

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: CS/SB 682

INTRODUCER: Health Regulation Committee and Senator Bennett

SUBJECT: Nursing Facilities

DATE: March 8, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Bedford | Wilson | HR | Fav/CS |
| 2. | | | JU | |
| 3. | | | HA | |
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| 6. | | | | |

I. Summary:

This bill changes the frequency of visits to nursing facilities by quality-of-care monitors from quarterly to annually. It requires quarterly visits by quality-of-care monitors for conditionally licensed nursing facilities and visits for other nursing facilities as directed by the Agency for Health Care Administration (AHCA or agency). The bill authorizes nursing facilities having a standard license to develop a plan to provide training for certified nursing assistants (CNA). This bill deletes the requirement for nursing facilities to submit a one-day adverse incident report to the agency. The risk manager for the facility will determine whether an incident is an adverse incident. This bill provides that the most recent survey is considered a licensure survey for purposes of future survey scheduling. This bill clarifies that compliance with federal posting standards satisfies state posting standards.

This bill amends ss. 400.118, 400.141, 400.147, 400.19, 400.195, and 400.23, Florida Statutes.

II. Present Situation:

The agency licenses nursing homes under the provisions of part II of ch. 400, F.S. Currently, quality-of-care monitors visit each nursing home quarterly. The quality-of-care monitors are registered nurses with training and experience in nursing facility regulation, standards of practice in long-term care and evaluation of patient care. Their role is to assess the overall quality of life in the nursing facility and assess specific conditions in the facility directly related to resident care, including the operations of internal quality improvement and risk management.

Nursing homes designated as Gold Seal facilities may develop a plan to provide CNA training as prescribed by federal regulations and state rules. A facility wishing to provide CNA training

must not have been cited for substandard quality of care, been terminated from the Medicare/Medicaid program, or had an enforcement action within the previous two years to meet federal requirements. The state is required to withdraw approval of a training program if any of these and/or other specified conditions occur (42 Code of Federal Regulations 483.151). In Florida, CNA training is subject to approval by the Board of Nursing in the Department of Health (DOH) in accordance with section 64B9-15.005, Florida Administrative Code, and appropriate certification by the Department of Education (DOE). There are approximately five Florida nursing homes that are currently certified by the DOE to offer CNA training.

Each nursing home must notify the Agency in writing within one business day of any adverse incident as defined by statute. The facility must initiate an investigation and provide a complete report to the agency within 15 calendar days after its occurrence. If, after a complete investigation, the facility's risk manager determines that the event does not constitute an adverse incident, the facility must include this information in the report.

Under s. 400.23(7), F.S., the agency must, at least every 15 months, evaluate each nursing home facility and determine the degree of compliance of the nursing home with licensure requirements in order to assign a licensure status to the nursing home. Based on the licensure survey, the agency must assign a licensure status of standard or conditional. A standard licensure status means that a nursing home has no class I or class II deficiencies and has corrected all class III deficiencies within the time established by the agency. A conditional licensure status means that a nursing home, due to the presence of one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the agency, is not in substantial compliance with licensure standards at the time of the survey. If a nursing home has no class I, class II, or class III deficiencies at the time of the follow-up survey, a standard licensure status may be assigned.

Section 400.23(8), F.S., defines class I, class II, class III, and class IV deficiencies as follows:

- A class I deficiency is a deficiency that the agency determines requires immediate corrective action because the nursing home's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the nursing home.
- A class II deficiency is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident.

A conditional license is issued to a nursing home that has been cited for serious deficiencies (class I or II) or failed to correct class III deficiencies. A facility must be in substantial

compliance with all regulations before returning to a standard license. Conditional licenses are considered “sanctions” and are subject to the Florida Administrative Procedure Act. These licenses are treated as legal sanctions and a nursing home licensee may challenge the conditional status.

State law currently requires each nursing home to post daily the names of staff on duty for the benefit of residents and the public. Federal requirements state that the facility must post the nurse staffing data on a daily basis at the beginning of each shift. The listing must be clear and readable and posted in a prominent place readily accessible to residents and visitors.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.118, F.S., changing the quality-of-care nurse monitor visits from quarterly to annually for all nursing facilities with a standard license. Nursing facilities with a conditional license will continue to be required to have at least quarterly visits by quality-of-care monitors. A quality-of-care visit may be conducted for any nursing facility at any time as deemed necessary by the agency.

Section 2. Amends s. 400.141, F.S., expanding the number of nursing homes eligible to offer training for CNAs from only Gold Seal nursing homes to all nursing homes that have a standard license. The ability to offer CNA training is already controlled by state and federal regulations prohibiting facilities with certain quality of care deficiencies from offering training.

Section 3. Amends s. 400.147, F.S., deleting the requirement for nursing facilities to submit a one-day adverse incident report to the agency. The bill modifies the definition of adverse incidents for nursing homes to clarify that events reported to law enforcement “for investigation” are adverse incidents rather than every report to law enforcement.

Section 4. Amends s. 400.19, F.S., allowing the last survey conducted within a 6-month survey cycle to be counted as a licensure survey in the event that the administrative action that originated the 6-month cycle is overturned. Therefore, the next licensure investigation would not be scheduled for this facility for up to 15 months.

Section 5. Amends s. 400.195, F.S., correcting a cross-reference.

Section 6. Amends s. 400.23, F.S., allowing compliance with federal posting requirements to satisfy the state posting requirements relating to the names of staff on duty each day. The small number of nursing homes that do not have federal certification (less than 10) would still be required to post information according to the state requirements.

The effective date of the bill is July 1, 2007.

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. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Quality-of-care monitoring visits will be reduced for the agency by going from quarterly to annually. The number of reports to be reviewed will be reduced by eliminating all of the one-day adverse incident reports to the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida CNA training is subject to approval by the Board of Nursing in the DOH and appropriate certification by the DOE. This bill would require the facility to develop a plan to provide training and authorizes the facility to apply to the agency for approval of its program; however, the bill does not provide sufficient guidance in approving such plans. Therefore, rule authority may be necessary. In addition, the bill does not address issues regarding a change in licensure status. A facility may have a standard license at the time the training program is approved; however, a finding of a serious deficiency(ies) may trigger the issuance of a conditional license. Additional language may be necessary to address the process of withdrawal or suspension of a training program should a conditional license be issued. An amendment is requested by the agency to provide rule authority for review of training programs.

VIII. Summary of Amendments:

None.

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