

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HSQS 11-02 Repeals Obsolete Language relating to the Agency for Health Care Administration

SPONSOR(S): Health & Human Services Quality Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Quality Subcommittee		Guzzo	Calamas

SUMMARY ANALYSIS

The PCB repeals ss. 408.18, 408.185, 402.164-167, and 408.036(3)(m)(3), F.S., which are either outdated, no longer effective, or no longer being implemented.

Section 408.18, F.S., the Health Care Antitrust Guidance Act, was created to provide instruction to the health care community to help resolve antitrust uncertainty that may deter health care business activities. This section authorizes the Office of the Attorney General (OAG) to issue antitrust no-action letters, which state the intention of the OAG not to take antitrust enforcement actions with respect to the requesting party. Since the statute was enacted in 1996, the OAG has only issued four no-action letters. Section 408.185, F.S., makes information held by the OAG submitted by a member of the health care community pursuant to a request for an antitrust no-action letter confidential and exempt from chapter 119, F.S., public records requirements.

Sections 402.164-167, F.S., relate to the Statewide Advocacy Council and the Florida local advocacy councils, which consist of citizen volunteers who monitor, investigate, and determine the presence of conditions or individuals that pose a threat to the rights, health, safety, or welfare of people who receive services from state agencies. Funding and positions for the Statewide Advocacy Council were eliminated in 2010.

Section 408.036(3)(m)(3), F.S., requires the Agency for Health Care Administration (AHCA) to provide an annual report to the Legislature listing the number of certificate of need exemption requests for open-heart services received during the calendar year. The Legislature can request this information from AHCA at any time.

The PCB does not appear to have a fiscal impact.

The PCB provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Antitrust Issues

Sections 408.18, and 408.185, F.S., relate to the Health Care Community Antitrust Guidance Act and antitrust no-action letters. These sections were created in 1996 to provide instruction to the health care community, to help resolve the problem of antitrust uncertainty that may deter health care business activities that can improve the delivery of health care.

Antitrust no-action letters state the intention of the Office of the Attorney General (OAG) not to take antitrust enforcement actions with respect to the requesting party. In order to receive an antitrust no-action letter, a member of the health care community must submit a request in writing to the OAG. In addition to the request for the antitrust no-action letter, requesting parties must provide the OAG with any additional information or documents the OAG requests for its review. Section 408.185, F.S., makes information held by the OAG submitted by a member of the health care community pursuant to a request for an antitrust no-action letter confidential and exempt from chapter 119, F.S., public records requirements. The information submitted by a member of a health care community is held by the OAG and exempt from public records for one year.

Statewide Advocacy Council

Sections 402.164-167, F.S., relate to the Florida Statewide Advocacy Council (SAC) and the Florida local advocacy councils. In 2000 the Legislature created a system that includes the SAC and local advocacy councils to serve as a consumer protection mechanism without interference by an executive agency for people receiving services from four state agencies, the Agency for Health Care Administration (AHCA), the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Elder Affairs. The types of programs and facilities monitored and investigated by the volunteer network include group homes for people with developmental disabilities, adult day training programs, inpatient and outpatient mental health and substance abuse facilities, economic self-sufficiency offices, Baker Act facilities, child care facilities, and licensed foster homes.

The SAC is under the direction of the Executive Office of the Governor and has 15 volunteer members appointed by the Governor. The SAC's primary role is to oversee and supervise the operation of 25 local advocacy councils and serve as the appellate body for complaints that the local advocacy councils have not been able to resolve. Local advocacy councils are located throughout the state and organized into 15 service areas.

Statutes authorize the Governor to assign the SAC to any executive agency for administrative support services.¹ In fiscal year 2004-05, the Governor assigned this role to AHCA. The Legislature appropriated AHCA \$555,437 in fiscal year 2009-10 from general revenue, including \$349,566 for salaries and benefits and \$137,450 for expenses, and five full time employees for SAC.² However, in 2010 all funding and positions were eliminated.

Certificate of Need Exemption Request Report

Section 408.036(3)(m)(3), F.S., requires AHCA to submit an annual report to the Legislature providing information concerning the number of certificate of need (CON) exemption requests for adult open-heart services it has received during the calendar year. CONs are written statements issued by AHCA

¹ S. 402.165, F.S.

² "Statewide Advocacy Council Activities Overlap with Other Entities, but Duplication is Minimal", Office of Program Policy Analysis and Government Accountability, Research Memorandum. October 13, 2009.

evidencing community need for new, converted, expanded or otherwise significantly modified health care facility, health service or hospice.³ In 2004, the Legislature created an exemption from CON review for open-heart surgery services provided by hospitals meeting certain criteria.⁴ Such hospitals are required to document or certify certain information to AHCA in their applications for exemption.

Effects of the Bill

The bill repeals s. 408.18, F.S., which created the Health Care Community Antitrust Guidance Act. Since the statute was enacted in 1996, the OAG has only issued four no-action letters.

The bill repeals s. 408.185, F.S., relating to a public records exemption for certain documents submitted for OAG review in regards to a request for a no-action letter. The repeal of this section will not result in these documents becoming available to the public. Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption may not be made public unless otherwise provided by law.

The bill repeals ss. 402.164-167, F.S., relating to the Statewide Advocacy Council and local advocacy councils. The SAC is currently defunct, as funding and positions were eliminated from the council in 2010.

Finally, the bill repeals s. 408.036 (3)(m)(3), F.S., relating to adult open-heart CON exemption reports submitted by AHCA. The Legislature can request this information from AHCA at any time.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 408.18, 408.185, 402.164-167, and 408.036, F.S., relating to the Health Care Community Antitrust Guidance Act; Information submitted for review of antitrust issues; Legislative intent, definitions; Florida Statewide Advocacy Council; Florida local advocacy councils; Duties of state agencies that provide client services relating to the Florida Statewide Advocacy Council and the Florida local advocacy councils; and projects subject to review.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³ S. 408.032(3), F.S.

⁴ S. 408.036(3)(m), Ch. 2004-383, Laws of Florida.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES