

STORAGE NAME: h2121.lt

DATE: April 12, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
ANALYSIS**

BILL #: HB 2121 (Formerly PCB LT 99-03)

RELATING TO: Public Records Exemption/Nursing Home Quality-of-Care Monitoring

SPONSOR(S): Committee on Elder Affairs and Long Term Care and Representative Argenziano

COMPANION BILL(S):

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

(1) Elder Affairs & Long Term Care YEAS 11 NAYS 0

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(5)

I. SUMMARY:

HB 2121 provides that the information contained in any agency record of a quality-of-care monitoring visit to a nursing home facility, except for specific exclusions pertaining to the reporting by a quality-of-care monitor of conditions which threaten the health or safety of a resident, is confidential and exempt from s. 119.07(1) and s. 24(a), Art.I of the State Constitution.

The bill also sets forth the public necessity for the exemption. Failure to protect the confidentiality of information gathered by the quality-of-care monitors would lead to a reluctance on the part of residents and staff of nursing facilities and others to provide accurate information which may serve as a basis for identifying and improving quality-of-care concerns before they develop into health or safety violations.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records. Generally, every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. An exception can occur only by specific legislative action, or when specifically made confidential by the Florida Constitution.

Public policy regarding access to government records is also addressed in section 119.07, Florida Statutes.

HB 1971 establishes a program of quality-of-care monitoring which requires the Agency for Health Care Administration to dedicate at least one specially trained registered nurse in every agency district, functioning solely and independently, to monitor all nursing facilities in the district on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays. In addition to observation of resident care and services, the monitors will conduct formal and informal interviews with residents, family members, guardians, staff, resident guests, volunteers, other regulatory staff, and representatives of a long term care ombudsman council or a human rights advocacy committee. The quality-of-care monitor may recommend to the facility administrator procedural and policy changes and staff training, as needed, to improve the care or quality of life of facility residents.

B. EFFECT OF PROPOSED CHANGES:

This bill creates an exemption from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, in order to protect the confidentiality of information gathered by the quality-of-care monitors which otherwise would lead to a reluctance on the part of residents and staff of nursing facilities and others to provide accurate information which may serve as a basis for identifying and improving quality-of-care concerns before they develop into health or safety violations.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates section 400.1185,F.S.

E. 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 AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

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

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:
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Staff Director:

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