

STORAGE NAME: h0767.elt.doc
DATE: January 31, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER & LONG TERM CARE
ANALYSIS**

BILL #: HB 767
RELATING TO: Health Care Union Organizing
SPONSOR(S): Representative(s) Bendross-Mindingall

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER & LONG TERM CARE
 - (2) STATE ADMINISTRATION
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 767 prohibits time spent by any nursing home employee to assist, promote, deter or discourage union organizing from being counted in staffing calculations for minimum staffing standards and disallows salaries paid for time spent on such activities for Medicaid cost reporting purposes. The bill exempts from these prohibitions the activities related to collective bargaining and communications between employees and employers, provided these activities or expenses are not directly related to influencing employees with respect to unionization.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Nursing homes are regulated by the Agency for Health Care Administration under part II of chapter 400, F.S. Section 400.23, F.S., requires the agency to adopt by rule reasonable and fair criteria in relation to the number and qualifications of all personnel, including management, medical, nursing, and other professional personnel, and nursing assistants, orderlies, and support personnel, having responsibility for any part of the care given to residents. The agency is further required in s. 400.23(3)(a), F.S., to adopt rules providing for minimum staffing requirements for nursing homes.

Federal and state government programs are the primary payers for nursing home care. The federal Medicare program, which pays for health care services for the elderly and disabled, primarily pays for short-term transitional care in nursing homes. Medicaid, the state/federal program that pays for health care services for the poor and disabled, pays for longer-term care. The Medicaid program pays for approximately two-thirds of the resident days in nursing homes in Florida. The FY 2000-2001 General Appropriations Act appropriated \$1,586,520,836 for nursing home care in the Medicaid program (appropriation line item 244).

The Florida Medicaid program pays nursing homes a facility-specific per diem rate based on the facility's reported costs. The per diem rate is the aggregate of costs in four specific domains: operating expenses, patient care, property costs and return on equity. The operating component includes administration, laundry, plant operations and housekeeping. The patient care component includes nursing, dietary, social services, and ancillary expenses. The property component includes interest, depreciation, insurance, property taxes, and equipment rental. Each of these components is calculated separately and the components are combined to determine the per diem rate.

The Agency for Health Care Administration states that Medicare reimbursement policies¹ currently in place already prohibit reimbursement for activities meant to influence unionization of employees. While Medicare reimbursement policies at the state and federal level recognize the costs associated with collective bargaining as necessary for the continued care of patients, costs stemming from an employer's activities respecting proposed unionization are not reimbursable.

¹ Medicare Reimbursement Manual, § 2180.3, Policy Statement Transmittal Nos. 218, 261.

C. EFFECT OF PROPOSED CHANGES:

HB 767 prohibits time spent by any nursing home employee to assist, promote, deter or discourage union organizing from being counted in staffing calculations for minimum staffing standards and disallows salaries paid for time spent on such activities for Medicaid cost reporting purposes. The bill exempts from these prohibitions the activities related to collective bargaining and communications between employees and employers, provided these activities or expenses are not directly related to influencing employees with respect to unionization.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:

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Tom Batchelor, Ph.D.

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