

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Health Care Committee

BILL: SB 1358

INTRODUCER: Senators Rich and Miller

SUBJECT: Hospitals

DATE: April 23, 2006

REVISED: 04/24/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/1 Amendment</u>
2.	<u></u>	<u></u>	<u>HA</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill requires the number of registered professional nurses, licensed practical nurses, and other nursing personnel assigned to each patient-care unit in a hospital to be consistent with the types of nursing care needed by the patients and the capabilities of the staff. Patients on each unit must be evaluated near the end of each change of shift by criteria developed by the hospital. Hospitals must have staffing schedules reflecting the actual nursing personnel required for the hospital and for each patient unit.

The current nurse staffing level and anticipated staffing schedule for each hospital must be available to the public, upon request, for each patient-care unit. Each hospital must retain and make available to the public the historic staffing level and schedules for the prior five years. Hospitals must prepare quarterly staffing reports that include specified information.

The Agency for Health Care Administration (AHCA or agency) must make available on its Internet website no later than October 1, 2006, and in a hard-copy format, certain nurse staffing information and certain other information relating to safety violations and complaints.

The bill prohibits hospitals from taking retaliatory actions against a direct-care nurse for certain activities undertaken in good faith related to staffing levels. The agency is authorized to inspect and audit a hospital's books and records needed to ensure the hospital's compliance with the

provisions of the bill. The agency is also authorized to impose a fine of up to \$1,000 per day for each day a hospital is in violation of the provisions of the bill.

This bill creates one undesignated section of law.

II. Present Situation:

Agency for Health Care Administration

Chapter 408, F.S., is titled “Health Care Administration” and contains the general statutory provisions assigned to the agency. The agency is created in s. 20.42, F.S., and is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate-of-need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in pt. III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

Health care providers that are regulated by AHCA include drug-free workplace laboratories, birth centers, abortion clinics, crisis-stabilization units, short-term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, *hospitals*, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family-care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for persons with developmental disabilities, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

Licensure of Hospitals

Under ch. 395, of the Florida Statutes, the agency is responsible for licensing and regulating hospitals. A hospital offers services more intensive than those required for room, board, personal services and general nursing care. A range of health care services are offered with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy. Also available are clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

Under s. 395.0161(2), F.S., the agency must accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization, provided the accreditation of

the licensed facility is not provisional and provided the licensed facility authorizes release of, and the agency receives the report of, the accrediting organization. Unaccredited facilities and initial licenses require certification and licensing surveys. Under state and federal regulations, accredited hospitals are “deemed” to meet the requirements and do not receive an annual license and certification survey. All hospitals are subject to annual Life-Safety and biennial Risk Management surveys.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

The JCAHO evaluates and accredits more than 15,000 health care organizations and programs in the United States. The JCAHO’s evaluation and accreditation services are provided for the following types of organizations:

- General, psychiatric, children’s and rehabilitation hospitals, and Critical access hospitals;
- Medical equipment services, hospice services and other home care organizations;
- Nursing homes and other long term care facilities;
- Behavioral health care organizations, addiction services;
- Rehabilitation centers, group practices, office-based surgeries and other ambulatory care providers; and
- Independent or freestanding laboratories.

The JCAHO also awards Disease-Specific Care (DSC) Certification to health plans, disease management service companies, hospitals and other care delivery settings that provide disease management and chronic care services.

The position of JCAHO is that the determination of actual staffing is hospital specific.

Hospital Nursing Staffing Requirements

The Florida Statutes and the Florida Administrative Code are general in their definition of staffing levels in hospitals. The current statutes and rules do not identify specific staff-to-patient ratios based on acuity. Section 395.1055(1)(a), F.S., requires the agency to adopt rules which must include reasonable and fair minimum standards for ensuring that “Sufficient numbers and qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care and safety.”

Florida Administrative Code, 59A-3.2085(5), Nursing Service, states that “Each hospital shall be organized and staffed to provide quality-nursing care to each patient. Where a hospital’s organizational structure does not have a nursing department or service, it shall document the organizational steps it has taken to assure that oversight of the quality of nursing care provided to each patient is accomplished.”

Rule 59A-3.2085(5)(f), F.A.C., further states that “A sufficient number of qualified registered nurses shall be on duty at all times to give patients the nursing care that requires the judgment and specialized skills of a registered nurse, and shall be sufficient to ensure immediate availability of a registered nurse for bedside care of any patient when needed, to assure prompt

recognition of an untoward change in a patient's condition, and to facilitate appropriate intervention by nursing, medical or other hospital staff members.”

Rule 59A-3.2085(5)(g), F.A.C., states that “Each Class I and Class II hospital shall have at least one licensed registered nurse on duty at all times on each floor or similarly titled part of the hospital for rendering patient care services.”

Rule 59A-3.2085(5)(h), F.A.C., states that “Each hospital shall maintain a list of licensed personnel, including private duty and per diem nurses, with each individual's current license number, and documentation of the nurses' hours of employment, and unit of employment within the hospital.”

The Code of Federal Regulations, section 482.23(b), Standard: Staffing and Delivery of Care, states that “The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient.”

Occupational Safety and Health Administration (OSHA)¹

Congress created the Occupational Safety and Health Administration (OSHA) under the Occupational Safety and Health Act, which was signed by President Richard M. Nixon on December 29, 1970. The mission of OSHA is to prevent work-related injuries, illnesses, and deaths. Since the agency was created in 1971, occupational deaths have been cut by 62 percent and injuries have declined by 42 percent. In order for OSHA to complete its mission it conducts inspections at various places of employment. Top priority for these inspections are reports of imminent dangers—accidents about to happen; second are fatalities or accidents serious enough to send three or more workers to the hospital. Third are employee complaints. Referrals from other government agencies are fourth. Fifth are targeted inspections—such as the Site Specific Targeting Program, which focuses on employers that report high injury and illness rates, and special emphasis programs that focus on hazardous work such as trenching or equipment such as mechanical power presses. Follow-up inspections are the final priority.

All employers must post the federal or a state OSHA poster to provide their employees with information on their safety and health rights. Employers may also enter into cooperative programs with OSHA to increase employee safety in the workplace including the following:

- The OSHA Alliance Program enables employers, labor unions, trade or professional groups, and educational institutions that share an interest in workplace safety and health to collaborate with OSHA to prevent injuries and illnesses in the workplace. The OSHA and the organization sign a formal agreement with goals that address training and education, outreach and communication, and promoting the national dialogue on workplace safety and health.

¹ <http://www.osha.gov/as/opa/osha-faq.html> (last visited April 23, 2006).

- The OSHA Strategic Partnership Program is for employers with varied backgrounds, experience and records in job safety and health. Participants in this program share a common commitment to improving workplace safety and health. These partnerships merge the creative ideas and resources of OSHA and stakeholders. This program emphasizes training and education in a voluntary, cooperative atmosphere. Tracking results is key to the partnerships.
- Voluntary Protection Programs are OSHA's premier partnership programs designed to recognize workplaces with exemplary safety and health programs. Program participants serve as models of excellence for others in their industries and communities and are exempt from routine OSHA inspections.

III. Effect of Proposed Changes:

The bill establishes nurse staffing requirements for hospitals and makes certain information about nurse staffing in hospitals available to the public.

Subsection (1) provides that this newly created section of law may be cited as the "Patients' Right-to Know Act."

Subsection (2) provides legislative findings relating to the right of consumers to obtain access to information concerning the quality and safety of the health care provided in Florida hospitals.

Subsection (3) defines the following terms: agency, average daily census, agency nurse, direct-care nurse, hospital, nurse, nursing care, retaliate, staffing level, and unit.

"Average daily census" is defined to mean the average number of inpatients receiving services in any given 24-hour period, beginning at midnight, in each clinical service area of the hospital.

"Agency nurse" is defined to mean any direct-care nurse who is not directly employed by the hospital, who provides care in the hospital, and who is working for purposes of providing supplemental staffing in a hospital.

"Direct-care nurse" is defined to mean any registered nurse who has direct responsibility to oversee or carry out medical regimens or nursing care for one or more patients. A nurse administrator, nurse supervisor, nurse educator, charge nurse, or other registered nurse who does not have a specific patient assignment may not be included in calculating the staffing level.

"Nursing care" means care that falls within the scope of practice set forth in ch. 464, F.S. (the Nurse Practice Act), and other laws and rules or care that is otherwise encompassed within recognized professional standards of nursing practice, including assessment, nursing diagnosis, planning, intervention, evaluation, and patient advocacy.

"Retaliate" means to discipline, discharge, suspend, demote, harass, deny employment or promotion, lay off, or take any other adverse action against a direct-care nurse as a result of that nurse taking any action described in this section.

“Staffing level” is defined to mean the actual numerical registered nurse-to-patient ratio within a nursing department or unit.

“Unit” means a functional division or area of a hospital in which nursing care is provided.

Subsection (4) requires the number of registered professional nurses, licensed practical nurses, and other nursing personnel assigned to each patient-care unit to be consistent with the types of nursing care needed by the patients and the capabilities of the staff. (The current statutory staffing requirement is that there be sufficient numbers and qualified types of personnel and occupational disciplines on duty and available at all times to provide necessary and adequate patient care and safety.) Patients on each unit must be evaluated near the end of each change of shift by criteria developed by the hospital. The bill requires a hospital to have staffing schedules reflecting the actual nursing personnel required for the hospital and for each patient unit. Staffing patterns must reflect consideration of nursing goals, standards of nursing practice, and the needs of the patients.

The current staffing level and anticipated staffing schedule must be available upon request for each patient-care unit for the effective date of that schedule. Each schedule must list the assigned nursing personnel and the average daily census for each patient-care unit. Hospitals must retain and make available to the public the historic staffing level and schedules for the prior five years.

All records required under this section, including anticipated staffing schedules and the methods to determine and adjust staffing levels, must be made available to the public upon request. These records must be maintained by the hospital for at least five years.

Subsection (5) requires hospitals to prepare a quarterly report that includes the:

- Average daily staffing levels by unit,
- Percentage of nursing hours that are completed by agency nurses by unit,
- Number and description of OSHA violations,
- Nurse vacancy rate,
- Nurse turnover rate, and
- Number and description of complaints made to JCAHO or to the agency.

Subsection (6) requires the agency to make available on its Internet website no later than October 1, 2006, and in a hard-copy format upon request, the following information for each hospital.

- Average daily staffing levels by unit.
- Percentage of nursing hours that are completed by contract or agency nurses by unit.
- Number and description of OSHA violations.
- Number and description of complaints.
- Vacancy rate.
- Turnover rate.

The website must also list each hospital's system affiliations if the hospital is affiliated with a nonprofit, for-profit, or public health care system or corporation. These data must be updated quarterly.

Subsection (7) prohibits a hospital from penalizing, discriminating against, or retaliating in any manner against a direct-care nurse for refusing an assignment that would violate the requirements established in this section. Also, a hospital may not penalize, discriminate against, or retaliate in any manner against an employee with respect to compensation for, or terms, conditions, or privileges of, employment if such an employee in good faith, individually or in conjunction with another person or persons:

- Reports a violation or suspected violation of this section to a regulatory agency, private accreditation body, or management personnel of the hospital;
- Initiates, cooperates in, or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by this section;
- Informs or discusses violations or suspected violations of this section with other employees, with any representative of the employees, with a patient or patient representative, or with the public; or
- Otherwise avails himself or herself of the rights set forth in this section.

An employee is considered to be acting in good faith if the employee reasonably believes that the information reported or disclosed is true and that a violation has occurred or may occur.

Subsection (8) authorizes the agency to inspect and audit books and records of individual or corporate hospitals, including books and records of related organizations with which a health care provider or a hospital had transactions. This subsection requires health care providers and hospitals to make available for inspection, copying, and review information requested by the agency in writing.

The bill establishes penalties for a hospital that refuses to file a report, fails to timely file a report, files a false report, or files an incomplete report and, upon notification, fails to timely file a complete report required under this section, or that fails to provide documents or records requested by the agency. The penalty is a fine not exceeding \$1,000 per day for each day the hospital is in violation. The agency is authorized to grant a one-time extension of any deadline for a hospital to timely file a report required by this section.

The bill will 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, Section 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:

There could be additional expenses to the hospitals for posting staffing schedules, retaining schedules for the last five years and making them available to the public, and for preparing staffing reports. There will also be an economic impact to any hospital who is found in violation of this bill.

C. Government Sector Impact:

There will be an economic impact to AHCA for the additional duties of reporting information on its website and inspecting and auditing hospitals. The anticipated amount of the impact is not known at this time.

VI. Technical Deficiencies:

On page 4, line 15, the reference to the “Joint Commission on Accreditation of Health Care Organizations” should be changed to the “private accrediting body of the hospital”.

On page 5, line 7, the first “persons” should be “person”.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 714216 by Health Care:

The amendment requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study hospital nursing staffing levels concerning the quality of care, differences in nursing acuity and patient risk, and the proportion of nursing hours provided by registered nurses within Florida-licensed hospitals. A report will be submitted by OPPAGA to the President of the Senate and the Speaker of the House of Representatives by February 1, 2007. (WITH TITLE AMENDMENT)

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