

STORAGE NAME: h0767.sa.doc
DATE: February 14, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
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 YEAS 8 NAYS 0
- (2) STATE ADMINISTRATION
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

Current law provides that time spent on unionizing activities is not reimbursable under Medicaid policies. Reimbursable activities are those related to the per-diem costs associated with the provision of care to nursing home residents.

This bill 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.

There is an indeterminate but probably positive fiscal impact on the state in its role as purchaser of nursing home services. There is no fiscal impact on local government.

The bill takes effect upon becoming law.

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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 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:

This bill creates an untitled section of law that disallows 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.

The bill exempts collective bargaining activities such as a grievance procedures or bargaining agreement negotiations, activities done pursuant to state or federal law or under a collective bargaining agreement, and communications between employees and employers, provided these activities or expenses are not directly related to influencing employees with respect to unionization.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Change," above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Agency on Health Care Administration indicates in its analysis of the bill that state government is the largest purchaser of nursing home services in the state. The agency cannot determine the fiscal impact of the bill. To the extent that the prohibition found in the bill is applied to all union activities, there could be some positive fiscal impact as a result of reduced absences of staff from floor duties and an increase in the amounts reimbursed by the federal government for nursing home services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any other purchaser of nursing home services would receive the same indeterminate positive fiscal benefit the state receives.

D. FISCAL COMMENTS:

The FY 2000-2001 General Appropriations Act appropriated \$1,586,520,836 for nursing home care in the Medicaid program (appropriation line item 244).

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

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