

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass and Be Placed on the Consent Calendar and Rescind the Subsequent Referral to the Committee on Ways and Means

Vote: 8 - 0 - 1

Yeas: Boone, Cowan, Dembrow, Freeman, Huffman, Maurer, VanOrman, Tomei

Nays: 0

Exc.: Olson

Prepared By: Keely West, Administrator

Meeting Dates: 4/3

WHAT THE MEASURE DOES: Grants nursing assistants implicated in an incident of abuse the right to a contested case hearing rather than an administrative hearing upon notification of findings by the Department of Human Services (DHS). Establishes a nursing assistant registry in DHS and permits DHS to place the abuse finding in the registry if a contested case hearing is not requested by the nursing assistant within 30 days of the notice. Prohibits employment by long term care facilities or adult foster homes of individuals in the registry.

ISSUES DISCUSSED:

- Provisions of the measure.

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The Board of Nursing maintains a registry of 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, DHS has offered CNAs the right to request a contested case hearing following the administrative panel review. DHS asserts 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.