

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 385

Nursing Home Facilities

**SPONSOR(S):** Murzin

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 682

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Innovation</u>	<u>8 Y, 0 N</u>	<u>Ciccone</u>	<u>Calamas</u>
2) <u>Healthcare Council</u>	<u></u>	<u>Ciccone</u>	<u>Gormley</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>

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### SUMMARY ANALYSIS

House Bill 385 revises the frequency of visits to nursing facilities by quality-of-care monitors (QOC) from quarterly to annually. The bill requires that quality of care monitors visit conditionally licensed nursing facilities quarterly and other nursing facilities as deemed appropriate by the Agency for Health Care Administration (the agency). The bill provides that every nursing facility that has a standard license may develop a plan to provide training for certified nursing assistants (CNA).

The bill modifies the definition of adverse incidents as events reported to law enforcement for investigation. The bill deletes the requirement for nursing facilities to submit a one-day adverse incident report as determined by the facility's risk manager to the agency. The bill provides that the most recent survey is considered the annual survey for purposes of future survey scheduling.

The bill specifies that compliance with federal posting standards satisfies state posting standards and specifies that nursing homes are required to post a conditional license only after it has been issued by final order. The bill also modifies the requirements for when a nursing home with a conditional license returns to a standard status. Finally, the bill modifies the definition of class I, class II, class III, and class IV deficiencies to be consistent with partial federal regulations.

There is no fiscal impact associated with this bill.

The bill provides an effective date of July 1, 2007.

## BILL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill reduces the number of QOC visits from quarterly to annually; however quarterly visits would continue to be made to facilities that have conditional licenses (class I or II deficiency, or uncorrected class III deficiency) and the agency would continue to direct QOC visits as deemed appropriate.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 400, Part II, F. S., provides that all nursing homes in the state be licensed. The agency is directed to carry out the licensure provisions required in law and currently uses quality-of-care monitors to visit each nursing home quarterly. These quality-of-care monitors are registered nurses with training and experience in nursing facility regulation, long term care practice standards and patient care evaluation. Quality of care monitors assess the overall quality of life in the nursing facility and those facility conditions that are directly related to resident care, including the internal quality improvement and risk management.

##### Gold Seal Facilities and Training

Section 400.141, F.S., provides that every licensed nursing home facility comply with all applicable standards and rules. Nursing homes that are designated as Gold Seal facilities may develop a plan to provide CNA training as prescribed by federal regulations and state rules. A facility wishing to provide CNA training must not have been cited for substandard quality of care, been terminated from the Medicare/Medicaid program, or had an enforcement action within the previous two years to meet federal requirements. The state is required to withdraw approval of a training program if any of these and/or other specified conditions occur (42 Code of Federal Regulations 483.151). In Florida, CNA training is subject to approval by the Board of Nursing in the Department of Health (DOH) in accordance with section 64B9-15.005, Florida Administrative Code, and appropriate certification by the Department of Education (DOE). There are approximately five Florida nursing homes that are currently certified by the DOE to offer CNA training.

##### Incident Reporting

Each nursing home must notify the agency in writing within one business day of any adverse incident as defined by statute. The facility must initiate an investigation and provide a complete report to the agency within 15 calendar days after its occurrence. If, after a complete investigation, the facility's risk manager determines that the event does not constitute an adverse incident; the facility must include this information in the report.

##### Licensure Evaluation and Status

Under s. 400.23(7), F.S., the agency must, at least every 15 months, evaluate each nursing home facility and determine the degree of compliance of the nursing home with licensure requirements in order to assign a licensure status to the nursing home. Based on the most recent inspection report, the agency must assign a licensure status of standard or conditional. A standard licensure status means that a nursing home has no class I or class II deficiencies and has corrected all class III deficiencies within the time established by the agency. A conditional licensure status means that a nursing home, due to the presence of one or more class I or class II deficiencies, or class III deficiencies not corrected

within the time established by the agency, is not in substantial compliance with licensure standards at the time of the survey. If a nursing home has no class I, class II, or class III deficiencies at the time of the follow-up survey, a standard licensure status may be assigned.

Section 400.23(8), F.S., defines class I, class II, class III, and class IV deficiencies as follows:

- A class I deficiency is a deficiency that the agency determines requires immediate corrective action because the nursing home's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the nursing home.
- 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 psychosocial 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 psychosocial 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 psychosocial 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.

A conditional license is issued to a nursing home that has been cited for serious deficiencies (class I or II) or failed to correct class III deficiencies. A facility must be in substantial compliance with all regulations before returning to a standard license. Conditional licenses are considered "sanctions" and are subject to the Florida Administrative Procedure Act. These licenses are treated as legal sanctions and a nursing home licensee may challenge the conditional status.

### Posting Requirements

State law currently requires each nursing home to post daily the names of staff on duty for the benefit of residents and the public. Federal requirements state that the facility must post the nurse staffing data on a daily basis at the beginning of each shift. The listing must be clear and readable and posted in a prominent place readily accessible to residents and visitors.

### **Effect of Proposed Legislation**

House Bill 385 would reduce the number of QOC visits from quarterly to annually; however, quarterly visits would continue to be made to facilities that have conditional licenses (class I or II deficiency, or uncorrected class III deficiency) and the agency would continue to direct QOC visits as deemed appropriate. Currently only Gold Seal nursing facilities may develop certified nursing assistant (CNA) training. This proposal could increase CNA training by allowing every nursing facility that has a standard license to develop a plan to provide training for CNAs.

The bill modifies the definition of adverse incidents as events reported to law enforcement for investigation, rather than every report to law enforcement. The bill deletes the requirement for nursing facilities to submit a one-day report as determined by the facility's risk manager to the agency. According to the agency, because of combined federal and state nursing regulations regarding reporting requirements, the continued requirement to submit the 15-day report and the agency quality-of-care nurse monitor visits, the elimination of the one-day report would not create a significant gap in monitoring regulatory compliance.<sup>1</sup> The bill also provides that the most recent survey is considered the

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<sup>1</sup> Agency for Health Care Administration staff analysis, March 2007, on file with committee

annual survey for purposes of future survey scheduling. The effect of this proposal would allow the last survey conducted within a six-month survey cycle to be counted as an annual survey in the event that the administrative action that originated the six-month cycle is overturned. The effect would be that the next annual investigation would not be scheduled for this facility for up to 15 months.

The bill provides that compliance with federal posting standards satisfies state posting standards and as such aligns federal and state standards. The bill also specifies that nursing homes are required to post a conditional license only after it has been issued by final order. Conditional licenses are considered "sanctions" and are subject to the Florida Administrative Procedures Act and can be challenged by the nursing home (licensee). Since these challenges can last several months or a year, the effect of this proposal could result in a nursing home having been returned to "standard" status before a final order on the conditional license would be finalized and therefore, resulting in most nursing homes never having to post a conditional license.

The bill clarifies that uncorrected class III deficiencies would prevent a nursing facility with a conditional license from getting a standard license. The bill modifies the definition of class I, class II, class III, and class IV deficiencies to be consistent with partial federal regulations.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 400.118(2)(a), F.S.; relating to nursing home quality assurance.

Section 2. Amends s. 400.141(24), F. S.; relating to nursing home facility administration and management.

Section 3. Renumbers s. 400.147(9) through (15), F.S., as s. 400.147(8) through (14) and amends s. 400.147(5)(e), (7) and (8), F.S.; relating to nursing home internal risk management and quality assurance programs.

Section 4. Amends s. 400.19(3), F.S.; relating to right of agency entry and inspection of nursing home facilities.

Section 5. Amends s. 400.195(1)(d), F.S.; relating to agency reporting requirements; corrects a cross reference.

Section 6. Amends s. 400.23(3)(a), (7)(b)(e) and (8), F.S.; relating to nursing home rules, deficiencies and licensure status.

Section 7. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Agency for Health Care Administration, there is no fiscal impact on the agency. The enacting legislation for nursing home and assisted living facility risk management and adverse incident reporting was passed in Senate Bill 1202, during the 2001 Legislative Session. Original staffing for adverse incident reporting was based on an estimate of 3,600 nursing home and assisted living facility adverse incidents per year. The original estimate fell significantly short of actual adverse incidents received each year. During Fiscal Year 2005-2006, 4,672 adverse incidents were processed by the agency—30 percent higher than estimated. The total number of adverse incidents is not affected by this bill. The agency has previously allocated necessary resources to handle this higher than anticipated workload from adverse incident reports and will require all existing resources to manage remaining activities.<sup>2</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration will require additional rule making authority regarding review and approval of such programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On page 13 between lines 347 and 348 insert the following:

The agency may adopt rules as necessary regarding review and approval of such programs.

D. STATEMENT OF THE SPONSOR

No statement submitted.

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<sup>2</sup> Agency for Health Care staff analysis, March 2007, on file with the Committee  
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**DATE:** 3/30/2007

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 13, 2007, the Health Innovation Committee adopted four amendments to the bill. These amendments do the following:

- Provides that the agency will conduct quarterly visits for a nursing home that is not conditionally licensed and that the quarterly visit request is valid through the current licensure period.
- Authorizes AHCA to develop criteria regarding the approval, suspension and termination of the certified nursing assistant training program by rule.
- Conforms to changes passed in the 2006 Legislative session related to the licensure process for licensed facilities (technical).
- Removes references regarding posting of final survey findings, the affect of deficiencies on the survey process, and the alignment of state and federal deficiency definitions.

The bill was reported favorably with four amendments.