

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Less Government – The bill provides for additional regulation of hospitals licensed under chapter 395.

B. EFFECT OF PROPOSED CHANGES:

Background

Given the variation in size, physical disability, cognitive function, level of cooperation, and fluctuation of condition in patients, patient handling and lifting tasks can be both physically demanding and unpredictable in nature.¹ Patient lifts are often accomplished in awkward positions such as bending or reaching over beds or chairs while a nurse's back is flexed.² One study has estimated that the cumulative weight lifted by a nurse in a typical 8-hour shift is equivalent to 1.8 tons.³

Nursing, psychiatric, and home health aides are especially susceptible to lifting injuries.⁴ In 2006, 9,200 registered nurses suffered a median 6 days away from work due to musculoskeletal disorders, while 27,590 nursing aides, orderlies and attendants suffered a median 5 days away from work.⁵

Present Situation

The Agency for Health Care Administration is responsible for the licensure and regulation of health care facilities as authorized in Chapter 395, F.S., Hospitals Licensing and Regulation.

Hospitals licensed under Chapter 395, have requirements for nursing services and functional safety. The administrative rules governing hospitals require that:

- Each hospital develops written standards of nursing practice and related policies and procedures to define and describe the scope and conduct of patient care provided by the nursing staff.⁶
- Each hospital has a hospital safety committee to adopt, implement and monitor a comprehensive, hospital-wide safety program. The safety program is required to adopt written policies and procedures to enhance the safety of the hospital, its personnel and patients.⁷

There are no requirements for a specific committee to oversee safe patient handling and lifting in hospitals.

No construction work, including demolition, of a hospital may be started until written approval has been given by AHCA's Office of Plans and Construction.⁸ This includes all construction of new facilities and any and all additions, modifications or renovations to existing facilities. Any remodeling plans for the

¹ *Evidence-based practices for Safe Patient Handling and Movement*, Online Journal of Issues in Nursing, Vol. 9, No. 3 (Sept. 2004). Available online at

<http://nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume92004/Number3September30/EvidenceBasedPractices.aspx>; viewed January 28, 2008.

² *Id.* (citing Blue, C.L., *Preventing back injury among nurses*, *Orthopaedic Nursing*, 15, 9-22 (1996); Videman, T., et al., *Low back pain in nurses and some loading factors of work*, *Spine*, 9(4), 400-404 (1984)).

³ See Tuohy-Main, K., *Why manual handling should be eliminated for resident and career safety*, *Geriatrics*, 15, 10-14(1997).

⁴ Hoskins, Anne B., *Occupational Injuries, Illnesses, and Fatalities among Nursing, Psychiatric, and Home Health Aides, 1995-2004*, June 30, 2006. Available online at <http://www.bls.gov/opub/cwc/content/sh20060628ar01p1.stm>; viewed January 27, 2008.

⁵ Bureau of Labor Statistics, *Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2006*, (released Nov. 8, 2007). Available online at <http://www.bls.gov/news.release/pdf/osh2.pdf>; viewed January 27, 2008.

⁶ Rule 59A-3.2085(5)(d), F.A.C.

⁷ Rule 59A-3.277, F.A.C.

⁸ Rule 59A-3.080, F.A.C.

purpose of incorporating patient handling and moving equipment would have to be submitted to the Office of Plans and Construction for approval.

According to AHCA, hospitals may have already adopted safe lifting policies and programs through their safety committees.⁹ Hospitals are responsible for paying worker's compensation claims and paying for temporary help when staff is unavailable because of injury.¹⁰ AHCA further advises that many hospitals in Florida already have patient lifting equipment.¹¹

Several states have recently passed legislation concerning safe patient lifting, including Texas in 2005, and Washington in 2006.¹² Washington provides a tax credit of up to \$1,000 for each acute care available inpatient bed towards the cost of purchasing mechanical lifting devices and other equipment that is primarily used to minimize patient handling by health care providers.¹³

Effect of Proposed Legislation

HB 471 creates s. 381.029, F.S., and requires that hospitals establish and implement an "evidence-based policy" regarding the safe lifting and associated handling of patients by hospital employees so as to minimize the risk of injuries to patients and employees. The bill defines "hospital" as a "health care facility licensed under chapter 395;" however, it does not define the term "evidence-based policy." Facilities that are licensed under chapter 395 include hospitals, ambulatory surgical centers, and mobile surgical facilities.

The bill requires that hospitals' safe lifting policies be developed by a committee composed of an "approximate mix" of management and non-management employees, at least half of whom are clinical employees, including registered nurses, engaged in direct patient care. The committee may be a newly created committee or a hospital committee already in existence. The bill does not define what constitutes an "approximate mix."

In developing the policy, the committee is required to use data to evaluate the risk of injury to patients and employees. The committee must also determine whether alternative strategies for lifting and handling patients are appropriate based upon the population of patients at that hospital and any other identified hospital-specific risks.

In making that determination, the committee must consider, at a minimum:

- Using mechanical lifting devices or other engineering controls that minimize the need for employees to manually lift and handle patients;
- Using teams of personnel to lift and handle patients;
- Providing training in safe lifting and handling practices for direct-care employees;
- Incorporating physical space and construction design for mechanical lifting devices in architectural plans for construction or renovation of the hospital;
- Developing an ongoing evaluation process to determine the effectiveness of the policy.

The bill creates a new section of law in Chapter 381, F.S. However, chapter 395 delegates to AHCA the authority to license and regulate hospitals pursuant to Part II of chapter 408, F.S. and part I of chapter 395. The bill does not provide for any regulation or oversight by AHCA should a hospital fail to comply, and no penalty has been established in the bill for non-compliance.

The effective date of the bill is October 1, 2008.

⁹ AHCA 2008 Bill Analysis & Economic Impact Statement, SB 508.

¹⁰ Pursuant to s. 440.09(5), F.S., a 25 percent reduction in workers' compensation benefits is allowed if an employee knowingly refuses to use a safety appliance and the employee knew he/she was required to use the safety appliance; an employee knowingly refuses to follow a safety rule if the safety rule is in statute or in an administrative rule of the Department of Financial Services and the employee knew about the safety rule; or an employee knowingly refuses to use a safety appliance provided by the employer.

¹¹ See *supra* note 9.

¹² Tex. Code Ann. §256.002; Wash. Rev. Code Ann. §70.41.390.

¹³ Washington State Nurses Association *Questions and Answers on Safe Patient Handling Legislation*. Available online at <http://www.wsna.org/legal/patienthandling/faq.asp>; viewed January 27, 2008.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.029, F.S.; provides definitions; requires hospitals to adopt a policy related to patient lifting and handling.

Section 2. Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments below.

AHCA's FISCAL FROM ANALYSIS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For hospitals currently without safe patient handling policies, the bill may result in a decrease in the number of injuries suffered by nurses, when engaged in lifting or handling patients, and by patients, who will gain additional protections against avoidable injuries. Nurses will miss fewer days of work, resulting in an increase in productivity and continuity of patient care.

Hospitals may need to acquire patient handling and moving equipment if the requirement for such is included in the policy developed by their respective committees and the hospitals do not already have the necessary equipment on site. Acquisition of new equipment, as necessary, by hospitals may also result in the need for architectural plans for and the renovation of the hospital, which requires approval from AHCA's Office of Plans and Construction. Hospitals may also incur additional expenses associated with training employees regarding their respective patient lifting policies.

D. FISCAL COMMENTS:

The bill implies that there may be complaints related to safe lifting practices. It is difficult to determine the exact impact on AHCA due to the fact that patients, families, and staff can already file a hospital complaint related to safe lifting practices under nursing services. Also, no penalty has been established in the bill for non-compliance. Hospitals may decide to remodel in order to incorporate lifting equipment. The plans and the remodeling would require reviews and surveys by the Agency. It is difficult to determine the exact impact on AHCA because many hospitals already have some patient lifting equipment, the percentage of beds that would be required to have lifting equipment has not been

established in this bill, and there are remodeling limitations in some hospitals such as the presence of asbestos in ceilings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates in chapter 381 new requirements for hospitals licensed under chapter 395. The bill does not provide for any regulation or oversight by AHCA should a hospital fail to comply, and no penalty has been established in the bill for non-compliance.

The bill at lines 15-16 defines "hospital" as a "health care facility licensed under chapter 395." Facilities that are licensed under chapter 395 include hospitals, ambulatory surgical centers, and mobile surgical facilities.

At lines 17-20, the bill directs hospitals to establish an "evidence-based" policy regarding patient lifting and handling; however, the term "evidence-based" is not defined. Additionally, at lines 20-24, the bill requires committees established by hospitals to be an "appropriate mix" of management and non-management employees, but does not clarify what would be considered an "appropriate mix."

D. STATEMENT OF THE SPONSOR

This bill is endorsed by the Florida Hospital Association (FHA), the Florida Nurses Association (FNA), the Service Employees International Union (SEIU) and the Florida Organizations of Nurse Executives (FONE). Each of these organizations support this legislation which will promote a safe environment for the delivery of patient care in our hospitals.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Health Innovation Committee adopted two amendments by the bill sponsor that do the following:

- Amendment #1 clarifies that safe patient lifting and handling policies apply strictly to hospitals by amending the definition of "hospital" provided in the bill from "a health care facility licensed under chapter 395" to "a health care facility licensed by the Agency for Health Care Administration as a hospital under chapter 395."

- Amendment #2 provides a compliance date of December 2008 for hospitals to implement safe patient lifting and handling policies.

The bill was reported favorably with two amendments.