

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: PCS/SB 760 (759702)

INTRODUCER: Health Regulation Committee

SUBJECT: Health Care

DATE: April 5, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Pre-meeting
2.			HA	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill repeals obsolete and redundant provisions, defines and corrects references to the Joint Commission, updates references to a variety of organizations and state agencies to reflect current titles or responsibilities related to facilities regulated by the Agency for Health Care Administration (AHCA), and streamlines reporting by licensed facilities and state agencies.

The bill makes the following substantive changes:

- Expands the authorized staffing of a geriatric outpatient clinic in a nursing home to include a nurse practitioner or a licensed practical nurse under the direct supervision of a registered nurse;
- Imposes a \$1,000 fine per day if a nursing home fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements;
- Eliminates the requirement for a newly hired nursing home surveyor to observe a facility's operations as a part of basic training;
- Eliminates the monthly reporting by nursing homes and assisted living facilities of any notice of claims or liability claims filed against the facility;
- Expands the definition of a portable equipment provider within the requirements for a health care clinic license to include a portable service or equipment provider;
- Prohibits activities related to altering, defacing, or falsifying a license certificate;
- Enhances the general licensing provisions of part II of ch. 408, F.S., to provide that the license renewal notice that the AHCA sends is a *courtesy* notice, authorize the AHCA to impose an administrative fine, not to exceed \$500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations, and authorize the AHCA to extend the license expiration date for up to 60 days and impose other conditions

during that extension period in order to accomplish the safe and orderly discharge of clients or residents;

- Phases out the Medicaid adult day health care waiver program;
- Repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an assisted living facility (ALF) with a standard license;
- Increases the per-bed fee for a standard-licensed ALF by \$8.50 biennially for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard licensure fees is increased;
- Requires additional monitoring, either onsite or by a desk review, for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended congregate care (ECC) specialty license;
- Requires all ALFs to report electronically to the AHCA, at least semiannually, certain aggregated data related to the residents and staff of the facility;
- Modifies the AHCA's consultation responsibilities with respect to assisted living facilities; and
- Revises the definition of an adult family-care home to address a glitch in the law by authorizing up to two people to own or rent the home.

This bill amends the following sections of the Florida Statutes: 154.11, 318.21, 394.4787, 394.741, 395.002, 395.003, 395.0193, 395.1023, 395.1041, 395.1055, 395.10972, 395.2050, 395.3036, 395.3038, 395.602, 400.021, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.19, 400.23, 400.275, 400.484, 400.606, 400.607, 400.915, 400.925, 400.931, 400.932, 400.933, 400.953, 400.967, 400.9905, 400.991, 400.9935, 408.034, 408.036, 408.043, 408.05, 408.061, 408.10, 408.804, 408.806, 408.810, 408.813, 408.815, 409.906, 429.07, 429.11, 429.14, 429.17, 429.19, 429.255, 429.35, 429.41, 429.53, 429.54, 429.65, 429.71, 429.915, 430.80, 440.13, 483.294, 627.645, 627.668, 627.669, 627.736, 641.495, and 766.1015.

The bill repeals the following sections of the Florida Statutes: 112.0455(10)(e), 383.325, 395.1046, 395.3037, 400.147(10), 400.148, 400.195, 408.802(11), 409.221(4)(k), 409.912(15)(e),(f), and (g), 429.12(2), 429.23(5), 429.28(3), 429.901(5), and 429.911.

II. Present Situation:

Health Care Licensing

The AHCA regulates over 41,000 health care providers under several regulatory programs based upon individual licensing statutes and the general licensing provisions in part II of ch. 408, F.S. The health care providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102, F.S.;
- Birth centers, as provided under ch. 383, F.S.;
- Abortion clinics, as provided under ch. 390, F.S.;

- Crisis stabilization units, as provided under parts I and IV of ch. 394, F.S.;
- Short-term residential treatment facilities, as provided under parts I and IV of ch. 394, F.S.;
- Residential treatment facilities, as provided under part IV of ch. 394, F.S.;
- Residential treatment centers for children and adolescents, as provided under part IV of ch. 394, F.S.;
- Hospitals, as provided under part I of ch. 395, F.S.;
- Ambulatory surgical centers, as provided under part I of ch. 395, F.S.;
- Mobile surgical facilities, as provided under part I of ch. 395, F.S.;
- Health care risk managers, as provided under part I of ch. 395, F.S.;
- Nursing homes, as provided under part II of ch. 400, F.S.;
- Assisted living facilities, as provided under part I of ch. 429, F.S.;
- Home health agencies, as provided under part III of ch. 400, F.S.;
- Nurse registries, as provided under part III of ch. 400, F.S.;
- Companion services or homemaker services providers, as provided under part III of ch. 400, F.S.;
- Adult day care centers, as provided under part III of ch. 429, F.S.;
- Hospices, as provided under part IV of ch. 400, F.S.;
- Adult family-care homes, as provided under part II of ch. 429, F.S.;
- Homes for special services, as provided under part V of ch. 400, F.S.;
- Transitional living facilities, as provided under part V of ch. 400, F.S.;
- Prescribed pediatric extended care centers, as provided under part VI of ch. 400, F.S.;
- Home medical equipment providers, as provided under part VII of ch. 400, F.S.;
- Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of ch. 400, F.S.;
- Health care services pools, as provided under part IX of ch. 400, F.S.;
- Health care clinics, as provided under part X of ch. 400, F.S.;
- Clinical laboratories, as provided under part I of ch. 483, F.S.;
- Multiphasic health testing centers, as provided under part II of ch. 483, F.S.; and
- Organ, tissue, and eye procurement organizations, as provided under part V of ch. 765, F.S.

The general licensing provisions contain standards for licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions. Each provider type has an authorizing statute (as listed above) that includes unique provisions for licensure beyond the general licensing provisions. If a conflict exists between the general licensing provisions and the authorizing statute, s. 408.832, F.S., provides that the general licensing provisions prevail.

There are several references in the authorizing statutes that conflict with or duplicate regulations in the general licensing provisions, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements, and plans of corrections from providers.

Nursing Homes

Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically

and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*.¹ This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs. Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida. Among other things, this law established a monthly reporting requirement of liability claims filed against nursing homes. This data, as well as other data related to nursing homes was included in a Semi-annual Report on Nursing Homes that the AHCA was required to submit to the Governor and Legislature. This statutory reporting obligation in s. 400.195, F.S., expired on June 30, 2005. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.²

Assisted Living Facilities

An assisted living facility (ALF) provides housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. ALFs are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, an ALF provides supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications.

As of December 2009, there were 2,830 ALFs licensed with a standard license by the AHCA in this state, for a total of 80,539 beds.³ In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health services,⁴ and ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.⁵

¹ The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*, may be found at <http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf> (Last visited on April 5, 2010).

² See: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/NH_Chart.pdf> (Last visited on April 5, 2010).

³ Source: The AHCA 2010 Bill Analysis & Economic Impact Statement for SPB 7018, on file with the Senate Health Regulation Committee.

⁴ An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

⁵ Source: The AHCA in an email to committee professional staff dated September 23, 2009.

LNS Specialty License

An LNS license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. As of December 2009, there were 977 ALFs licensed with an LNS specialty license.⁶

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,⁷ may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.⁸

The biennial fee for an LNS license is \$296 per license with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.⁹ Ostensibly, this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

Licensure Fees

The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect.¹⁰

⁶ Ibid, 6. The AHCA does not track the number of LNS beds.

⁷ Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

⁸ s. 429.07(3)(c), F.S.

⁹ s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

¹⁰ Found on the AHCA website at:

<http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf>, (Last visited on April 5, 2010).

Fee Description	Per s. 429.07(4), F.S.	CPI adjusted (current fee)
Standard ALF Application Fee	\$300	\$356
Standard ALF Per-Bed Fee (non-OSS)	\$ 50	\$ 59
Total Licensure fee for Standard ALF	\$10,000	\$13,087
ECC Application Fee	\$400	\$501
ECC Per-Bed Fee (licensed capacity)	\$ 10	\$ 10
LNS Application Fee	\$250	\$296
LNS Per-Bed Fee (licensed capacity)	\$ 10	\$ 10

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

Liability Claims Reporting

Chapter 2001-45, L.O.F.,¹¹ also established a monthly reporting requirement of liability claims filed against assisted living facilities. Cumulative data are reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.¹²

Adult Family-Care Homes

An adult family-care home is a full-time family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The adult family-care home provider must live in the home. Adult family-care homes are licensed and regulated under part II of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 58A-14, F.A.C., unless the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation, or for only his or her relatives. A frail elder is a functionally impaired person who is 60 years of age or older and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and impede the person's capacity to live independently.

Consumer Directed Care Program

The Consumer Directed Care Program (CDC) was implemented as a Medicaid 1115 Research and Demonstration waiver. As part of the new program, the AHCA was required to produce an

¹¹ s. 36, ch. 2001-45, L.O.F., creating s. 400.423, F.S.

¹² See: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf> (Last visited on April 5, 2010).

annual report to the Legislature. In March 2008, the CDC program was approved to be under the 1915(j) self directed option as a Medicaid state plan amendment instead of an 1115 Research and Demonstration waiver. The 1915(j) state plan amendment requires annual and 3-year comprehensive reporting to the federal Centers for Medicare and Medicaid Services (CMS). The report to the CMS communicates the current status of the CDC program, data on CDC enrollment, demographics, consumer satisfaction and cost effectiveness. The CMS requires this report to be available for public review.

The CARES Program

The AHCA is required to submit a report to the Legislature annually regarding the operations of the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program.¹³ The CARES program, which is housed in the Department of Elderly Affairs (DOEA), is Florida's federally mandated pre-admission screening program for nursing facility applicants seeking Medicaid funding for their care. The purpose of the CARES program is to ensure that Medicaid payment for nursing facility care is made only for individuals whose conditions require such care and to ensure that long-term care services are provided in the setting most appropriate to the needs of the person and in the most economical manner possible. In addition to pre-admission screening, the CARES program provides assessments for individuals in need of home and community-based services.

The annual report describes:

- The rate of diversion to community alternative programs,
- The CARES program staffing needs to achieve additional diversions,
- Reasons that diversions did not occur when the individuals desired the less restrictive setting and could have been served in that setting,
- Barriers to appropriate placement, and
- Statutory changes needed to ensure services are provided in the least restrictive setting.

The DOEA is required to track individuals over time who are assessed under the CARES program and diverted from nursing home placement. The DOEA is to report annually: demographic information on those individuals who have been diverted, a summary of community services provided to individuals for one year after diversion, a summary of inpatient hospital admissions for these individuals who have been diverted, and a summary of the length of time between diversion and subsequent entry into a nursing home or death.

III. Effect of Proposed Changes:

Sections 1, 4, 12, 17, 30, 31, 33, 55, 62, 63, 66, 70, 72, 79, and 80. Repeal the following sections of the Florida Statutes:

- s. 112.0455(10)(e), F.S., to remove an obsolete provision concerning drug testing within the Drug-Free Workplace Act. The Division of Statutory Revision requested clarification of this provision;
- s. 383.325, F.S., related to public access to governmental inspection reports for birth centers, since this is required in the general licensing provisions in part II of ch. 408, F.S.;

¹³ s. 409.912(15)(e), F.S.

- s. 395.1046, F.S., related to the AHCA's investigation procedures for complaints against a hospital for violations of the access to emergency services and care provisions under s. 395.1041, F.S. Complaint procedures exist in the general licensing provisions in part II of ch. 408, F.S. The federal process for emergency access complaints dictates that access to emergency services and care complaints be handled similarly to routine complaints;
- s. 395.3037, F.S., related to definitions of Department and Agency as they pertain to stroke centers. These terms are already defined in s. 395.002, F.S., which provides definitions for all of ch. 395, F.S.;
- s. 400.147(10), F.S., related to the requirement for a licensed nursing home to report to the AHCA monthly any notice of claims against the facility for violation of a resident's rights or negligence. This information has been required to be submitted since 2001. It was included in the AHCA's Semi-Annual Report on Nursing Homes, which is repealed in section 31 of this bill. Currently this information is reported on the AHCA's website;
- s. 400.148, F.S., related to the obsolete Medicaid "Up-or-Out" Quality of Care Contract Management Program;
- s. 400.195, F.S., related to an obsolete requirement for the AHCA to report on lawsuits against and deficiencies in nursing homes. The statutory reporting requirement was for the period June 30, 2001 through June 30, 2005;
- s. 408.802(11), F.S., related to the general licensure provisions, to delete reference to private review agents. The regulation of private review agents was repealed by the Legislature in 2009;
- s. 409.221(4)(k), F.S., related to the CDC program, to eliminate the requirement for the AHCA, the DOEA, the DOH, the Department of Children and Family Services, and the Agency for Persons with Disabilities to review and assess the implementation of this program on an ongoing basis. The requirement for the AHCA to submit an annual written report to the Legislature on these reviews and recommendations to improve the program is also repealed;
- s. 409.912(15)(e),(f), and (g), F.S., related to the CARES program. Paragraphs (e) and (f) repeal the annual reporting requirements for the AHCA concerning the operation of the CARES program and the DOEA's longitudinal study of individuals who are diverted from nursing home placement. Paragraph (g) repeals an obsolete reporting requirement that expired in 2005;
- s. 429.12(2), F.S., related to change of ownership for assisted living facilities, since this is addressed under the general licensing provisions in part II of ch. 408, F.S.;
- s. 429.23(5), F.S., to repeal the requirement for an assisted living facility to report monthly to the AHCA any liability claim filed against it, which is currently reported on the AHCA's website;
- s. 429.28(3), F.S., to eliminate duplicative provisions related to inspections and monitoring facilities that have been cited with violations. The provision requiring the AHCA to determine whether an ALF licensee is adequately protecting residents' rights in its biennial survey is transferred to s. 429.07, in section 64 of this bill;
- s. 429.901(5), F.S., to eliminate the definition of a term that is no longer used due to the repeal of s. 429.911, F.S., in section 80 of this bill; and
- s. 429.911, F.S., related to adult day care center licensure, to remove duplicative provisions that now exist in the general licensing provisions in part II of ch. 408, F.S.

Sections 2, 5, 18, 40, 48, 52, 82, 83, 85, 86, 87, 88, 89, and 90. Amend the following sections of the Florida Statutes to update the name of certain accrediting organizations, including the Joint Commission:

- s. 154.11, F.S., related to facilities owned and operated by the board of trustees of each public health trust;
- s. 394.741, F.S., related to providers of behavioral health care services;
- s. 395.3038, F.S., related to stroke centers;
- s. 400.925, F.S., related to home medical equipment providers;
- s. 400.9935, F.S., related to health care clinics;
- s. 408.05, F.S., related to health care quality measures that are reported by the AHCA;
- s. 430.80, F.S., related to the teaching nursing home pilot project;
- s. 440.13, F.S., related to workers' compensation;
- s. 627.645, F.S., related to health insurance;
- s. 627.668, F.S., related to insurance coverage for mental and nervous disorders;
- s. 627.669, F.S., related to insurance for substance abuse impaired persons;
- s. 627.736, F.S., related to personal injury protection automobile insurance;
- s. 641.495, F.S., related to health maintenance organizations and prepaid health clinics; and
- s. 766.1015, F.S., related to boards or other groups established for quality improvement purposes.

Section 3. Amends s. 318.21, F.S., to redirect funding intended to serve adult Medicaid recipients with complex spinal cord injuries from the AHCA to the Brain and Spinal Cord Injury Rehabilitation Trust Fund within the DOH.

Section 6. Amends s. 394.4787, F.S., to correct a cross-reference concerning licensure of a specialty psychiatric hospital.

Section 7. Amends s. 395.002, F.S., to redefine the term “accrediting organizations” as it relates to hospitals and other licensed facilities to delete the list of four organizations that are identified in statute. The term is redefined to mean nationally recognized or approved accrediting organizations whose standards incorporate comparable licensure requirements as determined by the AHCA. In addition, the following obsolete definitions are repealed: “initial denial determination,” “private review agent,” “utilization review,” and “utilization review plan.”

Section 8. Amends s. 395.003, F.S., to remove obsolete language concerning emergency departments located off-site from a licensed hospital.

Section 9. Amends s. 395.0193, F.S., related to peer review of physicians within hospitals and licensed facilities, to correct references to the Division of Medical Quality Assurance of the DOH.

Section 10. Amends s. 395.1023, F.S., related to reporting actual or suspected cases of child abuse, abandonment, or neglect by hospitals and licensed facilities, to clarify that references to the Department mean the Department of Children and Family Services.

Section 11. Amends s. 395.1041, F.S., to remove obsolete language pertaining to services within a hospital's service capability. The Division of Statutory Revision requested clarification of this provision.

Section 13. Amends s. 395.1055, F.S., to require that the AHCA's rulemaking concerning licensed facility beds conform to standards specified by the AHCA, the Florida Building Code, and the Florida Fire Prevention Code.

Section 14. Amends s. 395.10972, F.S., to update the reference to the current name of the Florida Society for Healthcare Risk Management and Patient Safety.

Section 15. Amends s. 395.2050, F.S., to update the reference to the current name of the Centers for Medicare and Medicaid Services.

Section 16. Amends s. 395.3036, F.S., to correct a cross-reference concerning the confidentiality of records and meetings of corporations that lease public health care facilities. The Division of Statutory Revision requested clarification of this provision.

Section 19. Amends s. 395.602, F.S., to eliminate one of the conditions that qualifies a hospital as a rural hospital. This condition is a hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax, in an area that was directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency, has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits, and a Medicaid inpatient utilization rate greater than 15 percent.

Section 20. Amends s. 400.021, F.S., to expand the definition of a geriatric outpatient clinic in a nursing home, to add that it may be staffed by an advanced registered nurse practitioner or a licensed practical nurse under the direct supervision of a registered nurse. Currently the definition of a geriatric outpatient clinic provides that it be staffed by a registered nurse or a physician assistant.

Section 21. Amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

Section 22. Amends s. 400.0255, F.S., to correct an obsolete cross-reference to an administrative rule concerning fair hearings requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

Section 23. Amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced was repealed. The Division of Statutory Revision requested clarification of this provision.

Section 24. Amends s. 400.071, F.S., to repeal disclosure of certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. Section 26 of this bill amends s. 400.111, F.S., to require certain disclosures to replace these requirements. This section also repeals the requirement for a nursing home

licensure applicant to identify the number of beds and number of Medicare and Medicaid certified beds since this is required in the general licensing provisions in s. 408.806(1)(d), F.S.

Section 25. Amends s. 400.0712, F.S., to repeal the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

Section 26. Amends s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA instead of a mandatory submission for all nursing home licensure applications.

Section 27. Amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility.

Section 28. Amends s. 400.141, F.S., to eliminate the requirement for a licensed nursing facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

This section requires the AHCA to fine a nursing facility \$1,000, as a class II violation, if it fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements. Section 400.121(2), F.S., authorizes this fine to be imposed per day, not to exceed \$5,000. In other instances, a class II deficiency is subject to a civil penalty of \$2,500 for an isolated deficiency, \$5,000 for a patterned deficiency, and \$7,500 for a widespread deficiency and is intended for ongoing non-compliance issues.

The bill repeals the requirement for a licensed nursing home to report to the AHCA information concerning filing for bankruptcy, divestiture of assets, or corporate reorganization. A similar provision is amended into the general licensing provisions in s. 408.810, F.S., in Section 58 of this bill.

Section 29. Amends s. 400.142, F.S., to eliminate the requirement for the AHCA to adopt rules related to nursing facility staff implementing an order to withhold or withdraw cardiopulmonary resuscitation inasmuch as statutory provisions exist in s. 401.45, F.S., for emergency medical responders.

Section 32. Amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

Section 34. Amends s. 400.23, F.S., to update the reference to the current name of the Division of Children's Medical Services Network of the DOH. The Division of Statutory Revision requested clarification of this provision.

Section 35. Amends s. 400.275, F.S., to eliminate the requirement for the AHCA to assign each newly hired nursing home surveyor to observe a facility's operations as a part of basic training.

The AHCA nursing home staff must be qualified under the federal requirements for the Surveyor Minimum Qualifications Test.

Section 36. Amends s. 400.484, F.S., related to violations by home health agencies, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section.

Section 37. Amends s. 400.606, F.S., to eliminate the requirement for an applicant for a hospice license to submit the projected annual operating cost of the hospice. Under the general licensing provisions, in part II of ch. 408, F.S., an applicant for licensure must submit information pertaining to the applicant's financial ability to operate.

Section 38. Amends s. 400.607, F.S., to clarify the grounds for administrative action by the AHCA against a hospice and eliminate duplicative provisions found in the general licensing provisions in part II of ch. 408, F.S.

Section 39. Amends s. 400.915, F.S., to correct an obsolete cross-reference to an administrative rule concerning the construction or renovation of a prescribed pediatric extended care center. This correction was requested by the Joint Administrative Procedures Committee.

Section 41. Amends s. 400.931, F.S., to repeal the option for an applicant for a home medical equipment provider license to submit a \$50,000 surety bond in lieu of proof of financial ability to operate.

Section 42. Amends s. 400.932, F.S., to clarify the grounds for administrative action by the AHCA against a home medical equipment provider.

Section 43. Amends s. 400.933, F.S., to authorize the AHCA to accept a licensed home medical equipment provider's survey or inspection of an accrediting organization, provided the accreditation is not *conditional* or provisional, in lieu of conducting its own survey or inspection.

Section 44. Amends s. 400.953, F.S., to require the affidavit submitted by the general manager of a home medical equipment provider concerning background screening of the provider's personnel to be submitted in accordance with s. 408.809(6), F.S., which requires the document to be submitted at the time of license renewal.

Section 45. Amends s. 400.967, F.S., related to violations by intermediate care facilities for developmentally disabled persons, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section.

Section 46. Amends s. 400.9905, F.S., to revise the definitions related to the health care clinic act to include "service" within the term "portable service or equipment provider." This change includes an entity that contracts with or employs a person to provide portable health care service or equipment to multiple locations, which bills third-party payors for those services, and which

otherwise, meets the definition of a clinic. Pediatric cardiology and perinatology¹⁴ clinic facilities that are a publicly traded corporation or that are wholly owned by a publicly traded corporation are exempted from the definition of and regulation as a health care clinic.

Section 47. Amends s. 400.991, F.S., to repeal the option for an applicant for a health care clinic license to submit a \$500,000 surety bond in lieu of proof of financial ability to operate. Another cross-reference is added to reflect an existing provision concerning proof of financial ability to operate for an applicant for a health care clinic license.

Section 49. Amends s. 408.034, F.S., to correct a reference to the AHCA's authority to issue licenses to intermediate care facilities for developmentally disabled persons under part VIII of ch. 400, F.S., without the facility first obtaining a certificate of need as required by s. 408.036(1)(a), F.S.

Section 50. Amends s. 408.036, F.S., to eliminate a cross-reference to an exception to the certificate-of-need requirements for a hospice. No exceptions are currently provided in s. 408.043, F.S.

Section 51. Amends s. 408.043, F.S., to remove the term "primarily" to clarify that a certificate of need is required to establish or expand an inpatient hospice facility unless the facility is licensed as a health care facility, such as a hospital or skilled nursing facility.

Section 53. Amends s. 408.061, F.S., to remove an inappropriate reference to an administrative rule that describes data reporting.

Section 54. Amends s. 408.10, F.S., to authorize the AHCA to provide staffing for the toll-free telephone number dedicated to handling consumer complaints.

Section 56. Amends s. 408.804, F.S., related to the general licensing provisions. Effective October 1, 2010, the act of, or causing another to alter, deface, or falsify a license certificate is a misdemeanor of the second degree. A licensee or provider who displays an altered, defaced, or falsified license certificate is subject to an administrative fine of \$1,000 for each day of illegal display and a license or application for a license is subject to revocation or denial.

Section 57. Amends s. 408.806, F.S., related to general licensing provisions, to require the AHCA to send a courtesy notice to the licensee 90 days before renewal. However, the AHCA's failure to do so or the licensee's failure to receive the notice does not excuse the licensee's responsibility to timely submit the renewal application and fee. Submission of the renewal application, application fee, and any applicable late fees is required to renew the license.

Section 58. Amends s. 408.810, F.S., related to general licensing provisions, to require an applicant to submit to the AHCA proof that the applicant has notified a mortgagor or landlord, if applicable, of the applicant's intent to provide services on the property that require licensure by

¹⁴ Perinatology is a subspecialty of obstetrics concerned with the care of the mother and fetus at higher-than-normal risk for complications See: <<http://www.medterms.com/script/main/art.asp?articlekey=7902>>, (Last visited on April 5, 2010).

the AHCA and instructed the mortgagor or landlord to notify the AHCA if the mortgagor or landlord initiates action against the applicant.

A controlling interest shall notify the agency within 10 days after initiation of a court action, such as bankruptcy proceedings, foreclosure, or eviction proceedings in which the controlling interest is a petitioner or defendant. (See the comment under Related Issues.)

Section 59. Amends s. 408.813, F.S., related to general licensing provisions, to authorize the AHCA to impose an administrative fine, not to exceed \$500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations. Unclassified violations might include: violating any term or condition of a license; violating any provision of the general licensing provisions, authorizing statutes, or applicable rules; exceeding licensed capacity without authorization; providing services beyond the scope of the license; or violating a moratorium.

Section 60. Amends s. 408.815, F.S., related to general licensing provisions, to authorize the AHCA to extend the license expiration date for up to 60 days and to impose other conditions during that 60-day extension in order to accomplish the safe and orderly discharge of clients. The authority to extend is at the discretion of the AHCA and does not create any right or entitlement to an extension of a license expiration date.

Section 61. Amends s. 409.906, F.S., related to optional Medicaid services, to phase out the adult day health care waiver program from July 1, 2010 through December 31, 2010. Enrollees as of July 1, 2010 will transition to other home and community-based services.

Section 64 Amends s. 429.07, F.S., to repeal the LNS specialty license and its requirements and the quarterly monitoring requirements related to ALFs that are licensed to provide ECC services. The bill requires an ALF that has been cited within the previous 24 months for a class I or class II violation to be subject to unannounced monitoring. This monitoring may occur through a desk review or onsite, unless a cited violation relates to providing or failing to provide nursing care. In that case, a registered nurse is required to participate in at least two onsite monitoring visits within a 12-month period. The monitoring requirement applies regardless of the status of the enforcement or disciplinary action for the cited violation.

The biennial per-bed licensure fee for a standard license is increased by \$8.50 to \$67.50 from the current per-bed licensure fee (CPI adjusted) of \$59. The other licensure fees in this section are amended to reflect the current CPI adjusted fee, only. The total standard licensure fee is increased from the current fee (CPI adjusted) of \$13,087 to \$18,500.

The bill eliminates the requirement for the DOEA to report annually to the Governor and Legislature on the status of and recommendations related to ECC services. A provision requiring the AHCA to determine whether the ALF licensee is adequately protecting residents' rights in its biennial survey is transferred from s. 429.28(3), F.S.

Section 65. Amends s. 429.11, F.S., to remove language related to provisional licenses within the authorizing statutes for assisted living facilities since provisional licenses are authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 67. Amends s. 429.14, F.S., to authorize the AHCA to provide information concerning assisted living facilities that have had their license denied, suspended, or revoked to the Department of Business and Professional Regulation electronically or through the AHCA's website.

Section 68. Amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license. This section of law is also amended to remove the requirement for a plan of correction as a part of issuing a conditional license for an assisted living facility since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 69. Amends s. 429.19, F.S., to clarify that a monitoring fee may be assessed in addition to an administrative fine.

Section 71. Amends s. 429.255, F.S., to eliminate the authorization for an ALF to use volunteers to provide certain health-related services, including: administering medications, taking residents' vital signs, managing individual pill organizers for residents who self-administer medication, giving prepackaged enemas, observing residents and documenting observations on the resident's record or reporting observations to the resident's physician, and performing all duties within the scope of their license or certification in a facility licensed to provide ECC services.

In addition, this section authorizes contracted personnel or facility staff who are licensed under the nurse practice act to provide LNS to residents in a standard-licensed ALF. The licensee is responsible for maintaining documentation of health-related services provided as required by rule and ensuring that staff are adequately trained to monitor residents who have received these health-related services.

Section 73. Amends s. 429.35, F.S., to authorize the AHCA to provide the results of an inspection of an assisted living facility to the local ombudsman council and others electronically or through the AHCA's website.

Section 74. Amends s. 429.41, F.S., to conform provisions related to rulemaking for ALFs to changes made in this bill.

Section 75. Amends s. 429.53, F.S., related to consultation by the agency pertaining to assisted living facilities. The bill expands the staff who may provide consultation and eliminates the requirement for the AHCA to consult in areas that are beyond its jurisdiction and areas of expertise.

Section 76. Amends s. 429.54, F.S., to require licensed ALFs to report electronically to the AHCA semiannually, or more frequently if required by rule, certain data related to the facility's residents and staffing. This data includes, but is not limited to the:

- Number of residents;
- Number of residents receiving LMH services;
- Number of residents receiving ECC services;
- Number of residents receiving LNS;
- Funding sources of the residents; and

- Professional personnel providing resident services.

The DOEA, in consultation with the AHCA, is required to adopt rules related to these reporting requirements.

Section 77. Amends s. 429.65, F.S., to revise the definition of “adult family-care home.” The bill authorizes up to two people to own or rent the home and requires these people to reside in the home. The bill also revises the definition of “provider” to mean one or two individuals.

Section 78. Amends s. 429.71, F.S., related to violations by adult family-care homes, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. The provisions within the section related to the plan of correction are removed since it is also addressed in the general licensing provisions.

Section 81. Amends s. 429.915, F.S., to remove the requirement for a plan of correction as a part of issuing a conditional license for an adult day care facility since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 84. Amends s. 483.294, F.S., to correct the inspection frequency for licensed multiphasic health testing centers to biennially, consistent with the general licensing provisions in part II of ch. 408, F.S.

Section 91. Provides an effective date of July 1, 2010, except as otherwise expressly provided in this act. Section 56 provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

This bill authorizes an ALF to provide LNS without obtaining an additional specialty license at a fee of \$296 plus \$10 per-bed fee based on the total licensed resident capacity of the facility. The per-bed licensure fee for all ALFs is increased \$8.50 biennially for non-OSS beds. This increased fee offsets the revenue generated from the LNS license and will be used to fund monitoring of any ALF that has been cited with a class I or class II deficiency. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by \$5,413 to accommodate the increased per-bed licensure fee increase.

B. Private Sector Impact:

This bill streamlines regulations for 29 provider types regulated by the AHCA through repeal of obsolete or duplicative provisions in licensing laws and reform of regulations related to inspections, electronic publication of documents and reports, timeframes for reporting licensure changes, and financial information and bonds.

The bill does not require an ALF to provide LNS, but an ALF may choose to do so with appropriate nursing personnel without the requirement to obtain an additional specialty license. All ALFs are required to report electronically, at least semiannually, certain information about the facility's residents and professional staffing. Monitoring inspections will be tied to performance rather than requiring a set number of monitoring inspections for each specialty license.

C. Government Sector Impact:

Same as comment for the private sector impact. Currently the AHCA contracts for operation of the call center that is used for facility, managed care, and Medicaid fraud complaints, and providing Medicaid information at an annual cost of \$1,050,482. Section 54 of this bill authorizes this service to be handled by AHCA staff. The AHCA projects that 10 FTEs are required to provide this service. By providing this service in-house beginning in January 2011, the AHCA estimates a cost savings of \$354,274 in the first year and \$394,273 thereafter. In addition, the AHCA estimates that \$55,700 will be saved in certified mail costs as a result of the courtesy notice for license renewal in section 57 of the bill.

The AHCA will be able to target its monitoring resources on facilities that have been cited for certain violations rather than whether a facility has a particular type of specialty license. This should generate efficiencies and focus resources on resident protection activities.

VI. Technical Deficiencies:

On line 2363, the word "the" needs to be added before "applicant."

VII. Related Issues:

Lines 2371 – 2375 could be crafted more narrowly to avoid notification of actions that are of no interest to the AHCA. For example, the AHCA would have no interest in a court action in which a controlling interest is the petitioner for foreclosure or eviction proceedings.

Section 80 of this bill repeals all of s. 429.911, F.S., related to denial, suspension, revocation of license; emergency action; administrative fines; and investigations and inspections for adult day care centers, ostensibly because it is duplicative of provisions in part II of ch. 408, F.S. However, s. 429.911(2)(d), F.S., provides that the failure to follow criteria and procedures provided under part I of ch. 394, F.S., relating to the transportation, voluntary admission, and involuntary examination of center participants is a ground upon which the AHCA may take action. This provision is unique to adult day care centers and is not duplicative of provisions in part II of ch. 408, F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.