduced the mandatory fine amount for late or non-reporting of the quarterly report from $5,000 to $200 per day, up to a maximum of $5,000 per quarter.[5]

Since July 1, 2008, $8,317,650 in fines has been assessed against HHAs.[6] The amount of fines has decreased annually since July 1, 2013, when the law was changed to reduce the amount of the fine.[7] The following table provides an overview of the HHA reporting fines assessed and collected by AHCA annually, since 2008.[8]

[1] S. 400.462(12), F.S.
[2] S. 400.462(14), F.S.
[3] S. 400.474(7), F.S.
[4] Ch. 2008-246, Laws of Fla.
[5] Ch. 2013-133, Laws of Fla.
[6] Florida Agency for Health Care Administration, 2015 *Agency Legislative Bill Analysis for HB 441,* page 2 (on file with Health and Human Services Committee staff).
[7] Id.
[8] Id.

Fiscal Year	Fines Assessed	Fines Collected
FY 2008-09	$485,5000	$375,000
FY 2009-10	$2,921,100	$2,254,533
FY 2010-11	$1,945,750	$1,298,250
FY 2011-12	$927,750	$711,750
FY 2012-13	$925,000	$603,000
FY 2013-14	$723,250	$263,375
FY 2014-15	$389,300	$129,200
Total	**$8,317,650**	**$5,635,108**

Certificate of Need

A certificate of need (CON) is a written statement issued by AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices.[9]

Florida's CON program has existed since July 1973. From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria.[10] Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986.

The Florida CON program has three levels of review: full, expedited and exempt.[11]

Certain projects must undergo a full comparative review, including:

- Adding beds in community nursing homes or intermediate care facilities for the developmentally disabled by new construction or alteration;
- Construction or replacement of a new hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled;
- Converting from one type of health care facility[12] to another;
- Establishing a hospice or hospice inpatient facility;
- Increasing the number of beds for comprehensive rehabilitation; and
- Establishing tertiary health services[13].

Section 408.036(3), F.S., provides several exemptions to CON review for health care facility projects. Currently, there is no exemption from CON review for a health care facility or project of an applicant who was previously licensed and has undergone CON review. If a health care facility or project that has undergone CON review fails to renew its license in a timely manner, it will be subject to full CON review, including applicable fees. Applicants for CON review are required to submit a fee at the time of application submission.[14] The minimum CON application filing fee is $10,000.[15] In addition to the base

[9] S. 408.032(3), F.S.
[10] Pub. L. No. 93-641, 42 U.S.C. §§ 300k et seq., created the "National Health Planning and Resources Development Act of 1974".
[11] S. 408.036, F.S.
[12] S. 408.032(8), F.S., defines "health care facility" as a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.
[13] S. 408.032(17), F.S., defines "tertiary health service" as a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. The agency shall establish by rule a list of all tertiary health services.
[14] S. 408.038, F.S., and Rule 59C-1.008(3), F.A.C.
[15] Id.

fee, applicants must pay a fee of 1.5 percent of each dollar of the proposed expenditure,[16] however the total fee may not exceed $50,000.[17]

Effect of the Bill

The bill removes the quarterly reporting requirement, and associated fine provisions for late reporting, for HHAs that are Medicare or Medicaid providers. Instead, the bill requires all HHAs to submit the number of patients receiving home health services to AHCA during the licensure renewal process.

The bill also creates an exemption from CON review for the establishment of a health care facility or project if the applicant was previously licensed within the past twenty-one days, failed to submit a renewal application, had a license that expired on or after January 1, 2015, and meets the following conditions:

- The applicant must not have a license denial or revocation action pending with AHCA at the time of the request for exemption;
- The applicant's request for exemption must be for the same service type, district, service area, and site for which the applicant was previously licensed;
- The applicant's request for exemption, if applicable, must include the same number and type of beds as were previously licensed;
- The applicant must agree to the same conditions that were previously imposed on the CON or on an exemption related to the applicant's previously licensed health care facility or project; and
- The applicant must apply for initial licensure within twenty-one days after AHCA approves the exemption request.

The bill permits an applicant whose license expired between January 1, 2015 and the effective date of the bill to apply for a CON exemption within thirty days of the bill becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill removes an HHA quarterly reporting requirement and the fines associated with the failure to timely file the report. As a result, there will be a reduction of fine revenues. Although the amount of fines collected for failure to timely file the quarterly report required by s. 400.474(7), F.S., has dropped significantly each year since FY 2009-10, the impact of the elimination of quarterly report fine revenue is indeterminate. Fines and licensure fees are deposited in the Agency's Health Care Trust fund and licensure fees are used to support the regulatory operations.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[16] Rule 59C-1(3)(a), F.A.C., provides that the proposed expenditure includes only items of cost contributing to the capital expenditures of the proposed project.
[17] Id.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HHAs may realize a reduction of administrative costs associated with submitting information to AHCA every two years instead of every quarter. Also, HHAs will no longer be fined for late filing of the report under s. 400.474(7), F.S.

The bill creates an exemption from CON review for the establishment of any health care facility or project if the applicant was previously licensed within the past 21 days, failed to submit a renewal application, had a license that expired on or after January 1, 2015, and meets certain conditions. A health care facility or project could save up to $50,000 in CON application filing fees by obtaining this exemption. However, the number of health care facilities or projects that would qualify for this exemption is unknown. Therefore, the fiscal impact for the general exemption from CON review is indeterminate.

The bill also creates a specific exemption from CON review for an applicant whose license expired between January 1, 2015 and July 1, 2015 to apply for a CON exemption within 30 days of the bill becoming a law. It appears that there is one hospice facility that would be affected by this exemption. The specific exemption could result in insignificant savings of up to $50,000 in CON application filing fees if the hospice is granted the exemption by AHCA.

D. FISCAL COMMENTS:

None.