The Florida Senate

PROFESSIONAL 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 Regulation Committee

BILL:	SB 2208
INTRODUCER:	Senator Villalobos
SUBJECT:	Patient Handling
DATE:	March 24, 2007
REVISED:	04/10/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HR	**Fav/1 amendment**
2.			FT	
3.			HA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- [ ] Technical amendments were recommended
- [X] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

The bill requires the governing body of a hospital 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 hospital 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 for Health Care Administration (AHCA or agency) to adopt rules requiring compliance with policy development and reporting by January 1, 2008, and full implementation by July 1, 2008.

The bill also allows a hospital to claim credit against its public medical assistance trust fund assessment on inpatient revenue equal to 100 percent of its expenditures for the purchase of mechanical lifting devices and other equipment primarily used to minimize patient handling. The bill specifies that the total maximum credit that may be earned under this provision for each hospital is limited to $1,000 for each available inpatient bed used for acute care.

This bill amends s. 395.701, F.S., and creates s. 381.029, F.S.

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 policy and planning for the state;
- 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 Florida Center for Health Information and Policy Analysis;
- 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 the 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.

Hospital Licensure

Chapter 395, F.S., delegates authority to the AHCA to license and regulate hospitals, ambulatory surgical centers, and mobile surgical facilities. 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 has 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.

Nursing and Back Injury

According to the Bureau of Labor Statistics, musculoskeletal disorders are the most common type of nonfatal injury or illness reported by nursing personnel. Nursing aides, orderlies, and attendants--a subset of the occupational group nursing, psychiatric, and home health aides--consistently ranked among the detailed occupations reporting the most cases of workplace injuries and illnesses during the 1995-2004 period. In 2004, for example, nursing aides, orderlies, and attendants reported the third highest number of injuries and illnesses. Only truck drivers (heavy and tractor-trailer) and laborers and material movers (hand) had more cases.[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. The 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.

[1] "Occupational Injuries, Illnesses, and Fatalities among Nursing, Psychiatric, and Home Health Aides, 1995-2004." Bureau of Labor Statistics. Found at: http://stats.bls.gov/opub/cwc/content/sh20060628ar01p1.stm (last visited on March 24, 2007)

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 1.8 tons. 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.

Costs of Back Injury

According to the Bureau of Labor Statistics, there were 270,890 back injuries reported in 2005.[2] 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.[3]

Public Medical Assistance Trust Fund

Part IV of chapter 395, F.S., consisting of ss. 395.701 and 395.7015, F.S., relates to the Public Medical Assistance Trust Fund (PMATF) which is created in s. 409.918, F.S. Revenue collected from assessments on the specified health care providers under part IV of chapter 395, F.S., are used to fund Medicaid-reimbursed hospital inpatient services. Through use of such trust fund moneys, the state is able to avoid use of general revenue to pay for Medicaid services provided to medically indigent state residents. According to the AHCA, the assessments, combined with revenues from cigarette taxes and interest earnings are fully utilized each year in the General Appropriations Act.

Certain specified health care facilities are subject to the PMATF assessment. Section 395.701, F.S., was originally enacted in 1984 to impose an assessment of 1.5 percent against the annual net operating revenue of each state-licensed hospital. The funds generated through the assessment are to be used to expand Medicaid coverage and equalize the financial burden of indigent health care among hospitals. Assessments against inpatient revenue from hospitals are deposited into the PMATF. As of March 2007, there are 234 hospitals subject to the PMATF assessment according to the AHCA.

III. Effect of Proposed Changes:

Section 1. Creates s. 381.029, F.S., titled safe patient handling and moving practices.

Subsection (1) provides definitions for the terms used in the bill including:

[2] http://stats.bls.gov/iif/home.htm (last visited on March 24, 2007)
[3] http://www.dir.ca.gov/dosh/dosh_publications/backinj.pdf (last visited on March 24, 2007)

- *Agency means the Agency for Health Care Administration.*

- *Good faith means that an employee believes that the information he or she reported or disclosed is true and that a violation has occurred or may occur.*

- *Hospital means an institution licensed under chapter 395, F.S.*

- *Minimal-lift philosophy means to the greatest extent possible minimizing lifting tasks,* encouraging a patient to assist with any lifting or moving activities without exacerbating his or her condition or putting himself or herself at risk, and avoiding any handling that involves manually lifting or moving the whole or a large part of a patient's weight.

- *Nurse* means a registered nurse, a licensed practical nurse, or an advanced registered nurse practitioner as defined in s. 464.003, F.S.

Subsection (2) requires the governing body of a hospital to adopt and ensure implementation of a policy and program to identify, assess, and develop strategies to control the risk of injury to patients and nurses associated with lifting, transferring, repositioning, or movement of 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 patient handling and movement committee that is responsible for implementing a minimal manual lift program in the facility. The committee may be a subcommittee of an existing committee and must include in its membership representatives of the bargaining unit if one is recognized and members of the nursing staff from various units of the facility.

- Analysis of the risk of injury to patients, nurses, and health care workers posed by the patient-handling and moving needs of the patient populations served by the hospital and the physical environment in which patient handling and movement occurs.

- Evaluation of alternative ways to reduce risks associated with patient handling and moving, including evaluation of equipment and the environment.

- Establishment of a program that will eliminate manual lifting, moving, and repositioning of patients, which poses risks of injury based on current research and practice.

- Establishment of a patient-handling hazard assessment. This assessment must consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

- Development of a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams.

- Acquisition of, training with, and deployment of sufficient equipment and aids so that manual lifting, repositioning, or movement of all or most of a patient's weight is restricted to emergency, life-threatening, or otherwise exceptional circumstances.

- Adoption of procedures for a nurse to employ in order to refuse to perform, or be involved in, patient handling or movement that the nurse believes in good faith will expose a patient or the nurse to an unacceptable risk of injury.

- Submission of an annual report to the governing body of the hospital and the agency 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, transferring, repositioning, or movement of a patient.

- Development of a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams.

- Conducting an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in claims of musculoskeletal disorders and days of lost work attributable to musculoskeletal disorders caused by patient handling, and include recommendations to increase the program's effectiveness.

- Publication of the policy, a plan for implementing the program, and publication of the results of an annual evaluation that uses data analysis to measure the success of the program.

- Consideration of the feasibility of incorporating patient handling and movement equipment, or the physical space and construction design needed to incorporate that equipment at a later date, when developing architectural plans for constructing or remodeling a hospital, or a unit of a hospital in which patient handling and movement occurs.

Subsection (3) prohibits a hospital from penalizing, discriminating against, or retaliating 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, a private accrediting 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 accrediting body concerning matters covered by this section;

- Informs or discusses violations or suspected violations of this section with any other employee, with any representative of an employee, with a patient or patient representative, or with the public; or

- Otherwise avails himself or herself of the rights set forth in this section.

Subsection (4) requires the agency to develop rules to administer the provisions of the bill that require compliance with policy development and reporting by January 1, 2008, and full implementation of safe-lift policies by July 1, 2008.

Section 2. Amends s. 395.701, F.S., allowing any hospital to 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 by health care providers, consistent with a safe patient handling program developed and implemented by the hospital in compliance with s. 381.029(2), F.S. The credit shall be equal to 100 percent of the cost of the mechanical lifting devices or other equipment. A credit earned during any one fiscal year may be carried over to be credited against the assessment required under paragraph (2)(a) and incurred in a subsequent fiscal year. Refunds may not be granted for credits under this subsection.

An application is not necessary for the credit; however, a hospital taking a credit under this subsection must maintain and submit records, as required by the agency, necessary to verify eligibility for the credit under this subsection.

The total maximum credit that may be earned under this subsection for each hospital is limited to $1,000 for each available inpatient bed used for acute care.

Section 3. Provides that this bill takes effect on July 1, 2007.

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:

Hospitals will incur costs to implement the provisions in the bill, although they are able to offset the cost of purchasing patient handling equipment by up to $1,000 per acute care bed against their PMATF assessment. To the extent that the PMATF credit does not cover their full cost of compliance with 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 hospitals, thus, decreasing workers compensation payments and decreasing costs related to time away from work due to injury.

C. Government Sector Impact:

The bill requires hospitals to 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 agency estimates that one full-time equivalent (FTE) Health Services and Facilities Consultant, Pay Grade 24, at an annual expense of $52,554, would be needed for the agency 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 bill also 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. Modification of the existing website to display the safe patient handling data would require a revision to contracted services with an outside vendor, resulting in additional costs of $250,000.

The total cost of implementing these provisions of this bill would be $317,275 in Year 1 and $64,275 in Year 2 and subsequent years.

The bill implies that there may be complaints related to safe handling and moving practices. It is difficult to determine the exact impact on the agency due to the fact that patients, families, and staff can already file complaints against a hospital related to patient safety and handling. The bill may require remodeling of hospitals in order to incorporate the lifting equipment which would require reviews and surveys by the agency. It is difficult to determine the exact impact on the agency as the majority of hospitals already have patient lifting and moving equipment.

Medicaid

Hospitals may offset the cost of compliance with this bill by taking a credit against their PMATF assessment on inpatient revenue equal to 100 percent of its expenditures 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 amount possible would be $1,000 per acute care bed. The credits would reduce the expected amount of tax revenue to be deposited to the PMATF to fund Medicaid hospital inpatient services. It would be very difficult to determine an estimate of the loss of revenue from this credit. Each hospital's total tax revenue would need to be known and how many acute care beds would actually need mechanical patient handling equipment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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:

Barcode 441646 by the Health Regulation Committee:
This amendment deletes the requirement that the safe patient handling and movement committee of a hospital must include representatives of the bargaining unit, if one is recognized, in its membership. The amendment also deletes patients or their representatives from the list of persons with whom an employee may discuss violations without retaliation by the hospital.