

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 247                      Nursing Facilities  
**SPONSOR(S):** Murzin and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 686

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>	<u>8 Y, 0 N</u>	<u>DePalma</u>	<u>Ciccone</u>
2) <u>Healthcare Council</u>	<u></u>	<u>DePalma</u>	<u>Gormley</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

HB 247 amends several provisions contained in Part II of Chapter 400, F.S., relating to the licensure, regulation, and maintenance of state nursing home facilities.

Specifically, the bill reduces the frequency of visits made by quality-of-care monitors to nursing home facilities from quarterly to annually. The bill continues to require quarterly quality-of-care monitoring for conditionally-licensed facilities – and other facilities as determined by the Agency for Health Care Administration (the “agency”) – and allows individual facilities to request quarterly visits if not conditionally-licensed.

The bill also permits nursing homes operating under a standard license to develop a plan to provide training for certified nursing assistants (CNAs), and provides for agency approval of such training programs. The bill redefines what constitutes an “adverse incident” and removes the requirement that facilities notify the agency within one business day of a risk manager’s receipt of a report detailing an adverse incident.

The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a “licensure survey” under certain circumstances where a facility’s original deficiencies are administratively overturned. Finally, the bill provides that a facility’s compliance with federal posting requirements sufficiently satisfies state posting requirements, and eliminates certain requirements relating to licensed nurses performing CNA duties for purposes of computing minimum staffing requirements for CNAs.

The legislation appears to have no fiscal impact to state or local governments.

The bill provides an effective date of July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – This bill reduces the frequency of visits made by quality-of-care monitors to certain nursing home facilities from quarterly to annually.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### *Quality-of-Care Monitoring*

In 1999, the Florida Legislature established the Nursing Home Quality of Care Monitoring Program.<sup>1</sup> Quality-of-care monitors are licensed nurses possessing training and experience in nursing facility regulation, standards of practice in long-term care, and in the evaluation of patient care. Their statutorily-prescribed role is to “assess the overall quality of life in the nursing facility and ... assess specific conditions in the facility directly related to resident care, including the operations of internal quality improvement and risk management programs and adverse incident reports.”<sup>2</sup> Additionally, monitors conduct formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a long-term care ombudsman council or Florida advocacy council.

Quality-of-care monitors are responsible for monitoring all nursing facilities in their respective districts “on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays.”<sup>3</sup> At a minimum, this entails quarterly monitoring visits.

Findings of a monitoring visit – both positive and negative – are provided orally and in writing to the facility administrator, and may include recommendations for procedural or policy changes within the facility. Conditions observed by a quality-of-care monitor evidencing a threat to the health or safety of a facility resident are required to be immediately reported to the agency and, as appropriate or as required by law, to law enforcement, adult protective services, or other responsible agencies.

##### *Gold Seal Designation*

The Governor’s Panel on Excellence in Long-Term Care is the entity charged with implementing and administering the state’s Gold Seal Program, an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period. The panel considers the quality of care provided to facility residents during its evaluation for Gold Seal designation. Additionally, a facility must:<sup>4</sup>

- not have class I or II deficiencies within the 30 months preceding application;

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<sup>1</sup> Ch. 99-394, L.O.F.

<sup>2</sup> S. 400.118(2)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> S. 400.235, F.S.

- evidence financial soundness and stability according to standards adopted by the agency in administrative rule;
- participate in a consumer satisfaction process;
- evidence the involvement of families and community members in the facility on a regular basis;
- maintain a stable workforce, as demonstrated by a relatively low rate of turnover among CNAs and licensed nurses within the 30 months preceding application;
- evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application; and
- provide targeted in-service training provided to meet training needs identified by internal or external quality assurance efforts.

Presently, there are 15 state nursing homes operating under a Gold Seal designation.<sup>5</sup>

### *CNA Training*

Presently, nursing homes designated as Gold Seal facilities are permitted to develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules. A facility wishing to provide CNA training must not have been either cited for substandard quality-of-care, terminated from the Medicare/Medicaid program, or had an enforcement action instituted against the facility to satisfy certain federal requirements. The state is required to withdraw its approval of a training program if any of these and/or other specified conditions occur.<sup>6</sup>

In Florida, CNA training is subject to approval by the Board of Nursing within the Department of Health, following certification by the Department of Education. Currently, there are approximately five state nursing homes that are certified by the Department of Education to offer CNA training.<sup>7</sup>

### *Incident Reporting*

Each nursing home facility must notify the agency in writing within one business day of any adverse incident, as they are presently defined by statute.<sup>8</sup> Subsequently, the facility must initiate an investigation and provide a complete report to the agency within 15 calendar days of the event giving rise to the investigation. If, following a complete investigation, the facility's risk manager determines that the event in question does not constitute an "adverse incident", the facility must include this information in the report submitted to the agency.

### *Licensure Evaluation and Facility Licensure Status*

At least every 15 months, the agency is required to evaluate each nursing home facility to determine the degree of compliance with state licensure requirements. Following this evaluation, a nursing home is assigned either a standard or conditional licensure status. A "standard" licensure indicates that a facility has no class I or II deficiencies, and has successfully corrected all class III deficiencies within the time established by the agency. A "conditional" license is provided to a nursing facility that is not in substantial compliance with licensure standards at the time of the survey, due to the presence of one or

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<sup>5</sup> Agency for Health Care Administration's *Nursing Home Guide*, available at: <http://ahcaxnet.fdhc.state.fl.us/nhguide/>. Information retrieved January 25, 2008 and revised by agency staff.

<sup>6</sup> 42 C.F.R. 483.151

<sup>7</sup> Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

<sup>8</sup> S. 400.147(7), F.S.

more class I or II deficiencies, or to class III deficiencies left uncorrected within the time prescribed by the agency.<sup>9</sup>

The various classes of deficiencies are defined as follows:<sup>10</sup>

- Class I – 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.
- Class II – a deficiency that the agency determines has compromised a 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.
- Class III – a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident, or one that has the potential to compromise a resident’s ability to maintain or reach his or her highest practicable physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class IV – a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a resident.

Additionally, a facility may be placed on a six-month survey cycle for a period of two years if it has been cited for a class I deficiency, two or more class II deficiencies from separate surveys/investigations within a 60-day period, or has received three substantiated complaints within a six-month period, each resulting in at least one class I or II deficiency.

#### *State Nursing Home Posting Requirements*

Under state law,<sup>11</sup> each nursing home is required to document compliance with the staffing standard requirements imposed by s. 400.23(3)(a), F.S., and post daily the names of staff on duty for the benefit of facility residents and the public.

#### Effect of Proposed Changes

HB 247 reduces the frequency of visits made by quality-of-care monitors to nursing home facilities from quarterly to annually. The bill continues to require quarterly quality-of-care monitoring for conditionally-licensed facilities – and other facilities as determined by the agency – and permits individual facilities to request quarterly visits if not conditionally-licensed. The bill further specifies that such a request applies only to a facility’s current licensure period, and must be resubmitted at the time of license renewal in order to be continued.

The bill also permits nursing homes operating under a standard license to develop a plan to provide CNA training, and provides for agency approval of such training programs.

Moreover, the bill specifies when an event reported to law enforcement constitutes an “adverse incident” by providing that only events reported to a law enforcement agency for further investigation

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<sup>9</sup> S. 400.23(7), F.S.

<sup>10</sup> S. 400.23(8), F.S.

<sup>11</sup> S. 400.23(3)(a)3, F.S.

are adverse incidents within the meaning of s. 400.147(5)(a)7, F.S. The bill also removes the requirement that facilities notify the agency within one business day of a risk manager's receipt of a report detailing an adverse incident. The facility would continue to submit a 15-day final report to the agency.<sup>12</sup>

The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a "licensure survey" under certain circumstances where a facility's original deficiencies are administratively overturned.

The bill provides that a facility's compliance with federal posting requirements sufficiently satisfies state posting requirements. The relevant federal posting requirement<sup>13</sup> specifies that nursing facilities must post the following information on a daily basis:

- Facility name;
- The current date;
- The total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift: (1) registered nurses, (2) licensed practical nurses or licensed vocational nurses (as defined under State law), and (3) certified nurse aides; and
- Resident census.

In its agency analysis, AHCA notes that the state and federal posting requirements serve a similar intent, and "either would be appropriate for providing information to the public about nursing home staffing."<sup>14</sup>

Finally, the bill eliminates certain requirements relating to licensed nurses performing CNA duties for purposes of computing minimum staffing requirements for CNAs.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 400.118(2)(a), F.S., requiring quality-of-care monitors to visit state nursing facilities annually instead of quarterly, to visit each conditionally-licensed nursing facility at least quarterly, and to visit other facilities as directed by the agency; providing for quarterly visits of facilities which are not conditionally-licensed upon a request by the facility; and clarifying that such requests apply only to a facility's current licensure period.

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<sup>12</sup> AHCA notes that, "based on adverse incidents submitted during 2006, 77.1% of the one-day adverse incident [reports] were determined not to meet the definition of an adverse incident by the facility upon completing the final 15-day report." Noting that there is a similar federal five-day adverse incident report requirement, the agency continues, "[f]ederal nursing home regulations include the requirement to immediately report to the agency all [instances] of abuse, neglect, and exploitation. Based upon the continued requirement to submit the 15-day report and the federal reporting requirement, the elimination of the one-day report would not create significant gaps in monitoring regulatory compliance." Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

<sup>13</sup> 42 C.F.R. 483.30(e); note that postings must also be made in a "clear and readable format" and in a "prominent place readily accessible to residents and visitors." Additionally, the facility must, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard, and must also maintain such nursing staff data for a minimum of 18 months, or as required by State law, whichever is greater.

<sup>14</sup> Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

**Section 2.** Amends s. 400.141, F.S., permitting nursing facilities maintaining a standard license to develop a plan to provide certified nursing assistant training, and to apply to the agency for program approval; granting rulemaking authority to the agency.

**Section 3.** Amends s. 400.147, F.S., clarifying that the term “adverse incident” applies to events reported to law enforcement only where such event is reported to a law enforcement agency for investigation; and eliminating the facility requirement to notify the agency within one business day of a risk manager’s receipt of a report detailing an adverse incident.

**Section 4.** Amends s. 400.19(3), F.S., permitting the last survey conducted within a six-month survey cycle to be counted as a “licensure survey” in the event that the administrative action giving rise to the six-month survey cycle results in the original deficiencies being overturned.

**Section 5.** Amends s. 400.195(1)(d), F.S., correcting a statutory cross-reference.

**Section 6.** Amends s. 400.23, F.S., providing that a facility’s compliance with certain federal posting requirements satisfies the state posting requirements contained in Chapter 400, F.S.; eliminating certain requirements relating to licensed nurses performing certified nursing assistant duties for purposes of computing minimum staffing requirements for certified nursing assistants.

**Section 7.** Provides an effective date of July 1, 2008.

## 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:

In its agency analysis, AHCA notes that, while there is no direct fiscal impact on the agency, “original staffing for adverse incident reporting was based upon an estimate of 3,600 nursing home and assisted living facility adverse incidents per year; however, this estimate fell significantly short of actual adverse incidents received each year. During Fiscal Year 2006-07, 4,728 adverse incidents were processed by the agency, approximately 30% higher than [the number originally] estimated. 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 continue to manage the remaining activities.”<sup>15</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or 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:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Committee on Healthy Seniors adopted two amendments by the bill sponsor. These amendments:

- Removed section 1 of the original bill, thereby making no changes to existing law regarding quality-of-care monitoring visits.
- Clarified that federal reporting requirements remain in place.

The committee reported the bill favorably with two amendments.

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<sup>15</sup> *Id.*