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DATE: March 28, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER & LONG TERM CARE
ANALYSIS**

BILL #: HB 1353
RELATING TO: Nursing Homes
SPONSOR(S): Representative(s) Kosmas

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER & LONG TERM CARE
- (2) JUDICIAL OVERSIGHT
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4) HEALTHY COMMUNITIES COUNCIL
- (5)

I. SUMMARY:

HB 1353 provides a definition for "isolated deficiency" for purposes of classifying nursing home deficiencies and imposing penalties. The bill adds three conditions as grounds for Agency for Health Care Administration (agency or AHCA) action against a licensee, including a demonstrated pattern of deficiencies, failure to pay assessed fines, and exclusion from the Medicare or Medicaid programs. Further, the bill sets new nursing home staffing standards for certified nursing assistants and licensed nurses at 3.0 and 1.0 hours per resident per day, respectively. It revises the definitions of Class I, II, and III violations, creates a new Class IV violation and revises the levels and ranges of fines that may be imposed for each type of violation. The bill also gives the agency authority to impose penalties notwithstanding the facility's correction of the violation.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

HB 1993: 2000 Legislative Session

The Task Force on the Availability and Affordability of Long-Term Care

The Legislature created, in the 2000 Session, the Task Force on the Availability and Affordability of Long-Term Care. The purpose of the task force was to assess the current long-term care system in terms of the availability of alternatives to nursing homes, the quality of care in nursing homes and the impact of lawsuits against nursing homes and other long-term care facilities on the costs of care and the financial stability of the long-term care industry. On February 16, 2001, the task force submitted an extensive report to the Legislature. The full report is available electronically at: <http://www.fpeca.usf.edu/Task%20Force/Publications/Documents/finalreportnew.PDF>

Quality of Care

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 at least two decades. Numerous reports, studies, task forces, hearings, and other efforts have been written to explain the factors that contribute to quality care, to creating a regulatory and reimbursement framework that enhances the likelihood of good care, and to finding sanctions that positively affect the performance of facilities that deliver poor care.

Staffing

The number and training of bedside staff seem to be associated with the quality of care provided to residents. The quality of care provided to residents is associated with the incidence of acute illnesses, malnutrition, dehydration, and other costly diminutions in the well-being of residents. A research team led Charlene Harrington in a study partially supported by the Agency for Healthcare Research and Quality examined the data reported by all nursing homes to the Federal Health Care Financing Administration (HCFA) to identify deficiencies in nursing home care. ⁱ

Percent of Nursing Homes Cited for Staffing Deficiencies

YEAR	% NATIONAL	% FLORIDA
1992	6.0	4.8
1993	6.2	5.6
1994	7.0	7.1
1995	5.7	9.3
1996	4.2	10.9
1997	3.8	10.8
1998	4.6	13.9
1999	5.7	12.4

Harrington Report 2000

The requirements for nursing facility staffing are prescribed in the Florida Administrative Code (59A-4.108). Each facility must provide 1.7 certified nursing assistant (CNA) hours per resident per day and .6 licensed nursing hours per resident per day. There are no requirements for staffing according to shifts. The industry reports approximately 100% turnover among CNAs every year. The State Long Term Care Ombudsman reports that the most frequent complaint received by that office is the lack of adequate numbers of staff to appropriately care for nursing home residents.

Residents of long-term care facilities require both health and social programs. Residents' service needs stem both from health conditions that may necessitate medical treatments but also from the importance of maximizing function and productivity.ⁱⁱ Florida's nursing home residents are older, more medically complex, more dependent in activities of daily living, and more likely to have cognitive impairment than ever before. The changing characteristics of the resident population has implications for nursing home quality in so far as sicker and more debilitated residents are more difficult to care for and require more expertise on the part of clinical staff.

Title 42 of the Code of Federal Regulation, Section 483.30 Nursing Services, provides the following requirement related to nursing staff:

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

Licensure, Certification, Deficiencies

All nursing homes operating in the state must be licensed by the state. Nursing home facilities may elect to participate in the Medicaid or Medicare programs. Facilities must meet federal "certification" standards in addition to being licensed if they would participate in Medicaid or Medicare.

As required under federal regulations, the Agency for Health Care Administration (AHCA) inspects facilities approximately every nine to fifteen months by making unannounced survey visits. AHCA inspectors review the physical environment of the facility, the medical records of some patients, and interview patients and family members. Deficiencies in the standards required of a nursing home are rated as Classes I, II, or III.

Class I deficiencies are those which the agency determines present an imminent danger to the residents or guests of the nursing home facility or a substantial probability that death or serious physical harm would result there from. Under current law, AHCA is authorized to issue a fine in the range of \$5,000 to \$25,000.

Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of the nursing home facility residents, other than class I deficiencies. Under current law, AHCA is authorized to issue a fine in the range of \$1,000 to \$10,000.

Class III deficiencies are those which the agency determines have an indirect or potential relationship to the health, safety, or security of the nursing home facility residents, other than class I or class II deficiencies. Under current law, AHCA is authorized to issue a fine in the range of \$500 to \$2,500.

Despite increasing patient acuity, staffing ratios, education requirements and skill levels of staff have not been changed significantly to reflect new patient needs. Nor has the ongoing training required for the clinical care “backbone” of the nursing home—the certified nursing assistant—changed. While nationwide, the percentage of facilities receiving deficiency citations for inadequate staffing has remained relatively stable, the deficiency citation for inadequate staffing on the part of Florida nursing homes has increased from 5.6% in 1993 to 12.4% in 1999 (Harrington, et.al, 2000). Florida nursing homes staff at a higher ratio than the national average, and staffing levels have increased consistently over the past eight years (Harrington, et.al, 2000).

Percent of Nursing Homes Cited for Top Ten Deficiencies

Indicator %	National	Florida
Food Sanitation	23.7	30.5
Dignity	14.1	24.7
Quality of Care	17.2	20.3
Pressure Sores	17.1	20.5
Comprehensive Care Plan	15.2	24.8
Comprehensive Assessments	15.1	17.7
Physical Restraints	13.7	13.5
Accident Prevention	17.7	10.0
Accidents	18	10.8
Housekeeping	14.4	13.3

Harrington Report 2000ⁱⁱⁱ

The percent of residents in Florida with severe conditions, such as contractures, appears to be increasing from a low of 16.5% in 1993 to 18.3% in 1999. While, the overall rates of residents with contractures are increasing nationwide, rates in Florida remain below the nationwide averages. On the Assessments, Food Sanitation, Care Planning, Dignity, and Florida received more citations than other states; on staffing deficiencies: between 1993 and 1999, citations increased from 5.6% in 1993 to a high of 13.9% in 1998, and then there was a slight decrease in 1999.

The Task Force document concluded: “Many of these outcomes are directly related to nurse staffing. Higher nurse staffing positively impacts resident outcomes. More staff is needed in homes and the state needs to adjust payment rates to reflect the additional cost of care.”^{iv}

C. EFFECT OF PROPOSED CHANGES:

The agency is granted authority to take action against nursing homes for a demonstrated pattern of deficiencies, failure to pay assessed fines, and exclusion from the Medicare or Medicaid programs.

Nursing facilities will be required by statute to staff at higher minimums than currently required by agency rule for certified nursing assistants and licensed nurses. The agency's regulatory response to violations will be affected by revisions in the definitions of Class I, II, and III violations and creation of a new Class IV violation, and in the levels and ranges of fines that may be imposed for each type of violation. The agency is given authority to impose penalties notwithstanding the facility's correction of the violation.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

A limited fiscal impact is projected for the few nursing facilities that are owned by counties. A more detailed analysis is being prepared by the agency.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that staffing enhancements result in costs that nursing facilities cannot absorb within existing resources, private pay and non-public third party payers may experience an increase in the per diem charged by facilities who have to add staff to meet the new standards.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:

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ⁱ Agency for Healthcare Research and Quality grant number HSO7574. Nursing home staffing and its relationship to deficiencies," by Dr. Harrington, David Zimmerman, and Sarita L. Karon: Journal of Gerontology: Social Sciences 55 (5) pp. S278-S287. [Agency for Healthcare Research and Quality \(AHRQ\) Home Page, formerly the Agency for Health Care Policy and Research](http://www.ahrq.gov/). Internet cite: <http://www.ahcpr.gov/>

ⁱⁱ Institute of Medicine, 2000 Study. Improving The Quality Of Long-Term Care. Page 7, quoted in [Informational Report of the Task Force on Availability and Affordability of Long-Term Care for the Florida Legislature in Response to House Bill 1993](#) Volume 1: Synopsis, Executive Summary, Options, Task Force Members' Responses, prepared by the Florida Policy Exchange Center on Aging , University of South Florida, Tampa, FL 33620. February 16, 2001y.

ⁱⁱⁱ *Ibid*, page 500

^{iv} *Ibid*