

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RORS 13-01 Repeals of Unnecessary AHCA Mandates

SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|----------|--|
| Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee | 10 Y, 0 N | Rubottom | Rubottom |

SUMMARY ANALYSIS

The PCB repeals or revises a number of statutes containing unnecessary or confusing rulemaking directives and references relating to the Agency for Health Care Administration.

The Administrative Procedure Act (APA) provides clear guidance on when rules are necessary to implement laws. Provisions in the substantive laws that add directives to make rules in addition to any needed rulemaking authority and substantive policy guiding rulemaking are either unnecessary, redundant to the requirements of the APA, or provide for rules that are unnecessary. The bill provides WHEREAS language to clarify the intent not to substantively change rulemaking authority by deleting unnecessary rulemaking mandates and references.

The bill strikes unnecessary rulemaking provisions, or revises statutes providing guidelines for rulemaking to ensure that the APA will be the consistent guide to when rules are needed to implement the particular substantive laws.

The bill only affects rulemaking authority and responsibility of AHCA in its health care licensure responsibilities, primarily the chapter relating to nursing homes.

The bill does not make substantive changes to law.

The bill becomes effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

AHCA has a number of regulatory responsibilities, among these being the licensure of health care facilities including abortion clinics, nursing homes and clinical laboratories.

In recent years, many of the facilities licensed by AHCA have come under increasing regulatory control of federal law relating to Medicaid and Medicare, and state laws providing greater specificity than previously provided. At the same time, frequent changes to many of these overlapping legal environments have made it difficult for AHCA to maintain rules consistent with current law. Some of this difficulty has related to unnecessary rulemaking mandates, particularly relating to statutes that provide sufficient specificity to enforce without resort to rulemaking.

Rulemaking is required by the APA whenever an agency has express authority to make rules, and must resort to rulemaking in order to implement, interpret or prescribe law, policy or requirements including mandatory forms.¹ Rulemaking is not discretionary under the APA.²

In 2009 and again in 2013, the Joint Administrative Procedures Committee held hearings focusing on 2007 legislation that, on its face, requires AHCA to make rules that have yet to be finally adopted. In some cases, that legislation and similar legislation contemplated rulemaking that was either unnecessary under the APA or already promulgated under previously enacted law.

Section 400.23(3) and (5), F.S., now provide very specific staffing ratios for licensed nursing homes. AHCA has been unable to update its rules to incorporate this recent reform but enforces the staffing standards pursuant to other statutory authority. Rulemaking mandates in these two provisions are unnecessary and inconsistent with the APA and the substantive law that requires enforcement with or without rules.³ Technically, AHCA is out of compliance with these nominal rulemaking mandates, but no practical effect flows from that status.

Section 390.012, F.S., provides for rulemaking by AHCA to implement the provisions of chapter 390. The statute specifically provides that rules must require abortion clinics to be in compliance with s. 390.0111, F.S. In essence, AHCA has authority and direction to adopt rules to implement chapter 390, including a requirement to require clinics to comply with a particular provision of chapter 390. This is unnecessary verbiage in statute law and adds nothing to the agency's duties or authority. Moreover, it is inconsistent with the clear intent of the APA that statutes speak for themselves and rules should not reiterate them.⁴

Effect of Proposed Changes

The bill repeals or revises a number of statutory provisions to eliminate redundant, unnecessary, confusing and unused mandates and references relating to AHCA's rulemaking authority. The bill does not reduce any rulemaking authority possessed by AHCA nor alter any substantive law. The bill provides WHEREAS language to clarify that not change in substantive law or rulemaking authority is intended by the statutory amendments.

¹ Section 120.52(16), F.S., defines "rule" to mean "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute...".

² Section 120.54(1)(a), F.S.

³ Section 120.54(1)(c), F.S., requires "No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules."

⁴ Section 120.545(1)(c), F.S., directing JAPC to make a determination whether a proposed rules reiterates or paraphrases statutory material.

An explanation of the particular changes follows:

Section 1 amends s. 390.012(3)(d), the abortion clinic licensure law, to repeal a provision requiring AHCA to adopt a rule requiring that abortion clinics obey s. 390.0111, the termination of pregnancy statute. Section 390.012(1) already provides full rulemaking authority to AHCA to implement s. 390.011-390.018 including s. 390.0111. In addition, s. 390.0111 has its own rule authorizing provision directed to the Department of Health and the licensing boards. Abortion clinics must obey s. 390.0111. Thus, a specific rule directing them to obey that law would not add to the force of law. AHCA will retain the power to enforce the relevant standards by rules as necessary. AHCA requested this mandate to be deleted from the statute.

Section 2 amends s. 400.021(11) to remove an unnecessary rulemaking reference.

Section 3 repeals s. 400.0712(3) which mandates "necessary" rules. AHCA has the authority and responsibility to adopt rules necessary to the implementation of the laws it enforces and the provision being repealed is redundant.

Section 4 amends s. 400.176(2) to remove an unnecessary rulemaking mandate.

Section 5 amends s. 400.23 to revise a number of provisions to:

- Clarify the rulemaking authority of AHCA regarding Chapter 400, Part II, Nursing Homes. (Lines 115-120)
- Remove the rulemaking requirement related to minimum staffing ratios because the Legislature has already set the minimum staffing ratios. (Lines 201-203 and 254-256) AHCA requested this change.
- Clarify various provisions that set standards to remove unnecessary rulemaking references.

Section 6 amends s. 400.487(7) to remove unneeded rulemaking in a self-executing provision exempting nursing home licensees and staff from civil and criminal liability for following "Do Not Resuscitate" orders. Rules cannot supply civil and criminal immunity. That is for the Legislature. AHCA requested this change.

Section 7 amends s. 400.497 to revise a number of provisions to:

- Clarify the rulemaking authority of AHCA regarding Chapter 400, Part III, Home Health Agencies.
- Clarify various provisions that set standards, removing unnecessary rulemaking references.

Sections 8 and 9 amend s. 400.506 and s. 400.509 to remove rulemaking authority that is redundant to the clear and express provisions of s. 400.497 revised in Section 7.

Section 10 amends s. 400.914 to revise a number of provisions to:

- Clarify the rulemaking authority of AHCA regarding Chapter 400, Part VI, Prescribed Pediatric Extended Care Centers.
- Clarify various provisions that set standards, removing unnecessary rulemaking references.

Section 11 amends s. 483.245 to remove an unnecessary rulemaking mandate to clarify AHCA's responsibility to enforce the law prohibiting rebates, kickbacks and fee splitting by licensed clinical laboratories. AHCA requested this change. AHCA has full rulemaking authority to enforce the section under s. 483.051.

B. SECTION DIRECTORY:

Section 1 amends s. 390.012(3)(d) by deleting a sentence requiring rules to require clinics to comply with s. 390.0111. The sentence is unnecessary to the enforcement of the provisions of the chapter.

Section 2 amends s. 400.021(11) to remove an unnecessary rulemaking reference.

Section 3 repeals s. 400.0712(3), which mandates "necessary" rules.

Section 4 amends s. 400.176(2) to remove an unnecessary rulemaking mandate.

Section 5 amends s. 400.23 by removing unnecessary rulemaking requirements and references.

Section 6 amends s. 400.487(7) by deleting an unnecessary rulemaking mandate.

Section 7 amends s. 400.497 by removing unnecessary rulemaking mandates.

Section 8 amends s. 400.506(12)(f) and (17) by eliminating unnecessary rulemaking mandates.

Section 9 repeals s. 400.509(7), an unnecessary rulemaking mandate.

Section 10 amends s. 400.914, to remove an unnecessary rulemaking mandate.

Section 11 amends s. 483.245(2), to remove an unnecessary rulemaking mandate.

Section 12 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None anticipate.
2. Expenditures: None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None anticipated.
2. Expenditures: None anticipated

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None anticipated

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to implicate the mandates provisions of Article VI, Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The purpose of the PCB is to clarify the administrative authority of AHCA to adopt rules as required by the provisions of the APA consistent with the needs of implementation of the relevant substantive laws.

Accordingly the bill removes unnecessary, redundant and confusing rulemaking requirements and references.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES