

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1254

INTRODUCER: Senator Grimsley

SUBJECT: Health Care Services Rulemaking

DATE: March 20, 2014

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Stovall	HP	<b>Pre-meeting</b>
2.		RC	

## I. Summary:

SB 1254 amends various sections of the Florida Statutes to delete unused, obsolete, and redundant rulemaking authority granted to the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) and make other technical and conforming changes.

## II. Present Situation:

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

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

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

In 2009 and again in 2013, the Joint Administrative Procedures Committee held hearings focusing on 2007 legislation that, on its face, requires the AHCA to make rules that have yet to

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

<sup>2</sup> Section 120.54(1)(a), F.S.

be finally adopted. In some cases, that legislation and similar legislation contemplated rulemaking that was either unnecessary under the APA or already promulgated under previously enacted law.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 390.012, F.S., relating to the disposal of fetal remains, to repeal the requirement that the AHCA adopt rules to require that abortion clinics be in compliance with s. 390.0111, F.S., relating to termination of pregnancies. This rule requirement is not necessary since abortion clinics must already comply with that section of law.

**Sections 2 - 4** amend ss. 400.021, 400.0712, and 400.23, F.S., relating to the regulation of nursing homes, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part II of ch. 400, F.S.

**Sections 5 - 8** amends ss. 400.487, 400.497, 400.506, and 400.509, F.S., relating to home health agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part III of ch. 400, F.S.

**Sections 9, 18, and 19** amend ss. 400.6095, 429.255, and 429.73, F.S., respectively, to repeal the requirement to adopt rules to implement do not resuscitate orders in hospice and assisted living facilities pursuant to s. 401.45, F.S. These grants of rulemaking authority are unnecessary since the statute is self-executing;

**Sections 10-11** amend s. 400.914, F.S., and create s. 400.9141, F.S., respectively, to substitute mandatory rulemaking with discretionary rulemaking authority as needed to administer part VI of ch. 400, F.S., relating to prescribed pediatric extended care centers. Section 400.9141, F.S., is also created with language moved from s. 400.914, F.S., to make the conditions self-executing.

**Sections 12-13** amend ss. 400.934 and 400.935, F.S., relating to home medical equipment providers, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VII of ch. 400, F.S.

**Sections 14-15** amend ss. 400.962 and 400.967, F.S., relating to intermediate care facilities for developmentally disabled persons, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VIII of ch. 400, F.S.

**Section 16** amends s. 400.980, F.S., relating to health care service pools, to repeal a mandate that the AHCA adopt rules for the registration of health care services pools.

**Section 17** amends s. 409.912, F.S., relating to the cost-effective purchasing of health care in the Medicaid program, to repeal the requirement for the AHCA to adopt rules to administer subsection 409.912(43), F.S., related to provider lock in programs. The subsection expires on October 1, 2014.

**Section 20** amends s. 440.255, F.S., to repeal the requirement that the AHCA adopt rules in order to adopt general guidelines for modeling drug-free workplace laboratories.

**Section 21** amends s. 483.245, F.S., to repeal the requirement that the AHCA adopt rules to assess administrative penalties for clinical laboratories that pay or receive kickbacks.

**Sections 22 and 23** amend ss. 765.541 and 765.544, F.S., relating to organ and tissue procurement agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer ss. 765.541 - 765.546, F.S.

The bill also makes technical, clarifying, and conforming changes as necessary throughout the sections of law amended by the bill.

**Section 24** establishes an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 390.012, 400.021, 400.0712, 400.23, 400.487, 400.497, 400.506, 400.509, 400.6095, 400.914, 400.934, 400.935, 400.962, 400.967, 400.980, 409.912, 429.255, 429.73, 440.102, 483.245, 765.541, and 765.544.

This bill creates section 400.9141 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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