

**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 Health Regulation Committee

BILL: SB 482

INTRODUCER: Senators Latvala and Bennett

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: January 17, 2012 REVISED: 01/19/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	<b>Fav/1 amendment</b>
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The focus of this bill is to eliminate duplicative and obsolete statutory language concerning nursing homes and to streamline certain reporting and administrative requirements. The bill also establishes minimum staffing requirements for nursing homes that serve persons under 21 years of age, establishes standards for providing short-term respite care, authorizes the Agency for Health Care Administration (AHCA) to certify correction of certain deficiencies based on written documentation from the facility, and authorizes home health agencies and nurse registries to provide small token items of minimum value (up to \$15 individually) to referring entities without penalty.

This bill substantially amends the following sections of the Florida Statutes: 83.42, 400.021 , 400.0234, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.147, 400.19, 400.191, 400.23, 400.462, 429.294, 430.80, 430.81, and 651.118.

The bill repeals sections 400.145 and 400.148, Florida Statutes.

## **II. Present Situation:**

### **Nursing Homes**

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. Such residents who live in an environment where they are totally dependent on others are especially vulnerable to abuse, neglect, and exploitation.

Nursing homes are subject to regulation under part II of ch. 400, F.S., the general licensing provisions of part II, ch. 408, F.S., and the minimum standards for nursing homes found in Rule chapter 59A-4, F.A.C. In addition, nursing homes that receive funding from Medicare or Medicaid are subject to federal standards and conditions of participation as certified Medicare or Medicaid providers.

Nursing homes are required to report adverse incidents to the AHCA within 1 day (initial report) and 15 days (final report) after the incident. In addition, federal requirements for participation in Medicaid or Medicare require facilities to report abuse, neglect, and exploitation immediately (initial report) and within 5 days (full report). An adverse incident is 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 the 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 for which the resident has not given his or her informed consent, including failure to honor advanced directives;
- 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; or
- An event that is reported to law enforcement or its personnel for investigation.

In addition, an adverse incident includes resident elopement, if the elopement places the resident at risk of harm or injury.<sup>1</sup>

### **Home Health Agencies and Nurse Registries**

Home health agencies and nurse registries are regulated under part III of ch. 400, F.S., the general licensing provisions of part II, ch. 408, F.S., and applicable rules found in Rule chapters 59A-8 and 59A-18, F.A.C.

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<sup>1</sup> Section 400.147(5), F.S.

Home health agencies are organizations that are licensed by the AHCA to provide home health services and staffing services. Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services (assistance with daily living activities, such as bathing, dressing, eating, personal hygiene, and ambulation);
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.<sup>2</sup>

A home health agency may also provide homemaker and companion services without additional licensing or registration. These services do not involve hands-on personal care to a client and typically include housekeeping, meal planning and preparation, shopping assistance, routine household activities, and accompanying the client on outings.

A nurse registry procures, offers, promises, or attempts to secure health care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers. Such personnel are compensated by fees as independent contractors. The contracts for services might include providing services to patients as well as providing private duty or staffing services to health care facilities or other business entities.<sup>3</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 83.42, F.S., relating to the Florida Residential Landlord and Tenant Act, to clarify that state law on evictions under this act does not apply to nursing home transfers and discharges. Instead, transfers and discharges related to residents of a nursing home are governed by s. 400.0255, F.S.

**Section 2** amends s. 400.021, F.S., to remove the requirement that the resident care plan be signed by the director of nursing or alternate and the resident or the resident's designee or legal representative. In addition, the prohibition on a facility using an agency or temporary registered nurse to complete the resident care plan is removed.

**Section 3** amends s. 400.0234, F.S., to eliminate a cross-reference to s. 400.145, F.S., to conform to the repeal of that section in this bill.

**Section 4** amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

**Section 5** amends s. 400.0255, F.S., to correct an obsolete cross-reference to a rule concerning fair hearings that might be requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

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<sup>2</sup> Section 400.462(14), F.S.

<sup>3</sup> Section 400.462(21), F.S.

**Section 6** amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced has been repealed. The Division of Statutory Revision requested clarification of this provision.

**Section 7** amends s. 400.071, F.S., to repeal the requirement for certain information to be submitted when a nursing home applies for a license. The information eliminated in this section includes:

- Certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. The bill amends s. 400.111, F.S., to require this disclosure if requested by the AHCA,
- The number of beds and the number of Medicare- and Medicaid-certified beds. The general licensing provisions in s. 408.806(1)(d), F.S., require the disclosure of the total number of beds requested, and
- Copies of any civil verdicts or judgments involving the applicant rendered within the preceding 10 years which pertain to medical negligence, violation of residents' rights, or wrongful death. In addition, the provision requiring, as a condition of licensure, that the licensee agree to provide to the AHCA copies of any new verdicts or judgments is repealed. Under current law, the AHCA is required to maintain this information in the facility's licensure file and in a database which is available as a public record.

**Section 8** amends s. 400.0712, F.S., to make technical changes to move into another subsection the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

**Section 9** amends s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA, instead of requiring submission of this information as a part of all nursing home licensure applications.

**Section 10** amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility. The information that is reported at relicensure is requested and presented at an aggregate level. Instead, the bill requires the nursing home to maintain records of the grievances, and these records are to be made available to the AHCA during inspections.

**Section 11** amends s. 400.141, F.S., to authorize a nursing home with standard licensure status to provide respite care pursuant to standards set out in law without obtaining additional licensure. The requirements to provide respite care under these standards include, but are not limited to, a detailed contract, an abbreviated plan of care, the resident providing certain medical information to the facility, and the facility releasing the respite resident to his or her designated caregiver. A person receiving respite care may live in the facility for a total of 60 days within a 12-month period. If a single stay exceeds 14 consecutive days, the facility must comply with all assessment and care planning requirements applicable to nursing home residents. Certain residents' rights apply to the person receiving respite care.

The bill requires a nursing home to maintain clinical records on each resident in accordance with accepted professional standards and practices. Records must be complete, accurately documented, readily accessible, and systematically organized.

The bill eliminates the requirement for a licensed facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

The bill eliminates the nursing home reporting requirements pertaining to average staffing ratios, staff turnover, and staff stability. Detailed records must be maintained by the facility, and these records are reviewed during inspections.

The penalty for a facility that does not comply with the requirement to impose a moratorium on accepting new admissions when the minimum-staffing requirements for two consecutive days are not met is reduced to a \$1,000 fine. Currently, a nursing home's failure to impose the admissions moratorium is a class II deficiency, which is subject to a civil penalty of \$2,500 for an isolated deficiency, \$5,000 for a patterned deficiency, and \$7,500 for a widespread deficiency. In addition, the law authorizes the fine amount for a class II deficiency to be doubled in certain situations.

The bill repeals the requirement for a licensed nursing home to report to the AHCA information concerning a filing for bankruptcy, divestiture of assets, or corporate reorganization.

The bill removes obsolete language concerning the initial implementation of a requirement to vaccinate residents for pneumococcal polysaccharide (PPV). Current law requires new residents to be assessed for pneumococcal polysaccharide within five working days after admission and to be vaccinated, if indicated.

A provision concerning the AHCA's ability to impose a deficiency or take other action if a facility does not have enough staff to meet residents' needs is relocated within this section.

**Section 12** amends s. 400.142, F.S., to remove references to rules adopted by the AHCA concerning do not resuscitate orders (DNR). Section 401.45, F.S., addresses procedures and authorization for withholding or withdrawing resuscitation from a patient when presented with a DNR.

**Section 13** repeals s. 400.145, F.S., relating to a nursing home providing copies of a resident's medical records to certain individuals. The federal Health Insurance Portability and Accountability Act (HIPAA) governs release of medical records. The provision concerning the amount that a facility may charge for copying residents' records is moved in this bill to s. 400.191, F.S.

**Section 14** amends s. 400.147, F.S., to remove the one-day notification requirement to the AHCA when a risk manager in a nursing home receives an incident report and the corresponding requirement to report findings about the incident to the AHCA within 15 days after the occurrence of the incident. Under the bill, the risk manager for the nursing home is only required to report to the AHCA if, after the investigation, it is determined that the incident was an adverse incident. That report is due to the AHCA within 15 days after the investigation is completed.

The bill also deletes duplicative language in subsection (8) concerning the AHCA's review of the adverse incident report to determine whether the incident potentially involved conduct by a health care professional. This requirement remains in subsection (7).

This section repeals the requirement for a licensed nursing home to report to the AHCA, monthly, any notice of claims against the facility for violation of a resident's rights or for negligence. This information has been required to be submitted since 2001. Currently, this information is published in the aggregate on the AHCA's website.<sup>4</sup>

**Section 15** repeals s. 400.148, F.S., relating to the Medicaid "Up-or-Out" Quality of Care Contract Management Program. This program was not implemented due to a lack of funding.<sup>5</sup>

**Section 16** amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

**Section 17** amends s. 400.191, F.S., to reinsert into this part the authority for a nursing home to charge a reasonable fee for copying resident records. This language was included in s. 400.145, F.S., which is repealed by this bill. The fee remains unchanged.

**Section 18** amends s. 400.23, F.S., to establish in statute minimum staffing requirements for a nursing home that serves persons under 21 years of age. For persons who require skilled care, the minimum combined average is 3.9 hours of direct care per resident per day, provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants. For persons who are medically fragile, the minimum combined average is 5 hours.

**Section 19** amends s. 400.462, F.S., to revise the definition of remuneration as it applies to home health agencies and nurse registries to authorize them to provide items with an individual value of up to \$15 to referring entities without penalty. Examples of such items which are included in the bill are plaques, certificates, trophies, or novelty items that are intended solely for presentation or are customarily given away solely for promotional, recognition, or advertising purposes.

**Section 20** amends s. 429.294, F.S., to remove a cross-reference to a section of law that is repealed in this bill.

**Sections 21, 22, and 23** amend ss. 430.80, 430.81, and 651.118, F.S., respectively, to conform statutory cross-references to other changes made in this bill.

**Section 24** provides an effective date for the bill of July 1, 2012.

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<sup>4</sup> See: [http://www.fdhc.state.fl.us/MCHQ/Long\\_Term\\_Care/FDAU/docs/LiabilityClaims/ALF\\_Chart.pdf](http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf) (Last visited on January 17, 2012).

<sup>5</sup> AHCA 2012 Bill Analysis and Economic Impact Statement for SB 482, which is on file with the Health Regulation Committee.

**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:**

Nursing homes may be favorably impacted due to the elimination of certain reporting and administrative requirements and the ability to provide short-term respite services under abbreviated plans of care.

**C. Government Sector Impact:**

The AHCA should experience a slight favorable fiscal impact due to the reductions in this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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B. Amendments:

**Barcode 540674 by Health Regulation on January 19, 2012:**

This amendment deletes the repeal of s. 400.145, F.S., related to a nursing home providing copies of records of care and treatment concerning a nursing home resident to certain individuals. It also deletes other amendments in the bill that conformed those sections of law to the repeal of s. 400.145, F.S.

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

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