

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1056

INTRODUCER: Senator Garcia

SUBJECT: Home Health Care Agency Licenses

DATE: March 31, 2017

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Stovall | Stovall        | HP        | <b>Favorable</b> |
| 2. |         |                | AHS       |                  |
| 3. |         |                | AP        |                  |

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**I. Summary:**

SB 1056 removes a prohibition on the Agency for Health Care Administration (AHCA) issuing an initial home health agency license to an applicant that shares common controlling interests with another licensed home health agency that is located in the same county and within 10 miles of the applicant.

The effective date of the bill is July 1, 2017.

**II. Present Situation:**

**Home Health Agencies (HHA)**

An HHA is an organization that provides home health services and staffing services.<sup>1</sup> Home health services provided by an HHA include health and medical services and medical supplies provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.<sup>2,3</sup>

Home health agencies are regulated by the AHCA pursuant to part III of ch. 400, F.S., and the general licensing provisions in part II of ch. 408, F.S. As of March 31, 2017, there are 1950 licensed HHAs in the state.<sup>4</sup>

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<sup>1</sup> Section 400.462(12), F.S.

<sup>2</sup> Section 400.462(14), F.S. Additional services may include dietetics and nutrition practice and nutrition counseling.

<sup>3</sup> Home health aide services may include hands-on personal care, simple procedures as an extension of therapy or nursing services, assisting in ambulation or exercises, and assisting with the self-administration of medication. *See* s. 400.462(15), F.S.

<sup>4</sup> Agency for Health Care Administration, FloridaHealthFinder.gov, search on home health agencies, available at: <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 31, 2017),

A license is required to operate as an HHA unless an exemption applies.<sup>5</sup> Numerous exemptions exist and the most common exemptions apply to an HHA operated by the federal government or home health services provided by a state agency, licensed health care practitioner operating under his or her professional license, or other licensed health care facility.<sup>6</sup>

An HHA must designate a geographic service area (one or more counties within an AHCA district) in which the HHA will operate. These counties are identified on the license. An HHA may apply to amend the geographic service area to expand within the AHCA district under the same license.<sup>7</sup>

A licensed HHA may also operate satellite offices under the main HHA license. A satellite office must be located in the same geographic service area as the HHA's main office and share administration, fiscal management, supervision, and service provision with the main office. Supplies and records may be stored at a satellite office and signs and advertisements can notify the public of the satellite office location. If an HHA wants to open an office outside of the geographic services area where the main licensed office is located, it must obtain a separate license.<sup>8</sup>

Section 400.471(7), F.S., prohibits the AHCA from issuing an initial license to an applicant for an HHA license if the applicant shares common controlling interest with another licensed HHA that is located within 10 miles of the applicant and is in the same county. This restriction was enacted in ch. 2008-246, Laws of Fla.

“Controlling interest” means:<sup>9</sup>

- The applicant or licensee or
- A person or entity that serves as an officer of, is on the board of directors of, or has a five percent or greater ownership interest in the
  - Applicant or licensee or
  - Management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.

### **Medicare and Medicaid Fraud**

The HHA industry in Florida has been marred with years of uncontrolled growth and health care fraud. The Florida Senate studied HHAs in Florida in 2007, issuing an interim report<sup>10</sup> that outlined unusually rapid growth in licensed HHAs, particularly in South Florida, and indications of possible quality-of-care problems and Medicaid fraud. Numerous regulatory reforms were enacted in 2008 and 2009 which focused on fraud and abuse prevention in the HHA industry.<sup>11</sup>

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<sup>5</sup> Section 400.464, F.S.

<sup>6</sup> Section 400.464(5), F.S.

<sup>7</sup> Rule 59A-8.007, F.A.C. The AHCA reviews the HHA's previous history of survey results and administrative action to assess the HHA's ability to provide quality services within the requested expanded area.

<sup>8</sup> Rule 59A-8.003(7), F.A.C.

<sup>9</sup> Section 408.803(7), F.S.

<sup>10</sup> The Florida Senate, *Review Regulatory Requirements for Home Health Agencies*, November 2007, [http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim\\_reports/pdf/2008-135hr.pdf](http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf) (last viewed March 30, 2017)

<sup>11</sup> See chs. 2008-246, 2009-193, and 2009-223, Laws of Fla.

Ongoing monitoring and Medicare and Medicaid fraud enforcement action continues. Most recently, in fiscal year 2015-2016, 24 HHAs were terminated from participation in the Medicaid program as a result of fraud and abuse,<sup>12</sup> and 26 HHAs were denied enrollment or reenrollment in the Medicaid program because of suspected fraud and abuse.<sup>13</sup>

In addition, the Centers for Medicare and Medicaid Services (CMS) has imposed a federal moratoria on new HHAs in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) in order to target fraud in Florida.<sup>14</sup>

- In July 2013, CMS implemented a moratorium on the enrollment of new HHAs in the Miami area.
- CMS extended the moratorium in 2014 to the metropolitan areas of Fort Lauderdale. The moratoria have since been extended at 6-month intervals and remain in place in both Miami and Ft. Lauderdale.
- Effective July 29, 2016, CMS expanded the moratoria statewide and made it applicable to Medicare, Medicaid, and the CHIP.<sup>15</sup>

There is no indication at this point as to the duration of the CMS imposed moratoria. The CMS has created a Provider Enrollment Moratoria Access Waiver Demonstration (PEWD) which is designed to provide exceptions to the moratoria to ensure that beneficiary access to care is not adversely impacted.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill removes a prohibition on the agency issuing an initial home health agency license to an applicant that shares common controlling interests with another licensed home health agency that is located in the same county and within 10 miles of the applicant. The bill also removes the directive for the agency to return the application and fees to the applicant.

The effective date of the bill is July 1, 2017.

### IV. Constitutional Issues:

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

None.

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<sup>12</sup> Joint Report by the AHCA and the Medicaid Fraud Control Unit with the Office of the Attorney General, The State's Efforts to Control Medicaid Fraud and Abuse FY 2015-16, December 16, 2016, page 57, available at:

[http://ahca.myflorida.com/Executive/Inspector\\_General/docs/Medicaid\\_Fraud\\_Abuse\\_Annual\\_Reports/2015-16\\_MedicaidFraudandAbuseAnnualReport.pdf](http://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2015-16_MedicaidFraudandAbuseAnnualReport.pdf) (last viewed March 30, 2017).

<sup>13</sup> *Id.* at page 58.

<sup>14</sup> CMS *Provider Enrollment Moratorium*, available at: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html> (last viewed March 30, 2017).

<sup>15</sup> The moratoria was imposed statewide to address problems in the effectiveness of the earlier moratorium because those did not prevent providers outside the moratoria area from billing for servicing beneficiaries within that area.

<sup>16</sup> *Supra*, note 13.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Applicants for an initial HHA license with common controlling interests with a currently licensed HHA will be able to obtain a new license within close proximity to the currently licensed HHA. A new license will enable the HHA to do business under a different license authority.

**C. Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 400.471 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.