

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill requires the Agency for Health Care Administration to develop rules to require compliance with policy development and reporting by January 1, 2008, and full implementation of safe handling and moving policies by July 1, 2012.

Safeguard Individual Liberty – The bill may result in a decrease in the number of injuries suffered by nurses, when engaged in moving or handling patients, and by patients, who will gain additional protections against avoidable injuries. The bill may create a cause of action against hospital or nursing home employers by providing rights against retaliation for employees who report or discuss violations of the safe handling and moving policy or program.

B. EFFECT OF PROPOSED CHANGES:

Background

Injuries to Health Care Workers

Patient handling and moving 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. Patient lifts are often accomplished in awkward positions such as bending or reaching over beds or chairs while a nurse's back is flexed.¹ One study has estimated that the cumulative weight lifted by a nurse in a typical 8-hour shift is equivalent to 1.8 tons.²

Nursing, psychiatric, and home health aides are especially susceptible to lifting injuries.³ In 2005, 9,060 registered nurses suffered a median 7 days away from work due to musculoskeletal disorders, while 28,920 nursing aides, orderlies and attendants suffered a median 5 days away from work.⁴

Present Situation

The Agency for Health Care Administration is responsible for licensing and regulation of health care facilities as authorized in Chapter 395, F.S., Hospitals Licensing and Regulation, and Part II of Chapter 400, F.S., Nursing Homes and Related Health Care Facilities.

Hospitals licensed under Chapter 395, have requirements for nursing services and functional safety. The administrative rules governing hospitals require that:

- Each hospital shall 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.⁵
- Each hospital shall have a hospital safety committee to adopt, implement and monitor a comprehensive, hospital-wide safety program. The safety program shall adopt written policies and procedures to enhance the safety of the hospital, its personnel and patients.⁶

¹ See Blue, C.L., *Preventing back injury among nurses*, *Orthopaedic Nursing*, 15, 9-22 (1996); Videman, T., et al., *Low back pain in nurses and some loading factors of work*, *Spine*, 9(4), 400-404 (1984).

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

³ Hoskins, Anne B., *Occupational Injuries, Illnesses, and Fatalities among Nursing, Psychiatric, and Home Health Aides, 1995-2004*, June 30, 2006. Available online at <http://www.bls.gov/opub/cwc/content/sh20060628ar01p1.stm>

⁴ Bureau of Labor Statistics, *Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2005*, November 17, 2006. Available online at <http://www.bls.gov/news.release/pdf/osh2.pdf>

⁵ Rule 59A-3.2085(5)(d), F.A.C.

Administrative rules governing skilled nursing facilities (nursing homes) require that:

- Nursing homes have sufficient nursing staff to provide nursing services to the residents as determined by the resident's plan of care.⁷
- Nursing homes have a risk management and quality assurance committee, the purpose of which is to assess resident care practices.⁸

There are no requirements for a specific committee to oversee safe patient handling and moving in either hospitals or nursing homes.

No construction work, including demolition, of a hospital or nursing home may be started until written approval has been given by the AHCA's Office of Plans and Construction.⁹ This includes all construction of new facilities and any and all additions, modifications or renovations to existing facilities. 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.

According to AHCA,¹⁰ 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. AHCA also advises that the majority of hospitals and nursing homes already have patient lifting and moving equipment.¹¹

Several states have recently passed similar legislation --- Texas in 2005, Washington in 2006. The latter state provides a tax credit of up to \$1,000 for each acute care available inpatient bed towards the cost of purchasing mechanical lifting devices and other equipment that is primarily used to minimize patient handling by health care providers.¹²

The "Nurse and Patient Safety & Protection Act of 2007" was introduced in the U.S. House of Representatives on January 10, 2007.¹³ It addresses similar concerns as HB 1193 and includes an appropriation for purchase of safe patient handling equipment.

Effect of Proposed Legislation

HB 1193 creates s. 381.029, F.S., and requires that hospitals and nursing homes adopt and implement a policy or program to control the risk of injury to patients and nurses associated with lifting or moving a patient. The bill defines "nurse" to include a registered nurse, a licensed practical nurse, or an advanced registered nurse practitioner.

The program requires hospitals and nursing homes to establish a policy which is consistent with a minimal-lift philosophy. "Minimal-lift philosophy" is defined in the bill to mean minimizing lifting tasks, encouraging patients to safely assist with lifting and moving, and avoiding any handling that involved manual lifting of patients.

The policy must include:

⁶ Rule 59A-3.277, F.A.C.

⁷ Rule 59A-4.108 F.A.C.

⁸ Rule 59A-4.123, F.A.C.

⁹ Rule 59A-3.080, F.A.C.

¹⁰ AHCA 2007 Bill Analysis & Economic Impact Statement, HB 1193.

¹¹ Pursuant to s. 440.09(5), F.S., a 25 percent reduction in workers' compensation benefits is allowed if an employee knowingly refuses to use a safety appliance and the employee knew he/she was required to use the safety appliance; an employee knowingly refuses to follow a safety rule if the safety rule is in statute or in an administrative rule of the Department of Financial Services and the employee knew about the safety rule; or an employee knowingly refuses to use a safety appliance provided by the employer.

¹² Washington State Nurses Association *Questions and Answers on Safe Patient Handling Legislation*. Available online at <http://www.wsna.org/legal/patienthandling/faq.asp>

¹³ HR 378 IH by Rep. Conyers. Accessed on March 24, 2007, at <http://thomas.loc.gov/cgi-bin/query/D?c110:1:./temp/~c110wncTp2::>

- An analysis of the risk of injury to patients, nurses and health care workers posed by handling and moving of patients and the physical environment in which the moving occurs;
- Establishment of a back injury resource nurse to serve as a resource for all nurses regarding control of risk to patients and nurses during handling and moving risks;
- An evaluation of alternative ways to avoid patient handling and moving risks, including equipment and the environment;
- Establish of a program that will eliminate manual lifting;
- Acquisition of equipment that aids lifting, so that manual lifting is restricted to emergency or exceptional situations;
- Collaboration between the staffing committee and the nurse and submission of an annual report to the committee;
- Procedures that a nurse may employ to refuse a patient handling or moving task because the nurse believes it will expose the patient or nurse to an unacceptable risk of injury;
- Submission of an annual report to the hospital or nursing home and AHCA on activities related to the identification, assessment, and development of strategies to control risk of injury to patients, nurses and other health care workers associated with the lifting and handling practices;
- Identification of the appropriate use of the policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams;
- Conduct of an annual program performance evaluation to determine its effectiveness in reducing musculoskeletal disorder claims and days of lost work caused by patient handling practices, including recommendations for program improvements, the evaluation to be provided to the safe patient handling committee; and
- Publication of the policy, the plan for implementation of the program, and the results of an annual evaluation that uses data analysis to measure the program's success.

HB 1193 requires that the hospital or nursing home consider the feasibility of incorporating patient handling and moving equipment or environmental accommodations to incorporate the equipment in development of the architectural plans for construction or remodeling of a hospital or nursing home, or a unit thereof.

The bill specifies that "a hospital or nursing home 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 the employee in good faith reports a suspected violation, participates in an investigation, discusses suspected violations with any other employee, employee representative or the public, or otherwise avails himself of the "rights set forth in this section."

The bill authorizes the Agency for Health Care Administration to develop rules to require compliance with policy development and reporting by January 1, 2008, and full implementation of safe handling and moving policies by July 1, 2012.

HB 1193 provides that when computing the annual assessment for inpatient revenue, any hospital may claim credit for the amount that it spent during that fiscal year for the purchase of mechanical lifting devices and other equipment primarily used to minimize patient handling. The hospital must submit records necessary to verify eligibility for the credit under this subsection. The maximum credit that may be earned for each hospital is limited to \$1,000 for each available inpatient bed used for acute care.

The effective date of the bill is July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.029, F.S.; provides definitions; requires hospitals and nursing homes to adopt policy related to patient handling and moving practices; provides rights to employees.

Section 2. Amends s. 395.701, F.S.; provides hospitals certain credits against annual assessments for inpatient revenues.

Section 3. Provides effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

AHCA provides the following information on the fiscal impact of this bill:

The bill requires that hospitals and nursing homes submit an annual report to the Agency on activities related to the identification, assessment, and development of strategies to control the risk of injury to patients and staff associated with lifting and moving patients. The bill requires an annual performance evaluation of the safe patient handling program including publication of the policy and the results of the annual performance evaluation using data analysis to measure the success of the program. Displaying this information on the Agency's website would cause significant changes to the current website design, format, and navigation resulting in additional contracted services with the outside vendor. In addition, the Agency will have to contract with the outside vendor to adjust the data to be consistent with national standards as well as consult with the State Consumer Health Information and Policy Advisory Council regarding the methodology.

The Agency will require additional staff 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 proposed bill may require remodeling of hospitals or nursing homes in order to incorporate the lifting equipment. The plans and the remodeling would require reviews and surveys by the Agency. It is difficult to determine the exact impact on the Agency because the majority of hospitals and nursing homes already have patient lifting and moving equipment.

	<u>2007-08</u>	<u>2008-09</u>
AHCA (2 FTE)	\$134,549*	\$128,549
Contracted Services (Website Modification)	<u>\$250,000</u>	<u>\$ 0</u>
Total Expenditures	\$384,549	\$128,549

*Fiscal Year 2007-08 includes \$6,000 in non-recurring funding for equipment for the new staff positions.

General Revenue Fund	\$384,549	\$128,549
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a decrease in the number of injuries suffered by nurses, when engaged in moving or handling patients, and by patients, who will gain additional protections against avoidable injuries. Nurses will miss fewer days of work, resulting in an increase in productivity and continuity of patient care.

Hospitals and nursing homes may be required to acquire patient handling and moving equipment. The bill provides that any hospital may claim credit for the amount that it spent for the purchase of this equipment; however, nursing homes are not included in this provision.

The bill may create a cause of action against hospital or nursing home employers by providing rights against retaliation for employees who report or discuss violations of the safe handling and moving policy or program.

D. FISCAL COMMENTS:

AHCA also advises as follows:

The bill amends s. 395.701, F.S. authorizing a hospital to claim credit for the purchase of certain mechanical lifting devices. When computing the annual assessment for inpatient revenue, any hospital may claim credit for the amount that it spent for the purchase of mechanical lifting devices and equipment. The potential effect would be that these claim credits would reduce the amount of cash in the Public Medical Assistance Trust Fund available to fund Medicaid hospital inpatient services. The effect of this reduction is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Health Care Administration to develop rules to require compliance with policy development and reporting by January 1, 2008, and full implementation of safe handling and moving policies by July 1, 2012.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 45-49, the bill directs hospitals and nursing homes to adopt a policy or program to “control the risk of injury to **patients and nurses...**” [Emphasis supplied]. “Nurse” is a term defined at lines 40-42. The bill also references “health care workers” [lines 53, 82] but does not define that term. Further, at lines 78-83, the bill requires submission of an annual report by the hospital or nursing home on their

activities to “control the risk of injury to **patients, nurses, and other health care workers...**” [Emphasis supplied]. The latter reference appears inconsistent with the direction at lines 45-49.

At lines 70-72, the bill refers to a “staffing committee and the nurse...” However, “staffing committee” is not defined or otherwise referenced in the bill, and it is unclear to which “nurse” this section refers.

The bill appears to provide Whistleblower-type protection for any employee who reports or discusses a violation of the facility’s safe patient handling policy adopted pursuant to this act. [Lines 106-122]

- At lines 106-109, the bill provides that “a hospital or nursing home 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...” [Emphasis supplied]. It is unclear whether the bar against “penalizing” an employee would prohibit an employer from disciplining the employee who reports his or her own failure to abide by the safe patient handling policy.
- At line 121, the bill refers to these provisions as “the rights set forth in this section.” Use of the word “rights” may create a cause of action against the hospital or nursing home employer. It is suggested that lines 121-122 be amended to read: “(d) Otherwise avails himself or herself of the provisions set forth in this subsection.”

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES