

The bill defines the terms “agency nurse,” average daily census,” “average daily CNA staffing level,” “average daily LPN staffing level,” “average daily RN staffing level,” “direct care nurse,” “hospital,” “registered nurse turnover rate,” “registered nurse vacancy rate,” and “unit.”

Additionally, the bill requires AHCA to adopt rules regarding the reporting requirements, including the additional data required to be submitted by hospitals and the format and timetable for making the report. Additionally, AHCA is provided with authority to calculate, using the risk adjusted formula methodology for patient acuity that is consistent with the national standards employed by the Agency for Healthcare Research and Quality, the average daily staffing levels by unit in a manner that health care research has shown to have a significant effect on the quality of patient care and outcomes, and make that information available.

Finally, the bill requires that current staffing levels and anticipated staffing schedules, including the average daily census and lists of the assigned nursing personnel, be made available to the public upon request for each patient care unit for the effective date of the schedule.

The bill has a \$428,719 recurring and \$275,500 non-recurring fiscal impact on the General Revenue Fund in Fiscal Year 2008-09 and a \$428,719 recurring fiscal impact on the General Revenue Fund in Fiscal Year 2009-10. (See Fiscal Analysis section).

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government – the bill creates additional government regulations by creating additional reporting requirements for health care providers and facilities.

Empowering families – the bill provides additional information for consumers making health care provider and facility choices.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Health Care Provider and Facility Data Reporting

The Florida Center for Health Statistics in AHCA identifies data sources and coordinates the compilation of health-related data and statistics related to health care providers and facilities in Florida.¹ AHCA then reports the results of the data compilation to provide what are known as patient safety indicators and inpatient quality indicators. Current requirements for reporting by health care facilities, providers and insurers are located in ss. 408.05 and 408.061, F.S. AHCA publishes data for public use on its consumer website <http://www.floridahealthfinder.gov/> (the “healthfinder website”). The healthfinder website is a combination of information formerly published on three separate websites, www.FloridaHealthStat.com, www.FloridaCompareCare.gov and www.MyFloridaRx.com.

Information available on the healthfinder website provides consumers with information that will assist them in comparing hospitals, ambulatory surgery centers, health plans, nursing homes, and prescription drugs. The data made available on the healthfinder website includes volume of cases, length-of-stay, and charges at each health care facility for groups of related diagnoses and procedures. The published data is adjusted for severity of illness or condition.

Data is currently available in an interactive format where the user selects the type of data to be viewed based on a menu of options. By making information such as health outcomes and quality of care available to consumers by provider type, consumers are better able to make informed decisions about their health care.

Data Reporting by Hospitals

AHCA uses the methodology developed by the Federal Agency for Healthcare Research and Quality to produce comparative consumer indicators. Licensed hospitals and ambulatory surgical centers report patient data that is used to develop the indicators.² This data is compiled to provide users with information about hospitalizations, lengths of stay, charges, mortality, infection and complication rates, and facility profiles.

Pursuant to 59E-7, F.A.C., AHCA requires hospitals to report whether any secondary diagnosis contained in the records submitted to AHCA was present at admission. The additional admission data enables AHCA to expand and enhance reportable information on infection rates and complication rates.

¹ S. 408.05, F.S.

² Data reported to AHCA is specified in 59B-9.010 through 59B-9.023, F.A.C. and 59E-7.011 through 59E-7.208, F.A.C. as authorized in s. 408.061, F.S.

AHCA's rules provide for nursing staffing requirements and include a general requirement that hospitals are staffed to ensure quality nursing care to patients.³ Currently, hospitals are required to submit an annual hospital financial report that includes nursing staffing counts per unit. This information is not made available on the healthfinder website.

State Consumer Health Information and Policy Advisory Council

The State Consumer Health Information and Policy Advisory Council generally advises AHCA regarding the collection and dissemination of information and makes recommendations for improvements pursuant to s. 408.05(8), F.S.⁴ The Council consists of 13 members with 10 members appointed by the Secretary of Health Care Administration, one member appointed by the Governor, one member appointed by the Chief Financial Officer, and one member appointed by the Commissioner of Education. Members are appointed for a term of four years.

With regard to the collection of information, the Council advises AHCA regarding the identification, collection, standardization, sharing, and coordination of health related data, including fraud and abuse data. The Council also advises AHCA regarding improvements to the healthfinder website for transparency of consumer health care information.

The Council has not recommended that AHCA publish nursing staffing levels for hospitals or other health care facilities.

Other Available Resources for Health Care Consumers

Other non-state affiliated websites are available for public use to compare hospital quality. One is <http://www.jointcommission.org/> maintained by the Joint Commission (formerly known as the Joint Commission on Accreditation of Health Care Organizations); while another is www.hospitalcompare.hhs.gov/ which is maintained by the federal Centers for Medicare and Medicaid Services.

Effect of Proposed Changes

House Bill 851 creates the Patient's Right-to-Know Act in s. 408.063, F.S., related to the collection and dissemination of health care information by AHCA. The bill provides that the purpose of the act is to improve health care in Florida by providing information concerning the financial health, staffing levels, and safety of hospitals in the state.

The bills defines terms applicable to the subsection as follows:

- Agency nurse – a direct care nurse that provides care in a hospital through supplemental staffing, but is not directly employed by the hospital.
- Average daily census – average number of patients receiving service in any given 24-hour period beginning at midnight in each clinical service area of the hospital
- Average daily CNA, LPN and RN staffing level – the average numerical certified nursing assistant-to-patient, licensed professional nurse-to-patient, or direct care nurse-to-patient ratio within a nursing department or unit. The ratio is to be calculated by dividing the annual average daily census for the nursing department or unit by the average number of direct care CAN, LPN, or RN FTE's per shift for the nursing department or unit.
- Direct care nurse – a registered nurse who has direct responsibility to oversee or carry out medical regimens or nursing care for one or more patients. Nurse administrators, supervisors,

³ Chapter 59A-3.2085(5)(f)-(g), F.A.C.

⁴ The Council was renamed in 2006. See 2006-261, L.O.F. Prior to July 1, 2006, the Council was known as the State Comprehensive Health Information System Advisory Council.

educators, charge nurses, or other registered nurses who do not have a specific patient assignment may not be included in the calculation of the staffing level.

- Hospital – an acute care hospital licensed under s. 395.003, F.S.
- Registered nurse turnover rate – the number of registered nurses who are no longer employed at the hospital during the year divided by the average of registered nurses employed on the first day of the year and the last day of the year.
- Registered nurse vacancy rate – the number of vacant registered nurse positions within a hospital divided by the total number of filled positions plus the total number of vacant positions within that hospital.
- Unit – a functional division or area of a hospital in which nursing care is provided.

The bill amends current provisions requiring AHCA to publish and disseminate information to the public regarding health care providers, facilities and services, by requiring such information to include, but not be limited to, the number and description of violations of the Occupational Safety and Health Administration regulations, the registered nurse turnover and vacancy rates, the results of the Consumer Assessment of Healthcare Providers and Systems hospital survey, the number and description of complaints made to the Joint Commission on Accreditation of Healthcare Organizations and AHCA, specific average daily RN, LPN, and CNA levels, and the percentage of nursing hours that are completed by agency nurses for the following hospital units: medical-surgical, adult critical care, pediatrics, pediatric intensive care, neonatal intensive care, trauma intensive care, mother-baby unit, psychiatric unit, ambulatory care, and outpatient, dialysis, cardiac catheterization laboratory, operating room, medical oncology, burn unit, transplant unit, rehabilitation unit, gastrointestinal laboratory, emergency, telemetry, and recovery unit, including postanesthesia care. While the reporting requirements are specific to hospitals with regard to specific nursing staffing levels within hospital units, the bill as drafted appears to apply all other reporting requirements to all health care providers, facilities, and services.

The bill further requires AHCA to develop rules regarding all reporting requirements provided for in s. 408.063(2), including additional data to be submitted by hospitals and the format and timetable for making reports. The bill provides that AHCA may calculate and make available the average daily staffing levels by unit in a manner that health care research has shown to have a significant effect on the quality of patient care and outcomes. The bill does not designate specific “health care research” upon which AHCA should rely. Moreover, the provision providing AHCA the authority to use a calculation that health care research has shown to have a significant effect on the quality of patient care and outcomes appears to conflict with the definitions applicable to the average daily CAN, LPN, and RN staffing levels, which provide for a specific calculation to be used for determining the respective averages.

The bill provides that AHCA must ensure that the nurse-staffing data that is made available is risk adjusted for patient acuity using the risk adjustment methodology described in s. 408.061(1) or an equivalent methodology that is consistent with national standards employed by the Agency for Healthcare Research and Quality.

Finally, the bill requires that current staffing levels and anticipated staffing schedules be available upon request for each patient care unit for the effective date of that schedule. The bill does not specify who must make the information available, AHCA or the health care facility or provider. Further, the bill requires that each schedule list the assigned nursing personnel and the average daily census for each patient care unit. Additionally, all records required under s. 408.063(2), including anticipated staffing schedules and the methods used to determine and adjust staffing levels, are required to be made available to the public upon request. The bill does not specify who is required to make the records available.

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

C. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as the "Patients' Right-to-Know Act."

Section 2. Provides Legislative purpose for the act.

Section 3. Amends s. 408.063, F.S.; relating to the dissemination of health care information.

Section 4. Provides for an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires AHCA to collect unit level data from more than 280 facilities. The collection of this new complex dataset would require three (3) Health Services and Facilities Consultant positions (pay grade 24) for the Agency to set up reporting forms and formats, collect the reports, review the reports and prepare data for publication.

For calendar year 2007, the Agency received 726 complaints about nursing services, staffing and patient care. It is estimated that the Agency would receive approximately 200 additional complaints per year about the staffing levels assuming that existing regulations about staffing could include enforcement of these staffing reporting requirements. Investigation of these complaints would require one surveyor for two days on-site investigation for each complaint or 3,200 hours annually (16 hours X 200 complaints = 3,200 hours + an estimated 2,400 hours for travel time and report writing = 5,600 hours). A total of 5,600 actual surveyor hours would be required which equates to three full-time equivalent registered nurse surveyors (5,600/1,854 hours per FTE = three FTE). Those complaints would require on-site investigations by field staff qualified to determine the adequacy of the nursing staff based on staffing records for direct-care nurses. Three (3) Registered Nurse Specialists, Pay Grade 75, would be required for this activity. Past experience would indicate that it is reasonable to expect that the Agency will experience difficulty recruiting and retaining nurse surveyors to occupy new field office positions that would be required to implement the proposed bill. These positions are requested at above the minimum of the pay grade and an additional amount for competitive area differential for positions in these areas (approximately 45% above the minimum of the pay grade). As these surveyors must be able to write the reports in the field, tablet computers (OCO funds) will be needed.

While the bill does not specifically call for the information to be published on the Agency's transparency website, reasonable compliance with bill language would require it. Modification of existing web site to display the nurse staffing data would require a revision to contracted services with an outside vendor, including contracting with an outside vendor for developing a risk adjustment methodology for patient acuity resulting in additional fees of \$250,000.

| | <u>2008-09</u> | <u>2009-10</u> |
|---------------------------|------------------|------------------|
| AHCA (6.0 FTE) | \$454,219* | \$428,719 |
| Contracted Services | \$250,000 | \$ 0 |
| Total Expenditures | \$704,219 | \$428,719 |

*Fiscal Year 2008-09 includes \$25,500 in non-recurring funding for equipment and three laptops for the new staff positions.

General Revenue Fund

\$704,219

\$428,719

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The additional administrative requirements in the bill will likely result in increased administrative burdens for health care facilities and providers in the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires AHCA to amend its rules to incorporate the new provisions created in the bill. AHCA has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 408.063, F.S. concerns the dissemination of information by AHCA. The bill provides for additional reporting requirements regarding hospitals for reporting average daily staffing levels for RNs, LPNs and CNAs in hospital units (lines 85-95), and generally for all health care facilities with regard to OSHA violations, nurse vacancy and turnover rates, results of hospital surveys and complaints made to the Joint Commission and AHCA (lines 74-85). The bill, however, does not amend other provisions of law, including ss. 408.05 and 408.061, F.S., that require health care providers and facilities to report this information to AHCA for dissemination to the public.

Additionally, the bill at lines 105-109 regarding the methods AHCA may use for calculating average daily staffing levels by AHCA appears to conflict with other provisions in the bill at lines 39-42, 45-48 and 51-55, which provide how the "ratio" for determining average daily staffing levels shall be calculated. Further the bill at lines 105-109 does not provide any specificity as to which "health care research" AHCA would rely on to calculate the average daily staffing levels by unit.

Finally, the bill requires staffing level and additional staffing level schedules to be made available upon request for each patient care unit; however, the bill does not indicate who is required to make this information available to the public AHCA or the individual health care facilities.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES