

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 231 Patient Lifting and Handling Practices

**SPONSOR(S):** Grimsley and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 626

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Regulation Policy Committee</u>	<u></u>	<u>Calamas</u>	<u>Calamas</u>
2)	<u>Civil Justice &amp; Courts Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Health &amp; Family Services Policy Council</u>	<u></u>	<u></u>	<u></u>
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5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

House Bill 231 requires hospitals to adopt and implement evidence-based policies for hospital employees that minimize the risk of injury to patients and employees associated with lifting and handling patients.

The bill requires that the policy be developed by either a newly created or existing committee of management and non-management hospital employees, including registered nurses engaged in direct patient care.

The bill requires committees to use data to evaluate the risk of injury and to determine the appropriateness of alternative lifting and handling strategies based on the population of patients served at the hospital and identified hospital-specific risk factors. The bill lists specific issues a committee must consider, and requires an ongoing evaluation process to determine the effectiveness of the policy.

The bill has no fiscal impact to state or local government.

The effective date of the bill is October 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Patient handling and lifting tasks can be both physically demanding and unpredictable in nature, due to the variation in size, physical disability, cognitive function, level of cooperation, and fluctuation of condition in patients.<sup>1</sup> Patient lifts are often accomplished in awkward positions such as bending or reaching over beds or chairs while a nurse's back is flexed.<sup>2</sup> One study has estimated that the cumulative weight lifted by a nurse in a typical 8-hour shift is equivalent to 1.8 tons.<sup>3</sup>

Nursing, psychiatric, and home health aides are especially susceptible to lifting injuries.<sup>4</sup> In 2006, 9,200 registered nurses suffered a median 6 days away from work due to musculoskeletal disorders, while 27,590 nursing aides, orderlies and attendants suffered a median 5 days away from work.<sup>5</sup>

##### Present Situation

The Agency for Health Care Administration (AHCA) is responsible for the licensure and regulation of health care facilities as authorized in Chapter 395, F.S., Hospitals Licensing and Regulation. Florida law imposes requirements for nursing services and functional safety on hospitals licensed under Chapter 395. AHCA's administrative rules governing hospitals require that:

- Each hospital 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.<sup>6</sup>

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<sup>1</sup> *Evidence-based practices for Safe Patient Handling and Movement*, Online Journal of Issues in Nursing, Vol. 9, No. 3 (Sept. 2004). Available online at

<http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume92004/No3Sept04/EvidenceBasedPractices.aspx>; viewed February 13, 2009.

<sup>2</sup> *Id.* (citing Blue, C.L., *Preventing back injury among nurses*, *Orthopaedic Nursing*, 15, 9-22 (1996); Videman, T., *et al.*, *Low back pain in nurses and some loading factors of work*, *Spine*, 9(4), 400-404 (1984)).

<sup>3</sup> See Tuohy-Main, K., *Why manual handling should be eliminated for resident and career safety*, *Geriatrics*, 15, 10-14(1997).

<sup>4</sup> Hoskins, Anne B., *Occupational Injuries, Illnesses, and Fatalities among Nursing, Psychiatric, and Home Health Aides, 1995-2004*, June 30, 2006. Available online at <http://www.bls.gov/opub/cwc/content/sh20060628ar01p1.stm>; viewed February 13, 2009.

<sup>5</sup> Bureau of Labor Statistics, *Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2006*, (released Nov. 8, 2007). Available online at <http://www.bls.gov/news.release/pdf/osh2.pdf>; viewed February 13, 2009.

<sup>6</sup> Rule 59A-3.2085(5)(d), F.A.C.

- Each hospital have a hospital safety committee to adopt, implement and monitor a comprehensive, hospital-wide safety program. The safety program is required to adopt written policies and procedures to enhance the safety of the hospital, its personnel and patients.<sup>7</sup>

There is no requirement for a specific committee to oversee safe patient handling and lifting in hospitals. According to AHCA, a large majority of hospitals may have already adopted safe lifting policies and programs through their safety committees. Hospitals are responsible for paying worker's compensation claims and paying for temporary help when staff is unavailable because of injury.<sup>8</sup> AHCA further advises that many hospitals in Florida already have patient lifting equipment.

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. No construction work, including demolition, of a hospital may be started until written approval has been given by AHCA's Office of Plans and Construction.<sup>9</sup> This includes all construction of new facilities and any and all additions, modifications or renovations to existing facilities.

Several states have recently passed legislation concerning safe patient lifting, including Texas in 2005, and Washington in 2006.<sup>10</sup> Washington provides a tax credit of up to \$1,000 for each acute care available inpatient bed towards the cost of purchasing mechanical lifting devices and other equipment that is primarily used to minimize patient handling by health care providers.<sup>11</sup>

### **Effect of Proposed Legislation**

HB 231 creates s. 381.029, F.S., and requires that hospitals establish and implement an "evidence-based policy" regarding the safe lifting and associated handling of patients by hospital employees so as to minimize the risk of injuries to patients and employees. The bill does not define the term "evidence-based policy." The bill applies to facilities that are licensed under chapter 395, which includes hospitals, ambulatory surgical centers, and mobile surgical facilities.

The bill requires that hospitals' safe lifting policies be developed by a committee composed of an "approximate mix" of management and non-management employees, at least half of whom are clinical employees, including registered nurses, engaged in direct patient care. The committee may be a newly created committee or a hospital committee already in existence. The bill does not define what constitutes an "approximate mix."

In developing the policy, the committee is required to use data to evaluate the risk of injury to patients and employees. The committee must also determine whether alternative strategies for lifting and handling patients are appropriate based upon the population of patients at that hospital and any other identified hospital-specific risks. In making that determination, the committee must consider, at a minimum:

- Using mechanical lifting devices or other engineering controls that minimize the need for employees to manually lift and handle patients;
- Using teams of personnel to lift and handle patients;
- Providing training in safe lifting and handling practices for direct-care employees;
- Incorporating physical space and construction design for mechanical lifting devices in architectural plans for construction or renovation of the hospital;
- Developing an ongoing evaluation process to determine the effectiveness of the policy.

<sup>7</sup> Rule 59A-3.277, F.A.C.

<sup>8</sup> Pursuant to s. 440.09(5), F.S., a 25 percent reduction in workers' compensation benefits is allowed if an employee knowingly refuses to use a safety appliance and the employee knew he/she was required to use the safety appliance; an employee knowingly refuses to follow a safety rule if the safety rule is in statute or in an administrative rule of the Department of Financial Services and the employee knew about the safety rule; or an employee knowingly refuses to use a safety appliance provided by the employer.

<sup>9</sup> Rule 59A-3.080, F.A.C.

<sup>10</sup> Tex. Code Ann. §256.002; Wash. Rev. Code Ann. §70.41.390.

<sup>11</sup> Washington State Nurses Association *Questions and Answers on Safe Patient Handling Legislation*. Available online at <http://www.wsna.org/legal/patienthandling/faq.asp>; viewed February 13, 2009.

The bill creates a new section of law in Chapter 381, F.S. However, chapter 395 delegates to AHCA the authority to license and regulate hospitals pursuant to Part II of chapter 408, F.S. and part I of chapter 395. The bill does not provide for regulation or oversight by AHCA should a hospital fail to comply, and establishes no penalty for non-compliance.

The effective date of the bill is October 1, 2009.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 381.029, F.S.; provides definitions; requires hospitals to adopt a policy related to patient lifting and handling.

**Section 2.** Provides effective date of October 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments below.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

For hospitals currently without safe patient handling policies, the bill may result in a decrease in the number of injuries suffered by nurses, when engaged in lifting or handling patients, and by patients, who will gain additional protections against avoidable injuries. Nurses will miss fewer days of work, resulting in an increase in productivity and continuity of patient care.

Hospitals may need to acquire patient handling and moving equipment if the requirement for such is included in the policy developed by their respective committees and the hospitals do not already have the necessary equipment on site. Acquisition of new equipment, as necessary, by hospitals may also result in the need for architectural plans for and the renovation of the hospital, which requires approval from AHCA's Office of Plans and Construction. Hospitals may also incur additional expenses associated with training employees regarding their respective patient lifting policies.

**D. FISCAL COMMENTS:**

The bill is unlikely to result in increased complaints to AHCA's Division of Health Quality Assurance. Patients, families, and staff can currently file a hospital complaint related to safe lifting practices, or any other quality issue. The bill does not require AHCA to enforce compliance. Hospitals may decide to remodel in order to incorporate lifting equipment. If so, the plans and the remodeling may require reviews and surveys by the Agency.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

The bill creates in chapter 381 new requirements for hospitals licensed under chapter 395. The bill does not provide for regulation or oversight by AHCA should a hospital fail to comply, and establishes no penalty for non-compliance.

The bill at lines 16-17 defines "hospital" as a "health care facility licensed under chapter 395." Facilities that are licensed under chapter 395 include hospitals, ambulatory surgical centers, and mobile surgical facilities.

The bill at lines 18-21 directs hospitals to establish an "evidence-based" policy regarding patient lifting and handling; however, the term "evidence-based" is not defined. At lines 21-26, the bill requires committees established by hospitals to be an "appropriate mix" of management and non-management employees, but does not clarify what would be considered an "appropriate mix."

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES