

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 247 Nursing Facilities  
**SPONSOR(S):** Policy & Budget Council; 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>17 Y, 0 N, As CS</u>	<u>DePalma/Massengale</u>	<u>Gormley</u>
3) <u>Policy &amp; Budget Council</u>	<u>31 Y, 0 N, As CS</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Council Substitute for 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 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 further 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 also eliminates the ability of the Agency for Health Care Administration (AHCA, or "the agency") to approve a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties for purposes of evaluating minimum staffing requirements for licensed nurses.

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** – 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.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### *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>1</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>2</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>3</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>1</sup> 42 C.F.R. 483.151

<sup>2</sup> Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

<sup>3</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>4</sup>

The various classes of deficiencies are defined as follows:<sup>5</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.

### Effect of Proposed Changes

The CS for HB 247 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. The effect of this provision might be an increase in the number of CNAs operating in the state.

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 regarding a resident, other than for transportation 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>6</sup> Additionally, the bill clarifies that federal adverse incident reporting requirements are unchanged by the legislation.

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<sup>4</sup> S. 400.23(7), F.S.

<sup>5</sup> S. 400.23(8), F.S.

<sup>6</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.

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 also eliminates the ability of the agency to approve a facility’s request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties for purposes of calculating minimum staffing requirements for licensed nurses.

C. SECTION DIRECTORY:

**Section 1.** 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 2.** 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 3.** 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 4.** Amends s. 400.195(1)(d), F.S., correcting a statutory cross-reference.

**Section 5.** Amends s. 400.23, F.S., eliminating AHCA’s ability to approve a facility’s request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties for purposes of evaluating minimum staffing requirements for licensed nurses.

**Section 6.** 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>7</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.

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<sup>7</sup> *Id.*

- Clarified that federal adverse incident reporting requirements remain unchanged by the legislation.

The committee reported the bill favorably with two amendments.

At its March 25, 2008 meeting, the Healthcare Council adopted two amendments to the bill adopted by the Healthy Seniors Committee on February 5, 2008. These amendments:

- Deleted language indicating that compliance with certain federal posting requirements relating to staffing standards satisfies the state posting requirements contained in s. 400.23(3)(a)3, F.S., and
- Restored current statutory language providing that licensed nurses counted toward the minimum staffing requirements for CNAs must exclusively perform the duties of a CNA for the duration of their shift.

The bill was reported favorably as a Council Substitute.

On April 1, 2008 the Policy and Budget Council adopted an amendment clarifying that an adverse incident is an event reported to a law enforcement agency regarding a resident, other than transportation as opposed to an event reported for investigation.

This analysis reflects the Council Substitute as amended.