

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: SB 2632

SPONSOR: Senator Myers

SUBJECT: Nursing Homes

DATE: April 19, 2000

REVISED: 04/25/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/4 amendments</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill requires nursing homes to have residents and employees immunized against influenzae annually before November 30th and within 3 days of becoming a resident or employed at the nursing home during the flu season (November 30 - March 31), subject to consent, with exemptions for medical contraindications and religious beliefs. The bill requires nursing homes to have residents immunized against pneumonia annually before November 30th and within 3 days of becoming a resident, subject to consent, with exemptions for medical contraindications and religious beliefs. Exceptions are specified for persons who document that they have already received the required vaccinations. The immunizations must be provided in accordance with the recommendations of the United States Centers for Disease Control and Prevention. The Agency for Health Care Administration is granted rulemaking authority regarding consent forms, documentation, and administrative requirements.

This bill substantially amends section 400.141, Florida Statutes.

II. Present Situation:

Part II, chapter 400, F.S., provides for the regulation of nursing homes. Section 400.141, F.S., requires licensed nursing homes to meet specified standards and requirements that the Agency for Health Care Administration (AHCA or agency) has adopted by rule. Licensed nursing homes must: be under the administrative direction and charge of a licensed nursing home administrator; appoint a medical director who is a Florida-licensed medical physician or Florida-licensed osteopathic physician; have regular, consultative, and emergency services of Florida-licensed physicians; provide for the access of the facility residents to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to their needs and conditions and which are not directly furnished by the nursing home; provide for resident use of a community pharmacy; be allowed and encouraged by the agency to provide other needed services such as respite care or adult day services, under specified circumstances; be allowed to share programming and staff for enhanced services, if the facility has a standard

licensure status or is a Gold Seal facility, exceeds minimum staffing standards, and is part of a retirement community that offers other services provided under the regulation of assisted living facilities, home health agencies, and adult day care centers; maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner; if the licensed nursing home furnishes food service, provide a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by attending physicians; keep full records of resident admissions and discharges, including medical records, personal and social history, and identity and address of next of kin or other persons who may have responsibility for the affairs of the residents, and individual care plans which include prescribed services, service frequency and duration, and service goals; keep fiscal records of its operations and conditions; furnish copies of personnel records for employees affiliated with the nursing home, to any other Florida-licensed facility requesting this information; publicly display a poster provided by the agency containing the names, addresses, and telephone numbers for the state's abuse hotline, the State Long-Term Care Ombudsman, the agency's consumer hotline, the Advocacy Center for Persons with Disabilities, the Statewide Human Rights Advocacy Committee, and the Medicaid Fraud Control Unit, with a clear description of the assistance to be expected from each.

Influenza and Pneumonia

Influenza, commonly called "the flu," is caused by the influenza virus which infects the respiratory tract. The virus is typically spread from person-to-person when an infected person coughs or sneezes the virus into the air. Influenza can cause severe illness and lead to serious and life-threatening complications in all age groups. Complications such as bacterial pneumonia, dehydration, and worsening of underlying chronic conditions (such as congestive heart disease and asthma) occur most often in persons who are particularly vulnerable, such as elderly persons and persons with chronic conditions. Flu is a major cause of illness and death in the United States and leads to over 10,000 hospitalizations and approximately 20,000 deaths each year, according to the United States Centers for Disease Control and Prevention (CDC). Pneumonia or pneumococcal disease, an infection that occurs when there is fluid in the lungs, kills more than 10,000 Americans each year, many of them age 65 or older, according to CDC.

Vaccines are effective in protecting individuals against illness or serious complications of flu, particularly those who are at high risk for developing serious complications from flu, and pneumonia according to CDC. The United States Centers for Disease Control and Prevention recommends that persons in high-risk groups which include individuals aged 65 or older and people with chronic diseases of the heart, lung, or kidneys, diabetes, immunosuppression, or severe forms of anemia should be vaccinated against the flu. The CDC also recommends that residents of nursing homes and other chronic-care facilities, children receiving long-term aspirin therapy, and any person who is in close or frequent contact with anyone in the high-risk group, such as health care personnel and volunteers, be vaccinated. The CDC recommends that the optimal time to be vaccinated against flu is from October through mid-November. People with an allergy to eggs should not take the flu vaccination.

Medicare coverage for flu shots for the elderly began in 1993. Flu shots are free for individuals enrolled in Medicare Part B from physicians who accept the Medicare payment as full payment. The Medicaid program covers costs for flu vaccine and administration for Medicaid patients who

are residents of nursing homes and long-term care facilities who are not the recipients of Medicare benefits. Medicare is the primary payor for this service. Medicare also covers vaccinations against pneumonia.

III. Effect of Proposed Changes:

The bill amends s. 400.141, F.S., to require every licensed nursing home, before November 30 of each year, to provide for immunizations against the flu virus to all its consenting residents and health care workers in accordance with the recommendations of the U.S. Centers for Disease Control and Prevention, subject to consent, with exemptions for medical contraindications and religious beliefs. The bill requires any consenting person who becomes a resident of a licensed nursing home or who is employed by the nursing home after November 30th but before March 31st of the following year to be immunized against the flu virus within 3 days after becoming a resident or an employee. If a resident or employee of a licensed nursing home can document that immunization has already occurred, then immunization need not be provided. The agency must adopt rules regarding consent forms, documentation, and administrative requirements.

The bill also requires every licensed nursing home, before November 30 of each year, to provide for immunizations against pneumonia to all its consenting residents in accordance with the recommendations of the U.S. Centers for Disease Control and Prevention, subject to consent, with exemptions for medical contraindications and religious beliefs. The bill requires any consenting person who becomes a resident of a licensed nursing home to be immunized against pneumonia within 3 days after becoming a resident. If a resident of a licensed nursing home can document that immunization has already occurred, then immunization need not be provided. The agency must adopt rules regarding consent forms, documentation, and administrative requirements.

If the bill becomes law, it shall take effect upon 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:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 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. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Licensed nursing homes will incur additional costs to provide flu vaccinations to its employees to comply with the bill's requirements. The Agency for Health Care Administration assumes that the net cost to nursing homes will be zero if the facilities include the cost of the flu immunizations for its employees in its facility rates.

Residents who are covered by Medicare Part B may incur costs for the flu vaccination or pneumonia vaccination required by the bill if their physicians do not accept the Medicare payment as full payment.

C. Government Sector Impact:

The Agency for Health Care Administration estimates that it will have recurring costs equal to \$83,265 for fiscal year 2000-2001 and fiscal year 2001-2002, respectively, for Medicaid coverage of the administration of flu vaccinations to employees and residents of licensed nursing homes. The agency will receive federal grants under Title XIX Medical Assistance equal to \$47,136 annually to offset the costs for total revenues minus total expenditures equal to (\$36,129) for fiscal year 2000-2001 and (\$36,129) for fiscal year 2001-2002. The agency's estimate is based on 61 percent of 84,000 nursing home employees being immunized times 65 percent of the Medicaid proportion of each nursing home census @ an average cost of \$2.50 to the nursing home.

The agency assumes that any costs relating to immunizing nursing home residents who are covered by the Medicaid program will be offset by the avoidance or reduction of Medicaid health care costs for these residents. Medicaid pays on average \$3.65 for the ingredients for the influenzae vaccine plus \$4.23 for a dispensing fee. The average Medicaid cost for the pneumococcal disease vaccine is \$20.21 plus \$4.23 for a dispensing fee. The agency indicated that the Medicaid program pays for immunizations of about 18,000 nursing patients each year and that the Medicare program pays for most of the remaining residents who are not otherwise covered under the Medicaid program for the vaccinations.

VI. Technical Deficiencies:

The word "virus" on page 1, line 18, is unnecessary and grammatically confusing.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:

Requires influenzae immunizations to be offered by each licensed nursing home facility to all of its consenting residents and health care workers in accordance with the recommendations of the U.S. Centers for Disease Control and Prevention before October 1 of each year, subject to medical approval. Any consenting person who becomes a resident of the facility or who is employed by the facility after October 1 but before March 1 of the following year must be immunized within 7 days after receiving medical approval. Provides requirements for the costs of employee vaccines. Exceptions are specified for persons who document that they have already received the required vaccinations. The Agency for Health Care Administration is granted rulemaking authority regarding consent forms, documentation, and administrative requirements.

#2 by Health, Aging and Long-Term Care:

Deletes the word "virus."

#3 by Health, Aging and Long-Term Care:

Provides immunity to a nursing home facility that administers an immunization as required by the bill for any adverse reaction occurring as a result of the immunization.

#4 by Health, Aging and Long-Term Care:

Requires any action against a nursing home facility by a resident that includes any claim or cause of action arising out of the rendering of, or the failure to render, medical care or services or for any deprivation or infringement of a right which involves the diagnosis or treatment of, services to, or clinically related care of an individual is a claim for medical malpractice. Requires such action to be brought under ch. 766, F. S., relating to medical malpractice, and provides that ch. 400, F.S., does not apply. The effective date of the bill is revised to July 1, 2000 and applies to all claims that accrue on or after that date.