

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	5 - 0 - 0
Yeas:	Kruse, Monnes Anderson, Telfer, Verger, Morrisette
Nays:	0
Exc.:	0
Prepared By:	Jennifer Kellar, Administrator
Meeting Dates:	2/4, 2/18, 3/4

WHAT THE MEASURE DOES: Provides Department of Human Services the right to go directly to a contested case hearing for a nursing assistant disputing a finding of abuse of a resident in long term care. Removes the informal conference requirement. Requires State Board of Nursing to maintain nursing assistant registry that contains information required by federal law, including a finding of abuse.

ISSUES DISCUSSED:

- Amendments clarify the measure's reflection of federal regulation and state-federal funding
- Director of the Board of Nursing addressing their investigative structure and new policies and procedures
- Discussion of Nurse Monitoring Program
- Need for agency transparency and accountability
- Operating agreement between department and Board of Nursing for maintenance of certified nurses aids registry

EFFECT OF COMMITTEE AMENDMENT: Clarify measure language to reflect federal regulation and state-federal funding more accurately. Clarifies that federal regulation requires establishment and maintenance of a registry of certified nurses aides (CNAs). Clarifies that it is the obligation of the Department, not the Board, to ensure that the registry meets federal requirements, and that the Department, not the Board, receives federal funds to maintain the registry.

BACKGROUND: The Board of Nursing maintains a registry on certified nurses aids (CNAs). If a CNA has a finding of substantiated abuse against their certification, this information is recorded in the registry. The finding of abuse does not automatically result in the loss of certification; however, it does prevent a CNA from being able to work in a nursing facility, and a CNA may be denied employment in other facility types on the basis of such a finding. Statute does allow the CNA to petition for removal of the abuse finding after one year.

The Code of Federal Regulations (CFR) 488.335 states that a CNA must be advised of their right to a hearing before a finding of abuse is placed against their certification on the registry. ORS 441.677 and 441.678 provide a CNA with a three-person administrative review, but makes no mention of a contested case hearing. Current statutory language does not provide for any appeal beyond this administrative review. Senate Bill 163-A eliminates the step of having a three-person administrative review board. Since late 2007, the Department of Human Services has offered CNAs the right to request a contested case hearing following the administrative panel review.

The Department of Human Services has asserted that because of federal requirements and the negative impact to the CNA when there is a finding of abuse, the CNA should have the right to a contested case hearing before a final determination is made. The measure brings current practice in alignment with state and federal law.

3/9/2009 9:35:00 AM

This summary has not been adopted or officially endorsed by action of the committee.