

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 2244

INTRODUCER: Senators Miller and Campbell

SUBJECT: Patient Handling

DATE: April 13, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>HA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires the governing body of a hospital or nursing home facility to adopt a policy and program, including establishing a safe patient handling committee, regarding the safe movement of patients. The bill outlines minimum criteria that must be included in the policy. The bill requires the hospital or nursing home to submit its policy and any plans for remodeling to the patient safety center and the Agency for Health Care Administration (AHCA or agency). The hospital or nursing home is prohibited from discriminating against an employee for reporting a violation of this section, cooperating in an investigation, or discussing a violation of this act with certain individuals. 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. The bill requires the agency to adopt rules requiring compliance with policy development and reporting by January 1, 2007, and full implementation by July 1, 2007.

This bill creates section 381.029 of the Florida Statutes.

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 part. 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.

Hospitals and Nursing Homes

Hospitals licensed under ch. 395, F.S., have patient safety and plans submission requirements. Under s. 395.1012, F.S., each licensed facility must adopt a patient safety plan. If a plan is adopted to implement the requirements of 42 C.F.R., part 482.21 then this requirement is met. This section of the Code of Federal Regulations is titled the Condition of Participation: Quality assessment and performance improvement program. Section 395.1012, F.S., also requires each licensed facility to appoint a patient safety officer and a patient safety committee. There must be at least one person on the committee that is not employed by or practicing in the facility.

Section 59A-3.2085(5)(d), Florida Administrative Code (F.A.C.), requires each hospital to develop written standards of nursing practice and related policies and procedures to define and describe the scope and conduct of patient care provided by the nursing staff.

Currently there are no requirements for specific procedures for patient handling and moving in hospitals. In s. 59A-3.277, F.A.C., hospitals are required to have a hospital safety committee to adopt, implement and monitor a hospital-wide safety program. The program must adopt written policies and procedures to enhance the safety of the hospital, its personnel and patients.

Section 59A-3.080, F.A.C., states that no construction work, including demolition, shall be started until the agency's Office of Plans and Construction have given written approval. This includes all construction of new facilities and any and all additions, modifications or renovations

to existing facilities. Presently, any remodeling plans for the purpose of incorporating patient handling and moving equipment would have to be submitted to the Office of Plans and Construction for approval.

Currently there are no requirements for specific procedures for patient handling and moving in nursing homes. In s. 59A-4.123, F.A.C., nursing homes are required to have a risk management and quality assurance committee as required in s. 400.147, F.S. Nursing homes are also required to follow fire prevention, fire safety, and life safety practices as outlined in s. 59A-4.130, F.A.C. Nursing homes also have to submit plans for construction, additions, modifications, or renovations for approval according to the rules in s. 59A-4.133, F.A.C.

Currently, most hospitals and nursing homes have voluntarily adopted additional programming to prevent injury to personnel who move patients. Hospitals and nursing homes are responsible for paying worker's compensation claims and paying for temporary help when staff is unavailable because of injury.

Health Care Injury

According to the Bureau of Labor Statistics, nursing personnel are consistently listed as one of the top ten occupations for work-related musculoskeletal disorders, with incident rates of 8.8 per 100 in hospital settings and 13.5 per 100 in nursing home settings.¹ The Occupational Safety and Health Administration (OSHA) reports that most health care industries report more injuries than other high risk industries, such as construction. Nursing aides, orderlies, and attendants have a risk of lost workday injuries and illnesses about 3.5 times that of the average private industry worker. The most common injury is various forms of back injury. The U.S. Department of Labor reports that nursing, psychiatric, and home health aides are especially susceptible to lifting injuries, because mechanical lifting devices available in some institutional settings are seldom available in the home care setting.

The National Institute for Occupational Safety and Health (NIOSH) is currently developing safe patient handling and movement principles. NIOSH, the Centers for Disease Control and Prevention, and many other organizations have developed a model for protecting the safety and health of health care workers, which involves a no-lift or minimal lift policy using mechanical lift equipment.

Challenges to Patient Lifting

Patient handling and movement tasks are physically demanding, performed under unfavorable conditions, and are often unpredictable in nature. Patients offer multiple challenges, including variation in size, physical disabilities, cognitive function, level of cooperation, and fluctuations in condition. As a load to be lifted, patients lack the convenience of handles and even distribution of weight, and have been known to be combative during the lifting process. One study has estimated that the cumulative weight lifted by a nurse in a typical 8-hour shift is equivalent to

¹ Bureau of Labor Statistics. (2002, December 19) *Survey of occupational inquiries and illnesses, 2001*. U.S. Department of Labor.

1.8 tons.² Lifting patients is also challenging because patient lifts are often accomplished in awkward positions such as bending or reaching over beds or chairs while a nurse's back is flexed.³

Costs of Back Injury

Back injury can result in days away from work, expensive rehabilitation costs, surgery, and a change in career. The estimated cost to treat a back strain is \$4,000 and back surgery costs around \$25,000. Indirect costs related to lost production, retraining, and sick or administration time is estimated to be at least four times that of direct costs.⁴

The Florida Patient Safety Corporation

The 2004 Legislature enacted HB 1629 (Chapter 2004-297, Laws of Florida), which established the Florida Patient Safety Corporation. Section 381.0271, F.S., creates the Florida Patient Safety Corporation as a not-for-profit corporation, whose purpose is to serve as a learning organization dedicated to assisting health care providers in the state to improve the quality and safety of health care rendered and to reduce harm to patients. The corporation is required to promote the development of a culture of patient safety in the health care system and may not regulate health care providers in the state.

University-based Patient Safety Centers

A number of universities in Florida have established patient safety centers or programs. A consortium of these centers work with the Florida Patient Safety Corporation to further the goal of patient safety. The universities that have patient safety centers or programs include the: University of Miami, University of South Florida, Florida State University, University of Florida (Gainesville), University of Florida (Jacksonville), Nova Southeastern University, University of Central Florida, and Florida Atlantic University.

III. Effect of Proposed Changes:

Section 1. Creates s. 381.029, F.S., titled safe patient handling and moving practices. This section provides definitions for the terms used in the bill.

- *Agency* means the Agency for Health Care Administration.
- *Hospital* means an institution licensed under chapter 395, F.S.
- *Nursing Home* means an institution licensed under chapter 400, F.S.

² Tuohy-Main, K. (1997) Why manual handling should be eliminated for resident and career safety. *Geriatrics*, 15, 10-14.

³ Blue, C.L. (1996). Preventing back injury among nurses. *Orthopaedic Nursing*, 15, 9-22., & Videman, T., Nurminen, T., Tolas, S., Juorinka, I., Vanharanta, H., & Troup, J. (1984). Low back pain in nurses and some loading factors of work. *Spine*, 9(4), 400-404.

⁴ U.S. Department of Health and Human Services. (1999, 23 November). *Federal Register, Part II, Department of Labor, Occupational Safety and Health Administration, 29 CFR Part 1910; Ergonomics Program: Proposal Rule.*

The bill requires the governing body of each hospital or nursing home to adopt and ensure implementation of a policy and program to identify, develop, and assess strategies to control the risk of injury to patients and nurses associated with lifting, transferring, repositioning, or moving a patient. The policy must be consistent with a minimal-lift philosophy and establish a process that, at a minimum, includes the:

- Establishment of a safe handling and moving committee with responsibility for implementing a minimal manual lift program in the facility.
- Analysis of the risk of injury to patients and staff posed by handling and moving of patients and the physical environment in which the moving occurs.
- Education of a back injury resource nurse to serve as an expert and to provide education to staff in the identification, assessment, and control of risks of injury to patients and nurses during patient handling.
- Evaluation of alternative methods of reducing risks of patient handling.
- Establishment of a program that will eliminate unnecessary manual lifting by using models that have been successful, such as zero lift, minimal lift, or lift team models.
- Training with sufficient equipment so that manual lifting only occurs in emergency or exceptional circumstances.
- Completion and submission of an annual report to the nurse staffing committee.
- Procedures that a nurse may employ to refuse to perform or be involved in patient handling or moving that the nurse believes will expose the patient or the nurse to an unacceptable risk of injury.
- Submission of an annual report to the governing body of the hospital or nursing home, the patient safety center, and the agency on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and staff associated with lifting and moving a patient.
- Publication of the policy, a plan for implementation of the program and publication of the results of an annual evaluation that uses data analysis to measure the success of the program.
- Consideration of incorporating patient handling equipment, or the physical space and construction design needed to incorporate that equipment at a later date, when the facility develops architectural plans for construction or remodeling.

The bill requires the hospital or nursing home to submit its policy and any plans for remodeling to incorporate patient handling and moving equipment to the patient safety center and the agency. It prohibits a health care facility penalizing, discriminating against, or retaliating in any

manner against an employee if the employee in good faith reports a violation or suspected violation, or participates in an investigation, discusses with any other employee, patient, or the public about the violation, or otherwise avails her or himself to the rights of this section. For the purposes of this section an employee is acting in good faith if she or he reasonably believes that the information reported is true and that a violation has occurred or may occur.

The bill authorizes the agency to develop rules to administer the provisions of the bill that require compliance with policy development and reporting by January 1, 2007, and full implementation of safe-lift policies by July 1, 2007.

Section 2. This act shall take effect July 1, 2006.

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:

Nursing homes and hospitals will incur costs to implement the provisions in the bill. It is possible that the affected facilities may pass on the costs to their patients. The provisions in the bill may decrease back injuries in nursing homes and hospitals, thus, decreasing workers compensation payments and decreasing costs related to time away from work due to injury.

The bill requires hospitals and nursing homes to submit certain information to the "patient safety center." The bill does not require the patient safety center to analyze the information provided, but if the center does analyze the information, there will be a fiscal impact on the center.

C. Government Sector Impact:

According to AHCA, one Health Services and Facilities Consultant, Pay Grade 24, full time employee (FTE) would be needed by AHCA for rule promulgation, setting up a format for the annual reports, collecting the reports, reviewing the reports, and entering the data into a format for internal reports or for the public. The total expenditures for FY 2006-07, including salary, benefits, and taxes, will be \$65,269 and \$62,659 for FY 2007-08.

According to AHCA, the proposed bill implies that AHCA may get complaints about violations of the requirements so there may be a potential increase in complaints and investigations affecting the Complaint Administration Unit and the field offices of the Division of Health Quality Assurance in the agency, as well as the Office of the General Counsel.

VI. Technical Deficiencies:

The bill refers to the “patient safety center” on page 3, lines 21 and 22, and on page 4, lines 9 and 10. It is not clear what entity is meant by this term. If the intent is to refer to the Florida Patient Safety Corporation, then the proper name of that organization should be used.

VII. Related Issues:

The bill provides rulemaking authority to AHCA to carry out the provisions in the bill. However, ch. 381, F.S., is not a licensing statute for nursing homes or hospitals and AHCA may not be able to take regulatory action for a violation. The bill should reference hospital and nursing home licensing statutes (ch. 395, F.S., and part II, ch. 400, F.S., respectively).

The bill references “nurses” several times in the bill, however, nurses are not the only staff who handle and lift patients. Nursing aides, certified nursing assistants, and orderlies do the majority of patient lifting. The scope of staff included in the bill also should be expanded to include all staff involved in lifting and moving patients.

VIII. Summary of Amendments:

None.

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