

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families— The bill incorporates, within the Nursing Home Guide published by the Agency for Health Care Administration, a Nursing Home Guide Watch List. This effectively consolidates the previously distinct documents and aligns the information therein, providing families seeking nursing home care for their loved ones more easily-accessible information.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Consumers seeking information about nursing homes have many different tools available to review both cumulative and individualized sources of information about such facilities. However, numerous statutory requirements and regulatory policies have resulted in varied presentation formats for this information, and consumers are frequently exposed to uncoordinated accounts of the performance of the state's nursing home facilities.

The Nursing Home Inspection Process

At least annually, the Agency for Health Care Administration (AHCA or the agency) inspects all licensed nursing homes. Inspections are unannounced, typically last between three and four days, and include a facility tour; interviews with residents, families, staff, visitors and volunteers; assessments of resident rights, protections and activities; and medical record reviews. If serious concerns or complaints warrant, the agency frequently conducts additional inspections.

Each deficiency that is observed and cited by the agency is ultimately classified as a Class I, II, III or IV deficiency, as described below:

- A **class I deficiency** is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- A **class II deficiency** is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A **class III deficiency** is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practical physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A **class IV deficiency** is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident.

Within ten days of an inspection, nursing homes are required to submit a written Plan of Correction detailing how all deficiencies listed will be corrected, and state inspectors then conduct follow-up visits to monitor a facility's progress. Given the complexity of the survey process, even the highest quality facilities may have several minor deficiencies. Severe deficiencies frequently result in fines, restrictions to patient admissions, change of ownership, or facility closure.

Following this inspection process, nursing homes are then provided with either a “standard” or “conditional” license. A standard license indicates a facility is fully compliant with certain minimum standards, while a conditional license indicates that a particular facility did not meet, or subsequently correct upon follow up, such minimum standards at the time of an annual or complaint inspection. Immediate action is required for deficiencies that pose a threat to resident health or safety.

The agency supplies paper copies of all nursing home inspection reports to the local long-term care ombudsman council, the agency’s local offices and the public library or county seat for the county in which the nursing facility is located.

Florida’s Nursing Home Guide

Annually, the agency publishes the Nursing Home Guide (the guide), a publication compiling a 45-month review of regulatory compliance and demographic information for each nursing home licensed in the state. The guide ranks the performance of the state’s nursing homes based on inspection results, quality of care, quality of life and administrative performance, and allows consumers to search for nursing homes in the state by geographic region, or by characteristics of the various facilities. Information contained in the guide is also quarterly updated by the agency on an Internet website.

General data provided in the guide includes the following:¹

- General guidance about when a nursing home is the appropriate choice of care.
- General guidance about selecting a nursing home.
- Contact information, such as phone numbers and websites, where questions can be answered, and further information obtained.
- A listing of all nursing home facilities in the state of Florida, including hospital-based skilled nursing units.
- The name, address, phone numbers and websites for each licensed facility.
- An indication of whether the facility has been awarded a Gold Seal.
- Details regarding each facility’s current licensee, including the year of licensure and whether such licensee is a for-profit or non-profit entity, and whether or not the facility is part of a retirement community.
- A facility’s corporate or religious affiliations.
- The number of private, semi-private, and total beds at a facility.
- The lowest daily charge for a semi-private room.
- The payment forms accepted by a facility.
- Any special services or amenities, or recreational programs provided by a facility.
- Non-English languages spoken by the administrator or staff of a facility.
- A summary of the deficiencies found at the facility over a 45 month period prior to the publication of the guide.

Within the guide, AHCA also ranks nursing homes by region, using a five-star “performance measure” system.² Furthermore, the agency calculates certain “inspection measures” to assess nursing homes’ compliance with the various federal laws governing nursing homes accepting Medicare or Medicaid payments.³ Although such measures assess compliance with federal regulations, the State of Florida

¹ Rule 59A-4.165, F.A.C.

² AHCA notes that such performance measures represent a nursing home’s ranking within its own geographic region. Potentially, all of the nursing homes in a particular region could perform better or worse than the statewide average. Therefore, a low rank does not necessarily indicate a “low quality” facility, and a high rank does not necessarily indicate a “high quality” facility.

³ For the ten nursing homes that accept neither Medicare nor Medicaid, such federal laws are inapplicable; these facilities are inspected for compliance with state laws only.

conducts the actual inspections as a subcontractor of the federal Centers for Medicare and Medicaid Services (CMS).

Following an inspection, a list of citations is provided to the facility, and AHCA computes a score indicating the number of facility citations observed, as well as their severity and scope. In total, there are 255 possible citations a facility may receive, grouped and ranked in three separate categories: "quality of care", "quality of life" and "administration."

Florida's Nursing Home Guide Watch List

Pursuant to statutory direction contained in section 400.191(3)(a), F.S., AHCA quarterly publishes (in printed form and on an Internet website) a Nursing Home Guide Watch List (the watch list) to assist consumers in evaluating the quality of nursing home care in Florida. A copy of the watch list is mailed to each nursing home facility, and each facility is responsible for posting the most recent version of the watch list "in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public."

The primary function of the watch list is to identify each facility that met the criteria for a "conditional" licensure status, and any facility that was operating under bankruptcy protection, on any day within the quarter covered by the list. For these facilities, the watch list must include, but is not limited to the following:

- The facility's name, address and ownership.
- The county in which the facility operates.
- The facility's license expiration date.
- The number of licensed beds in the facility.
- A description of the deficiency causing the facility to be placed on the list, as well as a description of any corrective action taken in the interim.
- The cumulative number of times the facility has been placed on the watch list.

The watch list also must include a brief description regarding how to choose a nursing home, the categories of facility licensure, an explanation of AHCA's inspection process and the terms used in the watch list, and the address and phone numbers of AHCA's managed care and health quality area offices.

Because a conditional license status can be used to classify both those facilities responsible for serious deficiencies, as well as facilities failing to correct relatively minor deficiencies, a nursing home can appear on the watch list while simultaneously maintaining a high ranking in the guide. Potentially, this creates a confusing divergence for consumers attempting to use the documents prior to selecting a nursing facility.

EFFECT OF PROPOSED CHANGES

House Bill 7053 amends s. 400.191, F.S., in several ways. The bill provides that AHCA may grant electronic access to its inspection reports as a substitute for sending copies, within 60 days of an annual inspection visit or 30 days of an interim visit, to the local long-term care ombudsman council, the agency's local office and a public library or the county seat for the county in which the facility is located.

The bill also explicitly requires AHCA to publish the Nursing Home Guide annually in consumer-friendly printed form, and quarterly in electronic form.

Furthermore, the legislation requires AHCA to list all prior names by which a nursing facility was known during the previous 24 months, the facility's occupancy levels and all federal and state recertification, licensure, revisit and complaint survey information on an Internet site. Additionally, all references to the Online Survey Certification and Reporting (OSCAR) system maintained by the federal Health Care

Financing Administration are deleted from the section, and the amount of time survey and deficiency information shall remain available in printed form, and posted by AHCA on an Internet site is reduced from 45 to 30 months. This reduction in the amount of time certain regulatory history is to remain available in various forms conforms to the timeframes common for various programs such as the Governor's Gold Seal Program⁴ for nursing facilities demonstrating excellence in long-term care over a sustained period.

The bill requires AHCA to publish, within its Nursing Home Guide, a Nursing Home Guide Watch List. This effectively merges the two previously distinct documents. The watch list is intended to assist consumers in evaluating the quality of nursing home care in the state by identifying each facility that either met the criteria for a conditional licensure status or is presently operating under bankruptcy protection. Additionally, the bill requires itemization within the watch list of the cumulative number of days, and the percentage of days, that a facility had a conditional license during the 30 months preceding publication.

Upon publication of its Nursing Home Guide, the bill requires AHCA to post a copy of the guide on its website by the 15th calendar day of the second month following the end of the calendar quarter, and each nursing home licensee is then required to retrieve the most recent version of the Guide from AHCA's website.

The bill requires electronic submission, when available, of records determined by AHCA to be necessary and essential to establish lawful compliance with any rules or standards. Facilities are also required to post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public, a copy of all pages in the most recent Nursing Home Guide listing the facility.

The bill has an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.191, F.S.; providing electronic access to inspection reports; requiring publication of the Nursing Home Guide, annually in printed form, and quarterly in electronic form; requiring AHCA to list prior names by which a facility was known during the previous 24 months, the facility's occupancy levels and all federal and state recertification, licensure, revisit and complaint survey information on an Internet site; deleting references to survey and deficiency information contained on the Online Survey Certification and Reporting (OSCAR) system, and reducing the time such survey and deficiency information shall remain available in printed form, and posted on an Internet site; providing publication of a "Nursing Home Guide Watch List" within the Nursing Home Guide; providing identification in the Nursing Home Guide Watch List of each facility meeting the criteria for a conditional licensure status and each facility operating under bankruptcy protection; providing inclusion on the Nursing Home Guide Watch List of the cumulative number of days and percentage of days a facility had a conditional license during the preceding 30 months; requiring AHCA to post a copy of the Nursing Home Guide on its website by the 15th calendar day of the second month following the end of the calendar quarter; requiring each nursing home licensee to retrieve the most recent version of the Nursing Home Guide from AHCA's website; requiring electronic submission, when available, of records determined by AHCA to be necessary and essential to establish lawful compliance with any rules or standards; requiring facilities to post, in a sufficient number of prominent positions throughout the facility, a copy of all pages from the most recent version of the Nursing Home Guide which list the facility.

Section 2. Provides an effective date of October 1, 2006.

⁴ Per s. 400.235, F.S., one of the requirements for Gold Seal certification is that a facility has had no class I or II deficiencies within the 30 months preceding application for the program.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None immediately, although AHCA reports a potential decrease in the costs associated with printing and distribution of the Nursing Home Guide and Nursing Home Guide Watch List through consolidation of the two previously distinct documents.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and municipalities are unaffected by this legislation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES