

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Murman offered the following:

Amendment (with title amendment)

Remove line(s) 541-835, and insert:

Section 7. Subsections (5) through (15) of section 400.147, Florida Statutes, are amended to read:

400.147 Internal risk management and quality assurance program.--

(5) For purposes of reporting to the agency under this section, the term "adverse incident" means:

(a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:

- 1. Death;
2. Brain or spinal damage;

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28 3. Permanent disfigurement;

29 4. Fracture or dislocation of bones or joints;

30 5. A limitation of neurological, physical, or sensory
31 function;

32 6. Any condition that required medical attention to which
33 the resident has not given his or her informed consent,
34 including failure to honor advanced directives; or

35 7. Any condition that required the transfer of the
36 resident, within or outside the facility, to a unit providing a
37 more acute level of care due to the adverse incident, rather
38 than the resident's condition prior to the adverse incident;

39 (b) Abuse, neglect, or exploitation as defined in s.
40 415.102;

41 (c) Abuse, neglect and harm as defined in s. 39.01;

42 (d) Resident elopement; or

43 (e) An event that is reported to law enforcement for
44 investigation.

45 (6) The internal risk manager of each licensed facility
46 shall:

47 (a) Investigate every allegation of sexual misconduct
48 which is made against a member of the facility's personnel who
49 has direct patient contact when the allegation is that the
50 sexual misconduct occurred at the facility or at the grounds of
51 the facility.†

52 (b) Report every allegation of sexual misconduct to the
53 administrator of the licensed facility.†~~and~~

54 (c) Notify the resident representative or guardian of the
55 victim that an allegation of sexual misconduct has been made and
56 that an investigation is being conducted.

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57 ~~(7) The facility shall initiate an investigation and shall~~
58 ~~notify the agency within 1 business day after the risk manager~~
59 ~~or his or her designee has received a report pursuant to~~
60 ~~paragraph (1)(d). The notification must be made in writing and~~
61 ~~be provided electronically, by facsimile device or overnight~~
62 ~~mail delivery. The notification must include information~~
63 ~~regarding the identity of the affected resident, the type of~~
64 ~~adverse incident, the initiation of an investigation by the~~
65 ~~facility, and whether the events causing or resulting in the~~
66 ~~adverse incident represent a potential risk to any other~~
67 ~~resident. The notification is confidential as provided by law~~
68 ~~and is not discoverable or admissible in any civil or~~
69 ~~administrative action, except in disciplinary proceedings by the~~
70 ~~agency or the appropriate regulatory board. The agency may~~
71 ~~investigate, as it deems appropriate, any such incident and~~
72 ~~prescribe measures that must or may be taken in response to the~~
73 ~~incident. The agency shall review each incident and determine~~
74 ~~whether it potentially involved conduct by the health care~~
75 ~~professional who is subject to disciplinary action, in which~~
76 ~~case the provisions of s. 456.073 shall apply.~~

77 (7)(8)(a) Each facility shall complete the investigation
78 and submit an adverse incident report to the agency for each
79 adverse incident within 15 calendar days after its occurrence.
80 If, after a complete investigation, the risk manager determines
81 that the incident was ~~not~~ an adverse incident as defined in
82 subsection (5), the facility shall include this information in
83 the report. The agency shall develop a form for reporting this
84 information.

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85 (b) The information reported to the agency pursuant to
86 paragraph (a) which relates to persons licensed under chapter
87 458, chapter 459, chapter 461, or chapter 466 shall be reviewed
88 by the agency. The agency shall determine whether any of the
89 incidents potentially involved conduct by a health care
90 professional who is subject to disciplinary action, in which
91 case the provisions of s. 456.073 shall apply.

92 (c) The report submitted to the agency must also contain
93 the name of the risk manager of the facility.

94 (d) The adverse incident report is confidential as
95 provided by law and is not discoverable or admissible in any
96 civil or administrative action, except in disciplinary
97 proceedings by the agency or the appropriate regulatory board.

98 ~~(8)(9)~~ By the 10th of each month, each facility subject to
99 this section shall report any notice received pursuant to s.
100 400.0233(2) and each initial complaint that was filed with the
101 clerk of the court and served on the facility during the
102 previous month by a resident or a resident's family member,
103 guardian, conservator, or personal legal representative. The
104 report must include the name of the resident, the resident's
105 date of birth and social security number, the Medicaid
106 identification number for Medicaid-eligible persons, the date or
107 dates of the incident leading to the claim or dates of
108 residency, if applicable, and the type of injury or violation of
109 rights alleged to have occurred. Each facility shall also submit
110 a copy of the notices received pursuant to s. 400.0233(2) and
111 complaints filed with the clerk of the court. This report is
112 confidential as provided by law and is not discoverable or
113 admissible in any civil or administrative action, except in such

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114 actions brought by the agency to enforce the provisions of this
115 part.

116 ~~(9)(10)~~ The agency shall review, as part of its licensure
117 inspection process, the internal risk management and quality
118 assurance program at each facility regulated by this section to
119 determine whether the program meets standards established in
120 statutory laws and rules, is being conducted in a manner
121 designed to reduce adverse incidents, and is appropriately
122 reporting incidents as required by this section.

123 ~~(10)(11)~~ There is no monetary liability on the part of,
124 and a cause of action for damages may not arise against, any
125 risk manager for the implementation and oversight of the
126 internal risk management and quality assurance program in a
127 facility licensed under this part as required by this section,
128 or for any act or proceeding undertaken or performed within the
129 scope of the functions of such internal risk management and
130 quality assurance program if the risk manager acts without
131 intentional fraud.

132 ~~(11)(12)~~ If the agency, through its receipt of the adverse
133 incident reports ~~prescribed in subsection (7)~~, or through any
134 investigation, has a reasonable belief that conduct by a staff
135 member or employee of a facility is grounds for disciplinary
136 action by the appropriate regulatory board, the agency shall
137 report this fact to the regulatory board. The agency must use
138 the 15-day report to fulfill this reporting requirement. This
139 subsection does not require dual reporting or additional, new
140 documentation and reporting by the facility to the appropriate
141 regulatory board.

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142 ~~(12)~~~~(13)~~ The agency may adopt rules to administer this
143 section.

144 ~~(13)~~~~(14)~~ The agency shall annually submit to the
145 Legislature a report on nursing home adverse incidents. The
146 report must include the following information arranged by
147 county:

148 (a) The total number of adverse incidents.

149 (b) A listing, by category, of the types of adverse
150 incidents, the number of incidents occurring within each
151 category, and the type of staff involved.

152 (c) A listing, by category, of the types of injury caused
153 and the number of injuries occurring within each category.

154 (d) Types of liability claims filed based on an adverse
155 incident or reportable injury.

156 (e) Disciplinary action taken against staff, categorized
157 by type of staff involved.

158 ~~(14)~~~~(15)~~ Information gathered by a credentialing
159 organization under a quality assurance program is not
160 discoverable from the credentialing organization. This
161 subsection does not limit discovery of, access to, or use of
162 facility records, including those records from which the
163 credentialing organization gathered its information.

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166 ===== T I T L E A M E N D M E N T =====

167 Remove line(s) 30-42, and insert:
168 definition of "resident care plan"; amending s. 400.147, F.S.;
169 revising the definition of "adverse incident"; revising adverse
170 incident reporting requirements; amending s. 400.195,