

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2192

SPONSOR: Senator Holzendorf

SUBJECT: Nursing Homes

DATE: April 6, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Wilson	HC	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 2192 requires nursing homes to maintain a minimum ratio of certified nursing assistants (CNAs) to residents of at least one CNA for every five residents during the day shift, one CNA for every six residents during the afternoon shift, and one CNA for every eight residents during the midnight shift. Designated facility nursing staff are not permitted to provide services such as food preparation, housekeeping, laundry or maintenance services. Any person providing services other than direct nursing care to residents may not be counted in the ratio of nursing staff to residents. The staffing ratio requirements apply to all nursing home residents and must be adjusted upward to meet special care needs of residents, regardless of a resident's source of reimbursement to the nursing home.

The bill requires each facility to post the current ratios of staff to residents for each wing and floor of the facility and for each shift, in visible and accessible places. The postings must show separately the ratios of residents to licensed nursing staff and unlicensed nursing staff, and show average daily staffing for the latest cost-reporting period.

This bill amends sections 400.23 and 400.063 of the Florida Statutes.

II. Present Situation:

Regulation of Nursing Homes by State Government

Nursing Homes and Related Facilities is the subject of ch. 400, F.S. Part II of ch. 400, F.S., provides for the regulation of nursing homes by the Agency for Health Care Administration (AHCA or the agency). The agency licenses and inspects nursing homes and is charged with the responsibility of developing rules related to the operation of nursing homes. The Department of

Health performs inspections of facilities for sanitation and physical safety purposes and local authorities have jurisdiction over fire safety inspections.

Section 400.23(1), F.S., provides that the Legislature expressly intends that reasonable and consistent quality of nursing home resident care be ensured and that the results of such care be demonstrated in safe and sanitary facilities. It is also the intent of the Legislature that the needs and preferences of nursing home residents be accommodated to enhance their quality of life, while minimizing paperwork requirements of facility staff.

Under s. 400.23(2), F.S., the agency, in consultation with the Department of Health and the Department of Elderly Affairs, adopts rules to regulate nursing homes, to include the following standards:

- Location and construction of the facility, including fire, plumbing, heating, cooling, lighting, ventilation and other housing conditions.
- Lifesafety, building code and renovation standards, including emergency shelter capability.
- Number and qualifications of all personnel, including medical, nursing and nursing assistant personnel.
- Sanitary controls, including water supply, sewage disposal, food handling and general hygiene.
- Equipment essential to health and welfare.
- Uniform accounting system.
- Comprehensive emergency management plans for: evacuation transportation, adequate shelter, emergency power, food and water, supplies, staffing, emergency equipment, transfer of records, and communications with residents' relatives.

Subsection (3) of s. 400.23, F.S., includes additional requirements for minimum staffing standards, such as:

- Minimum CNA staffing and minimum licensed nursing staffing per resident day, for all shifts and weekends.
- Documentation requirements, sanctions for violation of staffing standards and posting of names of staff on duty.
- Specifications for training requirements for feeding residents.

Under s. 400.23(7), F.S., the agency is required to conduct a site visit at least every 15 months at every nursing home in order to evaluate the degree of compliance with the nursing home standards and to assign a licensure status to each facility. A standard licensure status indicates that a facility has no class I or class II deficiencies, has corrected all class III deficiencies in a timely manner, and is in substantial compliance with quality of care criteria. A conditional licensure status indicates that a facility, due to the presence of one or more class I or class II deficiencies, or class III deficiencies uncorrected in a timely manner, is not in substantial compliance with quality of care criteria. The classes of deficiencies are defined in s. 400.23(8), F.S.

Nursing Home Staffing Requirements

Rule 59A-4.108, F.A.C., provides the specific nursing standards applicable to nursing homes under s. 400.23(2) and (3), F.S., as follows:

- The administrator must designate one full time registered nurse as a Director of Nursing to supervise the facility's nursing program. Where a Director of Nursing is delegated institutional responsibilities, a registered nurse must be designated as Assistant Director of Nursing. In a facility with a census of 121 or more residents, such facility must designate a registered nurse as Assistant Director of Nursing.
- The Director and Assistant Director of Nursing may serve in only one nursing home and may not serve as the facility administrator.
- The Director of Nursing must designate one licensed nurse on each shift to be responsible for the delivery of services for that shift.
- The facility must have sufficient nursing staff, on a 24-hour basis, to provide nursing and related services to residents in order to maintain the highest practicable physical, mental and psychosocial well-being of each resident. The facility must staff, at a minimum, an average of 1.7 hours of CNA and 0.6 hours of licensed nursing staff time for each resident per day.
- In a multi-story, multi-wing or multi-station nursing home, there must be a minimum of one nurse capable of providing direct resident care on duty at all times on each floor, wing or station.
- No nurse may be scheduled for more than 16 hours per day, for three consecutive days, except in a documented emergency.

Nursing Home Staffing Deficiencies

In January 2000, the University of California released the results of a study funded by the Health Care Financing Administration entitled *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 1992 Through 1998*, by Charlene Harrington, Ph.D., et al. The report provides several statistical findings relating to nursing homes throughout the United States, presented in a state-by-state format. In Table 30 of the study, statistics cited for Florida show that the state's nursing homes, for each of the focus years, slightly exceeded the national average in staffing as computed using payroll hours per resident day rather than actual hours of care delivered directly to residents. Despite the fact that on average, Florida nursing home facilities had higher staffing ratios, Florida facilities were cited more often than the national average for staffing deficiencies (see Table 45 in the Harrington study). Florida has seen a steady increase in the percentage of facilities with deficiency citations issued for insufficient staffing, while the national average has declined slightly over the study's focus years.

The Task Force on the Availability and Affordability of Long-Term Care

The Legislature created, in the 2000 Session, the Task Force on the Availability and Affordability of Long-Term Care. The purpose of the task force was to assess the current long-term care system in terms of the availability of alternatives to nursing homes, the quality of care in nursing homes and the impact of lawsuits against nursing homes and other long-term care facilities on the costs of care and the financial stability of the long-term care industry. On

February 16, 2001, the task force submitted an extensive report to the Legislature. One of the options in the report for improving the quality of nursing home care is to, over the next five years, reimburse nursing homes to increase the mandated minimum staffing ratios for direct care staff and to improve the stability of direct care staff. The full report is available electronically at: <http://www.fpeca.usf.edu/Task%20Force/Publications/Documents/finalreportnew.PDF>

Senate Interim Project 2001-25

Staff of the Committee on Health, Aging, and Long-Term Care published an interim report on long-term care issues. The report provides recommendations in three areas: developing a coordinated planning structure for the long-term care system, improving the quality of care in long-term care facilities and developing ways to make liability insurance more affordable for long-term care facilities. The report recommends that the Legislature should increase staffing standards in nursing homes, and ensure that Medicaid reimburses these costs for Medicaid recipient care. The report is available electronically at: http://www.leg.state.fl.us/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf

III. Effect of Proposed Changes:

Section 1. Amends s. 400.23, F.S., to provide that each nursing home must maintain a minimum ratio of CNAs to residents of at least one CNA for every five residents during the day shift, one CNA for every six residents during the afternoon shift, and one CNA for every eight residents during the midnight shift.

Designated facility nursing staff are not permitted to provide services such as food preparation, housekeeping, laundry, or maintenance services. Any person providing such services may not provide nursing care to residents and may not be counted in the ratio of nursing staff to residents.

The staffing ratio requirements apply to all nursing home residents, including respite-care residents, and must be adjusted upward to meet special care needs of residents, regardless of a resident's source of reimbursement to the facility. Staffing must be based on accurate resident acuity levels and the intensity and time needed to provide safe, preventive and restorative care.

Each facility must post the current ratios of staff to residents for each wing and floor of the facility and for each shift. The posted ratios must show separately the ratios of direct care licensed nursing staff and unlicensed nursing staff to residents. Average daily staffing for the most recently completed Medicare or Medicaid cost reporting period must also be posted. All postings must be visible and accessible to all residents and their families, all caregivers and all potential consumers.

Section 2. Amends s. 400.063(1), F.S., to change the citation of s. 400.23(8), F.S., to s. 400.23(9), F.S.

Section 3. Provides that the bill, should it become law, will take effect October 1, 2001.

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 Art. VII, s. 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 Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

The amended standards significantly increase the current minimum CNA staffing hours from an average of 1.7, to an average of 3.9. Rule 59A-4.108, F.A.C., requires minimum CNA staffing at 1.7 hours per resident per day, with no differentiation among shifts. The bill provides minimums of 1.6 CNA hours per resident during the day shift (1 CNA divided by 5 residents, times 8 hours per shift), 1.3 CNA hours per resident during the afternoon shift (1 CNA divided by 6 residents, times 8 hours per shift), and 1.0 CNA hour per resident during the night shift (1 CNA divided by 8 residents, times 8 hours per shift). The average of 3.9 CNA hours daily equates to three 8-hour shifts at: 1.6 hours in the morning, plus 1.3 hours in the afternoon, plus 1.0 hour at night. Note that no time has been allotted for staff breaks or meals, which would necessarily lower the ratios somewhat.

AHCA estimates that raising all nursing homes in Florida to a minimum CNA staffing level of 3.9 hours per resident per day would require an additional 26,552 CNAs. The total cost for this increase is estimated by AHCA to be \$534,603,920 annually. It is expected that 35 percent of the cost, or \$185,142,330 would be paid by Medicare and private pay sources, while the other 65 percent of the cost, \$349,461,590, would be paid by Medicaid.

C. Government Sector Impact:

The Medicaid portion of the additional CNA hours of \$349,461,590 would be comprised of federal funding participation (Medicaid match) at 56.45 percent, or \$197,271,068, and General Revenue at 43.55 percent, or \$152,190,522. Therefore, the annual General Revenue impact of the bill is expected to be \$152,190,522. The Managed Care and Health Quality program in AHCA would be subject to some degree of incremental expense due to

additional licensure survey demands regarding staffing minimums and staff posting requirements.

VI. Technical Deficiencies:

Because it is unclear whether the word “upward” on page 3, line 13, refers to the number of nursing staffing hours or instead to the ratio of nursing staff to residents (for a staffing ratio to go “upward,” the number of nursing hours per resident must *decrease*), the following amendment is suggested for page 3, line 13:

respite-care residents. Staffing, ~~and~~ must be adjusted upward to meet

VII. Related Issues:

Given the current shortage of licensed nurses and CNAs, it may be a challenge for nursing homes to find personnel to meet the heightened nursing staffing requirements. Phasing in the higher staffing over several years would enable CNA training programs to respond to the greater demand for CNAs.

VIII. Amendments:

None.