

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 686

INTRODUCER: Judiciary Committee, Health Regulation Committee, and Senator Bennett

SUBJECT: Nursing Facilities

DATE: March 6, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Fav/CS
2.	Sumner	Maclure	JU	Fav/CS
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends several sections in part II of chapter 400, Florida Statutes, related to regulation of nursing homes. The bill:

- Expands the eligibility requirements for nursing homes that offer certified nursing assistant (CNA) training from only Gold Seal nursing homes to standard license nursing homes.
- Eliminates the requirement that a nursing facility notify the Agency for Health Care Administration (Agency) within one business day after that facility's risk manager has received a report of an incident that will be investigated to determine whether it is an adverse incident. If the risk manager determines that the incident is not an adverse incident, the nursing home is not required to report to the Agency.
- Provides that, if additional surveys of a licensed nursing facility have been conducted due to cited deficiencies and those deficiencies are overturned as the result of administrative action, the most recent survey must be considered a licensure survey for purposes of scheduling future surveys.
- Authorizes a nursing home to allocate a licensed nurse's time between CNA duties and licensed nursing duties for purposes of compliance with minimum staffing requirements without seeking agency approval for the allocation.

This bill substantially amends the following sections of the Florida Statutes: 400.141, 400.147, 400.19, 400.195, and 400.23.

II. Present Situation:

Nursing homes are licensed and regulated by the Agency for Health Care Administration (Agency) under part II of ch. 400, F.S., part II of ch. 408, F.S., and Chapter 59A-4, Florida Administrative Code (F.A.C.). Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*.¹ This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs. Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida.

Evaluation and Licensure Status

At least every 15 months, the Agency is required by s. 400.23(7), F.S., to evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under part II of ch. 400, as a basis for assigning a licensure status to that facility. The Agency bases its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. The Agency also considers the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the planning and service area in which the facility is located, guardians of residents, and staff of the nursing home facility.

The licensure status assigned may be standard or conditional. A standard licensure status means that a facility 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 facility, due to the presence of one or more Class I or Class II deficiencies, or Class III deficiencies not

¹ The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*, may be found at http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf (last visited on February 8, 2008).

corrected within the time established by the Agency, is not in substantial compliance at the time of the survey with criteria established in law or rule. If a conditional licensee has no Class I, Class II, or Class III deficiencies at the time of the followup survey, a standard licensure status may be assigned.

Deficiencies are classified according to the nature and scope of the deficiency as follows²:

- Class I is a deficiency that the Agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- Class II is a deficiency that the Agency determines has compromised a 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.
- Class III is a deficiency that the Agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to a resident or has the potential to compromise a 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.
- Class IV is a deficiency that the Agency determines has the potential for causing no more than a minor negative impact on a resident.

Nursing Home Gold Seal Program and Training

The Gold Seal Program is established in s. 400.235, F.S., to award and recognize nursing facilities that demonstrate excellence in long-term care over a sustained period. The program was developed and is implemented by the Governor's Panel on Excellence in Long-Term Care. In order for a nursing home facility to be considered for a gold seal award, the facility must have been licensed and operating for 30 months without a conditional license and no Class I or Class II deficiencies. The panel evaluates nominees based on quality of care issues, evidence of financial soundness and stability, consumer satisfaction, evidence of involvement of families and members of the community in the facility on a regular basis, workforce stability, the facility record regarding the number and types of substantiated complaints, and targeted in-service training to meet needs identified by internal or external quality assurance efforts. The panel makes recommendations to the Governor, who then makes the awards, if appropriate.

Currently a nursing home designated as a Gold Seal facility may seek approval to provide certified nursing assistant (CNA) training as prescribed by federal regulations and state rules. Under federal requirements, a facility intent on providing CNA training must not have been cited for substandard quality of care, terminated from the Medicare or Medicaid program, or had an enforcement action within the previous two years.³ The CNA training is subject to approval by the Department of Health, Board of Nursing in accordance with Rule 64B9-15.005, F.A.C., and

² Section 400.23(8), F.S.

³ 42 Code of Federal Regulations (C.F.R.) § 483.151.

certification by the Department of Education. There are approximately five Florida nursing homes that are currently certified to offer CNA training.⁴

Staffing Standards

Federal regulations require nursing homes to have adequate staff to meet the needs of residents and to post the following information on a daily basis:⁵

- 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:
 - Registered nurses,
 - Licensed practical nurses, and
 - Certified nurse aides; and
- Resident census.

This information must be posted on a daily basis at the beginning of each shift. It must be in a clear and readable format and in a prominent place readily accessible to residents and visitors. State law requires the names of staff on duty to be posted daily for the benefit of facility residents and the public.

Florida's law, which has one of the highest mandatory staffing ratios in the country, requires specified staff-to-resident ratios for CNAs and licensed nurses providing direct care. The mandatory staffing ratios are:⁶

- A weekly average of 2.9 hours of CNA care per resident per day, with a minimum of 2.7 hours per resident per day, and
- A minimum of 1.0 hour of direct care per resident per day of licensed nursing staff, which includes licensed practical nurses and registered nurses.

Licensed nurses may be used to meet the minimum staffing requirements for CNAs. However, under current law, a facility may not use a licensed nurse to perform both licensed nursing and CNA duties, or allocate the staff time spent on duties of each discipline, without agency approval.

Adverse Incident Reporting

Chapter 2001-45, L.O.F., established the internal risk management and quality assurance program for nursing homes. The purpose of this program is to assess patient care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, shared risk agreements, and resident grievances; and to develop plans of action to correct and

⁴ Agency for Health Care Administration 2008 Bill Analysis & Economic Impact Statement for HB 247 (Identical).

⁵ 42 C.F.R. § 483.30(e).

⁶ Section 400.23(3), F.S.

respond quickly to identified quality deficiencies. Adverse incident reporting is one component of this program.

An adverse incident is defined in s. 400.147(5), F.S., as:

- An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:
 - Death,
 - Brain or spinal damage,
 - Permanent disfigurement,
 - Fracture or dislocation of bones or joints,
 - A limitation of neurological, physical, or sensory function,
 - Any condition that required medical attention to which the resident has not given his or her informed consent, including failure to honor advanced directives, or
 - Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident's condition prior to the adverse incident;
- Abuse, neglect, or exploitation as defined in s. 415.102, F.S.;
- Abuse, neglect and harm as defined in s. 39.01, F.S.;
- Resident elopement; or
- An event that is reported to law enforcement.

A facility must initiate an investigation and notify the Agency of minimal information about an incident within one business day after the risk manager has received an incident report from a health care provider, agent, or employee of the nursing home. The minimal information reported includes, but is not limited to, whether the events causing or resulting in the adverse incident represent a potential risk to any other resident. The facility is to complete an investigation into the incident and submit an adverse incident report to the Agency for each adverse incident within 15 calendar days after the occurrence. If, after investigation, the risk manager determines that the incident was not an adverse incident as defined, this determination must be reported to the Agency.

Based on adverse incident reports submitted during 2006, 77.1 percent of the one-day notifications were subsequently reported by the facility as not meeting the definition of adverse incident upon completing the 15-day investigation. The Agency investigates a portion of the one-day adverse incident notifications and two such investigations found serious deficiencies; however, both incidents were reported to the Agency as part of a 5-day Federal reporting requirement for mistreatment, neglect, abuse, including injuries of unknown source, and misappropriation of resident property required by 42 C.F.R. § 13(c).⁷ A similar 24-hour adverse incident reporting requirement for hospitals and ambulatory surgery centers was eliminated during a special session in 2003.⁸

⁷ Agency, *supra* note 4.

⁸ Chapter 2003-416, L.O.F., s. 4.

III. Effect of Proposed Changes:

Nursing Home Training

The bill amends s. 400.141, F.S., to authorize a nursing home with a standard license to develop a plan and apply to the Agency for Health Care Administration (Agency) for approval to provide certified nursing assistant (CNA) training. Currently, only nursing homes that have awarded a Gold Seal can get approval for CNA training. The bill authorizes the Agency to adopt rules relating to the approval, suspension, or termination of a CNA training program.

Adverse Incident Reporting

The bill modifies the definition of “adverse incidents” for nursing homes in s. 400.147, F.S., clarifying that only those events reported to law enforcement for investigation are adverse incidents rather than every event reported to law enforcement. It eliminates the nursing home requirement to notify the Agency of an incident within one day of a risk manager’s receipt of a report detailing an adverse incident. If after investigation the risk manager determines that the incident is an adverse incident, the bill provides that the facility shall include the information in its report to the Agency. The bill specifies that nothing in this subsection affects federal reporting requirements.

The Agency has indicated that, based upon the continued requirement to submit the 15-day adverse incident report and the federal reporting requirement, the elimination of the one-day notification would not create significant gaps in monitoring regulatory compliance. The Agency also indicated that quality-of-care nurse monitors focus on risk management and adverse incident reports during their visits to nursing homes.⁹

Right of Entry and Inspection

The bill amends s. 400.19, F.S., to provide that, if additional surveys of a licensed nursing facility have been conducted due to cited deficiencies and those deficiencies are subsequently overturned as the result of administrative action, the most recent survey must be considered a licensure survey for purposes of scheduling future surveys. The nursing home will then be in the routine survey cycle and might not be inspected for up to 15 months.

The bill makes conforming changes to s. 400.195, F.S., to conform a statutory cross-reference.

Licensure Status

The bill amends s. 400.23, F.S., to authorize a nursing home to allocate a licensed nurse’s time between CNA duties and licensed nursing duties for purposes of compliance with minimum staffing requirements without seeking agency approval for the allocation.

⁹ Agency, *supra* note 4.

Effective Date

This act shall take effect on July 1, 2008.

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. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill reduces the regulation of some nursing homes by eliminating some reporting requirements related to incident reporting, which could free up staff time for other activities.

C. Government Sector Impact:

The bill reduces the regulation of some nursing homes by eliminating some reporting requirements related to incident reporting. The Agency for Health Care Administration (Agency) noted in its bill analysis that staffing for adverse incident reporting was based upon an estimate of 3,600 nursing home and assisted living facility adverse incidents per year; however, actual reporting has exceeded that estimate. During fiscal 2006-2007, the Agency processed 4,728 adverse incidents. The Agency reallocated resources to handle this workload, but requires all existing resources to continue to manage remaining activities. The bill authorizes the Agency to develop rules related to the approval for nursing homes to conduct certified nursing assistant (CNA) training. The Agency has indicated that there will be no fiscal impact on it.¹⁰

¹⁰ Agency, *supra* note 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Governor's Veto**

After the 2007 Legislative Session, the Governor vetoed Senate Bill 682, a bill similar to the bill that is the subject of this analysis. The Governor stated that of the several changes the bill made to the nursing home regulatory rules, the most notable was the provision reducing the frequency of quality-of-care reviews of nursing homes conducted by the Agency from quarterly to annually. The Governor stated that "facilities responsible for providing care to our most vulnerable citizens must remain under strict scrutiny, and existing law provides for this accountability and oversight."¹¹ This provision is not part of this bill.

Obsolete Provisions

Several sections of the bill contain provisions that are now obsolete and could be deleted from law. Section 400.195, F.S., could be deleted entirely. The staffing requirements in s. 400.23(3)(a)1., F.S., also contain obsolete requirements.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 20, 2008:

The committee substitute does not include language to reduce the required frequency of visits to nursing homes by quality-of-care monitors and specifies that the state adverse incident reporting provisions do not affect reporting requirements imposed by federal law.

CS/CS by Judiciary on March 5, 2008:

The committee substitute does not include language that provides that a nursing home is in compliance with the state requirement to post daily the staff on duty if the facility complies with the federal posting requirements. It restores current statutory language specifying that when licensed nurses are used to count toward the minimum staffing requirements for certified nursing assistants, the nurses must exclusively perform the duties of a certified nursing assistant *for the entire shift* and not also be counted toward the minimum staffing requirements for licensed nurses.

- B. **Amendments:**

None.

¹¹ Veto Letter from Governor Charlie Crist, on CS/SB 682 (2007 Reg. Session), June 28, 2007.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
