HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HHS 18-02 Health Care Disaster Preparedness and Response
SPONSOR(S): Health & Human Services Committee; Massullo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	18 Y, 0 N	Royal	Calamas

SUMMARY ANALYSIS

In September 2017, Hurricane Irma posed an unprecedented threat to the state and a severe test of existing emergency preparedness and response protocols. In the aftermath, the House Select Committee on Hurricane Response and Preparedness was convened to gather information, solicit ideas for improvement, and make recommendations for legislation to improve hurricane preparedness and response. Testimony in the select committee revealed instances in which nursing homes, assisted living facilities, home health agencies, nurse registries, and other entities caring for Florida's most vulnerable populations were insufficiently prepared for a disaster.

The Agency for Health Care Administration (AHCA) licenses and regulates nursing homes, assisted living facilities, home health agencies and nurse registries. The Agency for Persons with Disabilities (APD) licenses and regulates community-based residential facilities. Current law requires most of these providers to have comprehensive emergency management plans that are reviewed and approved by either the local emergency management agencies or county health departments. Testimony during the select committee revealed that some facilities' plans were inadequate or were not followed. The bill adds components that must be addressed in the facilities' comprehensive emergency plans to address inadequacies in the facilities' plans. The bill also provides enforcement authority to AHCA and APD to ensure that facilities comply with the new plan requirements and follow their plans during an emergency.

Special needs shelters provide shelter and services to persons with special needs who have no other safe option for sheltering during an emergency or disaster. Testimony at the select committee revealed that special needs shelters were inadequately staffed during Hurricane Irma. The bill directs the Department of Health (DOH) to recruit faculty and students from state university and college health care programs to staff special needs shelters, and requires these entities, and state agencies, to allow employees who are healthcare practitioners to staff local special needs shelters if they have no other disaster-related duties for their employers. The bill requires local emergency management agencies and hospitals to enter into mutual agreements for sheltering people with complex medical needs beyond the capabilities of the local special needs shelters.

The Division of Emergency Management (DEM) has a state special needs registry for those that may need assistance sheltering in an emergency. However, most local emergency management agencies have their own registries. Additionally, the availability of special needs shelter information varies greatly between the local emergency management agencies. These factors, plus a surge of last minute registrations and health care providers that brought patients and residents to shelters without providing staffing, made it difficult for local emergency management agencies to manage the shelters. The bill requires DOH, rather than DEM, to establish a uniform statewide special needs shelter registry, and requires local emergency management agencies to use it, rather than local registries, while preserving local control over special needs shelter eligibility criteria.

Finally, the bill requires local emergency management agencies to establish procedures to allow health care facility staff to travel to and from work during declared curfews.

The bill has a significant negative fiscal impact on state government and no fiscal impact on local governments. See Fiscal Analysis.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Since 2000, 79 tropical or subtropical cyclones have impacted Florida, including Hurricanes Charley (2004), Ivan (2004), Jeanne (2004), Dennis (2005), Wilma (2005), and Matthew (2016).[1] However, in September 2017, Hurricane Irma posed an unprecedented threat to the state and a severe test of existing emergency preparedness and response protocols.

As Hurricane Irma moved across the state, at least 32 of Florida's rivers and creeks flooded, and 18 tornadoes were confirmed across the peninsula. Fifty-four of Florida's 67 counties issued evacuation orders to a record 6.8 million people. Nearly 700 shelters were opened throughout the state, housing a record-breaking peak population of 191,764 people.[2]

All of Florida's 67 counties were included under a Presidential Disaster Declaration. Out of these, 47 counties were declared for all categories of public assistance, while 48 counties were declared for individual assistance.[3] The widespread impact of Hurricane Irma tested Florida's emergency management capabilities, and the state can use the experience gained to further refine its emergency management framework.

House Select Committee on Hurricane Response and Preparedness

In September 2017, the Speaker of the House of Representatives created a Select Committee on Hurricane Response and Preparedness. The select committee was directed to gather information, solicit ideas for improvement, make recommendations to the executive branch, and suggest legislative options to address hurricane preparedness and response for consideration during the 2018 Legislative Session.[4] Specifically, the select committee was directed to consider the following topics.

- Avoiding and Mitigating Future Storm Damage
- Public Safety
- Evacuation
- Critical Worker and Employee Protections
- Medical Facilities
- Medical Care
- Shelters[5]

After conversations with constituents and local emergency management officials and over 16 hours of presentations and discussions with experts in numerous fields, the committee agreed to a list of proposed recommendations for consideration and further development by the standing substantive and fiscal committees of the House.[6] The select committee concluded that six policy areas clearly require action, including: vulnerable populations residing in health care and residential facilities; and shelters and vulnerable populations.[7]

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[1] Florida House of Representatives, Final Report of the Select Committee on Hurricane Response and Preparedness, January 16, 2018, Available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=select committee - Final Report online.pdf (last accessed February 10, 2018).
[2] Id, at 2.
[3] Id, at 3.
[4] Id, at 9.
[5] Id.
[6] Id, at 11.
[7] Id, at 13.

The committee found that while nursing homes, assisted living facilities, and other state-licensed entities responsible for vulnerable populations generally did what was necessary to prevent negative outcomes for their patients and residents, improvements are necessary to ensure the health and safety of Florida's most vulnerable populations living in facilities.[8]

The committee made numerous recommendations for consideration by the standing Health and Human Services Committee related to vulnerable populations, special needs shelters, and health care licensees:

- Improve the quality of the Comprehensive Emergency Management Plans (CEMP) required of facilities and health care providers and ensure through oversight and enforcement that they are capable of and prepared to implement these plans;
- Require facilities to share provisions of their CEMPs with residents, a resident's designated family member, legal representative or guardian;[9]
- Require licensed or contracted entities that provide home health or home and community based services to work with clients to develop individual emergency plans;
- Create a statewide special needs shelter registration system with standardized information, while continuing to allow counties to set shelter eligibility/exclusions to special needs shelters capacity; and
- Require all counties to post the eligibility criteria and registration process – including a link to the statewide registration form – on their websites.[10]

The committee published its final report on January 16, 2018.

Emergency Management Framework

Chapter 252, F.S., the State Emergency Management Act, provides the statutory outline for disaster response in Florida. It delegates responsibilities to entities within state and local governments and establishes the Division of Emergency Management (DEM), which is charged with coordinating state efforts to mitigate the impact of natural, technological, and manmade emergencies and disasters.[11]

Powers of the Governor

The Governor is responsible for meeting the dangers presented to this state and its people during emergencies. In the event of an emergency beyond local control, the Governor, or his or her designee, may assume direct operational control over all or any part of the emergency management functions within this state.[12] The Governor may by executive order or proclamation declare a state of emergency. A state of emergency has the force and effect of law and assists in the management of an emergency by activating the emergency mitigation, response, and recovery aspects of the state, local, and inter-jurisdictional emergency management plans applicable to the political subdivision or area in question. A state of emergency may be declared if the Governor finds that an emergency has occurred or is imminent.[13]

Florida Division of Emergency Management

Florida's Division of Emergency Management (DEM) administers programs to rapidly apply all available aid to impacted communities stricken by emergency.[14] The DEM is responsible for maintaining a

[8] Id.
[9] Id.
[10] Id, at 15.
[11] SS. 252.32 and 252.35, F.S.
[12] S. 252.36(1)(a), F.S.
[13] S. 252.36, F.S.
[14] S. 14.2016. F.S.

comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the DEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in emergency management.[15]

State Comprehensive Emergency Management Plan

The DEM is required by s. 252.35, F.S., to prepare a State Comprehensive Emergency Management Plan (SCEMP) to be integrated into and coordinated with the emergency management plans and programs of the federal government. The SCEMP must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters.[16] The SCEMP must be updated biannually and submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate, on February 1 of each even numbered year.[17]

The SCEMP designates the State Emergency Operations Center (SEOC) as the permanent location in which the state emergency response team (SERT) carries out the coordination and completion of response and recovery activities.[18] The SERT is comprised of DEM staff, other state agencies, and private volunteer organizations and non-governmental agencies and serves as the primary operational mechanism through which state assistance to local governments is managed. Members of the SERT are organized into sections, branches, and emergency support functions (ESFs).[19]

The 18 ESFs are the primary mechanisms for providing assistance at the state level. The ESFs ensure that all levels of government are able to mobilize as a unified emergency organization to safeguard the well-being of the residents and visitors of the state.[20] ESF-8, Public Health and Medical Services, coordinates the plans, procedures, and resources to address health care and medical needs. The Department of Health (DOH) is the primary agency in charge of ESF-8 with support from various agencies and organizations, including, the Agency for Health Care Administration (ACHA), Agency for Persons with Disabilities (APD), Department of Elder Affairs (DOEA), and the Department of Children and Families (DCF).[21]

The ESF-8 core mission is to, among other duties, support local assessment and identification of public health and medical needs in impacted counties and implement plans to address those needs, coordinate and support stabilization of the public health and medical system in impacted counties, support sheltering of persons with medical and functional needs, and monitor and coordinate resources to support care and movement of persons with medical and functional needs in impacted counties.[22]

The SCEMP states that the SEOC will be activated at a level necessary to effectively monitor or respond to threats or emergency situations. The SEOC operates 24 hours a day, 7 days a week, but the level of staffing varies with the activation level.[23] There are three levels of activation:

- Level 3: Normal conditions (maintained at all times other than during Level 1 or 2 conditions).
- Level 2: The SERT is activated, but may not require activation of every section, branch, or ESF.

[15] S. 252.35(1), F.S.
[16] S. 252.35(2)(a), F.S.
[17] S. 252.35(8), F.S.
[18] Florida Division of Emergency Management. *Comprehensive Emergency Management Plan* (2016). Available at https://floridadisaster.org/dem/preparedness/natural-hazards/comprehensive-emergency-management-plan/ (last accessed February 9, 2018).
[19] Id, at 5. The 18 ESFs are transportation, communications, public works and engineering, firefighting, information and planning, mass care, resource management, health and medical services, search and rescue, environmental protection, food and water, energy, military support, external affairs – public information, volunteers and donations, law enforcement and security, animal and agricultural services, and business, industry and economic stabilization.
[20] https://floridadistaster.org/dem/preparedness/natural-hazards/comprehensive-emergency-management-plan (last accessed on February 13, 2018).
[21] Id, at 2.
[22] Id, at 5.
[23] Id, at 32.

- Level 1: The SERT has activated all sections, branches, and ESFs to conduct response and recovery operations.[24]

Local Government Responsibilities

Chapter 252, F.S., also recognizes the innate emergency responsibilities that belong to political subdivisions within the state. Section 252.39, F.S., assigns counties and municipalities rights and responsibilities for emergency management. Each county in the state must establish and maintain an emergency management agency and develop an emergency management plan that is consistent with the state CEMP.[25] Municipalities also have the option of establishing municipal emergency management programs that are subject to the same laws, rules, and requirements that apply to county emergency management programs.[26]

Counties and municipalities operating emergency management programs have authority to charge and collect fees to support those programs, and to appropriate and expend funds in support of programming.[27] In the event that an emergency or disaster impacts only one political subdivision of the state, that subdivision has the authority to declare a local state of emergency, limited to a period of seven days.[28]

Special Needs

Special Needs Shelters

People with sensory disabilities or physical, mental, or cognitive impairments may require assistance during evacuations and sheltering in an emergency. Special needs shelters provide shelter and services to persons with special needs who have no other safe option for sheltering during an emergency or disaster.[29] These shelters must have back-up generator power and are intended to sustain an individual's level of health to the extent possible under emergency conditions.[30] DOH is the lead agency for coordination and recruitment of healthcare practitioners to staff the special needs shelters during an emergency or disaster.[31] Pursuant to ss. 401.273 and 456.38, F.S., DOH maintains a registry of healthcare practitioners who volunteer to assist in the event of an emergency, which it may use to staff special needs shelters during such an emergency or disaster.[32]

An individual must be medically stable and have special needs that exceed the basic first aid provided at general population shelters, but do not exceed the capacity, staffing, and equipment of the special needs shelter, to be eligible to shelter in a special needs shelter.[33] A special needs shelter may accept an individual who does not meet these requirements, but is not obligated to do so.[34]

Special Needs Shelters Staffing

Special needs shelters must be staffed with at least one registered nurse or advanced registered nurse practitioner on every shift during the sheltering event, and may be additionally staffed with one or more licensed medical practitioners per 20 persons.[35] Staffing levels may require adjustment as the

[24] Id, at 32.
[25] S. 252.38(1), F.S.
[26] S. 252.38(2), F.S.
[27] SS. 252.38(1)(e) and 252.38(3)(a), F.S.
[28] S. 252.38(3)(a)5., F.S.
[29] Rule 64-3.015, F.A.C.; *Guidelines for Special Needs Shelter, December 2016 Edition,* DEPARTMENT OF HEALTH, p. 2, *available at* https://www.flrules.org/Gateway/reference.asp?No=Ref-08031 (last visited Feb. 8, 2018).
[30] Id.
[31] S. 381.0303(1), F.S.
[32] S. 381.0303(5), F.S.
[33] Id.
[34] Id.
[35] Id. at 3.

sheltering event progresses based on changes in the health status of special needs individuals or the availability of caregivers and other volunteers.[36]

If funds have been appropriated for disaster coordinator positions in the DOH county health departments, the following provisions for special needs shelter planning apply.[37]

- DOH must coordinate with local medical and health providers, the American Red Cross, and other interested parties to develop a plan for staffing and medical management of special needs shelters, to conform with the local CEMP. The local Children's Medical Services offices assume this role for pediatric special needs shelters.
- County health departments, in conjunction with the local emergency management agencies, must coordinate the recruitment of healthcare practitioners to staff the local special needs shelters. County health department and county government employees are required to help staff special needs shelters, as needed.
- The local county health departments, Children's Medical Services offices, and emergency management agencies must jointly decide who is responsible for medical supervision in each special needs shelter.
- Local emergency management agencies, in cooperation with the local county health departments, are responsible for the designation and operation of special needs shelters during times of emergency or disaster.
- The Secretary of the Department of Elderly Affairs may convene a multiagency[38] special needs shelter discharge planning team to assist local emergency management agencies with continued operation or closure of special needs shelters and discharging special needs clients to alternate facilities.

Subject to availability of federal funds and barring other exclusions,[39] DOH must reimburse healthcare practitioners and emergency services personnel for care provided in special needs shelters at its request and healthcare facilities for care provided to special needs individuals who were transferred from special needs shelters by the multiagency special needs shelter discharge planning team.[40]

During Hurricane Irma 113 special needs shelters were opened in 53 counties.[41] These shelters served 10,452 special needs clients and 4,490 caregivers.[42] This was an unprecedented number of individuals seeking special needs sheltering.[43] Additionally, Hurricane Irma's path severely limited DOH's ability to reallocate staff between counties.[44] The select committee received testimony that these factors, among others, created staffing issues at special needs shelters.[45] The select committee recommended that the Department of Health recruit faculty and students of state university and college's healthcare programs to staff special needs shelters. The select committee additionally recommended that healthcare employees of state agencies, universities and colleges be authorized to staff special needs shelters.

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[36] Id.
[37] S. 381.0303(2), F.S.
[38] Each multiagency special needs shelter discharge planning team shall include at least one representative from each of the following state agencies: Department of Elderly Affairs, Department of Health, Department of Children and Families, Department of Veterans' Affairs, Division of Emergency Management, Agency for Health Care Administration, and Agency for Persons with Disabilities. S. 381.0303(2)(e), F.S.
[39] A healthcare provider cannot be reimbursed for providing care to a patient under an existing contract; facilities cannot be reimbursed if at the time service was provided to the patient, the patient was enrolled in another state-funded program such as Medicaid, was covered by health insurance, or was a member of an HMO or prepaid health clinic that would otherwise pay for the same services. s. 381.0303(4), F.S.
[40] S. 381.0303(4), F.S.
[41] Department of Health PowerPoint presentation, Florida House of Representatives, Select Committee on Hurricane Response and Preparedness meeting, November 9, 2017, available at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=Meeting Packets&FileName=select committee 11-9-17.pdf (last viewed on February 11, 2018)
[42] Id.
[43] Id.
[44] Id.
[45] Supra, FN 1.

Special Needs Shelters Intake and Discharge Information

DOH has issued a Special Needs Shelter Operation Guide (Guide) that includes a uniform intake and discharge form[46] with guidance on when to use the form.[47] The Guide recommends using the form for any individual who did not register prior to arriving to the special needs shelter or individuals with incomplete registration information.[48] The Guide also requires special needs shelter staff to update the discharge portion of the form, although the form itself only requires discharge planning if the individual cannot return home.[49]

Current law does not require local emergency management agencies to obtain intake and discharge information from individuals sheltering at a special needs shelter. Thus, local emergency management agencies are not required to comply with the Guide's requirements. Instead, local emergency management agencies are able to establish their own intake and discharge policies and forms, which may vary greatly throughout the state.

Special Needs Registry

Current law requires DEM to develop and maintain a registry of individuals who may require assistance during evacuations and sheltering in an emergency to ensure their needs are met.[50] DEM coordinates with local emergency management agencies to create this registry of special needs individuals within each local emergency management agency jurisdiction.[51] Registration requires identification of the individual with special needs as well as a plan for resource allocation to meet those identified needs.[52] All records, data, information, correspondence, and communications relating to registration are exempt from a public records request.[53]

The county health departments review registry application information and determine whether it is appropriate to place the individual in a special needs shelter during an evacuation or emergency.[54] Each local county health department must notify the local emergency management agency of its determinations.[55]

DEM is responsible for public education and outreach regarding the special needs registry, including a brochure available on its website.[56] Various agencies, facilities, and providers are required to annually provide registration information to their special needs clients or their caregivers and must assist local emergency management agencies by annually registering persons with special needs for special needs shelters.[57] Physicians and pharmacies may also provide registration information and assist with registration or educating patients about the registration process.[58]

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[46] The Special Needs Shelter (SpNS) Intake Form is available at http://www.floridahealth.gov/programs-and-services/emergency-preparedness-and-response/healthcare-system-preparedness/spns-healthcare/index.html (last viewed February 13, 2018).
[47] *Department of Health Special Needs Shelter Operation Guide*, available at http://www.floridahealth.gov/programs-and-services/emergency-preparedness-and-response/healthcare-system-preparedness/spns-healthcare/_documents/spns-8-iop.pdf (last viewed February 13, 2018).
[48] Id.
[49] Id.
[50] S. 252.355(1), F.S.
[51] S. 252.355(1), F.S.
[52] S. 252.355(1), F.S. The DEM's special needs registration program includes a uniform electronic registration form and a database for uploading and storing submitted registration forms that may be accessed by the appropriate local emergency management agency. The link to the registration form must be easily accessible on each local emergency management agency's website and the agency must enter into the database any registration form it receives in paper format. S. 252.355(2)(a), F.S.
[53] S. 252.355(4), F.S.
[54] Rule 64-3.015, F.A.C.; *Guidelines for Special Needs Shelter, December 2016 Edition,* DEPARTMENT OF HEALTH, p. 3, *available at* https://www.flrules.org/Gateway/reference.asp?No=Ref-08031 (last visited Feb. 8, 2018).
[55] Id.
[56] S. 252.355(2), F.S. This includes home health agencies, hospices, nurse registries, home medical equipment providers, the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, the Department of Elderly Affairs, and memory disorder clinics.
[57] Id.
[58] S. 252.355(2) F.S.

The select committee heard testimony identifying numerous challenges for registering special needs clients and staffing special needs shelters. Current law requires DEM to create a uniform electronic registration form and database for special needs sheltering,[59] but does not require all local emergency management agencies to use the statewide registry. This created a situation where all 67 counties had their own special needs registries with various registration forms and eligibility requirements.[60] Additionally, the availability of special needs shelter information varied greatly between the local emergency management agencies.[61] This, coupled with a surge of last minute registrations,[62] made it difficult for individuals to obtain, and local emergency management agencies to provide, special needs sheltering during Hurricane Irma.

The volume of people signing up for special needs shelters led to an overflow of people with special needs being sent to general shelters.[63] According to select committee testimony, this overflow resulted in a lack of proper care for people with special needs because general shelters were not prepared to staff these additional individuals. Staffing both general and special needs shelters was another challenge illuminated by select committee testimony. Many shelter staff personnel earn minimum wage, may be single parents, and did not have the support they needed to work during Hurricane Irma. Staff members faced further difficulties with physically getting to shelters due to curfews during the storm. Special needs shelters also lacked adequate medical personnel.

Consequently, the select committee recommended a statewide uniform registration form and a single, statewide registry that all local emergency management agencies must use to register individuals with special needs.[64] However, the select committee recognized that local circumstances and capabilities vary, and recommended the local emergency management agencies maintain authority over setting eligibility criteria for special needs shelters.

Effect of the Bill – Special Needs

Special Needs Shelters

The bill amends s. 381.0303, F.S. to address the special needs shelter staffing issues identified by the select committee. The bill directs DOH to recruit faculty and students from state university and college health care programs to staff special needs shelters. The bill also requires state agencies, universities and colleges to authorize their employees who are health care practitioners to staff local special needs shelters, if they do not have a designated emergency duty with their employer. The bill requires state agencies, universities and colleges to submit a roster of such employers to DOH by January 31, and any amended roster by May 31, of each year. The bill requires DOH to reimburse any state agency, university or college employee who provides care at a special needs shelters at the request of DOH.

The select committee received testimony that AHCA-licensed health care entities, like assisted living facilities and home health agencies dropped off residents and patients at special needs shelters without providing staffing or supplies to assist them in the shelter. Local emergency management agencies did not have sufficient information on the providers to file licensure complaints with AHCA. The bill amends s. 381.0303, F.S., to require local emergency management agencies to collect intake and discharge information from each individual who shelters in a special needs shelter, including whether these

[59] S. 252.355(2)(a), F.S.
[60] 16 counties do not list eligibility criteria for special needs shelters on their websites and 6 additional counties neither list eligibility requirements nor provide the special needs registration form on their websites. 16 counties require a caregiver; 5 counties prohibit dialysis patients; 2 counties prohibit IV patients; 8 counties prohibit electronic life support dependent patients; 2 counties prohibit patients in their 3rd trimester of pregnancy; 4 counties have weight restrictions; 4 counties prohibit patients requiring isolation; and 8 counties will accept patients on the basis of transportation needs.
[61] Id.
[62] Supra, FN 41.
[63] Testimony at the Florida House of Representatives, Select Committee on Hurricane Response and Preparedness, November 9, 2017.
[64] Supra, FN 1.

individuals are patients or residents of health care entities licensed under chapter 393, chapter 400 or chapter 429. These chapters include nursing homes, assisted living facilities, home health agencies, nurse registries, and developmental disability residential providers, among others. The bill requires local emergency management agencies to use a form developed by DOH to collect this information. These changes create statewide, uniform intake and discharge requirements which will allow DOH to collect accurate utilization data and identify any circumstances in which one of these health care providers improperly left a patient or client at a special needs shelter.

Special Needs Registry

The bill amends s. 252.355, F.S., to address the issues identified by the select committee related to each local emergency management agency having its own special needs shelter registry, and the lack of clear information about registration processes between counties.

The bill requires DOH to develop and maintain a statewide special needs registry program, rather than DEM. The bill requires DOH to develop the registration program by January 1, 2019, and fully implement it by March 1, 2019.

DOH must develop a uniform special needs registration form by October 31, 2018, and the bill creates a Special Needs Shelter Registry Work Group within DOH to make recommendations for the form. The 12- member work group will include the agency heads (or their designees) of DOH, DEM, the Agency for Health Care Administration (AHCA), the Department of Elderly Affairs and the Agency for Persons with Disabilities, the CEO of the Arc of Florida, and five representatives of local emergency management agencies appointed by the Florida Association of Counties.

The bill requires each individual seeking sheltering in a special needs shelter to use the uniform special needs registration form, and requires each local emergency management agency to use the statewide special needs shelter registry to register individuals with special needs The bill prohibits the use of separate, local special needs registries.

The bill also addresses the select committee's recommendation to improve communication about how to register for special needs shelters. It requires each local emergency management agency to post its eligibility criteria for special needs sheltering, and the uniform registration forms on its website. The bill also requires local emergency management agencies to make paper registration forms available and establish procedures for submitting and entering a paper registration form into the statewide special needs registry.

The bill also addresses concerns about how to plan for individuals whose needs are too great for the capability of a special needs shelter. The bill requires a local emergency management agency to notify a registrant in writing within 10 days after submission of a registration form whether he or she is eligible to shelter in a special needs shelter, and to designate such status in the special needs shelter registry. The bill also requires DOH to assist local emergency management agencies in developing alternative sheltering options for any registrant determined to be ineligible, and authorizes local emergency management agencies to coordinate with AHCA to facilitate placement in a health care facility for any individual who registers during a declared emergency or disaster and is deemed ineligible to shelter in a local special needs shelter.

In addition, the bill requires each local emergency management agency, and each general hospital[65] licensed under ch. 395, F.S., (within the same jurisdiction) to enter into agreements for sheltering people who have complex medical issues or who rely on devices or equipment that exceed the capabilities of local special needs shelters. The bill does not specify the content of such agreements,

[65] A "general hospital" is defined in ch. 395 as a facility that offers certain, enumerated hospital services and makes its facilities and services available to the general population. The term does not include specialty hospitals, which either restrict the range of services available or restrict their services to a defined age or gender group of the population. S. 395.002(10), (27), F.S.

allowing the local emergency management agencies and the hospitals to work out mutually agreeable terms and conditions.

The bill authorizes physician assistants and advance registered nurse practitioners to provide registration information for special needs shelters and assist with registration or educating patients about the registration process. This allows additional health care practitioners to assist in the registration process and may increase the number of individuals who register prior to a hurricane.

Health Care Facility Regulation

Background

The Agency for Health Care Administration (AHCA) licenses, certifies, and regulates 40 different types of health care providers.[66] Certain health care providers[67] are regulated under part II of ch. 408, F.S., which is the Health Care Licensing Procedures Act (Act), or core licensing statutes. The Act provides uniform licensing procedures and standards for 29 provider types, including hospitals, nursing homes, assisted living facilities, home health agencies and nurse registries.[68] In addition to the Act, each provider type has an authorizing statute, which includes unique provisions for licensure beyond the uniform criteria. In the case of conflict between the Act and an individual authorizing statute, the Act prevails.[69]

Health Care Facility Inspections and Penalties

Under the Act, AHCA may inspect or investigate a facility to determine the state of compliance with the core licensing statute, the facility's authorizing statutes, and applicable rules.[70] Inspections must be unannounced, except for those performed pursuant to initial licensure and license renewal. If at the time of the inspection, AHCA identifies a deficiency, the facility must file a plan of correction within 10 calendar days of notification, unless an alternative timeframe is required.

For any violation of the core licensing statute, the facility authorizing statutes, or applicable rules, AHCA may impose administrative fines.[71] Under the Act, violations are classified according to the nature of the violation and the gravity of its probable effect on clients:

- Class I violations are those conditions that AHCA determines presents an immediate danger to clients or there is a substantial probability of death or serious physical or emotional harm. These violations must be abated or eliminated within 24 hours unless a fixed period is required for correction.
- Class II violations are those conditions that AHCA determines directly threaten the physical and emotional health, safety, or security of clients.
- Class III violations are those conditions that AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients.
- Class IV violations are those conditions that do not have the potential of negatively affecting clients.[72]

AHCA may also impose an administrative fine for a violation that is not designated in one of the classes listed above, but the amount of the fine may not exceed $500 for each violation unless otherwise specified by law.

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[66] Agency for Health Care Administration, *Health Quality Assurance*, 2017, available at http://ahca.myflorida.com/MCHQ/ (last visited February 6, 2018).
[67] "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.
[68] S. 408.802, F.S.
[69] S. 408.832, F.S.
[70] S. 408.811, F.S.
[71] S. 408.813, F.S.
[72] Id.

Health Care Facility Emergency Management Planning

The Act requires each provider required by its authorizing statutes to have an emergency operations plan to designate a safety liaison to serve as the primary contact for emergency operations.[73] The Act also authorizes providers to temporarily exceed its licensed capacity to act as a receiving provider in accordance with an approved emergency operations plan for up to 15 days.[74] AHCA may approve requests for overcapacity in excess of 15 days based upon satisfactory justification and need as provided by the receiving and sending providers.[75] While in an overcapacity status, each provider must furnish or arrange for appropriate care and services to all clients. The Act allows AHCA to issue an inactive license to a licensee located in a geographic area in which a state of emergency was declared by the Governor if the provider:

- Suffered damage to its operation during the state of emergency;
- Is currently licensed;
- Does not have a provisional license; and
- Will be temporarily unable to provide services but is reasonably expected to resume services within 12 months.[76]

The Act authorizes AHCA to adopt rules relating to emergency management planning, communications, and operations.

Current law requires licensed health care facilities providing residential or inpatient services[77] to report emergency status, planning, and operations to AHCA through an AHCA-approved online database.[78] Prior to the 2017 hurricane season, AHCA used a commercially available off-the-shelf system, EMResource, as the online emergency management database.[79] The EMResource system provided each participating facility with a homepage in the system to enter, maintain and update facility information requested by AHCA.[80] The type of information that could be entered into EMResource includes:[81]

- Emergency contact information;
- Evacuation status;
- Bed availability and capacity;
- Damage, impacts and needs; and,
- Generator and fuel status.

Each facility is required to register two individuals with AHCA to be responsible for maintaining their facility data in the system, and to respond to requests for data updates.[82]

On July 1, 2017, DOH replaced EMResource with FLHealthSTAT as the approved online emergency management database, using federal hospital preparedness program funding.[83] DOH developed FLHealthSTAT with input from various stakeholder groups. The system contains many of the same

[73] Section 408.821(1), F.S
[74] Section 408.821(2), F.S
[75] Id.
[76] Section 408.821(3), F.S
[77] These include hospitals, nursing homes, assisted living facilities, hospices, dialysis centers, intermediate care facilities, transitional living facilities, crisis stabilization units, short-term residential treatment facilities, residential treatment facilities, residential treatment centers and adult family care homes.
[78] S. 408.821(4), F.S.
[79] AHCA educational presentation to Florida Argentum, Catherine Avery, Assisted Living Unit Manager, available at http://www.fl.argentum.org/wp-content/uploads/2016/10/Clinical-2-0915-1015.pdf (last viewed February 13, 2018).
[80] Id.
[81] Id.
[82] Id.
[83] *FL Health Systems*, Department of Health, available at http://www.floridahealth.gov/programs-and-services/emergency-preparedness-and-response/disaster-response-resources/fl-health-systems/index.html (last viewed February 13, 2018).

facility information requests as EMResource but also allows DOH and AHCA to create ad hoc fields to request additional information.[84]

AHCA required licensed health care facilities to report every day at 10:00 A.M. and 3:00 P.M. during Hurricane Irma and its aftermath.[85] The select committee received testimony that various licensed facilities encountered difficulties using FLHealthSTAT that prevented them from responding to AHCA's information requests through the system.[86] Consequently, these licensed facilities had to contact AHCA either directly or through ESF-8 by telephone. Similarly, ESF-8 was contacting licensed facilities by telephone for status updates. The select committee received testimony that having to make and receive phone calls was burdensome for the licensed facilities and diverted staff that could otherwise be used to assist patients.

Effect of the Bill – Health Care Facilities

Inspections and Penalties

The bill requires licensees required by authorizing statutes to have an emergency operations plan to conduct annual staff training on the policies and procedures for implementing the emergency operations plan within 2 months before the start of hurricane season. The bill requires the training to include testing of the implementation of the plan, either in a planned drill or in response to a disaster or emergency. The bill requires documentation of the training and testing to be provided to AHCA and the local emergency management agency within 30 days of completing the training and testing. The documentation must include an evaluation of the outcome of the training and any modifications to the plan to address any deficiencies. The bill requires a survey of staff to be conducted to determine staff's familiarity with the plan.

The bill makes failure to have an approved comprehensive emergency management plan as required by authorizing statutes a violation of the Act, subject to a $500 fine. The bill also makes the failure of a licensee to follow the policies and procedures in the comprehensive emergency management plan grounds for disciplinary action by AHCA. The bill requires AHCA to consider the licensee's efforts to follow the plan and any circumstances beyond the licensee's control that caused the failure. The bill requires AHCA to evaluate the potential or actual harm to the client's health, safety, and security caused by the failure in determining the penalty.

Similarly, the bill makes the failure of a general hospital to enter into and maintain sheltering agreements with local emergency management agencies a violation of the Act, subject to a $500 fine. The bill specifies that such failures are violations after July 1, 2019, providing the agencies sufficient time to engage in such agreements.

Emergency Management Planning

The bill moves the responsibility from DOH to AHCA to establish and maintain the online database for licensees providing residential or inpatient services to report information regarding its emergency status, planning, or operations to AHCA. The bill also authorizes AHCA to adopt rules requiring any licensee to use the online database for reporting information regarding its emergency status, planning, or operations to AHCA.

[84] Correspondence from the Department of Health to the Florida House of Representatives Health and Human Services Committee, dated February 13, 2018, on file with committee staff.
[85] Id.
[86] Supra, FN 63.

Nursing Homes

Nursing Home Licensure

Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S., which contains uniform licensing standards for 29 provider types including nursing homes. In addition, nursing homes must comply with the requirements contained in the individual authorizing statutes of part II of chapter 400, F.S., which includes unique provisions for licensure beyond the uniform criteria.

Nursing Home Inspections and Penalties

In addition to the requirements of the core licensing statute in s. 408.813, F.S., a nursing home is also subject to inspections and investigations under its authorizing statute, s. 400.19, F.S. Section 400.19(3), F.S., requires AHCA to conduct at least one unannounced inspection every 15 months of nursing home facilities to determine compliance with statutes and AHCA rules governing minimum standards of construction, quality and adequacy of care, and rights of residents.

In conducting an inspection or investigation, AHCA may cite a nursing home for violations of laws and rules and may impose administrative fines. Under s. 408.813, F.S., and s. 400.102, F.S., nursing homes may be subject to administrative fines imposed by the AHCA for certain types of violations. Both s. 408.813, F.S., and s. 400.23(8), F.S., categorize violations into four defined classes according to the nature and severity of the violation. Section 400.23(8), F.S. sets the fine amounts for each class of violation.

If a deficiency is cited during an inspection, AHCA must conduct a subsequent inspection to determine if the deficiency identified during inspection has been corrected. If the cited deficiency is a Class III or Class IV deficiency, AHCA may verify the correction without re-inspecting the facility if adequate written documentation has been received from the facility ensuring that the deficiency has been corrected. However, the Class III or IV deficiency must be unrelated to resident rights or resident care.[87]

Nursing Home Comprehensive Emergency Management Plans

Nursing homes must prepare a comprehensive emergency management plan that must address at a minimum:[88]

- Emergency evacuation transportation;
- Adequate sheltering arrangements;
- Postdisaster activities, including emergency power, food, and water;
- Postdisaster transportation;
- Supplies;
- Staffing;
- Emergency equipment;
- Individual identification of residents and transfer of records; and
- Responding to family inquiries.

The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency must ensure that DOEA, DOH, AHCA, the Division of Emergency Management, and appropriate volunteer organizations are given the opportunity to review the plan. The local emergency management agency must complete its review within 60 days and either approve the plan or advise the facility of necessary revisions. However, some local emergency management agencies do not provide AHCA an opportunity

[87] S. 400.19(3), F.S.
[88] S. 400.23(2)(g), F.S.

to review the plan, and current law does not require facilities to notify AHCA when a plan is approved.[89] Often, AHCA is not aware if a facility has an approved plan or of the contents of the plan until it conducts its next regular inspection.[90]

During Hurricane Irma, some nursing home's comprehensive emergency management plans were either inadequate or not followed.[91] Nursing homes were unable to maintain adequate staffing during the hurricane. Local emergency operations centers received calls from nursing homes requesting help with hardening and power outages.[92]

Assisted Living Facilities

ALF Licensure

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[93] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[94] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[95]

ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.[96] In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,[97] limited mental health services,[98] and extended congregate care services.[99] The Department of Elder Affairs (DOEA) is responsible for establishing training requirements for ALF administrators and staff.[100]

As of February 8, 2018, there are 3088 licensed ALFs in Florida with 99,390 beds.[101]

ALF Inspections and Penalties

Current law authorizes AHCA to inspect each licensed ALF at least once every 24 months to determine compliance with statutes and rules. Both s. 408.813, F.S. and s. 429.19, F.S. categorizes violations into

[89] Supra, FN 63.
[90] Id.
[91] Id.
[92] Id.
[93] S. 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.
[94] S. 429.02(16), F.S.
[95] S. 429.02(1), F.S.
[96] Under s. 429.04, F.S., the following are exempt from licensure: ALFs operated by an agency of the federal government; facilities licensed under ch. 393, F.S., relating to individuals with developmental disabilities; facilities licensed under ch. 394, F.S., relating to mental health; licensed adult family care homes; a person providing housing, meals, and one or more personal services on a 24-basis in the person's own home to no more than 2 adults; certain facilities that have been incorporated in this state for 50 years or more on or before July 1, 1983; certain continuing care facilities; certain retirement facilities; and residential units located within a community care facility or co-located with a nursing home or ALF in which services are provided on an outpatient basis.
[97] S. 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a licensed nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.)
[98] S. 429.075, F.S. A facility that serves one or mental health residents must obtain a licensed mental health license. A limited mental health ALF must assist a mental health patient in carrying out activities identified in the resident's community support living plan. A community support plan is a written document that includes information about the supports, services, and special needs of the resident to live in the ALF and a method by which facility staff can recognize and respond to the signs and symptoms particular to that resident which indicate the need for professional services (s. 429.02(7), F.S.)
[99] S. 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an ALF. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.
[100] S. 429.52, F.S.
[101] Agency for Health Care Administration, *Facility/Provider Search Results-Assisted Living Facilities*, available at http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (report generated on February 8, 2018).

four classes according to the nature and gravity of the violation. Section 429.19, F.S. sets the fine amounts for each class of violation.

If an ALF is cited for a class I violation or three or more class II violations arising from separate surveys within a 60-day period or due to unrelated circumstances during the same survey, AHCA must conduct an additional licensure inspection within six months.[102] Similarly, the Resident Bill of Rights requires AHCA to perform a biennial survey to determine whether a facility is adequately protecting residents' rights.[103]

During any calendar year in which no survey is performed, AHCA may conduct at least one monitoring visit of a facility, as necessary, to ensure compliance of a facility with a history of certain violations that threaten the health, safety, or security of residents. If warranted, AHCA will perform an inspection as a part of a complaint investigation of alleged noncompliance with the Resident Bill of Rights.[104]

Under s. 408.813, F.S., ALFs are subject to administrative fines imposed by AHCA for certain types of violations. In addition, AHCA may deny, revoke, or suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S., such as an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility or a determination by AHCA that the owner lacks the financial responsibility to provide continuing adequate care to residents. AHCA must deny or revoke the license of an ALF with two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.[105] AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition presents a threat to the health, safety, or welfare of a client.[106] AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.[107] Finally, ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons[108] and disabled adults.[109]

ALF Comprehensive Emergency Management Plans

ALFs must prepare a comprehensive emergency management plan that must address at a minimum:[110]

- Emergency evacuation transportation;
- Adequate sheltering arrangements;
- Postdisaster activities, including provision of emergency power, food, and water;
- Postdisaster transportation;
- Supplies;
- Staffing;
- Emergency equipment;
- Individual identification of residents and transfer of records; and
- Communication with families, and responses to family inquiries.[111]

[102] S. 429.34(2), F.S.
[103] S. 429.28(3), F.S.
[104] Id.
[105] S. 429.14(4), F.S.
[106] S. 408.814(1), F.S.
[107] S. 429.14(7), F.S.
[108] "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. S. 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of ch. 825, F.S. that the accused did not know the age of the victim. S. 825.104, F.S.
[109] "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. S. 825.101(4), F.S.
[110] S.429.41(1)(b), F.S.
[111] Id.

The comprehensive emergency management plan is subject to review and approval by the local emergency management agency.[112] The local emergency management agency must ensure the DOEA, DOH, AHCA, the Division of Emergency Management, and the appropriate volunteer organizations are given the opportunity to review the plan.[113] The local emergency management agency must complete its review within 60 days and must either approve the plan or advise the ALF of necessary revisions.[114] However, some local emergency management agencies do not provide AHCA an opportunity to review the plan, and current law does not require facilities to notify AHCA when a plan is approved.[115] Often, AHCA is not aware if a facility has an approved plan or of the contents of the plan until it conducts its next regular inspection.[116]

During Hurricane Irma, some ALF's comprehensive emergency management plans were either inadequate or not followed.[117] The select committee received testimony that, during Hurricane Irma, ALFs brought residents to special needs shelters but did not provide staffing or assistance for them in the shelter, and did not have a plan for taking them back to the facility after the emergency. ALFs were unable to maintain adequate staffing during the hurricane. Some ALFs dropped off clients at shelters with no staff or other caregivers to care for them, and no plan for picking clients up after the hurricane.[118] Some ALF clients were registered with special needs shelters and dropped off by their ALF without their consent.[119] Local emergency operations centers received calls from ALFs requesting help with hardening and power outages.[120]

Effect of the Bill – Nursing Homes and Assisted Living Facilities

To address the inadequacy of the comprehensive emergency management plans, the bill requires nursing homes and ALFs to address additional components in their plans:

- Hardening;
- Which staff are responsible for implementing each element of the plan;
- How the facility will maintain staffing during emergencies;
- Whether and how the facility will accommodate family members of staff;
- Whether the facility is located in an evacuation zone;
- Whether the facility intends to shelter in place or relocate to another facility;
- Whether the facility has an emergency power source;
- How the facility will inform residents and the resident's designated family member, legal representative, or guardian when the plan has been activated; and
- A working phone number for the facility for use by the resident's designated family member, legal representative, or guardian to make contact post-disaster.

The bill requires the above information, an overview of the facility's plan and, if appropriate, a description of the evacuation plan, to be provided to AHCA, the facility's residents and the resident's designated family member, legal representative, or guardian. The bill requires AHCA to post this information to its consumer information website. The bill requires any changes in this information to be provided to AHCA, the facility's residents, and the resident's designated family member, legal representative, or guardian within 30 days of the change.

The bill requires a facility to submit its plan to the local emergency management agency within 90 days after licensure or change of ownership. The bill requires the plan to be submitted annually or within 30

[112] Id.
[113] Id.
[114] Id.
[115] Supra, FN 63.
[116] Id.
[117] Id.
[118] Id.
[119] Id.
[120] Id.

days of any modification to a previously approved plan. The bill requires the facility to notify AHCA within 30 days of submission of the plan and within 30 days after approval of the plan by the local emergency management agency. The bill requires facilities to submit revisions requested by the local emergency management agency within 30 days after written notification from the local emergency management agency. These requirements ensure AHCA receives timely information regarding the nursing home's comprehensive emergency management plan.

The bill also provides enforcement authority to AHCA to ensure nursing homes and ALFs comply with the requirements for the plans. The bill adds compliance with the requirements for comprehensive emergency management plans to the list of items AHCA must evaluate during its inspections of each facility type, and makes it a licensure violation for a nursing home or an ALF to fail to comply with the requirements for the comprehensive management plan, subject to a $500 fine.

Home Health Agencies

HHA Licensure

Home health agencies (HHAs) are organizations licensed by AHCA to provide home health and staffing services.[121] Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. These services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services (assistance with daily living such as bathing, dressing, eating, personal hygiene, and ambulation);
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.[122]

Staffing services are provided to health care facilities, schools, or other business entities on a temporary or school-year basis by licensed health care personnel and by certified nursing assistants and home health aides who are employed by, or work under the umbrella of, a licensed HHA.[123]

A HHA may also provide homemaker[124] and companion[125] services without additional licensing or registration. These services do not involve hands-on personal care to a client and typically include housekeeping, meal planning and preparation, shopping assistance, routine household activities, and accompanying the client on outings. Personnel providing homemaker or companion services are employed by or under contract with a HHA.[126]

Since 1975, HHAs operating in Florida have been required to obtain a state license.[127] HHAs must meet the general health care licensing provisions[128] and specific HHA licensure provisions and standards.[129] A HHA license is valid for 2 years, unless revoked.[130] If a HHA operates related offices, each related office outside the health service planning district where the main office is located must be separately licensed.[131] As of February 8, 2018, there are 1,916 licensed HHAs in Florida.[132]

[121] S. 400.462(12), F.S.
[122] S. 400.462(14), F.S.
[123] S. 400.462(30), F.S.
[124] S. 400.462(16), F.S.
[125] S. 400.462(7), F.S.
[126] S. 400.462(13), F.S.
[127] SS. 36 – 51 of ch. 75-233, Laws of Fla.
[128] Part II of ch. 408, F.S.
[129] Part III of ch. 400, F.S., and Rule 59A-8, F.A.C.
[130] S. 408.808(1), F.S.
[131] S. 400.464(2), F.S. There are eleven health service planning districts grouped by county.
[132] Florida Health Finder, *Facility/Provider Search Results-Home Health Agencies*, available at http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (report generated February 8,2018).

A HHA may obtain an initial license by submitting to AHCA a signed, complete, and accurate application and the $1,705 licensure fee.[133] The HHA must also submit the results of a survey conducted by AHCA.[134] The application must identify the geographic service areas[135] and counties in which the HHA will provide services. An initial licensure applicant must be fully accredited to obtain a license to provide skilled nursing services, however, accreditation is not required if, after initial licensure, a home health agency requests to begin providing skilled nursing services.

HHA Inspections and Penalties

In addition to the requirements of the core licensing statute in s. 408.813, F.S.,[136] a HHA is also subject to inspections and investigations under its authorizing statute, s. 400.484, F.S. In conducting an inspection or investigation, AHCA may cite an HHA for violations of laws and rules and may impose administrative fines. Both s. 408.813, F.S., and s. 400.484, F.S., categorize violations into four defined classes according to the nature of the violation. Section 408.813, F.S., authorizes AHCA to impose fines for those violations "as provided by law", referring to s. 400.484, F.S., which specifies the fines AHCA may impose.

Provision of HHA Services During an Emergency

HHAs must prepare a comprehensive emergency management plan that provides for the continuation of home health services during an emergency that interrupts patient care or services in the patient's home.[137] The plan must include the means by which the HHA will continue to provide staff to perform the same type and quantity of services to their patients who evacuate to special needs shelters that were being provided to those patients prior to evacuation.[138] The plan must address:

- Notification of staff when emergency response measures are initiated;
- Communication between staff members, county health departments, and local emergency management agencies, including a backup system;
- Identification of resources necessary to continue essential care or services or referrals to other organizations subject to written agreement; and
- Prioritization and contact of patients who need continued care or services.[139]

The plan must be consistent with standards adopted by national or state accreditation organizations and consistent with the local special needs plan.[140]

Current law requires the HHA to submit the plan to the local county health department for review and approval. However, such submission is conditional upon receipt of an appropriation by DOH to establish disaster coordinator positions in county health departments, unless the State Surgeon General and a local county commission jointly determine to require that such plans be submitted based on a determination that there is a special need to protect public health in the local area during an emergency.[141]

For patients listed in the special needs registry,[142] HHAs must document in the patient's record how care or services will be continued in the event of an emergency or disaster.[143] The HHA must discuss the emergency provisions with the patient and the patient's caregivers, including where and how the

[133] S. 400.471(5) and Rule 59A-8.003(12).
[134] Id.
[135] S. 408.032(5), F.S. lists the eleven health service planning districts grouped by county.
[136] S. 408.813, F.S.
[137] S. 400.492, F.S.
[138] Id.
[139] Id.
[140] Id.
[141] S. 381.0303(8), F.S.
[142] S. 252.355, F.S.
[143] S.400.492(1), F.S.

patient is to evacuate, procedures for notifying the HHA if the patient evacuates to a location other than the shelter identified in the patient record, and a list of medications and equipment which must either accompany the patient or will be needed by the patient in the event of an evacuation.[144]

HHAs must maintain a current prioritized list of patients who need continued services during an emergency. The list must specify how services will be continued in the event of an emergency or disaster for each patient and if the patient is to be transported to a special needs shelter, if the patient is receiving skilled nursing services, and the patient's medication and equipment needs. HHAs must provide the list upon request to county health departments and to local emergency management agencies.[145]

HHAs are not required to continue to provide care to patients in emergency situations beyond their control that make it impossible to provide services.[146] HHAs may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for the agency to reach its clients.[147] If HHAs cannot provide services to patients in the special needs registry due to situations beyond their control that make it impossible to provide services, they must demonstrate a good faith effort to attempt to provide services by documenting staff attempts to follow procedures outlined in the HHA's comprehensive emergency management plan and the patient's record.[148]

HHAs are authorized to provide services in special needs shelters located in any county.[149]

During Hurricane Irma, some HHAs dropped off clients at shelters with no staff or other caregivers to care for them.[150] Current law requires home health agencies to provide staff to perform the same type and quantity of services to patients evacuated to special needs shelters that the patient was receiving prior to evacuation. However, an AHCA rule states that if the patient has a caregiver, the caregiver must accompany and remain with the patient at the special needs shelter, and that caregivers who regularly assist the patient in the home are expected to continue to do the same care in the shelter.[151] Further, the rule defines caregivers as relatives, household members, guardians, friends, neighbors, and volunteers – not HHA staff.[152] The AHCA rule appears to negate the statutory requirement that the HHA staff its evacuated clients during an emergency.

Nurse Registries

A nurse registry is a business that procures, offers, promises, or attempts to secure healthcare-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to hospitals, nursing homes, hospices, ALFs, and other business entities.[153] A nurse registry is exempt from the licensing requirements of a HHA, but must be licensed as a nurse registry.[154] Nurse registries are governed by part II of chapter 408, F.S.,[155] 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), pursuant to part II of ch. 400, F.S., to offer contracts in Florida.[156]

[144] Id.
[145] S. 400.492(2), F.S.
[146] S. 400.492(3), F.S. , e.g. when roads are impassable or when patients do not go to the location specified in their patient records
[147] Id.
[148] Id.
[149] S. 400.492(4), F.S.
[150] Supra, FN 63.
[151] Rule 59A-8.027, F.A.C. (AHCA Form 3110-1022, rev. March 2013, incorporated by reference).
[152] Id..
[153] S. 400.462(21), F.S.
[154] S. 400.506(1)(a), F.S. A licensed nurse registry may operate a satellite office.
[155] S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.
[156] S. 400.506(1), F.S.

The workers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or other business entities.[157] This is a key defining feature of a nurse registry; it cannot have any employees except for the administrator, alternate administrator and office staff – all individuals who enter the home of patients to provide direct care must be independent contractors.[158]

Nurse Registry Inspections and Penalties

Nurse registries are surveyed by AHCA biennially.[159] In addition to the biennial inspection, nurse registries may also be inspected to determine compliance with the relevant statutes and rules.[160] In addition to the requirements of the core licensing statute in s. 408.813, F.S.,[161] nurse registries are also subject to inspections and investigations under its authorizing statute, s. 400.484, F.S. In conducting an inspection or investigation, AHCA may cite a nurse registry for violations of laws and rules and may impose administrative fines. Both s. 408.813, F.S., and s. 400.484, F.S., categorize violations into four defined classes according to the nature of the violation. Section 408.813, F.S., authorizes AHCA to impose fines for those violations "as provided by law", referring to s. 400.484, F.S., which specifies the fines AHCA may impose.

Provision of Nurse Registry Services During an Emergency

Nurse registries must prepare a comprehensive emergency management plan that addresses the means by which the nurse registry will continue to provide the same type and quantity of services to its patients who evacuate to special needs shelters that were being provided to those patients prior to evacuation.[162] The plan must specify how the nurse registry will facilitate the provision of continuous care to persons in the special needs registry during an emergency that interrupts the provision of care or services in private residences.[163] The plan must also be consistent with the local special needs plan and must be updated annually.[164]

The submission of emergency management plans to county health departments by nurse registries is conditional upon receipt of an appropriation by DOH to establish disaster coordinator positions in county health departments, unless the State Surgeon General and a local county commission jointly determine that such plans must be submitted based on a determination that there is a special need to protect public health in the local area during an emergency.[165] If the nurse registry submits the comprehensive emergency management plan, the county health department must ensure that the plan complies with the criteria set forth in AHCA rule[166] within 90 days after receipt of the plan.[167] The county health department must either approve the plan or advise the nurse registry of necessary revisions.[168] The county health department must notify AHCA if a nurse registry fails to submit a plan or fails to submit requested information or revisions to the county health department within 30 days after written notification from the county health department.[169] AHCA must notify the nurse registry that its failure constitutes a deficiency, subject to a fine of $5,000 per occurrence.[170] AHCA may impose the fine if the plan is not submitted, information is not provided, or revisions are not made as requested.[171]

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[157] Id.
[158] Agency for Health Care Administration, *Frequently Asked Questions Nurse Registries: What is a nurse registry?* http://ahca.myflorida.com/mchq/Health_Facility_Regulation/Home_Care/NR_FAQS/section1.shtml (last visited March 13, 2015).
[159] S. 408.811(1)(b), F.S.
[160] S. 400.484(1), F.S.
[161] S. 408.813, F.S.
[162] S. 400.506(12), F.S.
[163] Id.
[164] Id.
[165] S. 381.0303(8), F.S.
[166] Rule 59A-18.018, F.A.C.
[167] S. 400.506(12)(e), F.S.
[168] Id.
[169] Id.
[170] Id.
[171] Id.

Nurse registries may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for a provider to reach its clients.[172]

Nurse registries must assist persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities in registering with the special needs registry.[173] Nurse registries must maintain a current prioritized list of patients in private residences who are in the special needs registry, under the care of persons referred for contract, and who need continued services during an emergency.[174] The list must specify if the patient is to be transported to a special needs shelter and if the patient is receiving skilled nursing services. Nurse registries must make the list available to county health departments and to local emergency management agencies upon request.[175]

Nurse registries must demonstrate a good faith effort to provide services to patients in the special needs registry identified as needing care during an emergency by documenting attempts of staff to follow procedures outlined in the nurse registry's comprehensive emergency management plan. [176] Persons referred for contract who care for persons in the special needs registry must include in the patient record a description of how care will be continued during a disaster or emergency that interrupts the provision of care in the patient's home.[177] Persons referred for contract who care for persons in the special needs registry must provide a list of the patient's medication and equipment needs to the nurse registry and must make this information available to county health departments and to local emergency management agencies upon request.[178]

The person referred for contract is responsible for ensuring that continuous care is provided.[179] However, a person referred for contract is not required to continue to provide care to patients in emergency situations that are beyond the person's control and that make it impossible to provide services, such as when roads are impassable or when patients do not go to the location specified in their patient records.[180]

Current law requires nurse registries to provide staff to perform the same type and quantity of services to patients evacuated to special needs shelters that the patient was receiving prior to evacuation. However, an AHCA rule states that if the patient has a caregiver, the caregiver must accompany and remain with the patient at the special needs shelter, and that caregivers who regularly assist the patient in the home are expected to continue to do the same care in the shelter.[181] Further, the rule defines caregivers as relatives, household members, guardians, friends, neighbors, and volunteers.[182] The AHCA rule appears to negate statutory requirement that the nurse registry staff its evacuated patients.

Effect of the Bill – Home Health Agencies and Nurse Registries

Current law requires HHAs and nurse registries to prepare and submit a comprehensive emergency management plan to the county health department for review and approval. The bill requires HHAs and nurse registries to submit their plans within 90 days after licensure or a change of ownership. Under the bill, HHA and nurse registry plans must be updated annually or within 30 days after modification to a previously approved plan.

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[172] Id.
[173] S. 400.506(11), F.S.
[174] S. 400.506(12)(b), F.S.
[175] S. 400.506(12)(b), F.S.
[176] S. 400.506(12), F.S.
[177] S. 400.506(12)(a), F.S.
[178] S. 400.506(12)(c), F.S.
[179] S. 400.506(12)(a), F.S.
[180] S. 400.506(12)(d), F.S.
[181] Rule 59A-18.018, F.A.C. (Form 3110-1017, Rev. March 2013 incorporated by reference).
[182] Agency for Health Care Administration, Form 3110-1017, Rev. March 2013, pursuant to Rule 59A-18.018, F.A.C., available at http://:ahca.myflorida.com/MCHQ/Emergency_Activities/index.shtml (last visited on Feb. 12, 2018).

Currently, if a HHA or nurse registry fails to submit a plan or fails to submit requested information or revisions to the county health department within 30 days after a written request, such failure constitutes a deficiency and is subject to a $5,000 fine per occurrence. The bill requires the county health department to notify AHCA of the HHA or nurse registry's failure to comply within 10 days. If AHCA does not impose the fine, the bill would require AHCA to document the reason in the licensee's file.

The bill requires HHAs and persons referred for contract by nurse registries to continue to provide services in an emergency unless an emergency situation is beyond their control. The bill requires HHAs and nurse registries to document in their comprehensive emergency management plans how they will staff and provide continuous services to patients during an emergency, either in the home or in a shelter. The plans must include how the HHA or nurse registry will respond if it is unable to continue to provide services or cease operation due to circumstances beyond their control. The licensee must then notify the patient whose services will be discontinued as well as the local emergency operations center. The bill requires the licensee to document its efforts to comply with its comprehensive emergency management plan and the efforts of its staff to notify the patients, designated family members, legal representatives or guardians.

The bill requires HHAs to discuss with each patient, their designated family member, legal representative or guardian, how to register for a special needs shelter. Current law directs HHAs and nurse registries to maintain a list of patients who need continued services during an emergency and to submit the list to the local emergency management agencies and the county health departments, upon request. The bill removes the condition of a request, and instead requires the HHA and nurse registry to submit the list as part of the comprehensive emergency management plan. The bill also requires the HHA and nurse registry to update the list annually or each time a patient is identified as needing services.

The bill requires AHCA to review the documentation required by the bill to determine the licensee's compliance with its emergency plan during any inspection conducted pursuant to part II of chapter 408.

Services for Individuals with Developmental Disabilities

Developmental Disability Community Services

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.[183] APD's overarching goal is to prevent or reduce the severity of the developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.[184]

Individuals with specified developmental disabilities who meet Medicaid eligibility requirements may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver, known as iBudget Florida, or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).[185] APD serves almost 33,900 individuals through iBudget Florida, offering 27 supports and services delivered by contracted service providers to enable individuals to live in their community rather than in an institutional setting.[186]

[183] S. 393.063(9), F.S.
[184] S. 393.062, F.S.
[185] S. 393.0662, F.S.
[186] AGENCY FOR PERSONS WITH DISABILITIES, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Third Quarter Fiscal Year 2016-17*, November 2017, *available at* http://apdcares.org/publications/reports/docs/Quarterly%20Report%203rd%20Quarter%20FY%202016-17.pdf (last visited Jan. 21, 2018).

Examples of waiver services are residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.[187] AHCA has adopted a handbook in rule that outlines the requirements service providers must meet when delivering iBudget Florida services.[188] Providers who do not meet these requirements will not be able to bill for services rendered to clients.

Individual Support Plans

Pursuant to s. 393.0651, F.S., APD must develop a support plan for each client receiving services from APD.[189] This support plan is developed with the individual's support coordinator.[190] Each support plan must include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized.[191] The client and his or her support coordinator must review and, if necessary, revise the support plan annually to review progress in achieving the objectives specified.[192]

Developmental Disability Residential Services

Types of Residential Facilities

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.[193] Pursuant to s. 393.067, F.S., APD licenses and regulates community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs (CTEPs).[194] While the majority of APD clients live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DDs are residential facilities licensed and regulated by the Agency for Health Care Administration pursuant to part VIII of ch. 400, F.S.[195] Most APD clients living in the community, about 19,500, live and receive services in their families' homes, with another 5,000 living in their own homes. However, nearly 9,000 clients live in facilities licensed and overseen by APD.[196]

Residential Facility Inspections and Penalties

APD must conduct annual inspections and reviews of its licensed facilities and may also conduct unannounced inspections to determine compliance of its facilities with the applicable provisions of ch. 393, F.S., and the rules adopted pursuant thereto.[197] APD may discipline a facility's license in various ways and refuse to issue a license to a facility if it is determined that the facility has failed to comply

[187] Id.
[188] Rule 59G-13.070, F.A.C.
[189] S. 393.0651, F.S.
[190] S. 393.063(37), F.S., defines "Support Coordinator" as a person designated by APD to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the necessary supports and services; advocating on behalf of the individual or family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.
[191] Id.
[192] S. 393.0651(7), F.S.
[193] S. 393.063(28) defines residential facility as a facility providing room and board and personal care for persons who have developmental disabilities.
[194] AGENCY FOR PERSONS WITH DISABILITIES, *Planning Resources*, http://apd.myflorida.com/planning-resources/ (last visited Jan. 21, 2018).
[195] S. 393.063(25), F.S.
[196] Email from Caleb Hawkes, Legislative Affairs Director, Agency for Persons with Disabilities, RE: Agency Client Placements (February 9, 2018)(on file with the Health and Human Services Committee staff)
[197] Ss. 393.067(2) and 393.067(9), F.S.

with the applicable requirements of ch. 393, F.S., or the rules adopted pursuant thereto.[198] Additionally, APD may pursue injunctions against a facility for any violation constituting an emergency requiring immediate action.[199]

Provision of Residential Services During an Emergency

Residential facilities licensed by APD must develop their own comprehensive emergency management plans to address the needs of their residents in the event of an emergency.[200] Each comprehensive emergency management plan must be updated annually[201] and include:[202]

- A description of potential hazards to which the facility is vulnerable, such as hurricanes, tornadoes, flooding, fires, hazardous materials, power outages, and severe weather conditions;
- Provisions for the care of residents remaining in the facility during an emergency, including predisaster or emergency preparation, protecting the facility, supplies, emergency power, food and water, staffing, and emergency equipment;
- Provisions for the care of both residents who are evacuated from and remain in the facility during an emergency, including identification of such residents, transfer of resident records, evacuation transportation, sheltering arrangements, supplies, staffing, emergency equipment, and medication;
- Identification of residents with mobility limitations who may need specialized assistance either at the facility or in case of evacuation;
- Identification of and coordination with the local emergency management agency;
- Arrangement for postdisaster activities including responding to family inquiries, obtaining medical intervention for residents, transportation, and reporting to the county office of emergency management the number of residents who have been relocated and the place of relocation; and
- The identification of staff responsible for implementing each part of the plan.

All comprehensive transitional education programs and those facilities that serve residents with complex medical conditions must have their emergency management plans approved by the local emergency management agency;[203] this approval is not required for foster care facilities, group home facilities, or residential habilitation centers that do not serve residents with complex medical conditions. During its review, the local emergency management agency must allow APD, the Division, and relevant volunteer organizations to review these comprehensive emergency management plans.[204] The local emergency management agency must complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.[205]

Effect of the Bill - Services for Individuals with Developmental Disabilities

Individual Support Plans

The bill requires APD waiver clients' individual support plans to include an individual emergency plan, updated annually, to include the selection of an evacuation shelter and documented registration with the special needs registry, if appropriate, and a staffing plan for the client in the shelter, if necessary.

[198] S. 393.0673, F.S. Possible discipline includes revocation or suspension of a license, imposition of an administrative fine, or an immediate moratorium on admissions to a facility. Additionally, APD may initiate receivership or injunctive proceedings in court when violations require immediate action to ensure the safety and welfare of residents, ss. 393.0678 and 393.0675, F.S.
[199] S. 393.0675, F.S.
[200] S. 393.067(8), F.S.
[201] S. 393.067(8), F.S.
[202] Rule 65G-2.010(3)(a), F.A.C.
[203] S. 393.067(8), F.S.
[204] S. 393.067(8), F.S.
[205] S. 393.067(8), F.S.

Provision of Residential Services during an Emergency

The bill requires additional components in comprehensive emergency management plans for APD facilities regarding:

- Hardening;
- Identifying which staff are responsible for implementing each element of the plan; how the facility will maintain staffing during emergencies; and how the facility will accommodate family members of staff;
- Whether the facility is located in an evacuation zone, intends to shelter in place or relocate to another facility, and has an emergency power source; and
- How the facility intends to inform residents, the residents' designated family members, legal representatives, or guardians once the emergency management plan has been activated.

The bill requires the facilities to provide their residents, the residents' designated family members, legal representatives, or guardians the overview of the comprehensive emergency management plan and description of the evacuation plan, if appropriate. Any changes or updates to the plan should similarly be provided within 30 days of the change.

The bill adds specific timelines for submission of the comprehensive emergency management plans by CTEP's and facilities serving individuals with complex medical conditions. Specifically, these APD facilities must submit their plans to the local emergency management agency within 90 days of licensure and notify APD within 30 days of such submission. Thereafter, the plan must be submitted annually or after modification to a previously approved plan. Facilities must notify APD within 30 days of its plan being approved.

The bill requires APD facilities to conduct annual staff training on the policies and procedures for implementing the emergency management plan. The training must be conducted within the two months before the hurricane season. This training includes testing of the implementation of the plan, either through a planned drill or in response to an actual disaster or emergency.

The bill requires APD to determine and communicate prior to disaster impact which requirements for service provision it intends to waive for its clients who are relocated to shelters or other facilities during an emergency; however, APD may waive additional requirements following disaster impact, if appropriate.

Residential Facility Inspections and Penalties

The bill adds to APD's existing authority to conduct unannounced inspections of its facilities to determine compliance with applicable laws and rules by requiring APD to consider compliance with the requirements of the comprehensive emergency management plan during these inspections. Additionally, the bill requires periodic followup inspections as necessary to monitor compliance with the plan.

The bill allows APD to discipline or refuse to issue or renew a facility's license or pursue injunctive proceedings against a facility if it failed to:

- Comply with the requirements of the comprehensive emergency management planning process, or
- Follow the policies and procedures in the comprehensive emergency management plan. However, APD shall consider mitigating factors, including the facility's efforts to follow the plan and circumstances beyond the facility's control that caused the failure. Additionally, APD shall evaluate the potential or actual harm to the client's health, safety, and security caused by the failure when determining any penalty.

Emergency Curfews

Background

Curfews are often imposed during an emergency or disaster to ensure the safety of citizens. Curfews are generally enacted by counties and municipalities and vary depending on the nature of the emergency or disaster. This can create a patchwork of differing restrictions in the affected areas making travel and the delivery of emergency supplies difficult.

DEM may issue individuals that transport or distribute essential goods used to preserve, protect, or sustain life, health, safety, or economic well-being during a declared emergency a certificate of exemption from curfews.[206] Certificate holders may enter and remain in curfew areas for the limited purposes of transporting and distributing essential goods.[207] However, law enforcement retains the right to determine the route into and through curfew areas, even for individuals with a certificate.[208]

Currently, there is no statutory exemption to allow employees of health care facilities to enter and remain in curfew areas during a declared state of emergency. The select committee received testimony that the inability of health care facility employees to travel through and remain in curfew areas created staffing and access to care issues during and after Hurricane Irma.[209] Additionally, the select committee recommended a statutory exemption to curfews for health care facility employees.[210]

Effect of Bill – Emergency Curfews

The bill creates s. 252.3591, F.S., requiring each local emergency management agency to establish a procedure for authorizing employees of health care facilities subject to ch. 408, F.S., and developmental disability facilities licensed under ch. 393, FS., to enter and remain in curfew areas during a declared emergency or disaster. Authorized employees of these licensees may enter and remain in curfew areas to provide services to patients and clients. This should create greater access to care during a declared emergency or disaster and resolve some staffing difficulties for these facilities.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.355, F.S., relating to registry of persons with special needs; notice; registration program.
Section 2: Creates s. 252.3591, F.S., relating to ensuring access to care.
Section 3: Amends s. 381.0303, F.S., relating to special needs shelters.
Section 4: Amends s. 393.0651, F.S., relating to family or individual support plan.
Section 5: Amends s. 393.067, F.S., relating to facility licensure.
Section 6: Amends s. 393.0673, F.S., relating to denial, suspension, or revocation of license; moratorium on admissions; administrative fines; procedures.
Section 7: Amends s. 393.0675, F.S., relating to injunctive proceedings authorized.
Section 8: Amends s. 400.102, F.S., relating to action by agency against licensee; grounds.
Section 9: Amends s. 400.19, F.S., relating to right of entry and inspection.
Section 10: Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.
Section 11: Amends s. 400.492, F.S., relating to provision of services during an emergency.
Section 12: Amends s. 400.497, F.S., relating to rules establishing minimum standards.
Section 13: Amends s. 400.506, F.S., relating to licensure of nurse registries; requirements; penalties.
Section 14: Amends s. 408.813, F.S., relating to administrative fines; violations.

[206] Ss. 252.359(5) and 252.36(5)(m), F.S. The certificate of exemption is valid for one year and may be renewed as long as the individual continues to meet the criteria for certification.
[207] S. 252.359.
[208] Id.
[209] Supra, FN 63.
[210] Supra, FN 1.

Section 15: Amends s. 408.821, F.S., relating to emergency management planning; emergency operations; inactive license.
Section 16: Amends s. 429.14, F.S., relating to administrative penalties.
Section 17: Amends s. 429.28, F.S., relating to resident bill of rights.
Section 18: Amends s. 429.41, F.S., relating to rules establishing standards.
Section 19: Provides for an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

Hosting / Domain	Annual / Monthly Rate	Estimate	TOTAL
Web Hosting	$5,000	12	$60,000
Certificates / URL	$1,000	1	$1,000
TOTAL			**$61,000**

1. Revenues:

   None.

2. Expenditures:

   Agency for Health Care Administration

   The bill has a significant, negative fiscal impact on AHCA. AHCA estimates the bill's additional inspection and monitoring duties will create an increase in workload requiring 13 new FTEs with a total expenditure for FY 2018-2019 of $1,052,727 and recurring costs of $983,645 for FYs 2019-2020 and 2020-2021.[211]

Fiscal Year	FY 2018-2019	FY 2019-2020	FY 2020-2021
Non-recurring costs	$67,258	0	0
Recurring costs	$985,469	$983,645	$983,645
Total Expenditures	$1,052,727	$983,645	$983,645

   The bill requires AHCA to establish and maintain the FloridaHealthStat database to gather information from facilities, providers and others for use during a declared emergency. The agency estimates an annual recurring cost to host the database of $300,000. [212]

   Department of Health

   The bill has a significant, negative fiscal impact on DOH to development and maintain the special needs shelter registry. DOH estimates that it will cost $642,835 in nonrecurring funds to develop the special needs shelters registry and $61,000 recurring to host it.[213]

Requirement Gathering & Development	Hourly Rate	Estimated Hours	TOTAL
Project Manager Services	$109	1907	$207,863
Development Services	$105	1890	$198,450
Development Services (Junior)	$98	1225.5	$120,099
Functional Design	$95	1225.5	$116,423
TOTAL			**$642,835**

[211] Email from the Agency for Health Care Administration dated Feb. 12, 2018, on file with the House Health & Human Services Committee.
[212] Id.
[213] Correspondence from the Department of Health to the House of Representatives Health & Human Services Committee dated February 12, 2018, on file with the Health & Human Services staff.

DOH anticipates that the special needs shelter registry will create an increase in workload requiring 2 FTEs with a total recurring cost of $125,229.08.[214]

Position	Position Base Salary	Benefits & Fringe	Total
Government Analyst II – Registry Admin	$46,381.14	$16,233.40	$62,614.54
Government Analyst II – SpNS Coordinator	$46,381.14	$16,233.40	$62,614.54
TOTAL			**$125,229.08**

The bill does not expressly require the special needs registry to be capable of providing alert and notification services to registrants. Such services could be used, among other things, to send out mass notifications during emergencies directly to registrants or to send reminders to individual registrants to renew their registration. DOH estimates a recurring cost to be $144,000-$720,000 based on the number of registrants in the special needs shelter registry.

Alert & Notification Services	Cost Per Seat	Number of Seats	TOTAL
Everbridge	1.44	100,000.00	$144,000.00
	1.30	200,000.00	$259,200.00
	1.15	300,000.00	$345,600.00
	1.01	400,000.00	$403,200.00
	0.86	500,000.00	$432,000.00
	0.72	1,000,000.00	$720,000.00

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires various health care facilities and health care providers to submit CEMPs to local county health departments. This may create a negative fiscal impact on health care facilities and health care providers in counties which charge for reviewing CEMPs, for those which currently do not submit CEMPs for review, if any. Currently, 13 counties[215] charge a fee for reviewing a CEMP.[216] These fees are $48-$65 for initial review and $24-$35[217] for review of updates or revisions to the CEMP.[218]

D. FISCAL COMMENTS:

None.

[214] Id.
[215] Id. Citrus, Collier, Escambia, Hardee, Hernando, Hillsborough, Manatee, Miami-Dade, Monroe, Pasco, Pinellas, Polk and Sumter.
[216] Id.
[217] Id. Monroe County charges $65 for both initial and update/revision reviews.
[218] Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The rulemaking authority provided in the bill and in current law is sufficient to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2018, the Health and Human Services Committee adopted two amendments and reported PCB 18-02 favorably as amended. The amendments:

- Add a deadline for a nurse registry to submit a comprehensive emergency management plan to the county health department for review (within 90 days after licensure or change of ownership).
- Add the CEO of the ARC of Florida to the Special Needs Shelter Registry Work Group created by the bill.

The analysis is drafted to the PCB as passed by the Health and Human Services Committee.