

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 891 Health Care Provider Accountability

**SPONSOR(S):** Select Committee on Health Innovation, Giallombardo and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Innovation	11 Y, 0 N, As CS	Guzzo	Calamas
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Nursing homes provide 24-hour a day nursing care, case management, health monitoring, personal care, social activities, respite care, and physical, occupational, and speech therapy to those who are ill or physically infirm. Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act in part II of chapter 408, F.S., and under the individual authorizing statutes for nursing homes in part II of chapter 400, F.S.,

PCS for HB 891 requires nursing homes to report to AHCA any common ownership the facility or its parent company shares with a staffing or management company, a vocational or physical rehabilitation company, or any other entity that conducts business within the facility. Common ownership means, in relevant part, an ownership interest of 5 percent or more held by the entity in the facility or by the facility in the entity. The PCS requires facilities to report this information electronically as an element of the data required to be reported in the Florida Nursing Home Uniform Reporting System. AHCA must annually publish on its website all common ownership reported in the preceding year.

PCS for HB 891 also requires AHCA to submit an annual report to the Governor and the Legislature on the success of the Personal Care Attendant (PCA) training program, which was created by the Legislature in 2021, to create an additional path for an individual to become a certified nursing assistant (CNA). The report must include:

- The number of PCAs who take and subsequently pass the CNA exam after the four months of initial employment with a facility;
- Any adverse actions related to patient care involving PCAs; and
- The number of new CNAs employed and remaining each year after being employed as PCAs.

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

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Nursing Homes

Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S., which contains uniform licensing standards for all 29 types of facilities and providers licensed by AHCA. In addition, nursing homes must comply with the requirements contained in the individual authorizing statutes of part II of chapter 400, F.S., which includes unique provisions beyond the uniform criteria.

##### *Nursing Home Uniform Reporting System*

Nursing homes are required to annually submit actual audited, financial experience including expenditures, revenues, and statistical measures to AHCA's Florida Nursing Home Uniform Reporting System (NHURS).<sup>1</sup> The data may be based on internal financial reports that are certified to be complete and accurate by the chief financial officer of the nursing home, and must include the fiscal year-end balance sheet, income statement, statement of cash flow, and statement of retained earnings.<sup>2</sup>

##### *Disclosure of Ownership Interest (State)*

The Act requires applicants for licensure, including applicants for nursing home licensure, to submit to AHCA the name, address, and social security number, or individual taxpayer identification number if a social security number cannot be legally obtained, of:<sup>3</sup>

- The applicant;
- The administrator or a similarly titled person who is responsible for the day-to-day operation of the facility;
- The financial officer or similarly titled person who is responsible for the financial operation of the licensee or provider;
- Each person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; and
- Each person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.

Current Florida law does not require nursing homes to report to AHCA any common ownership the facility or its parent company shares with staffing or management companies, vocational or physical rehabilitation companies, or any other companies that conduct business within the facility.

##### *Disclosure of Ownership Interest (Federal)*

The federal Centers for Medicare and Medicaid Services (CMS) recently published a final rule implementing additional disclosure requirements for nursing homes certified to provide Medicare or Medicaid.<sup>4</sup> According to CMS, "over the years CMS has become increasingly concerned about the quality of care at nursing homes, especially those owned by private equity companies and other types of investment firms. Academic research suggests that ownership of nursing homes by private equity

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<sup>1</sup> S. 408.061(5), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Ss. 408.806(1), F.S., and 408.803(7), F.S.

<sup>4</sup> 42 C.F.R., § 424.502 (Nov. 17, 2023).

companies and other types of investment firms can be associated with worse resident outcomes, and merits closer scrutiny.”<sup>5</sup>

The rule requires all Medicare and Medicaid certified nursing homes to report to CMS and the relevant state Medicaid agencies additional information about their ownership and management structures. Specifically, nursing homes must submit certain information with their application for initial enrollment and upon revalidation, including information on any person or entity who does any of the following:<sup>6</sup>

- Exercises operational, financial, or managerial control over the facility or a part thereof;
- Provides policies or procedures for any of the operations of the facility;
- Provides financial or cash management services to the facility;
- Leases or subleases real property to the facility;
- Owns a whole or part interest equal to or exceeding five percent of the total value of such real property;
- Provides management or administrative services;
- Provides management or clinical consulting services; or
- Provides accounting or financial services to the facility.

For each disclosable party above, the nursing facilities must report the organizational structure of such entity. This requirement varies by business structure, as follows:<sup>7</sup>

- For a corporation – the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds five percent.
- For a limited liability company – the members and managers of the limited liability company including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company.
- For a general partnership – The partners of the general partnership.
- For a limited partnership – The general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent.
- For a trust – The trustees of the trust.

### Personal Care Attendant Training Program

In the initial stages of the COVID-19 pandemic, nursing homes struggled to maintain adequate staffing levels.<sup>8</sup> To address the staffing challenges caused by the pandemic, AHCA temporarily approved the creation of the personal care attendant (PCA) training program.<sup>9</sup> A PCA is an individual who has not fulfilled the necessary requirements to become a certified nursing assistant (CNA), but may assist nursing home residents with certain tasks after completion of required training.<sup>10</sup> This allows them to develop the skills to become a CNA while receiving on the job experience. Like all applicants for certification as a CNA, a PCA is required to pass the CNA competency exam, but their PCA training

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<sup>5</sup> Centers for Medicare & Medicaid Services, *Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Definitions of Private Equity Companies and Real Estate Investment Trusts for Medicare Providers and Suppliers* (Nov. 15, 2023), available at <https://www.cms.gov/newsroom/fact-sheets/disclosures-ownership-and-additional-disclosable-parties-information-skilled-nursing-facilities-and-0> (last visited January 30, 2024).

<sup>6</sup> 42 C.F.R., § 424.502 “Additional Disclosable Party” (1)-(3).

<sup>7</sup> 42 C.F.R., § 424.502 “Organizational Structure”

<sup>8</sup> Noelle Denny-Brown, Denise Stone, Burke Hays, and Dayna Gallaghe/U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *COVID-19 Intensifies Nursing Home Workforce Challenges* (Oct. 19, 2020), available at <https://aspe.hhs.gov/basic-report/covid-19-intensifies-nursing-home-workforce-challenges> (last visited January 30, 2024).

<sup>9</sup> Memorandum from the Agency for Health Care Administration to the Florida Health Care Association and Florida Leading Age (Mar. 28, 2020), available at [https://www.fhca.org/images/uploads/pdf/Personal\\_Care\\_Attendant.pdf](https://www.fhca.org/images/uploads/pdf/Personal_Care_Attendant.pdf) (last visited January 30, 2024). See also Memorandum from the Agency for Health Care Administration to the Florida Health Care Association and Florida Leading Age (Sep. 9, 2020), available at [https://www.fhca.org/images/uploads/pdf/PCA\\_letter\\_9-8-20\\_1.pdf](https://www.fhca.org/images/uploads/pdf/PCA_letter_9-8-20_1.pdf) (last visited January 30, 2024).

<sup>10</sup> S. 400.211(2)(d), F.S.

substitutes for the 120-hour CNA training program.<sup>11</sup> A PCA must become certified within four months of initial employment.<sup>12</sup>

In 2021, the Legislature codified the temporary PCA training program, with modifications to align it with current practice for CNAs.<sup>13</sup> The goal of the PCA training program is to enable the PCA to further obtain skills and training from their employer toward successfully passing the CNA exam.<sup>14</sup> The PCA must attain certification as a CNA within four months of initial employment.<sup>15</sup>

Completion of all training and documentation requirements for PCA candidates is the ultimate responsibility of the nursing home.<sup>16</sup> Training must consist of 16 hours of classroom instruction and eight hours of supervised simulation in which the PCA candidate is required to demonstrate competency in all areas of training.<sup>17</sup> The facility must maintain a record of all PCA candidates who complete training and must provide the names of all PCAs working in the facility to AHCA upon request.<sup>18</sup>

### **Effect of the Bill**

PCS for HB 891 requires nursing homes to report to AHCA any common ownership the facility or its parent company shares with a staffing or management company, a vocational or physical rehabilitation company, or any other entity that conducts business within the facility. Common ownership means, in relevant part, an ownership interest of 5 percent or more held by the entity in the facility or by the facility in the entity. The PCS requires facilities to report this information electronically as an element of the data required to be reported in the NHURS. AHCA must annually publish on its website all common ownership reported in the preceding year.

PCS for HB 891 also requires AHCA to submit an annual report to the Governor and the Legislature on the success of the PCA training program, which must include:

- The number of PCAs who take and subsequently pass the CNA exam after the four months of initial employment with a facility;
- Any adverse actions related to patient care involving PCAs; and
- The number of new CNAs employed and remaining each year after being employed as PCAs.

The bill provides an effective date of July 1, 2024.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

**Section 2:** Amends s. 400.211, F.S., relating to persons employed as nursing assistants; certification requirements; qualified medication aide designation and requirements.

**Section 3:** Provides an effective date of July 1, 2024.

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

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

#### **1. Revenues:**

None.

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<sup>11</sup> S. 400.141(1)(w), F.S., and rule 59A-4.1081, F.A.C.

<sup>12</sup> S. 400.211(2)(d), F.S.

<sup>13</sup> Chapter 2021-163, Laws of Fla.

<sup>14</sup> Rule 59A-4.1081(2), F.A.C.

<sup>15</sup> S.400.211(2)(d), F.S.

<sup>16</sup> Rule 59A-4.1081(6), F.A.C.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not necessitate rule-making for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES