

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 437 Nurse Registries

SPONSOR(S): Insurance & Banking Subcommittee, Stone and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 880

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 437 passed the House on February 20, 2020, and subsequently passed the Senate on March 12, 2020.

Under the workers' compensation law, injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires. Among other services, workers' compensation covers attendant care. Attendant care is care rendered by trained professional attendants that is beyond the scope of household duties. Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.

A nurse registry is an agency licensed to secure temporary employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, certified nursing assistants, homemakers, and companions in a patient's home or with health care facilities or other entities. The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity. A workers' compensation carrier may use a nurse registry to place attendant care services to be rendered to an injured worker, but nurse registries are not expressly mentioned in the workers' compensation statute.

The bill specifically authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

The bill has no fiscal impact on state or local government or the private sector.

The bill was approved by the Governor on June 27, 2020, ch. 2020-101, L.O.F., and became effective on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Workers' Compensation Attendant Care Benefits

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.¹ Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.² Medical services must be provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).³

There are several types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties.⁴ Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.⁵

Providing in-home attendant care has significant advantages for both the injured worker and the carrier. The injured worker can be more comfortable than in an institution and realize better outcomes, both physically and mentally. The carrier can achieve significant cost savings. Current law does not expressly authorize carriers to use any particular provider type or provider business model.

Placement of Attendant Care Services

Nurse Registries

A nurse registry is an agency licensed to secure temporary employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, certified nursing assistants, homemakers, and companions in a patient's home or with health care facilities or other entities.⁶ Nurse registries are governed by part II of chapter 408, F.S.,⁷ associated rules in Chapter 59A-35, F.A.C., and the nurse registry rules in Chapter 59A-18, F.A.C. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA) to offer contracts in Florida.⁸

The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity (e.g., a workers' compensation carrier).⁹ This is a key defining feature of a nurse registry; it cannot have any employees except for the administrator, alternate

¹ S. 440.09(1), F.S.

² S. 440.13(2)(a), F.S.

³ S. 440.13(3)(a), F.S.

⁴ S. 440.13(1)(b), F.S. Attendant care must be medically necessary and performed at the direction and control of an authorized treating physician pursuant to a written prescription. S. 440.13(2)(b), F.S.

⁵ The valuation of family-member provided attendant care is limited in both duration and cost. S. 440.13(2)(b), F.S.

⁶ S. 400.462(21), F.S.

⁷ S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

⁸ S. 400.506(1), F.S.

⁹ S. 400.506(6)(d), F.S.

administrator, and office staff – all individuals who enter the home of patients to provide direct care must be independent contractors.¹⁰

Home Health Agencies

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual's home or place of residence.¹¹ HHAs are governed by part II of chapter 408, F.S.,¹² associated rules in Chapter 59A-35, F.A.C., and Chapter 59A-8, F.A.C. Like a nurse registry, a HHA must be licensed by AHCA, pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.¹³

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with a HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and a HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; a HHA qualifies for such reimbursement.

The workers' compensation law is silent regarding how attendant care providers are selected to provide authorized compensable care for injured workers. A workers' compensation carrier has the discretion to choose attendant care providers directly or to use a nurse registry or HHA to place attendant care providers for the benefit of an injured worker.

Effect of the Bill

The bill specifically authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁰ S. 400.506(6)(e), F.S.

¹¹ S. 400.462(12), (14), F.S.

¹² S. 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.

¹³ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.