

# HOME HEALTH AGENCY STATE LAW CHANGES

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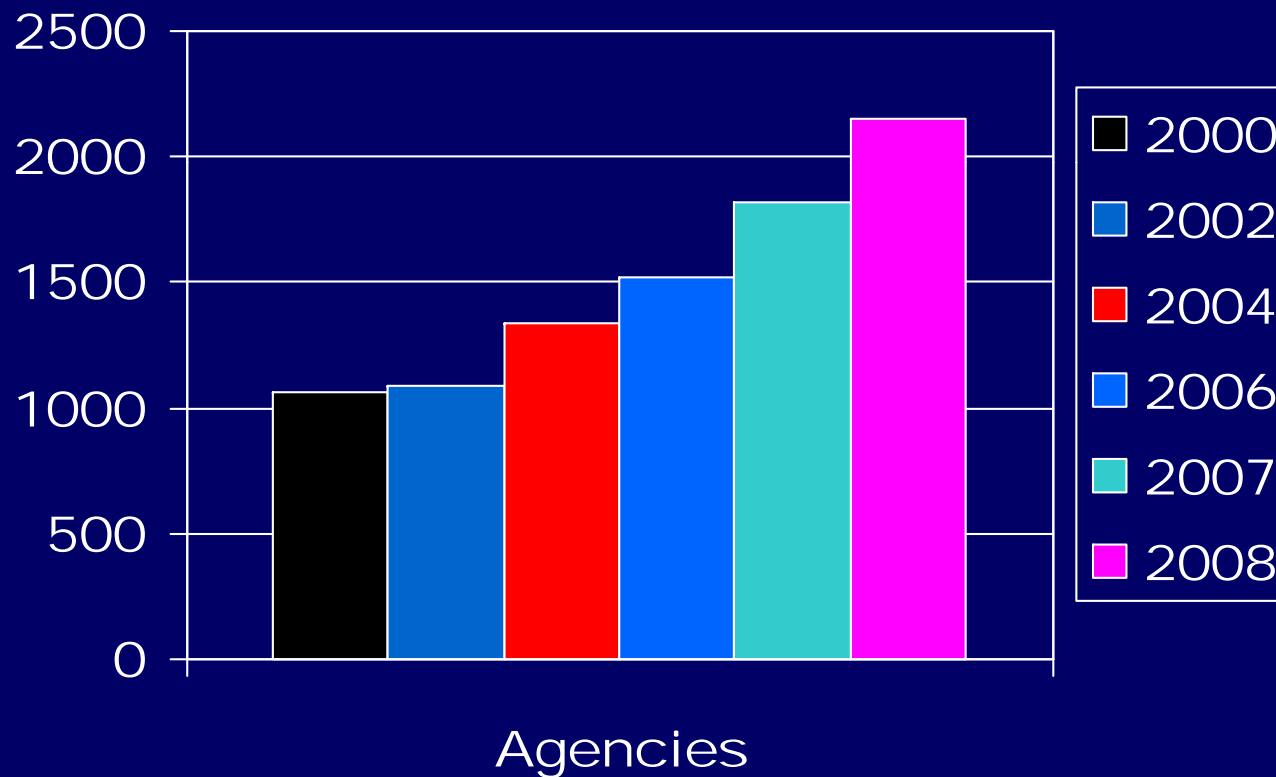
[http://ahca.myflorida.com/licensing\\_cert.shtml](http://ahca.myflorida.com/licensing_cert.shtml)

select "*home health agency*"

See Florida Statutes heading (2<sup>nd</sup> item on list)



# Home Health Agencies in Florida



# Applications for New HHA Licenses

**Applications to start new HHAs** - received so far this  
year (Jan 1 to June 30, 2008): **317**

Calendar year 2007 – **431**

**Applications for new owners who have purchased  
HHAs**

So this year thru June 30 – **118**

Calendar year 2007 - **232**

# Florida Senate Review

The Florida Senate Committee on Health Regulation issued a report in November 2007 – **“Review Regulatory Requirements for Home Health Agencies”**

The Committee Report states:

“The unusually rapid growth over the past several years, particularly in South Florida, in the number of licensed home health agencies & the indications of possible quality-of-care problems and Medicaid fraud have led to concerns about the adequacy of the state regulatory environment for home health agencies.”

Recommendations were made in the report & included in a bill prepared by the Committee and passed by the Florida Legislature as CSHB 7083.



# Counties with the most HHAs

Florida Senate report stated that there was **1 HHA for every 505 persons aged 65+ in Dade county based on the # licensed as of 8/23/07 -- 651 HHAs**

HHAs have increased since that report - as of 7/23/08 there are:

Dade = **831 licensed + 123 applications pending**

Broward = **237**

Palm Beach = **153**



# Home Health Agency Growth

- **Extraordinary growth in the number of home health agencies in Miami-Dade County cannot be explained based on market analysis.**

	<b>Aug 99</b>	<b>Apr 07</b>	<b>Aug 07</b>	<b>Nov 07</b>	<b>July 08</b>
<b>Miami-Dade</b>	216	578	651	718	831
<b>All Other Counties</b>	970	1,199	1,212	1,247	1,362

- **285% increase in Miami-Dade compared to 40% increase for the other 66 counties between August 1999 and July 2008**
- **Certificate of Need for Medicare-certified agencies eliminated July 1, 2000**

# Home Health Agency Growth

Because of the extraordinary growth in applications, it is taking longer to get a home health agency license

and get licensed home health agencies Medicare certified





## RE: APPLICATIONS FOR NEW LICENSES

Current law says a license cannot be sold, assigned or transferred (408.804, Florida Statutes)

Law changes require additional items for applications for new licenses (initials & changes of ownership)

# RE: APPLICATIONS FOR INITIAL & CHANGE OF OWNERSHIP LICENSES

## **1. Additional items for financial schedules:**

- a. **Business Plan** signed by representative of the owning entity -- details the HHA's methods to obtain patients & its plan to recruit & maintain staff – *will be in the instructions for the financial schedules*
- b. Evidence of **contingency funding** = 1 month's average operating expenses during the 1<sup>st</sup> year
- c. **Income statements** (financial schedules) **cannot project an operating margin of 15% or greater** for any month in the 1<sup>st</sup> year (400.471(2), F.S.)

# RE: APPLICATIONS FOR INITIAL & CHANGE OF OWNERSHIP LICENSES

2. **Accreditation or application for accreditation** from an accrediting organization that is recognized by AHCA for licensure:
- Community Health Accreditation Program (CHAP)
  - Joint Commission
  - Accreditation Commission for Health Care (ACHC)

**Must provide proof of accreditation within 120 days of HHA application to AHCA. Cannot be conditional or provisional. (400.471(2)(h), F.S.)**

## RE: APPLICATIONS FOR NEW HHA LICENSES

- Must maintain accreditation to maintain license
- All periodic licensure surveys would be done by the accrediting organization, not AHCA - in current law now 400.471, F.S.
- AHCA will continue to investigate complaints of accredited HHAs as currently done.

# Accreditation for HHAs

- **Accredited** = exempt from licensure surveys
- **Accredited with deemed status** = exempt from the Medicare/Medicaid surveys & licensure surveys

# Question

If I am applying for a license for a new HHA, can I get accreditation as well as deemed status for Medicare & Medicaid at the same time?

Answer: No. CMS requires that HHAs have at least 10 skilled patients to be surveyed for Medicare & Medicaid. Per state law, cannot admit any patients until licensed.

## RE: APPLICATIONS FOR INITIAL & CHANGE OF OWNERSHIP LICENSES

**Cannot issue a license to an applicant that *shares common controlling interests* with another HHA that is **located within 10 miles** of the applicant & is in the same county. Application & fees will be returned. (400.471(7), F.S.)**

**“Controlling interests” in existing law 408.803(7) , F.S.:**

- ***the applicant or licensee (individual, corporation, partnership)***
- ***a person or entity that has a 5% or greater ownership, is an officer, or on the board of directors – of the applicant, licensee, or management company***

# Change of ownership

An application for a HHA license cannot be transferred to another HHA or controlling interest before the license is issued. (400.471(8), F.S.)

AHCA is required to write rules that HHA must be licensed & have passed an unannounced survey in order to approve an application for change of ownership. Rules will not be completed until 2009.  
(400.497(6), F.S.)



# Relocation

To relocate your HHA to a different geographic area not listed on the license, must submit an **initial** application & fee for a HHA license for the new location.

400.471(9), F.S.

## Can I purchase a HHA licensed for Dade county & move it to Palm Beach county?

Answer: Not without much work, including applying for a new Medicare, Medicaid #

1. Submit change of ownership application & receive a license for the HHA at its Dade county location.
2. Submit initial application for a new HHA license in Palm Beach county, pass initial licensure survey (accreditation per bill), get licensed

more.....>



continued

3. Apply for a new Medicare # & Medicaid #, including deemed status survey by accrediting org, submit new OASIS test transmission, civil rights docs

CMS State Operations Manual, 3210.1B5 says:

*“If relocation is to a site in a different geographic area serving different clients than previously served & employing different personnel to serve those clients, do not assign the agreement to the new owner. The provider must be treated as a new applicant to the Medicare program, rather than as an address change of an existing provider.”*

# Administrator

- **Must be** a **direct employee** & a physician, physician's assistant, RN or individual having at least 1 yr of sup/admin experience in HHA, hospital, am surg, mobile surgical facility, nursing home, or ALF.
- Can manage **up to 5** HHAs within the same AHCA geographic service area or within an immediately contiguous county. The new law says all HHAs must have **identical controlling interests**.
- An administrator in a **retirement community** can manage up to 4 other types of facilities if all have identical controlling interests. (400.476, F.S.)

# Director of Nursing

- Can be:
  - an RN who is a direct employee with at least 1 year of supervisory experience as an RN;
  - can also be administrator if 10 or fewer FTE
  - the administrator who is also a physician, a physician's assistant or RN - licensed to practice in this state - if 10 or fewer FTE (400.476, F.S.)
  - can be the DON of the HHA in a retirement community + up to 4 entities in that community under same corporation.

# Director of Nursing

- Can manage:
  - Up to 2 HHAs if *identical controlling interests* & located within same AHCA geographic service area or immediately contiguous county
  - Up to 5 HHAs if the above + have an RN who meets the qualifications of the DON when the DON is not present (400.476, F.S.)

# Director of Nursing

- HHAs are not required to have a DON if:
  - **do not provide skilled nursing or provide only PT, OT & ST -- CSHB 7083 adds and are not Medicare & Medicaid certified**
- When required to have a DON - HHA cannot operate for more than 30 calendar days without a DON
  - Must notify AHCA within 10 days of termination of DON
  - Must notify AHCA of identify & qualifications of new DON within 10 days after hire

(400.476, F.S.)



# Director of Nursing

- If HHA operates for more than 30 days without a DON,
  - HHA commits a class II deficiency (\$5,000 fine)
  - AHCA may issue moratorium or revoke HHA license
- Failure to notify AHCA is fine of \$1,000 for 1<sup>st</sup> violation & \$2,000 for 2<sup>nd</sup> violation
  - DON is also to notify AHCA when she leaves, but is not fined for failure to do so.

400.476, F.S.





## **Actions that may result in denial, revocation, suspension or fine for HHAs**

- Failing to provide at least one service directly to a patient for a period of 60 days.

New 400.474(2), F.S.

# HHA must continue to operate, even when changing ownership

*“There can be no CHOW, i.e. transfer of Medicare participation, assignment of the provider agreement & provider number, if there is no functioning provider in existence. If a provider ceases operations, it no longer meets the definition of any provider type and no longer has a right to a provider agreement or identification number.”*

CMS State Operations Manual, 3210.1E

[www.cms.hhs.gov/manuals](http://www.cms.hhs.gov/manuals), select “Internet-only Manuals”



# Transferor is Responsible When Changing Ownership

- “(3) The transferor shall be responsible and liable for:
- (a) The lawful operation of the provider and the welfare of the clients served until the date the transferee is licensed by the agency.”

408.807, Florida Statutes

## Actions that may result in denial, revocation, or fine for HHAs

Excluding legal & religious holidays, failing to:

- Have administrator, alternate administrator or director of nursing available to the public (at least by phone), Mon – Fri, for 8 consecutive hours between 7a.m. to 6 p.m.
- Have a person available on the premises (during designated time above) to answer the phone & the door, be able to contact the administrator, alternate or DON.
- Give a surveyor access to records within 1 hour of arrival.
- Give a surveyor a list of current patients within 2 hours of arrival.

\$500 fine 1<sup>st</sup> time, denial or revocation 2<sup>nd</sup> time

**59A-8.003(10), FAC**



# Staffing Services

“Staffing services” means services **provided to a health care facility, school, or other business entity on a temporary** or school-year basis pursuant to a written contract by licensed health care personnel & by CNAs & home health aides who are employed by, or work under the auspices of, a licensed HHA or nurse registry.

400.462(29), F.S.

These temporary staff are supervised by the facility or entity requesting the temporary staff. The facility or entity retains the records for its patients & is responsible for the care provided by the temporary staff.

# Staffing Services

The admitting agency does NOT give patients to the staffing agency. It gets temporary staff from the staffing agency & assigns them to patients.

Health Care Services Pool – “provides **temporary employment** in health care facilities, residential facilities, and agencies for licensed, certified, or trained health care personnel ..” 400.980 (1), F.S.

“**Temporary employment**” means employment whereby a pool hires its own employees or independent contractors and **assigns them to health care facilities to support or supplement the facilities’ work force in special work situations** such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

59A-27.001(1), Fla Administrative Code



# Examples of Staffing

Example 1: A Nursing Home needs a temporary CNA because they have CNA out on sick leave. Your HHA sends a CNA to work for the nursing home.

Example 2: Your HHA lost 2 HH aides last week, one on maternity leave, the other to another job. You request staffing services from another HHA to get 2 HH aides to come work for your HHA temporarily until you fill your vacancy & the aide comes back from leave. Your HHA then supervises these aides & assigns them to provide services & they report back to you, providing you with records. They are temporary staff for your HHA.

## Subcontracting – Not the Same as Staffing

HHA subcontracts with another HHA to provide some of the services to the patient. The contract HHA has record of the services it provides to the patient & furnishes records of what services it provided to the primary (admitting) HHA. It also has a copy of the plan of care.

**“The skilled care services provided by a HHA, directly or under contract, must be supervised & coordinated in accordance with the plan of care.” 400.487(6), F.S.**

**The admitting HHA has a record of its supervision & coordination of the contracted services.**





# Subcontracting

Services provided by others under contractual arrangements to a HHA must be monitored & managed by the admitting HHA. The admitting HHA is fully responsible ...

When nursing services are ordered, the HHA to which a patient has been admitted for care must provide:

- The initial admission visit,
- All service evaluation visits &
- The discharge visit by a direct employee.

**400.487(5), F.S.**

# Subcontracting

“The HHA must provide at least one service directly to patients.”

“The HHA’s application for licensure shall state explicitly what services will be provided directly by the HHA’s employees or by contracted personnel, if services are provided by contract.” 59A-8.008(4), FAC

CMS requires one service be provided directly in its entirety by Medicare & Medicaid HHAs - 42 CFR 484.14(a)

# Subcontracting – Medicare & Medicaid

## Contract requirements {42 CFR 484.14(f)}

The written contract specifies the following:

- (1) Patients are accepted for care only by the primary HHA.
- (2) The services to be furnished.
- (3) The necessity to conform to all applicable agency policies, including personnel qualifications.
- (4) The responsibility for participating in developing plans of care.
- (5) The manner in which services will be controlled, coordinated, and evaluated by the primary HHA.
- (6) The procedures for submitting clinical & progress notes, scheduling of visits, periodic patient evaluation.
- (7) The procedures for payment for services furnished under the contract.



**May result in HHA denial, revocation,  
suspension & shall result in fine of \$5,000**

Fails to submit a **quarterly report** to AHCA, within 15 days after the end of the quarter, *based on data as it existed on the last day of the quarter:*

- **# of insulin-dependent diabetic patients rec'g insulin-injection services from the HHA**
- **# of patients rec'g by HHA & hospice services**
- **# of patients rec'g services from the HHA**
- **Name & license # of nurses who provide HH services to patients & rec'd remuneration from the HHA in excess of \$25,000 that quarter**

**400.474(6), F.S.**

## Quarterly Report (cont'd)

### Web-based reporting being set up for HHAs to enter data

- The first report is for the quarter ending 9/30 – due no later than 10/15/08
- Memo to be sent to all HHAs on how to submit the report.

408.806(8), F.S.

AHCA “may establish procedures for the electronic notification and submission of required information”



# HHA PENALTIES

400.484, F.S.

CLASS I DEFICIENCY: “Any act, omission or practice that results in a **patient’s death, disablement, permanent injury, or places a patient at imminent risk of death, disablement or permanent injury.**”

“Upon finding a class I deficiency, the Agency shall impose an administrative fine in the amount of \$15,000 for each occurrence & each day that the deficiency exists.”

# HHA PENALTIES

400.484, F.S.

CLASS II DEFICIENCY: “any act, omission, or practice that has a **direct adverse effect on health, safety or security of patient.**”

“Upon finding a class II deficiency, the Agency shall impose an administrative fine in the amount of \$5,000 for each occurrence and each day that the deficiency exists.”

# HHA PENALTIES

400.484, F.S.

CLASS III DEFICIENCY: “any act, omission, or practice that has an **indirect adverse** effect on health, safety or security of patient.”

“Upon finding an uncorrected or repeated Class III deficiency, the Agency shall impose an administrative fine of \$1,000 for each occurrence and each day that the uncorrected or repeated deficiency exists.”





# HHA PENALTIES

400.484, F.S.

CLASS IV DEFICIENCY: “any act, omission, or practice related to **required reports, forms, or documents** which does not have the potential of negatively affecting patients.”

“Upon finding an uncorrected or repeated class IV deficiency, the Agency shall impose an administrative fine of **\$500** for each occurrence and each day that the uncorrected or repeated deficiency exists.”

