



Committee on Healthy Seniors

**Tuesday, February 5, 2008
8:30 AM - 10:30 AM
24 HOB**

**Marco Rubio
Speaker**

**Hugh Gibson
Chair**



House of Representatives

Committee on Healthy Seniors

AGENDA

February 5, 2008
8:30 AM – 10:30 AM
24 HOB

- I. Opening Remarks by Chair Gibson
- II. Overview of elder care facilities and services by the Agency for Health Care Administration and Department of Elder Affairs
- III. Consideration of the following bill:
 HB 247 by Representative Murzin relating to Nursing Facilities
- IV. Closing Remarks by Chair Gibson
- V. Adjournment

Overview of Elder Care Facilities & Services

*Long Term Care Regulation
Presentation to House Committee on
Healthy Seniors*



February 5, 2008

AHCA Long Term Care Responsibilities

- Nursing Homes, Assisted Living, Adult Family Care Homes, Others
- State Licensure
- Federal Certification
- Certificate of Need Program
- Plans and Construction Review
- Emergency Support Functions
- Medicaid Reimbursement

Long Term Care Providers

- Nursing Home – Provide necessary care and services to persons needing care or supervision including 24 hour nursing care
- Assisted Living Facility - Provide housing, meals, and one or more personal services for a period exceeding 24 hours, limited 24 hour nursing
- Adult Family Care Home – Similar to assisted living however owner must live in the home

Demographics

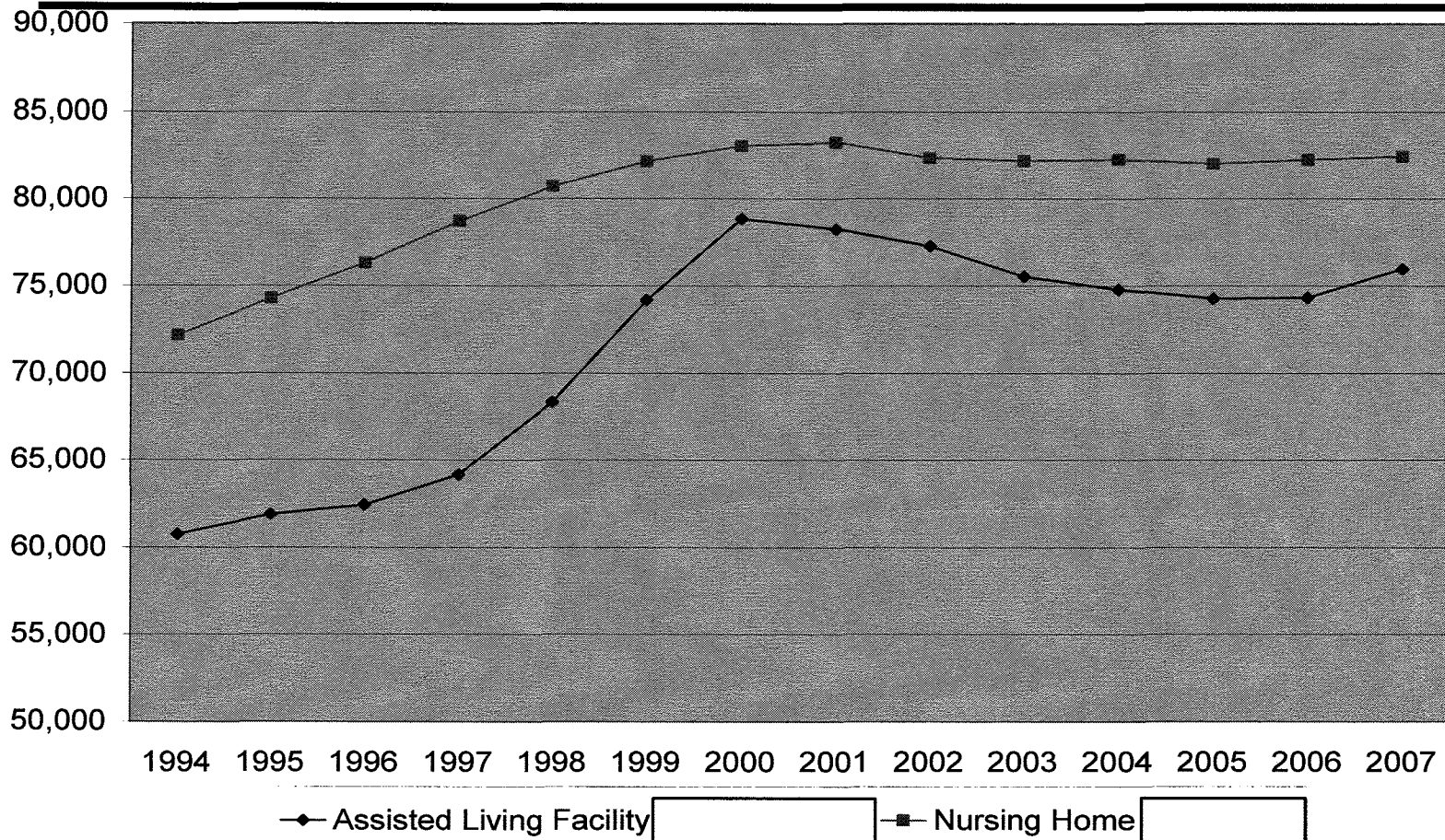
Assisted Living Facilities

- No Limitation on Licensure
- Decade of Significant Growth
- 2,537 Facilities / 76,667 Beds
- No Federal "Certification"
- Limited Medicaid Funding
- Aged & Disabled
- Mental Health
- Developmentally Disabled

Nursing Homes

- Certificate of Need
- CON Moratorium until 2011
- 673 Facilities / 82,409 Beds
- 96% (645 Homes) Certified for Medicare or Medicaid
- Reimbursement for Nursing Home Patient Days
 - 61% Medicaid
 - 19% Medicare

Nursing Home Occupied Beds Assisted Living Licensed Beds



Regulatory Standards

Nursing Home and Assisted Living

- Resident Rights
- Dietary Standards
- Supervision
- Abuse, Neglect, and Exploitation Protection
- Medication Assistance
- Education
- Facility and Resident Records

Regulatory Standards

Assisted Living Facilities

- Resident Care Standards
- Staffing Standards
 - Total Staff Hours Per Week Based on Number of Residents
- Limited Physical Plant
- Background Screening of Direct Care Staff

Nursing Homes

- Quality of Care & Services to Highest Practicable Function
- Nursing Staff Standards
 - Certified Nursing Assistants 2.9 Hrs/Resident
 - Licensed Nurses 1 Hr/Resident
- Fire/Life Safety Physical Plant
- Background Screening of All Staff with Access to Residents, Resident Funds, Living Areas

Inspections & Monitoring

Assisted Living Facilities

- Biennial Licensure Surveys
- Complaint Investigations
- Quarterly ECC Monitoring
- Twice a Year LNS Monitoring
- Inspection Process
 - Regulatory and Complaint History
 - Adverse Incidents

Nursing Homes

- 6-15 Month Licensure Inspection
- Complaint Investigations
- Quarterly Monitoring by Nurse Monitor to Every Nursing Home
- Inspection Process
 - Regulatory and Complaint History
 - Adverse Incidents
 - Resident Assessments
 - Quality Indicators

Nursing Home Quality Indicator Survey Process

- **Federal Quality Indicator Survey Process**
 - Florida: First Statewide Pilot
- Improve Consistency/Accuracy of Problem Identification Using a More Structured Process
- Comprehensive Review of Regulatory Care Areas within the Current Survey Process
- Enhanced Documentation by Organizing Survey Findings through Automation
- Focus Survey Resources on Facilities with Largest Number of Quality Concerns

Nursing Home QIS Florida Roll-out Plan

- Tallahassee/Pensacola
Jacksonville Complete
- Alachua/Miami Summer 2008
- Orlando/Ft. Myers Fall 2008
- Delray/Tampa-St. Pete Fall 2009

Regulatory Sanctions

Assisted Living Facilities

- Fines \$500 - \$10,000
 - Class I Deficiencies
 - Class II Deficiencies
 - Uncorrected Class III
- Conditional License
- Moratorium on New Admissions
- License Denial or Revocation
- License Suspension

Nursing Homes

- Fines \$1,000 – \$30,000
 - Class I Deficiencies
 - Class II Deficiencies
 - Uncorrected Class III
- Conditional License
- Moratorium on New Admissions
- License Denial or Revocation
- License Suspension
- Six-Month Survey Cycle
- Nursing Home Watch List

Nursing Home Federal Enforcement

Sanctions

- Civil Monetary Penalties - Fines
- No Payment for New Admissions
- Termination from Medicare and/or Medicaid
- Special Focus Facilities – Increased Inspections

Quality Initiatives

Nursing Home and Assisted Living

- Risk Management and Adverse Incident Reporting
 - Annual Reports Published On AHCA Web Site

Nursing Homes

- Quality of Care Nurse Monitors
- Staffing Requirements
 - Federal Standard – Appropriate Staff to Meet Needs
 - State Minimum Staffing Ratios – Among Highest Nationally
- Nursing Home Gold Seal
 - Excellence in Regulatory History, Financial Stability, Ombudsman Complaints, Staffing, and Community Involvement
- Federal Quality Measures using Resident Assessments
 - Pain, Pressure Sores, Restraints, Incontinence
- Federal Initiatives for Performance Improvement Partnerships
 - Restraint Reduction
 - Pressure Ulcer Reduction

Gold Seal Nursing Homes

- Baldomero Lopez State Veterans' Nursing Home
- Bay Village of Sarasota
- Carpenter's Home Manor
- Florida Presbyterian Homes, Inc.
- John Knox Village Medical Center Orange City
- John Knox Village Med Center (Tampa)
- The Pavilion for Health Care
- River Garden Hebrew Home for the Aged
- Sunnyside Nursing Home
- The Mayflower Healthcare Center
- Tierra Pines Center
- Vicars Landing Nursing Home
- Village on the Green
- Water's Edge Extended Care
- Willowbrooke Court at St. Andrews

Consumer Information

Assisted Living Facilities

- Florida Health Finder
- Inspection Reports
- Affordable Assisted Living Web Site (DOEA)
 - Demographic Information
 - Services Offered

Nursing Homes

- Florida Health Finder
- Inspection Reports
- Nursing Home Guide & Watch List
 - Demographic Information
 - Services Offered
 - Star Ranking Based on Regulatory Violations
- Federal Nursing Home Compare Website

Facility Display

Paramount Nursing and Rehabilitation

123 Elm Street

Jackson

33550

Duval

Voice:

(888) 999-2222

Fax:

(888) 888-3333

Web:

Current Licensee: Paramount Nursing LLC

Licensee Since: 2003

Ownership Type: For-Profit

Affiliation: Paramount Management

Beds: 120 Total: 108 Semi-Private / 12 Private

Occupancy Rate: 96.45%

Lowest Daily Charge: \$ 160.00

Payment Forms Accepted: CHAMPUS, Insurance or HMO, Medicaid, Medicare, VA, Worker's Compensation

Overall Inspection	★★★
Quality of Care	★★★
Quality of Life	★★★
Administration	★★★★

Components of Inspection	
Nutrition and Hydration	★★★★★
Restraints and Abuse	★★★★★
Pressure Ulcers	★
Decline	★★★★★
Dignity	★★

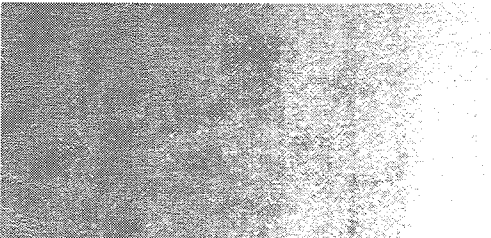
Inspection Details for this Facility

Florida's Long-Term Care Ombudsman Program

**Presentation to the House Committee on
Healthy Seniors**

February 5, 2008

Real People Helping Real People

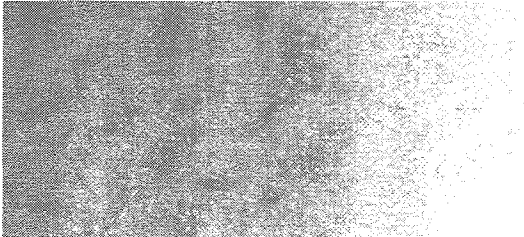


Florida's Long-Term Care
OMBUDSMAN PROGRAM
Our 2 cents is no small change

Real People Helping Real People

★ Florida's Long-Term Care Ombudsman Program

- Volunteer program formed in 1975
- Result of federal Older Americans Act
- Administered by Department of Elder Affairs
- Similar programs exist in all states in U.S.



Florida's Long-Term Care
OMBUDSMAN PROGRAM
Our 2 cents is no small change

Real People Helping Real People

★ The Program's Mission

- Advocating for the highest quality of care and life for long-term care facility residents by:
 - Empowering residents to advocate for themselves
 - Identifying, investigating and resolving complaints
 - Promoting enforcement of laws and regulations
 - Advising and recommending policy to state and federal governments on long-term care issues

Real People Helping Real People

★ Core ombudsman beliefs

- A resident-centered advocate
- A negotiator
- Resolution specialists

★ Common ombudsman misconceptions

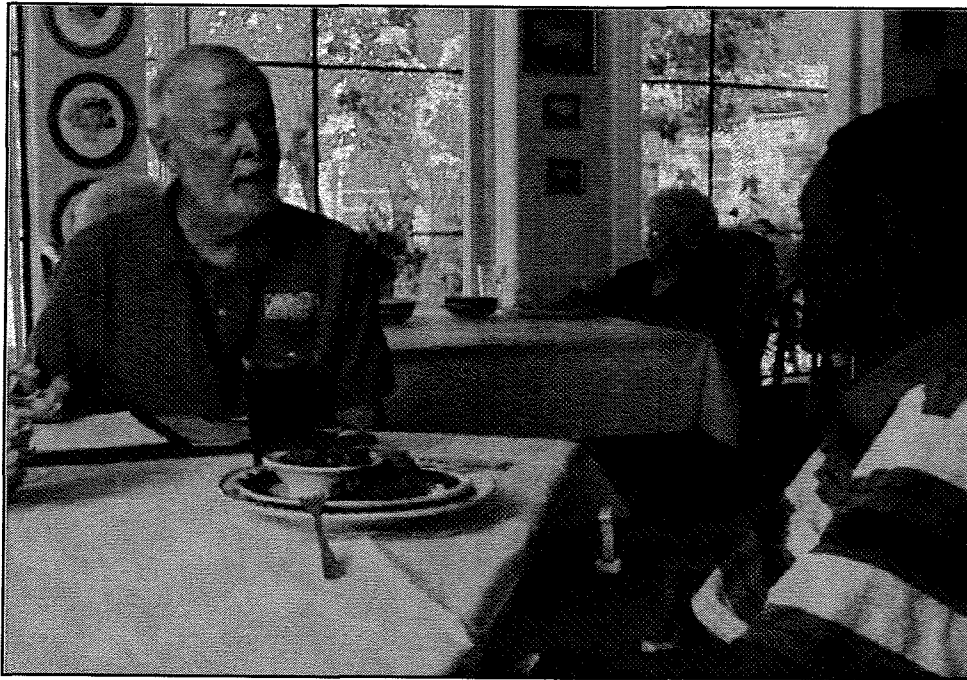
- An inspector/regulator
- A mediator
- A bill collector



Florida's Long-Term Care
OMBUDSMAN PROGRAM

Our 2 cents is no small change

Volunteers – The Program's Backbone



- ★ More than 400 volunteer ombudsmen around the state each give an average of 20 hours per month to the program
- ★ They advocate for the rights of elders in nursing homes, assisted living facilities and adult family care homes

Florida's Long-Term Care
OMBUDSMAN PROGRAM

Our 2 cents is no small change

Volunteers – The Program's Backbone

- ★ Ombudsmen identify and respond to individual concerns expressed by long-term care residents, their families, friends and other concerned citizens
- ★ Investigation topics range from food and medication issues to matters of dignity, privacy and respect

Resident Concerns

- ★ In 2006-07, ombudsmen responded to concerns about inappropriate discharge of residents more than any other issue
- ★ Other prominent concerns included medication administration errors; food concerns; personal hygiene; accidents, falls and improper handling; and symptoms left unattended

Resident Concerns

Most Frequent Complaints in Nursing Homes, 2006-07

	216
	194
	169
	164
	157

Resident Concerns

*Most Frequent Complaints in Assisted Living Facilities
and Adult Family Care Homes, 2006-07*

	178
	155
	105
	104
	97

Excellence in Advocacy

- ★ Equipping ombudsmen with cutting-edge information remains a high priority (Section, 400.0091, F.S.)
 - Fifth statewide ombudsman training conference scheduled for May 2008
 - Regionalized trainings coincide with quarterly leadership meetings and focus on concentrated advocacy topics, e.g., access to residents' records, ombudsman documentation and investigation skills
 - Local councils educate volunteers on issues affecting residents within their own communities

Excellence in Advocacy

★ Ombudsman advocacy is consensual based and confidential

- Ombudsmen need permission from the resident or resident's legal representative

- Exceptions:

- If a resident is unable to speak for him/herself and there is no established legal representative, an ombudsman must obtain authorization from the State Long-Term Care Ombudsman
- Systemic investigations that involve all residents



Florida's Long-Term Care
OMBUDSMAN PROGRAM

Our 2 cents is no small change

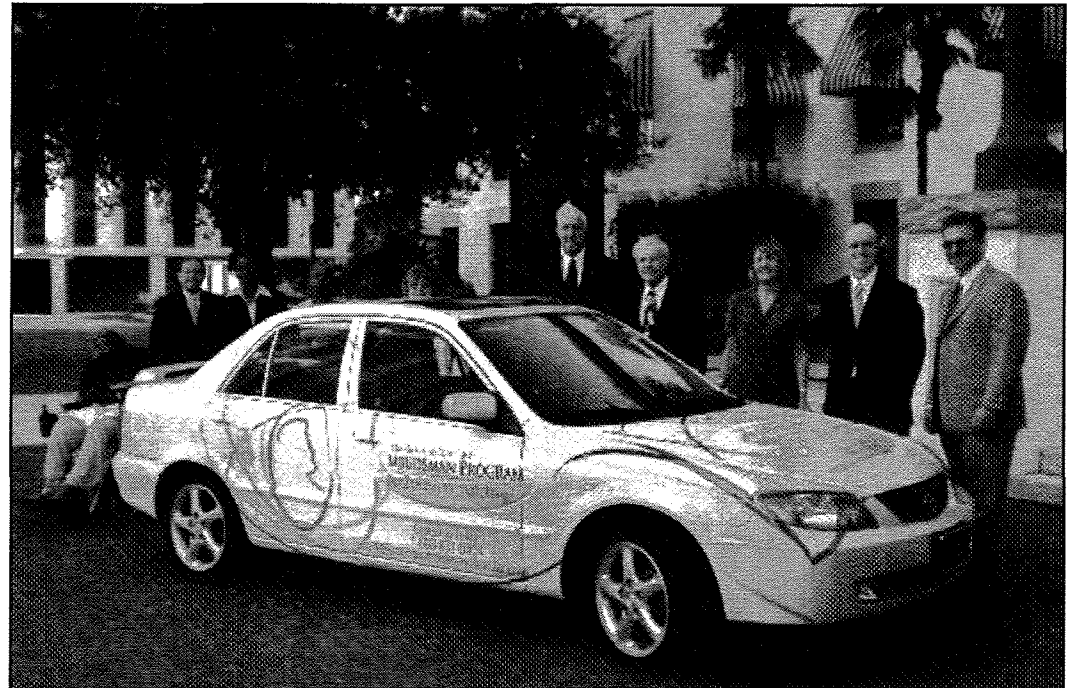
Organizational Analysis & Strategic Plan

- ★ The program completed an organizational analysis and developed a strategic plan to enhance program infrastructure
- ★ The plan contains 142 recommendations relating to:
 - Resident advocacy
 - Program awareness
 - Staff and volunteer training

Public Awareness and Recruitment

★ Integrated Communications Campaign

- Public Relations Efforts
 - Proactive, positive statewide media outreach
- Advertising Efforts
 - PSAs and paid print, television and radio ads that have been featured in the Miami Herald, Pensacola News Journal, and cable systems statewide



Florida's Long-Term Care
AMBUDSMAN PROGRAM
Our 2 cents is no small change

Ombudsman on the Horizon

★ Updated Long-Term Care Ombudsman Program Rule

- Provide clearer expectations about the program's responsibility and authority to advocate on behalf of long-term care residents
- Fulfill the intent of the Older Americans Act
- Conform with program instructions outlined by the Administration on Aging

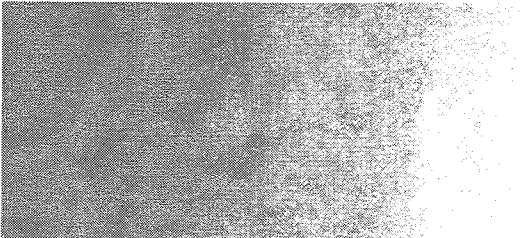
THANK YOU

*Contact Brian Lee,
State Long-Term Care Ombudsman:*

(850) 414-2323

E-mail:

ltpcopweb@elderaffairs.org





Florida's Long-Term Care
OMBUDSMAN PROGRAM
Our 2 cents is no small change

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 Nursing Facilities

SPONSOR(S): Murzin and others

TIED BILLS: IDEN./SIM. BILLS: SB 686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Healthy Seniors		DePalma 	Ciccone 
2) Healthcare Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 247 amends several provisions contained in Part II of Chapter 400, F.S., relating to the licensure, regulation, and maintenance of state nursing home facilities.

Specifically, the bill reduces the frequency of visits made by quality-of-care monitors to nursing home facilities from quarterly to annually. The bill continues to require quarterly quality-of-care monitoring for conditionally-licensed facilities – and other facilities as determined by the Agency for Health Care Administration (the “agency”) – and allows individual facilities to request quarterly visits if not conditionally-licensed.

The bill also permits nursing homes operating under a standard license to develop a plan to provide training for certified nursing assistants (CNAs), and provides for agency approval of such training programs. The bill redefines what constitutes an “adverse incident” and removes the requirement that facilities notify the agency within one business day of a risk manager’s receipt of a report detailing an adverse incident.

The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a “licensure survey” under certain circumstances where a facility’s original deficiencies are administratively overturned. Finally, the bill provides that a facility’s compliance with federal posting requirements sufficiently satisfies state posting requirements, and eliminates certain requirements relating to licensed nurses performing CNA duties for purposes of computing minimum staffing requirements for CNAs.

The legislation appears to have no fiscal impact to state or local governments.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill reduces the frequency of visits made by quality-of-care monitors to certain nursing home facilities from quarterly to annually.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Quality-of-Care Monitoring

In 1999, the Florida Legislature established the Nursing Home Quality of Care Monitoring Program.¹ Quality-of-care monitors are licensed nurses possessing training and experience in nursing facility regulation, standards of practice in long-term care, and in the evaluation of patient care. Their statutorily-prescribed 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 programs and adverse incident reports.”² Additionally, monitors conduct formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a long-term care ombudsman council or Florida advocacy council.

Quality-of-care monitors are responsible for monitoring all nursing facilities in their respective districts “on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays.”³ At a minimum, this entails quarterly monitoring visits.

Findings of a monitoring visit – both positive and negative – are provided orally and in writing to the facility administrator, and may include recommendations for procedural or policy changes within the facility. Conditions observed by a quality-of-care monitor evidencing a threat to the health or safety of a facility resident are required to be immediately reported to the agency and, as appropriate or as required by law, to law enforcement, adult protective services, or other responsible agencies.

Gold Seal Designation

The Governor’s Panel on Excellence in Long-Term Care is the entity charged with implementing and administering the state’s Gold Seal Program, an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period. The panel considers the quality of care provided to facility residents during its evaluation for Gold Seal designation. Additionally, a facility must:⁴

¹ Ch. 99-394, L.O.F.

² S. 400.118(2)(a), F.S.

³ *Id.*

⁴ S. 400.235, F.S.

- not have class I or II deficiencies within the 30 months preceding application;
- evidence financial soundness and stability according to standards adopted by the agency in administrative rule;
- participate in a consumer satisfaction process;
- evidence the involvement of families and community members in the facility on a regular basis;
- maintain a stable workforce, as demonstrated by a relatively low rate of turnover among CNAs and licensed nurses within the 30 months preceding application;
- evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application; and
- provide targeted in-service training provided to meet training needs identified by internal or external quality assurance efforts.

Presently, there are 12 state nursing homes operating under a Gold Seal designation.⁵

CNA Training

Presently, nursing homes designated as Gold Seal facilities are permitted to develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules. A facility wishing to provide CNA training must not have been either cited for substandard quality-of-care, terminated from the Medicare/Medicaid program, or had an enforcement action instituted against the facility to satisfy certain federal requirements. The state is required to withdraw its approval of a training program if any of these and/or other specified conditions occur.⁶

In Florida, CNA training is subject to approval by the Board of Nursing within the Department of Health, following certification by the Department of Education. Currently, there are approximately five state nursing homes that are certified by the Department of Education to offer CNA training.⁷

Incident Reporting

Each nursing home facility must notify the agency in writing within one business day of any adverse incident, as they are presently defined by statute.⁸ Subsequently, the facility must initiate an investigation and provide a complete report to the agency within 15 calendar days of the event giving rise to the investigation. If, following a complete investigation, the facility's risk manager determines that the event in question does not constitute an "adverse incident", the facility must include this information in the report submitted to the agency.

⁵ Agency for Health Care Administration's *Nursing Home Guide*, available at: <http://ahcaxnet.fdhc.state.fl.us/nhcguid/>. Information retrieved January 25, 2008.

⁶ 42 C.F.R. 483.151

⁷ Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

⁸ S. 400.147(7), F.S.

Licensure Evaluation and Facility Licensure Status

At least every 15 months, the agency is required to evaluate each nursing home facility to determine the degree of compliance with state licensure requirements. Following this evaluation, a nursing home is assigned either a standard or conditional licensure status. A "standard" licensure indicates that a facility has no class I or II deficiencies, and has successfully corrected all class III deficiencies within the time established by the agency. A "conditional" license is provided to a nursing facility that is not in substantial compliance with licensure standards at the time of the survey, due to the presence of one or more class I or II deficiencies, or to class III deficiencies left uncorrected within the time prescribed by the agency.⁹

The various classes of deficiencies are defined as follows:¹⁰

- Class I – 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.
- Class II – a deficiency that the agency determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class III – a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident, or one that has the potential to compromise a resident's ability to maintain or reach his or her highest practicable physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class IV – a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a resident.

Additionally, a facility may be placed on a six-month survey cycle for a period of two years if it has been cited for a class I deficiency, two or more class II deficiencies from separate surveys/investigations within a 60-day period, or has received three substantiated complaints within a six-month period, each resulting in at least one class I or II deficiency.

State Nursing Home Posting Requirements

Under state law,¹¹ each nursing home is required to document compliance with the staffing standard requirements imposed by s. 400.23(3)(a), F.S., and post daily the names of staff on duty for the benefit of facility residents and the public.

Effect of Proposed Changes

HB 247 reduces the frequency of visits made by quality-of-care monitors to nursing home facilities from quarterly to annually. The bill continues to require quarterly quality-of-care monitoring for conditionally-licensed facilities – and other facilities as determined by the agency – and permits individual facilities to request quarterly visits if not conditionally-licensed. The bill further specifies that such a request applies

⁹ S. 400.23(7), F.S.

¹⁰ S. 400.23(8), F.S.

¹¹ S. 400.23(3)(a)3, F.S.

only to a facility's current licensure period, and must be resubmitted at the time of license renewal in order to be continued.

The bill also permits nursing homes operating under a standard license to develop a plan to provide CNA training, and provides for agency approval of such training programs.

Moreover, the bill specifies when an event reported to law enforcement constitutes an "adverse incident" by providing that only events reported to a law enforcement agency for further investigation are adverse incidents within the meaning of s. 400.147(5)(a)7, F.S. The bill also removes the requirement that facilities notify the agency within one business day of a risk manager's receipt of a report detailing an adverse incident. The facility would continue to submit a 15-day final report to the agency.¹²

The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a "licensure survey" under certain circumstances where a facility's original deficiencies are administratively overturned.

The bill provides that a facility's compliance with federal posting requirements sufficiently satisfies state posting requirements. The relevant federal posting requirement¹³ specifies that nursing facilities must post the following information on a daily basis:

- Facility name;
- The current date;
- The total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift: (1) registered nurses, (2) licensed practical nurses or licensed vocational nurses (as defined under State law), and (3) certified nurse aides; and
- Resident census.

In its agency analysis, AHCA notes that the state and federal posting requirements serve a similar intent, and "either would be appropriate for providing information to the public about nursing home staffing."¹⁴

Finally, the bill eliminates certain requirements relating to licensed nurses performing CNA duties for purposes of computing minimum staffing requirements for CNAs.

¹² AHCA notes that, "based on adverse incidents submitted during 2006, 77.1% of the one-day adverse incident [reports] were determined not to meet the definition of an adverse incident by the facility upon completing the final 15-day report." Noting that there is a similar federal five-day adverse incident report requirement, the agency continues, "[f]ederal nursing home regulations include the requirement to immediately report to the agency all [instances] of abuse, neglect, and exploitation. Based upon the continued requirement to submit the 15-day report and the federal reporting requirement, the elimination of the one-day report would not create significant gaps in monitoring regulatory compliance." Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

¹³ 42 C.F.R. 483.30(e); note that postings must also be made in a "clear and readable format" and in a "prominent place readily accessible to residents and visitors." Additionally, the facility must, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard, and must also maintain such nursing staff data for a minimum of 18 months, or as required by State law, whichever is greater.

¹⁴ Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.118(2)(a), F.S., requiring quality-of-care monitors to visit state nursing facilities annually instead of quarterly, to visit each conditionally-licensed nursing facility at least quarterly, and to visit other facilities as directed by the agency; providing for quarterly visits of facilities which are not conditionally-licensed upon a request by the facility; and clarifying that such requests apply only to a facility's current licensure period.

Section 2. Amends s. 400.141, F.S., permitting nursing facilities maintaining a standard license to develop a plan to provide certified nursing assistant training, and to apply to the agency for program approval; granting rulemaking authority to the agency.

Section 3. Amends s. 400.147, F.S., clarifying that the term "adverse incident" applies to events reported to law enforcement only where such event is reported to a law enforcement agency for investigation; and eliminating the facility requirement to notify the agency within one business day of a risk manager's receipt of a report detailing an adverse incident.

Section 4. Amends s. 400.19(3), F.S., permitting the last survey conducted within a six-month survey cycle to be counted as a "licensure survey" in the event that the administrative action giving rise to the six-month survey cycle results in the original deficiencies being overturned.

Section 5. Amends s. 400.195(1)(d), F.S., correcting a statutory cross-reference.

Section 6. Amends s. 400.23, F.S., providing that a facility's compliance with certain federal posting requirements satisfies the state posting requirements contained in Chapter 400, F.S.; eliminating certain requirements relating to licensed nurses performing certified nursing assistant duties for purposes of computing minimum staffing requirements for certified nursing assistants.

Section 7. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its agency analysis, AHCA notes that, while there is no direct fiscal impact on the agency, "original staffing for adverse incident reporting was based upon an estimate of 3,600 nursing home and assisted living facility adverse incidents per year; however, this estimate fell significantly short of actual adverse incidents received each year. During Fiscal Year 2006-07, 4,728 adverse incidents were processed by the agency, approximately 30% higher than [the number originally] estimated. The agency has previously allocated necessary resources to handle this higher-than-anticipated workload from adverse incident reports, and will require all existing resources to continue to manage the remaining activities."¹⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁵ *Id.*

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to nursing facilities; amending s. 400.118, F.S.; revising the frequency of visits to nursing facilities by quality-of-care monitors from the Agency for Health Care Administration; amending s. 400.141, F.S.; authorizing certain licensed nursing facilities to develop a plan to provide certain training for nursing assistants; providing for rules relating to agency approval of training programs; amending s. 400.147, F.S.; redefining the term "adverse incident"; deleting the requirement that a nursing facility notify the agency of an adverse incident; deleting notification requirements; requiring that a risk manager determine if an incident was an adverse incident; amending s. 400.19, F.S.; providing that the most recent survey is a licensure survey under certain conditions for purposes of future survey scheduling; amending s. 400.195, F.S.; conforming a cross-reference; amending s. 400.23, F.S.; requiring that federal posting requirements for staffing standards comply with state posting requirements; revising provisions relating to a facility's use of licensed nurses to meet certain minimum staffing requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 400.118, Florida Statutes, is amended to read:

400.118 Quality assurance; early warning system;

29 monitoring; rapid response teams.--

30 (2) (a) The agency shall establish within each district
 31 office one or more quality-of-care monitors, based on the number
 32 of nursing facilities in the district, to monitor all nursing
 33 facilities in the district on a regular, unannounced, aperiodic
 34 basis, including nights, evenings, weekends, and holidays.
 35 Quality-of-care monitors shall visit each nursing facility
 36 annually, shall visit each conditionally licensed nursing
 37 facility at least quarterly, and shall visit other facilities as
 38 directed by the agency. However, upon the request of a facility,
 39 the agency shall make quarterly visits to a nursing home that is
 40 not conditionally licensed. The request applies only to the
 41 current licensure period and must be made again by the facility
 42 at the time of license renewal in order to be continued.

43 Priority for additional monitoring visits shall be given to
 44 nursing facilities that have ~~with~~ a history of resident care
 45 deficiencies. Quality-of-care monitors shall be registered
 46 nurses who are trained and experienced in nursing facility
 47 regulation, standards of practice in long-term care, and
 48 evaluation of patient care. Individuals in these positions may
 49 ~~shall~~ not be deployed by the agency as a part of the district
 50 survey team in the conduct of routine, scheduled surveys, but
 51 shall function solely and independently as quality-of-care
 52 monitors. Quality-of-care monitors shall assess the overall
 53 quality of life in the nursing facility and shall assess
 54 specific conditions in the facility directly related to resident
 55 care, including the operations of internal quality improvement
 56 and risk management programs and adverse incident reports. The

57 | quality-of-care monitor shall include in an assessment visit
 58 | observation of the care and services rendered to residents and
 59 | formal and informal interviews with residents, family members,
 60 | facility staff, resident guests, volunteers, other regulatory
 61 | staff, and representatives of a long-term care ombudsman council
 62 | or Florida advocacy council.

63 | Section 2. Section 400.141, Florida Statutes, is amended
 64 | to read:

65 | 400.141 Administration and management of nursing home
 66 | facilities.--Every licensed facility shall comply with all
 67 | applicable standards and rules of the agency and shall:

68 | (1) Be under the administrative direction and charge of a
 69 | licensed administrator.

70 | (2) Appoint a medical director licensed pursuant to
 71 | chapter 458 or chapter 459. The agency may establish by rule
 72 | more specific criteria for the appointment of a medical
 73 | director.

74 | (3) Have available the regular, consultative, and
 75 | emergency services of physicians licensed by the state.

76 | (4) Provide for resident use of a community pharmacy as
 77 | specified in s. 400.022(1)(q). Any other law to the contrary
 78 | notwithstanding, a registered pharmacist licensed in Florida,
 79 | that is under contract with a facility licensed under this
 80 | chapter or chapter 429, shall repackage a nursing facility
 81 | resident's bulk prescription medication which has been packaged
 82 | by another pharmacist licensed in any state in the United States
 83 | into a unit dose system compatible with the system used by the
 84 | nursing facility, if the pharmacist is requested to offer such

85 service. In order to be eligible for the repackaging, a resident
 86 or the resident's spouse must receive prescription medication
 87 benefits provided through a former employer as part of his or
 88 her retirement benefits, a qualified pension plan as specified
 89 in s. 4972 of the Internal Revenue Code, a federal retirement
 90 program as specified under 5 C.F.R. s. 831, or a long-term care
 91 policy as defined in s. 627.9404(1). A pharmacist who correctly
 92 repackages and relabels the medication and the nursing facility
 93 which correctly administers such repackaged medication under the
 94 provisions of this subsection shall not be held liable in any
 95 civil or administrative action arising from the repackaging. In
 96 order to be eligible for the repackaging, a nursing facility
 97 resident for whom the medication is to be repackaged shall sign
 98 an informed consent form provided by the facility which includes
 99 an explanation of the repackaging process and which notifies the
 100 resident of the immunities from liability provided herein. A
 101 pharmacist who repackages and relabels prescription medications,
 102 as authorized under this subsection, may charge a reasonable fee
 103 for costs resulting from the implementation of this provision.

104 (5) Provide for the access of the facility residents to
 105 dental and other health-related services, recreational services,
 106 rehabilitative services, and social work services appropriate to
 107 their needs and conditions and not directly furnished by the
 108 licensee. When a geriatric outpatient nurse clinic is conducted
 109 in accordance with rules adopted by the agency, outpatients
 110 attending such clinic shall not be counted as part of the
 111 general resident population of the nursing home facility, nor
 112 shall the nursing staff of the geriatric outpatient clinic be

113 counted as part of the nursing staff of the facility, until the
 114 outpatient clinic load exceeds 15 a day.

115 (6) Be allowed and encouraged by the agency to provide
 116 other needed services under certain conditions. If the facility
 117 has a standard licensure status, and has had no class I or class
 118 II deficiencies during the past 2 years or has been awarded a
 119 Gold Seal under the program established in s. 400.235, it may be
 120 encouraged by the agency to provide services, including, but not
 121 limited to, respite and adult day services, which enable
 122 individuals to move in and out of the facility. A facility is
 123 not subject to any additional licensure requirements for
 124 providing these services. Respite care may be offered to persons
 125 in need of short-term or temporary nursing home services.
 126 Respite care must be provided in accordance with this part and
 127 rules adopted by the agency. However, the agency shall, by rule,
 128 adopt modified requirements for resident assessment, resident
 129 care plans, resident contracts, physician orders, and other
 130 provisions, as appropriate, for short-term or temporary nursing
 131 home services. The agency shall allow for shared programming and
 132 staff in a facility which meets minimum standards and offers
 133 services pursuant to this subsection, but, if the facility is
 134 cited for deficiencies in patient care, may require additional
 135 staff and programs appropriate to the needs of service
 136 recipients. A person who receives respite care may not be
 137 counted as a resident of the facility for purposes of the
 138 facility's licensed capacity unless that person receives 24-hour
 139 respite care. A person receiving either respite care for 24
 140 hours or longer or adult day services must be included when

141 calculating minimum staffing for the facility. Any costs and
 142 revenues generated by a nursing home facility from
 143 nonresidential programs or services shall be excluded from the
 144 calculations of Medicaid per diems for nursing home
 145 institutional care reimbursement.

146 (7) If the facility has a standard license or is a Gold
 147 Seal facility, exceeds the minimum required hours of licensed
 148 nursing and certified nursing assistant direct care per resident
 149 per day, and is part of a continuing care facility licensed
 150 under chapter 651 or a retirement community that offers other
 151 services pursuant to part III of this chapter or part I or part
 152 III of chapter 429 on a single campus, be allowed to share
 153 programming and staff. At the time of inspection and in the
 154 semiannual report required pursuant to subsection (15), a
 155 continuing care facility or retirement community that uses this
 156 option must demonstrate through staffing records that minimum
 157 staffing requirements for the facility were met. Licensed nurses
 158 and certified nursing assistants who work in the nursing home
 159 facility may be used to provide services elsewhere on campus if
 160 the facility exceeds the minimum number of direct care hours
 161 required per resident per day and the total number of residents
 162 receiving direct care services from a licensed nurse or a
 163 certified nursing assistant does not cause the facility to
 164 violate the staffing ratios required under s. 400.23(3)(a).
 165 Compliance with the minimum staffing ratios shall be based on
 166 total number of residents receiving direct care services,
 167 regardless of where they reside on campus. If the facility
 168 receives a conditional license, it may not share staff until the

169 conditional license status ends. This subsection does not
 170 restrict the agency's authority under federal or state law to
 171 require additional staff if a facility is cited for deficiencies
 172 in care which are caused by an insufficient number of certified
 173 nursing assistants or licensed nurses. The agency may adopt
 174 rules for the documentation necessary to determine compliance
 175 with this provision.

176 (8) Maintain the facility premises and equipment and
 177 conduct its operations in a safe and sanitary manner.

178 (9) If the licensee furnishes food service, provide a
 179 wholesome and nourishing diet sufficient to meet generally
 180 accepted standards of proper nutrition for its residents and
 181 provide such therapeutic diets as may be prescribed by attending
 182 physicians. In making rules to implement this subsection, the
 183 agency shall be guided by standards recommended by nationally
 184 recognized professional groups and associations with knowledge
 185 of dietetics.

186 (10) Keep full records of resident admissions and
 187 discharges; medical and general health status, including medical
 188 records, personal and social history, and identity and address
 189 of next of kin or other persons who may have responsibility for
 190 the affairs of the residents; and individual resident care plans
 191 including, but not limited to, prescribed services, service
 192 frequency and duration, and service goals. The records shall be
 193 open to inspection by the agency.

194 (11) Keep such fiscal records of its operations and
 195 conditions as may be necessary to provide information pursuant
 196 to this part.

197 (12) Furnish copies of personnel records for employees
 198 affiliated with such facility, to any other facility licensed by
 199 this state requesting this information pursuant to this part.
 200 Such information contained in the records may include, but is
 201 not limited to, disciplinary matters and any reason for
 202 termination. Any facility releasing such records pursuant to
 203 this part shall be considered to be acting in good faith and may
 204 not be held liable for information contained in such records,
 205 absent a showing that the facility maliciously falsified such
 206 records.

207 (13) Publicly display a poster provided by the agency
 208 containing the names, addresses, and telephone numbers for the
 209 state's abuse hotline, the State Long-Term Care Ombudsman, the
 210 Agency for Health Care Administration consumer hotline, the
 211 Advocacy Center for Persons with Disabilities, the Florida
 212 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
 213 with a clear description of the assistance to be expected from
 214 each.

215 (14) Submit to the agency the information specified in s.
 216 400.071(1)(b) for a management company within 30 days after the
 217 effective date of the management agreement.

218 (15) Submit semiannually to the agency, or more frequently
 219 if requested by the agency, information regarding facility
 220 staff-to-resident ratios, staff turnover, and staff stability,
 221 including information regarding certified nursing assistants,
 222 licensed nurses, the director of nursing, and the facility
 223 administrator. For purposes of this reporting:

224 (a) Staff-to-resident ratios must be reported in the

225 categories specified in s. 400.23(3)(a) and applicable rules.
 226 The ratio must be reported as an average for the most recent
 227 calendar quarter.

228 (b) Staff turnover must be reported for the most recent
 229 12-month period ending on the last workday of the most recent
 230 calendar quarter prior to the date the information is submitted.
 231 The turnover rate must be computed quarterly, with the annual
 232 rate being the cumulative sum of the quarterly rates. The
 233 turnover rate is the total number of terminations or separations
 234 experienced during the quarter, excluding any employee
 235 terminated during a probationary period of 3 months or less,
 236 divided by the total number of staff employed at the end of the
 237 period for which the rate is computed, and expressed as a
 238 percentage.

239 (c) The formula for determining staff stability is the
 240 total number of employees that have been employed for more than
 241 12 months, divided by the total number of employees employed at
 242 the end of the most recent calendar quarter, and expressed as a
 243 percentage.

244 (d) A nursing facility that has failed to comply with
 245 state minimum-staffing requirements for 2 consecutive days is
 246 prohibited from accepting new admissions until the facility has
 247 achieved the minimum-staffing requirements for a period of 6
 248 consecutive days. For the purposes of this paragraph, any person
 249 who was a resident of the facility and was absent from the
 250 facility for the purpose of receiving medical care at a separate
 251 location or was on a leave of absence is not considered a new
 252 admission. Failure to impose such an admissions moratorium

253 constitutes a class II deficiency.

254 (e) A nursing facility which does not have a conditional
 255 license may be cited for failure to comply with the standards in
 256 s. 400.23(3)(a)1.a. only if it has failed to meet those
 257 standards on 2 consecutive days or if it has failed to meet at
 258 least 97 percent of those standards on any one day.

259 (f) A facility which has a conditional license must be in
 260 compliance with the standards in s. 400.23(3)(a) at all times.

261

262 Nothing in this section shall limit the agency's ability to
 263 impose a deficiency or take other actions if a facility does not
 264 have enough staff to meet the residents' needs.

265 (16) Report monthly the number of vacant beds in the
 266 facility which are available for resident occupancy on the day
 267 the information is reported.

268 (17) Notify a licensed physician when a resident exhibits
 269 signs of dementia or cognitive impairment or has a change of
 270 condition in order to rule out the presence of an underlying
 271 physiological condition that may be contributing to such
 272 dementia or impairment. The notification must occur within 30
 273 days after the acknowledgment of such signs by facility staff.
 274 If an underlying condition is determined to exist, the facility
 275 shall arrange, with the appropriate health care provider, the
 276 necessary care and services to treat the condition.

277 (18) If the facility implements a dining and hospitality
 278 attendant program, ensure that the program is developed and
 279 implemented under the supervision of the facility director of
 280 nursing. A licensed nurse, licensed speech or occupational

281 therapist, or a registered dietitian must conduct training of
 282 dining and hospitality attendants. A person employed by a
 283 facility as a dining and hospitality attendant must perform
 284 tasks under the direct supervision of a licensed nurse.

285 (19) Report to the agency any filing for bankruptcy
 286 protection by the facility or its parent corporation,
 287 divestiture or spin-off of its assets, or corporate
 288 reorganization within 30 days after the completion of such
 289 activity.

290 (20) Maintain general and professional liability insurance
 291 coverage that is in force at all times. In lieu of general and
 292 professional liability insurance coverage, a state-designated
 293 teaching nursing home and its affiliated assisted living
 294 facilities created under s. 430.80 may demonstrate proof of
 295 financial responsibility as provided in s. 430.80(3)(h).

296 (21) Maintain in the medical record for each resident a
 297 daily chart of certified nursing assistant services provided to
 298 the resident. The certified nursing assistant who is caring for
 299 the resident must complete this record by the end of his or her
 300 shift. This record must indicate assistance with activities of
 301 daily living, assistance with eating, and assistance with
 302 drinking, and must record each offering of nutrition and
 303 hydration for those residents whose plan of care or assessment
 304 indicates a risk for malnutrition or dehydration.

305 (22) Before November 30 of each year, subject to the
 306 availability of an adequate supply of the necessary vaccine,
 307 provide for immunizations against influenza viruses to all its
 308 consenting residents in accordance with the recommendations of

309 the United States Centers for Disease Control and Prevention,
 310 subject to exemptions for medical contraindications and
 311 religious or personal beliefs. Subject to these exemptions, any
 312 consenting person who becomes a resident of the facility after
 313 November 30 but before March 31 of the following year must be
 314 immunized within 5 working days after becoming a resident.
 315 Immunization shall not be provided to any resident who provides
 316 documentation that he or she has been immunized as required by
 317 this subsection. This subsection does not prohibit a resident
 318 from receiving the immunization from his or her personal
 319 physician if he or she so chooses. A resident who chooses to
 320 receive the immunization from his or her personal physician
 321 shall provide proof of immunization to the facility. The agency
 322 may adopt and enforce any rules necessary to comply with or
 323 implement this subsection.

324 (23) Assess all residents for eligibility for pneumococcal
 325 polysaccharide vaccination (PPV) and vaccinate residents when
 326 indicated within 60 days after the effective date of this act in
 327 accordance with the recommendations of the United States Centers
 328 for Disease Control and Prevention, subject to exemptions for
 329 medical contraindications and religious or personal beliefs.
 330 Residents admitted after the effective date of this act shall be
 331 assessed within 5 working days of admission and, when indicated,
 332 vaccinated within 60 days in accordance with the recommendations
 333 of the United States Centers for Disease Control and Prevention,
 334 subject to exemptions for medical contraindications and
 335 religious or personal beliefs. Immunization shall not be
 336 provided to any resident who provides documentation that he or

337 she has been immunized as required by this subsection. This
 338 subsection does not prohibit a resident from receiving the
 339 immunization from his or her personal physician if he or she so
 340 chooses. A resident who chooses to receive the immunization from
 341 his or her personal physician shall provide proof of
 342 immunization to the facility. The agency may adopt and enforce
 343 any rules necessary to comply with or implement this subsection.

344 (24) Annually encourage and promote to its employees the
 345 benefits associated with immunizations against influenza viruses
 346 in accordance with the recommendations of the United States
 347 Centers for Disease Control and Prevention. The agency may adopt
 348 and enforce any rules necessary to comply with or implement this
 349 subsection.

350

351 Facilities having a standard license ~~that have been awarded a~~
 352 ~~Gold Seal under the program established in s. 400.235~~ may
 353 develop a plan to provide certified nursing assistant training
 354 as prescribed by federal regulations and state rules and may
 355 apply to the agency for approval of their program. The agency
 356 may adopt rules relating to the approval, suspension, or
 357 termination of a certified nursing assistant training program.

358 Section 3. Subsections (5) through (15) of section
 359 400.147, Florida Statutes, are amended to read:

360 400.147 Internal risk management and quality assurance
 361 program.--

362 (5) For purposes of reporting to the agency under this
 363 section, the term "adverse incident" means:

364 (a) An event over which facility personnel could exercise

365 control and which is associated in whole or in part with the
 366 facility's intervention, rather than the condition for which
 367 such intervention occurred, and which results in one of the
 368 following:

- 369 1. Death;
- 370 2. Brain or spinal damage;
- 371 3. Permanent disfigurement;
- 372 4. Fracture or dislocation of bones or joints;
- 373 5. A limitation of neurological, physical, or sensory
 374 function;
- 375 6. Any condition that required medical attention to which
 376 the resident has not given his or her informed consent,
 377 including failure to honor advanced directives; or
- 378 7. Any condition that required the transfer of the
 379 resident, within or outside the facility, to a unit providing a
 380 more acute level of care due to the adverse incident, rather
 381 than the resident's condition prior to the adverse incident;
- 382 (b) Abuse, neglect, or exploitation as defined in s.
 383 415.102;
- 384 (c) Abuse, neglect and harm as defined in s. 39.01;
- 385 (d) Resident elopement; or
- 386 (e) An event that is reported to a law enforcement agency
 387 for investigation.

388 (6) The internal risk manager of each licensed facility
 389 shall:

- 390 (a) Investigate every allegation of sexual misconduct
 391 which is made against a member of the facility's personnel who
 392 has direct patient contact when the allegation is that the

393 sexual misconduct occurred at the facility or at the grounds of
 394 the facility;

395 (b) Report every allegation of sexual misconduct to the
 396 administrator of the licensed facility; and

397 (c) Notify the resident representative or guardian of the
 398 victim that an allegation of sexual misconduct has been made and
 399 that an investigation is being conducted.

400 (7) (a) The facility shall initiate an investigation ~~and~~
 401 ~~shall notify the agency within 1 business day after the risk~~
 402 ~~manager or his or her designee has received a report pursuant to~~
 403 ~~paragraph (1) (d). The notification must be made in writing and~~
 404 ~~be provided electronically, by facsimile device or overnight~~
 405 ~~mail delivery. The notification must include information~~
 406 ~~regarding the identity of the affected resident, the type of~~
 407 ~~adverse incident, the initiation of an investigation by the~~
 408 ~~facility, and whether the events causing or resulting in the~~
 409 ~~adverse incident represent a potential risk to any other~~
 410 ~~resident. The notification is confidential as provided by law~~
 411 ~~and is not discoverable or admissible in any civil or~~
 412 ~~administrative action, except in disciplinary proceedings by the~~
 413 ~~agency or the appropriate regulatory board. The agency may~~
 414 ~~investigate, as it deems appropriate, any such incident and~~
 415 ~~prescribe measures that must or may be taken in response to the~~
 416 ~~incident. The agency shall review each incident and determine~~
 417 ~~whether it potentially involved conduct by the health care~~
 418 ~~professional who is subject to disciplinary action, in which~~
 419 ~~case the provisions of s. 456.073 shall apply.~~

420 (b) ~~(8)~~ (a) Each facility shall complete the investigation

421 and submit an adverse incident report to the agency for each
 422 adverse incident within 15 calendar days after its occurrence.
 423 If, after a complete investigation, the risk manager determines
 424 that the incident was ~~not~~ an adverse incident as defined in
 425 subsection (5), the facility shall include this information in
 426 the report. The agency shall develop a form for reporting this
 427 information.

428 (c) ~~(b)~~ The information reported to the agency pursuant to
 429 paragraph (b) ~~(a)~~ which relates to persons licensed under
 430 chapter 458, chapter 459, chapter 461, or chapter 466 shall be
 431 reviewed by the agency. The agency shall determine whether any
 432 of the incidents potentially involved conduct by a health care
 433 professional who is subject to disciplinary action, in which
 434 case the provisions of s. 456.073 shall apply.

435 (d) ~~(e)~~ The report submitted to the agency must also
 436 contain the name of the risk manager of the facility.

437 (e) ~~(d)~~ The adverse incident report is confidential as
 438 provided by law and is not discoverable or admissible in any
 439 civil or administrative action, except in disciplinary
 440 proceedings by the agency or the appropriate regulatory board.

441 (8) ~~(9)~~ By the 10th of each month, each facility subject to
 442 this section shall report any notice received pursuant to s.
 443 400.0233(2) and each initial complaint that was filed with the
 444 clerk of the court and served on the facility during the
 445 previous month by a resident or a resident's family member,
 446 guardian, conservator, or personal legal representative. The
 447 report must include the name of the resident, the resident's
 448 date of birth and social security number, the Medicaid

449 identification number for Medicaid-eligible persons, the date or
 450 dates of the incident leading to the claim or dates of
 451 residency, if applicable, and the type of injury or violation of
 452 rights alleged to have occurred. Each facility shall also submit
 453 a copy of the notices received pursuant to s. 400.0233(2) and
 454 complaints filed with the clerk of the court. This report is
 455 confidential as provided by law and is not discoverable or
 456 admissible in any civil or administrative action, except in such
 457 actions brought by the agency to enforce the provisions of this
 458 part.

459 (9)~~(10)~~ The agency shall review, as part of its licensure
 460 inspection process, the internal risk management and quality
 461 assurance program at each facility regulated by this section to
 462 determine whether the program meets standards established in
 463 statutory laws and rules, is being conducted in a manner
 464 designed to reduce adverse incidents, and is appropriately
 465 reporting incidents as required by this section.

466 (10)~~(11)~~ There is no monetary liability on the part of,
 467 and a cause of action for damages may not arise against, any
 468 risk manager for the implementation and oversight of the
 469 internal risk management and quality assurance program in a
 470 facility licensed under this part as required by this section,
 471 or for any act or proceeding undertaken or performed within the
 472 scope of the functions of such internal risk management and
 473 quality assurance program if the risk manager acts without
 474 intentional fraud.

475 (11)~~(12)~~ If the agency, through its receipt of the adverse
 476 incident reports prescribed in subsection (7), or through any

477 investigation, has a reasonable belief that conduct by a staff
 478 member or employee of a facility is grounds for disciplinary
 479 action by the appropriate regulatory board, the agency shall
 480 report this fact to the regulatory board.

481 (12)~~(13)~~ The agency may adopt rules to administer this
 482 section.

483 (13)~~(14)~~ The agency shall annually submit to the
 484 Legislature a report on nursing home adverse incidents. The
 485 report must include the following information arranged by
 486 county:

487 (a) The total number of adverse incidents.

488 (b) A listing, by category, of the types of adverse
 489 incidents, the number of incidents occurring within each
 490 category, and the type of staff involved.

491 (c) A listing, by category, of the types of injury caused
 492 and the number of injuries occurring within each category.

493 (d) Types of liability claims filed based on an adverse
 494 incident or reportable injury.

495 (e) Disciplinary action taken against staff, categorized
 496 by type of staff involved.

497 (14)~~(15)~~ Information gathered by a credentialing
 498 organization under a quality assurance program is not
 499 discoverable from the credentialing organization. This
 500 subsection does not limit discovery of, access to, or use of
 501 facility records, including those records from which the
 502 credentialing organization gathered its information.

503 Section 4. Subsection (3) of section 400.19, Florida
 504 Statutes, is amended to read:

505 400.19 Right of entry and inspection.--

506 (3) The agency shall every 15 months conduct at least one

507 unannounced inspection to determine compliance by the licensee

508 with statutes, and with rules adopted ~~promulgated~~ under the

509 provisions of those statutes, governing minimum standards of

510 construction, quality and adequacy of care, and rights of

511 residents. The survey shall be conducted every 6 months for the

512 next 2-year period if the facility has been cited for a class I

513 deficiency, has been cited for two or more class II deficiencies

514 arising from separate surveys or investigations within a 60-day

515 period, or has had three or more substantiated complaints within

516 a 6-month period, each resulting in at least one class I or

517 class II deficiency. In addition to any other fees or fines in

518 this part, the agency shall assess a fine for each facility that

519 is subject to the 6-month survey cycle. The fine for the 2-year

520 period shall be \$6,000, one-half to be paid at the completion of

521 each survey. The agency may adjust this fine by the change in

522 the Consumer Price Index, based on the 12 months immediately

523 preceding the increase, to cover the cost of the additional

524 surveys. If such deficiencies are overturned as the result of

525 administrative action but additional surveys have already been

526 conducted pursuant to this section, the most recent survey shall

527 be considered a licensure survey for purposes of scheduling

528 future surveys. The agency shall verify through subsequent

529 inspection that any deficiency identified during inspection is

530 corrected. However, the agency may verify the correction of a

531 class III or class IV deficiency unrelated to resident rights or

532 resident care without reinspecting the facility if adequate

533 written documentation has been received from the facility, which
 534 provides assurance that the deficiency has been corrected. The
 535 giving or causing to be given of advance notice of such
 536 unannounced inspections by an employee of the agency to any
 537 unauthorized person shall constitute cause for suspension of not
 538 fewer than 5 working days according to the provisions of chapter
 539 110.

540 Section 5. Paragraph (d) of subsection (1) of section
 541 400.195, Florida Statutes, is amended to read:

542 400.195 Agency reporting requirements.--

543 (1) For the period beginning June 30, 2001, and ending
 544 June 30, 2005, the Agency for Health Care Administration shall
 545 provide a report to the Governor, the President of the Senate,
 546 and the Speaker of the House of Representatives with respect to
 547 nursing homes. The first report shall be submitted no later than
 548 December 30, 2002, and subsequent reports shall be submitted
 549 every 6 months thereafter. The report shall identify facilities
 550 based on their ownership characteristics, size, business
 551 structure, for-profit or not-for-profit status, and any other
 552 characteristics the agency determines useful in analyzing the
 553 varied segments of the nursing home industry and shall report:

554 (d) Information regarding deficiencies cited, including
 555 information used to develop the Nursing Home Guide WATCH LIST
 556 pursuant to s. 400.191, and applicable rules, a summary of data
 557 generated on nursing homes by Centers for Medicare and Medicaid
 558 Services Nursing Home Quality Information Project, and
 559 information collected pursuant to s. 400.147(8) ~~s. 400.147(9)~~,
 560 relating to litigation.

561 Section 6. Paragraph (a) of subsection (3) of section
 562 400.23, Florida Statutes, is amended to read:

563 400.23 Rules; evaluation and deficiencies; licensure
 564 status.--

565 (3)(a)1. The agency shall adopt rules providing minimum
 566 staffing requirements for nursing homes. These requirements
 567 shall include, for each nursing home facility:

568 a. A minimum certified nursing assistant staffing of 2.6
 569 hours of direct care per resident per day beginning January 1,
 570 2003, and increasing to 2.7 hours of direct care per resident
 571 per day beginning January 1, 2007. Beginning January 1, 2002, a
 572 ~~ne~~ facility may not shall staff below one certified nursing
 573 assistant per 20 residents, and must provide a minimum licensed
 574 nursing staffing of 1.0 hour of direct care per resident per day
 575 but never below one licensed nurse per 40 residents.

576 b. Beginning January 1, 2007, a minimum weekly average
 577 certified nursing assistant staffing of 2.9 hours of direct care
 578 per resident per day. For the purpose of this sub-subparagraph,
 579 a week is defined as Sunday through Saturday.

580 2. Nursing assistants employed under s. 400.211(2) may be
 581 included in computing the staffing ratio for certified nursing
 582 assistants only if their job responsibilities include only
 583 nursing-assistant-related duties.

584 3. Each nursing home must document compliance with
 585 staffing standards as required under this paragraph and post
 586 daily the names of staff on duty for the benefit of facility
 587 residents and the public. Compliance with federal posting
 588 requirements satisfies the posting requirements in this

589 subparagraph.

590 4. The agency shall recognize the use of licensed nurses
 591 for compliance with minimum staffing requirements for certified
 592 nursing assistants, provided that the facility otherwise meets
 593 the minimum staffing requirements for licensed nurses and that
 594 the licensed nurses are performing the duties of a certified
 595 nursing assistant. ~~Unless otherwise approved by the agency,~~
 596 Licensed nurses counted toward the minimum staffing requirements
 597 for certified nursing assistants must exclusively perform the
 598 duties of a certified nursing assistant ~~for the entire shift~~ and
 599 not also be counted toward the minimum staffing requirements for
 600 licensed nurses. ~~If the agency approved a facility's request to~~
 601 ~~use a licensed nurse to perform both licensed nursing and~~
 602 ~~certified nursing assistant duties,~~ The facility must allocate
 603 the amount of staff time specifically spent on certified nursing
 604 assistant duties for the purpose of documenting compliance with
 605 minimum staffing requirements for certified and licensed nursing
 606 staff. In no event may the hours of a licensed nurse with dual
 607 job responsibilities be counted twice.

608 Section 7. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 247**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Healthy Seniors Committee
2 Representative(s) Murzin offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove line(s) 26-62
6
7

8
9 -----
10 **T I T L E A M E N D M E N T**

11 Remove line(s) 2-5 and insert:

12 An act relating to nursing facilities amending s. 400.141, F.S.;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.2 (for drafter's use only)

Bill No. **HB 247**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Healthy Seniors Committee
2 Representative(s) Murzin offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Between line(s) 440 and 441 insert:

6 (f) Nothing herein shall affect any federal reporting
7 requirements.