

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB's 834, 1140, and 1612

SPONSOR: Health, Aging and Long-Term Care Committee, Senators Brown-Waite, Meek and Campbell

SUBJECT: Nursing Home Regulation

DATE: March 18, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bills 834, 1140, and 1612 requires the Office of the Long-Term Care Ombudsman to establish a statewide toll-free telephone number to receive calls reporting concerns about nursing home facilities. Provisions relating to the discharge and transfer of nursing home residents are modified to clarify what discharges and transfers are permitted. To protect nursing home residents from unfair or inappropriate discharge, local ombudsmen are required to review the notice of discharge, within 7 days, for every nursing home resident who requests their help.

The bill directs the Agency for Health Care Administration (AHCA) to develop and contract for consumer satisfaction surveys and to develop and publish, electronically and on paper, a wide variety of information about licensed and certified nursing home facilities that would assist consumers in evaluating and choosing a nursing home; authorizes AHCA to require additional staffing or to specify qualifications for certain staff; requires AHCA to establish an early warning system and rapid response teams to detect and remedy problems in a nursing home's operations or finances, before such problems become sanctionable, and provides a quality-of-care monitoring program for nursing homes; provides for repackaging of pharmaceuticals to reduce costs for nursing home residents with certain pension benefits; abolishes the Nursing Home Advisory Committee and repeals the nursing home rating system; creates the "Gold Seal Program" to recognize excellence in nursing home facilities and creates a panel to manage the Gold Seal Program in the Executive Office of the Governor.

Additionally, the bill authorizes AHCA to adjust targets in the patient care component of the Medicaid *per diem* rate to allow an additional approximately \$40,000,000 to be used to reimburse nursing homes for hiring direct care staff; creates a panel to study specific aspects of Medicaid reimbursement of nursing facilities and to evaluate ways to use reimbursement policies to improve the quality of patient care, including the recruitment and retention of mature persons as certified nursing assistants; requires nursing homes to immunize their residents and employees against influenzae and pneumococcal disease; requires the Department of Elderly Affairs (DOEA) to

study and recommend to the Legislature ways to improve the training, availability, and retention of qualified certified nursing assistants in the nursing home industry; expands the group of providers who may qualify to participate in a long-term care community diversion pilot project; increases the allowable maximum fine for a class I violation from \$10,000 to \$25,000, a class II violation from \$5,000 to \$10,000, and a class III violation from \$1,000 to \$2,500; and establishes a teaching-nursing-home pilot project.

This bill amends ss. 394.4625, 400.022, 400.0255, 400.063, 400.141, 400.162, 400.19, 400.191, 408.035, 400.241, and 430.703, Florida Statutes (F.S.), and ss. 400.071, 400.121, 400.215, 400.23, 430.707, 468.1755, and 468.1756, F.S., 1998 Supplement; creates ss. 400.0078, 400.0225, 400.118, 400.174, 400.232, 400.235, and 408.909, F.S.; reenacts ss. 468.1695(3) and 468.1735, F.S.; renumbers s. 400.0231, F.S., as s. 400.1415, F.S.; repeals s. 400.29, F.S.; and creates four undesignated sections of law.

## **II. Present Situation:**

### ***Profile of the Nursing Home Industry***

A nursing home is a health care facility that provides housing, nursing services, pharmaceutical services, dental services, dietary services, resident activities, social services, and specialized rehabilitative and restorative services, for three or more persons not related to the owner or manager of the facility, for a period exceeding 24 hours. When needed by residents, a nursing home will also arrange for laboratory and radiological services, and mental health services. A person who resides in a nursing home most often does so because of the need for skilled nursing services. Medicaid is the primary payer, in Florida, for nursing home care and, until the recent emergence of long-term care insurance, it has been the *only* public payer for long-term care services. Until private long-term care insurance became available, the only alternative available for payment for long-term nursing home care, other than Medicaid, was private out-of-pocket payment. Medicare has historically paid at a higher rate of reimbursement relative to Medicaid, but Medicare pays only for short-term care and limited services in the nursing home setting.

A growing area of specialization within the nursing home industry, primarily triggered by changes in Medicare reimbursement and the impact of managed care on private-sector insurance payments for hospital inpatient services, is a level of care referred to as "sub-acute." It is, generally, short-term (lasting from 1 to 30 days, on average) and is designed to accommodate a person who is recovering from surgery or some other acute-care treatment. A nursing home resident receiving sub-acute care may require assistance with administration of medications, ambulation, or personal care, may need monitoring, or a combination of these, or other, services. Virtually all sub-acute care services are paid for by Medicare or a private funding source.

### ***Background of Nursing Home Regulation in Florida***

The quality of care provided to persons who live in nursing home facilities has been a concern both at the state and national level for many years. Before federal and state regulations were enacted, elderly and disabled adults were cared for in private homes--residential and institutional, local governmental facilities, and through fraternal organizations. Private individuals kept elderly and disabled people in their homes on a room-and-board basis, usually when there was no one

available to care for such persons and they could not afford private institutional care. Limited financial assistance was available to elderly persons under the Old Age Assistance Law, chapter 412, F.S.

There was a growing recognition that there were certain fire and life safety hazards associated with private homes, and some institutions, caring for the elderly and the disabled. There were reports throughout the country of homes burning and elderly or disabled adults being trapped and dying due to inadequate planning, precautions, and equipment.

State regulation of nursing homes was first enacted in 1953. That law was repealed and replaced in 1969 when chapter 400, F.S., was first enacted. One year later, most of the provisions of chapter 400, F.S., were repealed and the original provisions that now comprise part II of chapter 400, F.S., providing for nursing home regulation, were enacted.

All nursing homes operating in the state must be licensed by the state. Part II of chapter 400, F.S., provides for the licensure and regulation of nursing home facilities by AHCA. There are 673 nursing homes licensed in Florida. The purpose of such regulation, as provided in s. 400.011, F.S., is to provide for the development, establishment, and enforcement of basic standards for:

- the health, care, and treatment of persons in nursing homes and related health care facilities; and
- the construction, maintenance, and operation of such institutions which will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.

To meet the objective of state regulatory policy relating to nursing homes, the Legislature has enacted provisions within part II of chapter 400, F.S., to: protect residents' rights and provide for the civil enforcement of such rights; provide for resident hearings of facility decisions to transfer or discharge; provide guidelines relating to handling of resident property and personal affairs; penalize alteration of patient records of nursing home residents; establish minimum standards for clinical laboratory test results and diagnostic X-ray results; and provide for itemized resident billing in a form and with content as prescribed by AHCA. Additionally, the Legislature has enacted regulations that provide: licensure criteria for nursing homes, including, but not limited to, administration and management of a nursing home, records of care and treatment of residents; contractual requirements relating to residents; personnel guidelines pertaining to certified nursing assistants (CNAs) and nursing home administrators; right of entry and inspection authority; and AHCA's disciplinary authority for enforcement of state policies relating to nursing homes.

### ***Major Features of State Regulation of the Nursing Home Industry***

#### *Deficiencies*

As required under state law, AHCA inspects nursing home facilities approximately every fifteen months by making unannounced survey visits. The agency's inspectors review the physical environment of the facility, the medical records of some patients, and interview patients and family members. Deficiencies in meeting the licensure standards are rated as classes I, II, or III. According to data prepared by AHCA, the most common deficiencies cited are related to: food

preparation, a resident's comprehensive care plan, resident dignity, and comprehensive assessments.

Class I deficiencies, the most threatening deficiencies, are those which AHCA determines present an imminent danger to the residents or guests of the nursing home or a substantial probability that death or serious physical harm would result from such a degree of substandard conditions. The statute provides that the condition or practice constituting a class I violation must be abated or eliminated immediately, unless AHCA determines that a fixed period of time is required for correction. A class I deficiency is sanctionable with a civil penalty in an amount not less than \$5,000 or greater than \$10,000, for each and every deficiency. A fine may be levied regardless of the fact that the deficiency has been corrected, making it available as a punitive sanction as well as an administrative sanction.

Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of nursing home residents, other than class I deficiencies. Although class II deficiencies may pose unsafe conditions, the time frame of any harm that may result is not considered *imminent*. A class II deficiency is sanctionable with a civil penalty in an amount not less than \$1,000 or greater than \$5,000, for each and every deficiency. If a class II deficiency is corrected within the time specified, no civil penalty may be imposed, unless it is a repeat offense.

Class III deficiencies are those which the agency determines have an indirect or potential relationship to the health, safety, or security of nursing home residents, other than class I or class II deficiencies. A class III deficiency is sanctionable with a civil penalty of not less than \$500 or greater than \$1,000, for each and every deficiency. If a class III deficiency is corrected within the time specified, no civil penalty may be imposed, unless it is a repeat offense.

#### *The Nursing Home Advisory Committee and the Nursing Home Rating System*

The nursing home rating system is provided for under subsection 400.23(7), F.S., 1998 Supplement, as one of the duties that is delegated to the Nursing Home Advisory Committee. The committee consists of 15 members who are appointed by and report directly to the Director of Health Care Administration. Part of the committee's charge is to assist AHCA in ensuring that nursing homes comply with legislative intent that the rules adopted under part II of chapter 400, F.S.: (1) include criteria by which a reasonable and consistent quality of resident care may be assured, the results of such resident care can be demonstrated, and by which safe and sanitary nursing homes can be provided; (2) provide that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in nursing homes; and (3) that efforts are made to minimize the paperwork associated with the reporting and documentation requirements of the adopted rules.

One way the committee is required to meet this responsibility is to assist with the development of a nursing home rating system based on requirements of part II of chapter 400, F.S., and certain federal laws. The committee is required to assist in: developing surveyor guidelines and training to ensure the equitable application of the nursing home rating system; developing guidelines to determine the scope and severity of noncompliance with regulatory requirements; identifying burdensome paperwork that is not specifically related to resident care; and advising AHCA of

proposed changes in statutes and rules necessary to ensure adequate care and services and the promotion and protection of residents' rights in long-term care facilities.

The degree of compliance by a nursing home licensee with the established regulatory rules is the basis for assigning a rating. The agency is to base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. Under the system, a nursing home may be rated superior, standard, or conditional. The rating must be placed on the nursing home's license. Until recently, a facility's rating could be used as the basis for enhanced Medicaid reimbursements.

A superior rating indicates that the facility has no class I or II deficiencies and has corrected all class III deficiencies within the time established by AHCA; is in substantial compliance with the criteria established under part II of chapter 400, F.S., rules adopted by AHCA, and, if applicable, rules adopted under certain specified federal laws; and the facility exceeds the criteria for a standard rating through enhanced programs and services in nursing service, dietary or nutritional services, physical environment, housekeeping and maintenance, restorative therapies and self-help activities, social services, and activities and recreational therapy.

A standard rating indicates that the facility has no class I or II deficiencies, has corrected all class III deficiencies within the time established by AHCA, and is in substantial compliance at the time of the survey with criteria established under part II of chapter 400, F.S., with rules adopted by AHCA, and, if applicable, rules adopted under certain specified federal laws.

A conditional rating indicates that the facility, due to the presence of one or more class I or II deficiencies, or class III deficiencies not corrected within the time established by AHCA, is not in substantial compliance at the time of the survey with criteria established under part II of chapter 400, F.S., rules adopted by AHCA, or, if applicable, with rules adopted under certain specified federal laws. If the facility comes into substantial compliance by the time of a follow-up survey, it may be rated standard, but may not qualify for a superior rating until the time of the next relicensure survey.

### *Nursing Home Staffing Requirements*

Problems identified in nursing homes throughout the state are frequently attributed to insufficient staff available to perform the necessary care of residents. The existing criteria for nursing home staffing are in the *Florida Administrative Code*, 59A-4.108, F.A.C. That section specifies staffing levels for a twenty-four hour period, but does not specify minimum staffing by shift. Each facility must provide 1.7 certified nursing assistant (CNA) hours per resident per day and .6 licensed nursing hours per resident per day. Federal regulations governing Medicare and Medicaid providers require that facilities employ sufficient staff to meet the needs of the residents, rather than specifying a ratio of staff to residents.

Nursing home industry representatives estimate that annual turnover among CNA staff is approximately 100 percent. The State Long-Term Care Ombudsman reports that the most frequent complaint about nursing homes received by that office is the lack of adequate numbers of staff to appropriately care for nursing home residents.

### *Regulation of Nursing Home Administrators*

The regulation of nursing home administrators is governed by part II of chapter 468, F.S. The licensure of nursing home administrators is administered by the Board of Nursing Home Administrators within the Department of Health. The regulation has been enacted to ensure that nursing homes in operation in Florida are under the management of a nursing home administrator who holds a current valid license, provisional license, or temporary license and that such an administrator meets minimum requirements of safe practice. Section 468.1755, F.S., 1998 Supplement, provides grounds for which a nursing home administrator may be disciplined.

### *The Long-Term Care Ombudsman Program*

Part I of chapter 400, F.S., establishes the Office of State Long-Term Care Ombudsman, which is located within the Department of Elderly Affairs for administrative purposes. Within the Office, the State Long-Term Care Ombudsman Council and the position of legal advocate are created. The state ombudsman council appoints the State Long-Term Care Ombudsman who serves at the pleasure of the state ombudsman council. At least one district long-term care ombudsman council is established in each of the planning and service areas of the Department of Elderly Affairs; the councils function under the direction of the state ombudsman council.

The primary purpose of the Office of State Long-Term Care Ombudsman is to identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities who are 60 years of age or older relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents. The State Long-Term Care Ombudsman Council is delegated responsibilities that include, among others, assisting the ombudsman in reaching a consensus among district ombudsman councils on issues of statewide concern and serving as an appellate body for unresolved complaints from district ombudsman councils.

### *Pharmacy Regulation*

Chapter 465, F.S., provides for the regulation of the practice of pharmacy by the Board of Pharmacy in the Department of Health. Section 465.015(2) (c), F.S., makes it unlawful for a pharmacist to sell or dispense drugs without first being furnished with a prescription. The Board of Pharmacy has adopted an administrative rule that prohibits a pharmacist from placing into the stock of any pharmacy, any part or any prescription, compounded or dispensed, which is returned by a patient, except as specified in s. 64B-16-28.118, *Florida Administrative Code*. The exception is that in a closed drug delivery system in which unit dose medication is dispensed to in-patients, the unused unit dose of medication may be returned to the pharmacy for redispensing only if each dose is individually sealed and if each unit dose or the unit dose system of which it is clearly a part, is labeled with the name of the drug, dosage strength, manufacturer's control number, and expiration date. A "closed drug system" means a system in which control of the unit dose medication is maintained by the facility rather than by the individual patient. A "unit dose system" means a system in which all individually sealed unit doses are physically connected as a unit. Section 499.07, F.S., provides that a drug is misbranded if its labeling is in any way false or misleading.

### ***Medicaid Reimbursement***

The Florida Medicaid program is established under ss. 409.901-409.9205, F.S., and implemented through regulations provided under Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration (Agency). The Department of Children and Family Services and the federal Social Security Administration determine Medicaid recipient eligibility.

Nursing facility services are paid for from many sources. In addition to Medicaid and Medicare reimbursement, a nursing facility may be paid out of the private resources of its residents as well as from other public sources such as Social Security benefits, veteran's benefits, local government grants, charitable donations and grants, and other sources. Data from the 1996 Nursing Home Financial Report, published by the Agency, state that Medicaid net patient service revenue totaled \$1,330,100,132 or 40.4% of total net patient service revenue, Medicare net patient service revenue totaled \$1,174,298,607 or 35.7% of total net patient service revenue, and other sources accounted for \$784,800,218 or 23.9% of total net patient service revenue. For Fiscal Year 1996, Medicaid accounted for \$89, other payer sources combined accounted for \$153, and Medicare accounted for \$382 in net revenue per nursing facility patient day.

The Florida Medicaid (Title XIX) Long-Term Care Reimbursement Plan provides the guidelines for reimbursement for Medicaid services provided by participating Medicaid nursing facility providers. A daily per diem rate is determined for each nursing facility based on the facility's annual cost report. Effective January 1, 1999, the average Medicaid per diem rate paid to nursing facilities was \$102.38. There is no rate difference between the skilled and intermediate levels of care. Flat rate supplemental reimbursement is available for approved recipients who have AIDS or who are medically-fragile children. Prior authorization by the Agency is required for a supplemental reimbursement. There is no limitation on the length of stay in a nursing facility. However, Medicaid reimbursement for a reserved bed held by a nursing facility for a recipient is limited to 8 days for a hospital stay and 16 days, per state fiscal year (July 1-June 30), for home visits.

Committee Substitute for Committee Substitute for Senate Bill 484, enacted during the 1998 legislative session (Chapter 98-191, Laws of Florida), amended the Medicaid reimbursement law to direct the Agency to establish a case-mix, or level of care, reimbursement methodology for nursing facilities no earlier than the rate-setting period beginning April 1, 1999, and to specify how the Agency is to develop the case-mix reimbursement methodology. The bill provides an option for the Agency to modify the patient care component of the current nursing facility reimbursement methodology if sufficient data are not available to implement the planned case-mix reimbursement methodology.

### ***Interim Studies***

During the 1998-99 legislative interim, the Senate President directed the Health Care Committee to study issues relating to discharge and transfer of nursing home residents who are Medicaid recipients. Legislative interest in the discharge and transfer practices of nursing homes was generated as a result of developments in a Tampa nursing home owned by Vencor, Inc., as well as numerous anecdotal reports of improper discharges and transfers of Medicaid nursing home

residents. On September 14, 1998, the committee held a public hearing in Tampa for purposes of receiving public comment about such occurrences. Following the public hearing, committee staff produced a report of the committee's findings and recommendations for proposed legislative action. (See Senate Interim Project Report 98-28 entitled, "Protection from Eviction of Medicaid Nursing Home Residents.")

The House of Representatives' Committee on Elder Affairs & Long Term Care conducted a series of workshops during the 1998-1999 legislative interim to hear presentations from regulators, the nursing home industry, and consumer advocates and to discuss quality-of-care issues. The following recommendations were distilled from these workshops for Legislative consideration:

- Improve the amount, access to and quality of consumer information about nursing facilities;
- Rate the quality of nursing facilities in a way which is useful to the public and tied to their performance over time;
- Recognize and reward facilities with a history of exemplary performance;
- Consider the required staffing levels and their adequacy;
- Improve the quality of care provided by direct care staff by developing better ways to train, recruit, compensate, and retain direct care staff;
- Use reimbursement policy as a tool to promote and reward high quality care;
- Establish quality assurance processes that are on-going and collaborative;
- Establish and use "Practice Guidelines" for critical areas of nursing home care;
- Provide enhanced regulatory enforcement; and
- Encourage the use of volunteers and community participation.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 400.0078, F.S., providing for a statewide toll-free telephone number, to require the State Long Term Care Ombudsman to establish a statewide toll-free telephone number for receiving complaints about nursing facilities.

**Section 2.** Amends s. 400.022, relating to nursing home residents' rights, to specify the Office of the Attorney General as a representative of the state who must be granted immediate access to nursing home residents and to make technical and conforming changes.

**Section 3.** Creates s. 400.0225, F.S., providing for consumer satisfaction surveys, to require AHCA, or its contractor, in consultation with the nursing home industry and consumer representatives, to: (1) develop an easy-to-use consumer satisfaction survey, (2) ensure that all licensed nursing homes participate in assessing consumer satisfaction, and (3) establish procedures to ensure that, at least annually, a representative sample of residents of each facility is selected to participate in the survey. The agency is required to report the results of those surveys in the consumer information materials it prepares and distributes. All reports must protect the identity of individual respondents.

**Section 4.** Renumbers s. 400.0231, F.S., relating to patient records, as s. 400.1415, F.S.



**Section 5.** Amends s. 400.0255, F.S., relating to transfer and discharge of nursing home residents, to define the terms “discharge” and “transfer.” This section of law is amended to require nursing homes to permit the district ombudsman council to review a notice of discharge or transfer given to a nursing home resident, when requested by the resident, and to comply with residents’ rights requirements relating to discharge or transfer when deciding to discharge or transfer a resident. Additionally, this section is amended to make various conforming and technical changes and to make the following revisions to existing law:

*Signed Notice*

A licensed nursing home administrator, or an individual employed by the nursing home who is designated by the nursing home administrator, must sign the notice of discharge or transfer, unless the facility is citing a medical reason for the transfer or discharge. When a medical reason is the basis of a discharge or transfer, the resident’s personal physician or the facility’s medical director must sign the notice.

*Physical Environment Unsafe*

Each nursing facility must notify AHCA of any proposed discharge or transfer that results from changes in the facility’s physical plant that make the facility unsafe for residents. The agency, must then conduct an onsite inspection of the facility to verify the necessity of the discharge or transfer.

*Medicaid Beds*

The facility is prohibited from citing a lack of Medicaid-certified beds as a reason for a discharge or transfer, if the facility’s current Medicaid resident census is less than the percentage of Medicaid compliance specified in its certificate-of-need (CON). A facility that does not have a Medicaid compliance requirement in its CON must use the average percentage of Medicaid compliance for facilities being awarded a CON in the AHCA district or subdistrict in which the facility operates as a means of documenting a lack of Medicaid-certified beds for purposes of discharge or transfer of a nursing home resident. A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under law relating to discharge or transfer, refuses to readmit a resident within the prescribed time frame must refund the bed reservation payment.

*Transfer/discharge Document*

The agency is required to develop a standard document to be used by all nursing home facilities for notifying residents of a discharge or transfer. The form must include pertinent information regarding the discharge or transfer process, information necessary for the resident to contact the district long-term care ombudsman, and must clearly describe the resident’s appeal rights and the procedures for filing an appeal, including the right to request the district ombudsman council to review the notice of discharge or transfer.

*Ombudsman Council Review*

When request by a nursing home resident, the district ombudsman council must review a notice of discharge or transfer within 7 days after receipt of such request. The nursing home administrator, or the administrator’s designee, must forward a request for review contained in the notice within 24 hours after such requested is submitted. Failure to forward such a request within 24 hours after its receipt delays the running of the 30-day advance notice period until the request has been forwarded. A district ombudsman, when requested, must review an emergency discharge or

transfer within 24 hours after receipt of the request and shall assist the resident with filing an appeal.

Following receipt of any notice of discharge or transfer by a district ombudsman council, the council may request a private informal conversation with a resident to whom the notice is directed, and, a family member, if known, or the resident's legal guardian or designee to ensure the nursing home is lawfully proceeding with the discharge or transfer. If requested, the district ombudsman council must assist a resident with filing an appeal of the proposed discharge or transfer.

**Section 6.** Amends s. 400.071, F.S., 1998 Supplement, relating to application for a nursing home license, to require a nursing facility, as a condition of licensure, to notify AHCA of civil verdicts and judgments pertaining to medical negligence, residents rights, and wrongful death for the 10 years preceding application, and after licensure, any new judgments or verdicts within 30 days after filing with the clerk of the court. Further, the facility must agree to participate in a consumer satisfaction measurement process, as prescribed by the agency. In reviewing a CON application to add beds to an existing nursing home facility, AHCA is required to give preference to a licensee who has been awarded a Gold Seal, if the applicant otherwise meets the CON review criteria. Reference to the rating system is replaced with a prohibition against having received a class I or II deficiency within the previous 30 months as one of the factors to be considered by AHCA in deciding whether a licensee qualifies for an abbreviated survey.

**Section 7.** Creates s. 400.118, F.S., to require the agency to establish an early warning system to detect conditions in nursing facilities that could be detrimental to the health, safety, and welfare of residents. The agency must establish quality-of-care monitors in each AHCA area to make regular, unannounced, and periodic visits to all nursing homes in the area. Such monitors must be registered nurses who are trained and experienced in nursing facility regulation, standards of practice in long-term care, and evaluation of patient care, and may not be deployed by the agency as a part of an inspection survey team. Language in this section of the bill requires reporting of conditions observed during a monitoring visit which threaten the health or safety of residents and provides for exclusion from discovery or introduction into evidence, for legal or administrative action, the written or oral records of the monitoring visit, except as related to reports of threats to health or safety.

Additionally, this section of the bill requires AHCA to create *rapid response teams* to visit facilities identified through the early warning system. These teams may visit facilities that request AHCA's assistance, but may not be deployed to help a facility prepare for an inspection.

**Section 8.** Amends s. 400.121, F.S., 1998 Supplement, providing for denial, suspension, or revocation of a nursing home license and moratorium on admissions and administrative procedures, to authorize AHCA to require enhanced staffing in a facility under administrative action because of care-related deficiencies attributable to staffing. It allows the nursing facility to request an interim rate increase and requires the agency to process the request within 10 days after receipt of all required documentation from the nursing home. A nursing home that fails to maintain the required increased staffing is subject to a fine of \$500 per day for each day the staff is below the level required by AHCA.

**Section 9.** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities, to require nursing homes to appoint a state-licensed medical director, and to authorize AHCA to establish, by rule, more specific criteria for the appointment of a medical director. This section of law is further amended to require nursing homes to provide for resident use of a community pharmacy, as specified under the residents' rights law. Furthermore, regardless of any other law to the contrary, a registered pharmacist licensed in Florida is authorized to repackage a nursing home resident's bulk prescription medication that has been packaged by another pharmacist licensed in the United States into a unit dose system compatible with the system used by the nursing home. Such repackaging services must be made available to residents with bulk prescription medication benefits covered under a qualified pension plan, as provided for under specified federal law, or a long-term-care policy, as defined under specified state law. A pharmacist who correctly repackages and relabels the medication and the nursing home that correctly administers such repackaged medication are shielded from liability in any civil or administrative action arising from the repackaging. To qualify for the repackaging service, a nursing home resident must sign an informed-consent form provided by the facility which includes an explanation of the repackaging process and which notifies the resident that the facility is immune from liability. It further requires that all facilities display prominently a poster provided by the agency which list the names, telephone numbers and help to be expected from several state operated help lines. It also allows Gold Seal facilities to operate CNA training programs if approved by the agency. References to the rating system, that is abolished in section 14 of this bill, are deleted and replaced with references to deficiencies.

**Section 10.** Amends s. 400.162, F.S., relating to property and personal affairs of residents, to require nursing homes to develop policies to minimize the risk of theft or loss of residents personal property and provide a copy of the policy to all employees and to all residents at admission and to post the policy in accessible places. The policy must include provisions related to reporting of loss or theft to law enforcement and any facility waiver of liability. At a resident's request, a nursing home must mark the resident's property to identify it, if defacing it can be avoided.

**Section 11.** Amends s. 400.19, F.S., authorizing AHCA to enter and inspect nursing homes, to require AHCA to, within 60 days after receipt of a complaint from a nursing home resident or resident's representative, complete its investigation and report to the complainant its findings and resolution.

**Section 12.** Amends s. 400.191, F.S., relating to availability, distribution, and posting of reports and records, to require AHCA to provide information to the public about all of the licensed nursing homes operating in the state. Such information is to be provided within 60 days after an annual inspection visit or within 30 days after any interim visit to a nursing home by sending copies of the inspection reports to the district long-term care ombudsman council, AHCA's local office, and a public library or the county seat for the county in which the nursing home is located. Additionally, AHCA is required to post on the Internet and to provide in hardcopy printed and electronic formats a consumer-friendly extensive array of information about each nursing facility in the state to assist consumers in evaluating and selecting a facility. A hard copy report of a less extensive array of facility specific information is to be published annually.

**Section 13.** Amends s. 400.215, F.S., 1998 Supplement, relating to personnel screening requirements for nursing home employees and applicants for employment, to allow nursing homes, pending receipt of abuse registry results, to hire, on a probationary basis, under supervision, for up to 30 days, applicants who have met level 1 criminal screening and who, under penalty of perjury, attest to not having been classified in the Central Abuse Registry and Tracking System as a perpetrator in a confirmed report of abuse, neglect, or exploitation. Also, AHCA is required to set up a database of persons previously disqualified through the abuse registry and, then, allow nursing homes to directly check applicants against that database. The Agency for Health Care Administration or the Department of Health, as appropriate, must, within 30 days after the date AHCA or the department receives all required documentation, notify an applicant for employment in a nursing home who requests an exemption from disqualification from employment, as a result of the employment screening process, of a decision to approve or deny such request.

**Section 14.** Amends s. 400.23, F.S., 1998 Supplement, to require AHCA to adopt rules providing for minimum staffing standards for nursing homes, setting minimum CNA staffing and minimum licensed nursing staffing per resident per day, including evening and night shifts and weekends. The rules must address staffing compliance documentation, sanctions for violation of such standards, and requirements for daily posting in the facility of the names of staff on duty for the benefit of residents and the public. Provision is made for substituting licensed nurses for CNAs in certain circumstances and for the use of trained staff, in addition to CNAs and licensed nurses, to assist residents with eating. The rules must specify minimum training requirements and physiological conditions or disorders of residents that necessitate eating assistance by nursing personnel. The nursing home rating system is repealed, and the Nursing Home Advisory Committee is abolished. In lieu of the rating system, AHCA must, through its survey process, designate each nursing home as either standard or conditional. The superior rating is abolished.

The upper limit of the dollar range of civil penalties that may be assessed against a facility cited for a: (1) class I deficiency is increased from \$10,000 to \$25,000; (2) class II deficiency is increased from \$5,000 to \$10,000; and (3) class III deficiency is increased from \$1,000 to \$2,500. Language providing for review and approval of construction plans is deleted from this section and transferred to a new provision created in section 15 of the bill.

**Section 15.** Creates s. 400.232, F.S., providing for review and approval of nursing home construction plans and for fees and costs associated with such plans, to transfer the provisions of subsection 400.23(11), F.S., 1998 Supplement, into a newly created section of law. No substantive changes are made.

**Section 16.** Creates s. 400.235, F.S., to establish in the Executive Office of the Governor a Gold Seal program to be developed and implemented by the Governor's Panel on Excellence in Long Term Care. The Gold Seal program is an award and recognition program for nursing homes that demonstrate excellence over a sustained period. A lengthy array of criteria and standards are established against which facilities must be evaluated. The thirteen member Panel will be made up of consumers and consumer advocates, state agency appointees, including the Medicaid director, representatives of the nursing home industry, the University Consortium on Aging, and persons with special expertise in the fields of quality management, service delivery excellence, and public sector accountability. Panel members are restricted from having an ownership interest in a nursing

facility and Panel members employed by a nursing facility are restricted from participating in the review of or vote on their own employing facility. It requires the appointment of the Panel by October 1, 1999, and the organizational meeting of the Panel by December 10, 1999. It requires DOEA and AHCA to provide staff support to the Panel.

**Section 17.** Amends s. 408.035, F.S., to give preference to a Gold Seal nursing home in a CON application for adding beds at the facility.

**Section 18.** Amends s. 400.241, F.S., providing for prohibited acts and penalties for violations of such prohibited acts, to add a new subsection (3) making it a crime, designated a second degree misdemeanor, for any person, long-term care facility, or other entity to willfully interfere with an unannounced licensure inspection. Alerting or advising a nursing home of the actual or approximate date of such an inspection is made a *per se* (i.e., in itself) violation of this subsection.

**Section 19.** Amends s. 468.1755, F.S., 1998 Supplement, to add, as a grounds for disciplinary action against the license of a nursing home administrator, authorizing the discharge or transfer of a resident for reasons other than those provided in s. 400.022, F.S., or s. 400.0255, F.S., and to make other technical and conforming changes.

**Section 20.** Amends s. 394.4625, F.S., relating to voluntary admission of mental health patients to treatment, to conform a cross reference.

**Section 21.** Amends s. 400.063, F.S., relating to the Resident Protection Trust Fund, to conform a cross reference.

**Section 22.** Reenacts s. 468.1695, F.S., relating to licensure by examination of nursing home administrators, for purposes of incorporating the amendment made in this bill to s. 468.1755, F.S., 1998 Supplement.

**Section 23.** Reenacts s. 468.1735, F.S., 1998 Supplement, providing for provisional licensure of nursing home administrators, to incorporate an amendment to s. 468.1755, F.S., 1998 Supplement, in cross references to that provision of law.

**Section 24.** Amends s. 468.1756, F.S., 1998 Supplement, providing a statute of limitations relating to administrative complaints filed against nursing home administrators, to incorporate a revised cross reference to s. 468.1755, 1998 Supplement.

**Section 25.** Provides for AHCA to adjust target limitations in the patient care component of the Medicaid *per diem* rate, effective July 1, 1999, to allow for \$41,697,600 (\$18,422,000 from the General Revenue Fund and \$23,275,600 from the Medical Care Trust Fund, federal funding) to be used to reimburse nursing homes for the cost of increased staffing, as provided for in the bill.

**Section 26.** Creates a panel on Medicaid reimbursement to study the state's Medicaid reimbursement plan for nursing homes and recommend to the Legislature changes to increase the rate of nursing home employee retention, create incentives for renovation versus new construction of facilities, and create incentives for nursing homes to provide more direct care staff and nurses.

Members of the panel are specified and the timetable for meeting and for making recommendations is established.

**Section 27.** Creates s. 400.174, F.S., providing for immunizations of nursing home residents and employees, to require nursing homes to immunize their residents and employees against influenzae and pneumococcal diseases. A person who resides in or is employed by such a facility prior to November 30 each year must be immunized by that date. A person who becomes a resident or is employed after November 30, but before March 31 of the next year, must be immunized within 3 days of residency or employment. A resident or employee who can document that he or she has already been immunized as required under this section is deemed to have met the requirements of this section. Immunizations required under this section must conform to the current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. The Agency for Health Care Administration must adopt rules that prescribe the documentation methodology for compliance with this section. Nursing homes are required to obtain written, informed consent from each resident or employee immunized under this section, and residents and employees are exempt from the requirements of this section if the vaccine is medically contraindicated, as indicated by the product labeling approved by the federal Food and Drug Administration, or the resident or employee objects to such immunization for religious reasons.

**Section 28.** Directs the Department of Elderly Affairs, in cooperation with consumer advocates, the nursing home industry, AHCA, and the Departments of Health, Education, and Labor and Employment Security, to conduct a study of CNA training programs and to include a number of additional topics related to the availability of CNAs and the impact of turnover and shortages of CNAs. It requires an assessment of factors likely to improve the availability and retention of CNAs within the nursing home industry. The Department of Elderly Affairs is to report findings and recommendations to the Speaker of the House of Representatives and the President of the Senate by January 15, 2000.

**Section 29.** Repeals s. 400.29, F.S., relating to an annual report of nursing home facilities, requiring AHCA to produce an annual report about nursing homes that contains certain specified data and information.

**Section 30.** Creates s. 408.909, F.S., providing for implementation of a teaching-nursing-home pilot project, to: (1) define the term "teaching nursing home;" (2) require AHCA to implement a pilot project of a multi-disciplinary program of geriatric education and research in a nursing home facility it designates as a teaching nursing home; (3) require that AHCA develop criteria for designating teaching nursing homes in consultation with advocates of the elderly, advocates of persons with disabilities, representatives of the nursing home industry, and representatives of the State University System; (4) specify additional minimum criteria for a nursing home to qualify for designation as a teaching nursing home; (5) authorize a teaching nursing home to affiliate with a state medical school and a federally funded center of excellence in geriatric research and education; (6) acknowledge that the Legislature may make an annual appropriation to a teaching nursing home; (7) restrict a teaching nursing home's use of funds received under this section to operating and maintaining a teaching nursing home and conducting geriatric research; and (8) explicitly prohibit a teaching nursing home from spending funds received under this section for construction of buildings or for maintaining or operating a nursing home or health care facility.

**Section 31.** Amends s. 430.703, F.S., providing definitions used in the Long-Term Care Community Diversion Pilot Project Act, to add a definition for the term “other qualified provider.” This term is defined to mean an entity licensed under chapter 400, F.S., i.e., a nursing home, assisted living facility, home health agency, hospice, adult family care home, adult day care center, prescribed pediatric extended care facility, or a transitional living facility, that meets all the financial and quality assurance requirements established by AHCA or DOEA and that can demonstrate a long-term-care continuum.

**Section 32.** Amends s. 430.707, F.S., 1998 Supplement, providing contracting authority under the Long-Term Care Community Diversion Pilot Project Act, to require DOEA, in consultation with AHCA, to select and contract with managed care organizations and other qualified providers to provide long-term care within community diversion pilot project areas.

**Section 33.** This section appropriates a sum of \$100,000 from the Health Care Trust Fund to DOEA for fiscal year 1999-2000 to fund the additional responsibilities of the Office of State Long-Term Care Ombudsman contained in the bill and to establish a statewide toll-free telephone number, as provided for under section 1 of the bill.

**Section 34.** Provides a July 1, 1999, effective date, except that section 13, relating to screening of nursing home facility personnel, is to take effect upon the bill becoming a law.

#### 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:

Language contained in section 3 of the bill requires AHCA to *protect the identity of individual respondents* whose responses to a consumer satisfaction survey conducted by a contractor acting on behalf of AHCA must be reported as results of those surveys in publications *prepared and distributed by the agency*. Use of the word “protected” is vague. The agency and its contractor may be unable to meet this obligation, as provided in the bill, since it and its contractor agent are subject to the requirements of the public records requirements of Article I, Subsection 24(a) of the *State Constitution* and s. 119.07(1), F.S., 1998 Supplement.

Section 7 of this bill exempts the records of AHCA’s quality-of-care monitors from discovery or introduction into evidence in any civil or *administrative* action. Exclusion of a record held by an agency from discovery relating to an administrative action or introduction into evidence in an administrative action must be accomplished through adoption of a Public Records Law exemption, as provided under the requirements of Article I, Subsection 24(a) of the *State Constitution*. Furthermore, given the monitors’ role, it may reasonably be anticipated that such records will contain sensitive information of a personal nature relating to patients, and a

proprietary nature relating to the business operations of nursing homes that should, for public policy reasons, be protected from public disclosure.

**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. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A number of consumer protections are provided or enhanced related to: inappropriate transfer or discharge from a facility, protection of resident property from loss or theft, and nursing home resident use of pharmaceutical benefits covered under certain pension plans. The nursing home industry can be expected to experience a positive fiscal impact under section 5 of the bill since a nursing home may discharge or transfer a nursing home resident who converts to the Medicaid program once the facility has met the Medicaid compliance obligation imposed by its CON or, if no such obligation is imposed under a facility's CON, meet the average percentage of Medicaid compliance in the AHCA district or subdistrict in which the facility operates.

Nursing homes will incur significant additional costs related to compliance with the requirements for increased staffing. Nursing homes may benefit, however, from the expedited employee background screening procedure allowing hiring of certain nursing home personnel on a probationary basis, as provided in section 13 of the bill, because faster screening may eliminate the loss of a qualified job applicant, as often occurs currently, who seeks and obtains employment elsewhere during the delay in receipt of screening results. Also, applicants for employment in nursing homes will benefit from the faster certainty that will result from the 30-day notification timeframe specified for informing persons requesting an exemption from employment disqualification of approval or denial of their request.

Nursing home licensees will be subjected to larger civil penalty sanctions that may be assessed for cited deficiencies. The upper limit for each class of deficiency has been substantially increased in section 14 of the bill. Because the civil penalty that may be assessed varies as determined by AHCA, which is constrained by the ranges for each class established in law, and must be assessed against individual nursing home facilities, a projection of the fiscal impact resulting from the increased fee is not possible.

Section 27 of the bill requires nursing homes to immunize their residents and employees against influenzae and pneumococcal diseases, as specified. Since the duty is placed on the nursing home to ensure that such immunizations are received, subject to: receipt of written,



informed consent; medical contraindication; and religious objection, it is possible that such a duty will increase costs to nursing homes.

**C. Government Sector Impact:**

The Long-Term Care Ombudsman Council estimates recurring costs of \$100,000. The bill provides an appropriation of \$100,000 for these costs.

The Agency for Health Care Administration estimates that implementing the quality-of-care monitoring requirements in section 7 of the bill using nurse consultants in each district will require 13 FTEs at an annualized cost of \$925,000 for salaries and an additional \$261,000 for expenses based on standard costs.

Pursuant to 42 *Code of Federal Regulation* 432.50, federal financial participation is available at the rate of 75 percent for skilled medical personnel and directly supporting staff of the Medicaid agency. Revising the patient care caps in the Medicaid Nursing Home Reimbursement Plan to allow nursing facilities to be reimbursed for up to 2.25 hours of CNA staff time per resident per day is projected to cost approximately \$40,000,000 for twelve months. Beginning in January 2000, instead of July 1999, would reduce the cost to approximately \$18,000,000. This estimate is based on calculations that assume that all of the nearly 700 nursing homes in the state would participate effective July 1, 1999. Agency staff anticipate that the actual expenditures would be significantly less.

ITEM	GENERAL REVENUE	MEDICAID MATCH	TOTAL
Long-Term Care Ombudsman	\$100,000		\$100,000
RN Consultants expenses	\$130,848	\$130,848	\$261,696
RN Consultants salaries	\$231,250	\$693,750	\$925,000
CNA Study	\$25,000	\$25,000*	\$50,000
Revised patient care targets ( <i>increase staffing</i> )	\$17,416,000 43.54%	\$22,584,000 55.46%	\$40,000,000
<b>TOTAL</b>	<b>\$17,903,098</b>	<b>\$23,433,598</b>	<b>\$41,336,696</b>

\*The cost of the CNA study is projected to be approximately \$50,000 based on the costs of other more extensive evaluative research projects contracted by the Department of Elder Affairs. It is possible that this contract may be eligible for Medicaid matching money, which would reduce the general revenue required by 55 percent.

Immunization of nursing home residents and employees, as required by section 27 of the bill, may have a fiscal impact relating to Medicaid reimbursement for resident care and operating costs of nursing homes.

There is a fiscal impact associated with the travel and related expenses for the Governor's Panel on Excellence in Long-Term Care, as provided for under section 16 of the bill, and the Medicaid reimbursement panel, as provided for under section 26 of the bill.

**VI. Technical Deficiencies:**

A Public Records Law exemption bill is required to effect the exemptions created in section 3 and section 7 of the bill relating to consumer satisfaction surveys and records of quality-of-care monitors dispatched by AHCA to evaluate nursing home conditions, respectively.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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