

**STORAGE NAME:** h0171.LTC  
**DATE:** March 17, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Elder Affairs and Long Term Care  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 171

**RELATING TO:** Screening for all Nursing Home Staff and Auxiliary Employees

**SPONSOR(S):** Representative Diaz de la Portilla & others

**STATUTE(S) AFFECTED:** 400.215, F.S.

**COMPANION BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) Elder Affairs and Long Term Care
- (2) Health and Human Services Appropriations
- (3)
- (4)
- (5)

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**I. SUMMARY:**

HB 171 requires the Agency for Health Care Administration (AHCA) to conduct a level 2 background screening as prescribed in chapter 435, F.S., for all personnel of nursing facilities.

Level 2 screening requires employment history checks, fingerprinting, statewide and juvenile records checks through Florida Department of Law Enforcement (FDLE), federal records checks through the Federal Bureau of Investigations (FBI), and may include local criminal records checks through local law enforcement agencies. Persons screened under this section must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to the provisions of specific Florida Statutes or a similar statute of another jurisdiction. Those statutes cover offenses such as adult abuse, murder, battery, arson, selling drugs, and certain sex-related crimes.

A level 2 background check currently costs \$45 per person.

The act would take effect on October 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Under current law, Certified Nursing Assistants (CNAs) are subject to at least a records check through the Central Abuse Registry, and a statewide criminal records correspondence check through the FDLE. Further, the applicant or employee is required to provide an employment history and the facility must make diligent efforts to verify the history. Nursing homes are responsible for the costs associated with the screening. The abuse registry check costs six dollars and FDLE charges fifteen dollars for the criminal records check.

In fiscal year 1995-96, the Department of Children and Family Services (DCFS) screened 46,500 CNAs. Of those screened, thirty-four had confirmed reports of adult abuse, neglect, or exploitation. Another 184 applicants required further research after the initial screening because investigations or appeals to findings of abuse, neglect, or exploitation were pending.

There has been anecdotal reporting of elderly persons being mistreated by nursing facility staff who had a history of criminal behavior. But other than the 34 cases (.08%) described above, there is no evidence of widespread abuse, neglect, or exploitation of nursing home residents by persons with an unknown, relevant to the statutes, criminal background.

The Certified Nursing Assistant Program which processes CNA registration and exemption hearings for the background screening is currently a part of the Agency for Health Care Administration, but it will be transferred to the Department of Health on July 1, 1997.

Under current law no other nursing home staff is required to have a background screening.

B. EFFECT OF PROPOSED CHANGES:

The proposed changes would require all applicants for employment and employees of nursing homes licensed under s. 400 be screened pursuant to the level 2 screening standards defined in chapter 435, F.S., as a condition for employment or continued employment. This requirement includes what are referred to as "auxiliary employees" as well. The screening requirements do not apply to volunteers.

Based upon a check of three nursing homes around the state, and consultation with nursing home industry representatives, the best projection of persons affected by this bill is as follows:

	# staff	FBI	FDLE	Abuse Registry	Total Cost
<b>CNAs (current)</b>	50,000	\$24	done	done	\$1,200,000
<b>Existing staff, not screened</b>	35,000	\$24	\$15	\$6	\$1,575,000
<b>Projected Auxiliary staff</b>					
<b>120 beds @ 1 auxiliary staff per bed X 85,000 beds</b>	85,000	\$24	\$15	\$6	\$3,825,000
<b>Total</b>	170,000				\$6,660,000

Allowing for the 22,000 currently employed CNAs (reported by AHCA) who would need only the FBI check, expenditures of \$3.8 million dollars would be required. The fiscal impact is further assessed below.

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C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

There is no explicit authority to create new rules. However, the affected agencies (FDLE, AHCA, and DCFS) may need to modify existing rules.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

(4) any entitlement to a government service or benefit?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Taxes are not addressed.

b. Does the bill require or authorize an increase in any fees?

The costs to be paid by the nursing facilities to comply with this new, more involved, level of screening will be higher.

c. Does the bill reduce total taxes, both rates and revenues?

The costs to be paid by nursing facilities to comply with this new, more involved, level of screening will be higher.

d. Does the bill reduce total taxes, both rates and revenues?

No.

- e. Does the bill reduce total fees, both rates and revenues?

No.

- f. Does the bill authorize any fee or tax increase by any local government?

The bill does not directly, but existing statute requires that the two county operated nursing homes pay the costs of the required screening.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill creates more stringent requirements for nursing facility owners, operators and persons wishing to work in nursing facilities.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill requires that all persons employed by a licensed nursing facility undergo a level 2 screening which includes criminal records (adult and juvenile) and fingerprint checks. These are not now required.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

This section need be completed only in the discretion of the Committee.

Section 1 creates s. 400.215, F.S., that directs AHCA to require background screening pursuant to the standards for a level 2 background screening as identified in chapter 435. Requires that completion of this screening be completed for employment, and continued employment for all staff including "auxiliary employees". The bill does not

require that volunteers be screened. Auxiliary employees are not defined. Medicare reimburses non-institution staff who provide (usually) professional care to the residents as "ancillary services." Ancillary care includes podiatry, optometry, physical and speech therapy, psychiatric, and other services.

Section 2 provides an effective date of October 1, 1997.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

**1. Non-recurring effects:**

Chapter 435, F.S., allows for exemption hearings to the automatic disqualification that occurs when a background screening provides evidence of one of the listed offenses. The screening requirement applies to existing employees; so, the workload for the first year would be significant. Currently, AHCA conducts these hearings for the certified nursing assistants. That experience has indicated that one staff person (FTE) can process approximately 200 hearings per year. Therefore, AHCA has projected the need for two professional staff and one support staff to implement this legislation.

AHCA prepared an evaluation and estimated non-recurring effects the first year of \$20,613, and of \$15,314 for the Department of Health.

<b>Department of Health</b>	<b>Year 1</b>
Expense Costs 3 FTEs	\$5,733
Operating Capital Outlay 3 FTEs	\$9,581
<i>Health SUB-TOTAL</i>	<i>\$15,314</i>
<b>Agency for Health Care Administration</b>	
Expenses 1 FTE	\$2,132
Operating Capital Outlay	\$3,167
<i>AHCA SUB-TOTAL</i>	<i>\$5,299</i>
<b>Total Non-recurring Effects</b>	<b>\$20,613</b>

2. Recurring Effects:

The Department of Health and AHCA project recurring costs of:

<b>Department of Health</b>	<b>Year 1</b>	<b>Year 2</b>
Salaries: 2 Senior Human Services Program Specialists, 1 Administrative Secretary	\$113,689	\$113,689
Expenses	\$28,866	\$28,866
<i>Sub-total for Department of Health</i>	<i>\$142,555</i>	<i>\$142,555</i>
<b>Agency for Health Care Administration</b>		
Salaries 1 Health Facility Evaluator II	\$155,423	\$155,423
Expenses	\$39,923	\$39,923
<i>Sub-total for Agency for Health Care Administration</i>	<i>\$195,346</i>	<i>\$195,346</i>
<b>TOTAL Recurring:</b>	<b>\$337,901</b>	<b>\$337,901</b>

3. Long Run Effects Other Than Normal Growth:

None are projected.

4. Total Revenues and Expenditures:

Revenues from fees are projected to cover the costs for DCFS and the Florida Department of Law Enforcement. The Department of Health and AHCA project the following total expenditures:

Department	Year 1	Year 2
Department of Health	\$157,869	\$142,555
Agency for Health Care Administration	\$215,959	\$195,346
<b>Total</b>	<b>\$373,828</b>	<b>\$337,901</b>



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

The Florida Association of Counties reports two counties own and operate nursing facilities. The Association reports that fiscal impact would be negligible.

2. Recurring Effects:

The Florida Association of Counties report the recurring fiscal effects would be negligible.

3. Long Run Effects Other Than Normal Growth:

There may be an increase in costs associated with the purchasing of nursing home care for publicly funded clients, both through Medicaid and any local subsidies or purchasing arrangements for NF care.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

It is anticipated that a level 2 screening will cost \$45 per person screened. The bill requires that all staff, current and future, be screened. Considering direct care, administrative, and support staff the ratio of nursing facility employees to the number of beds in a facility is almost one-to-one. The typical 120 bed facility would face an immediate cost of approximately four thousand dollars. This cost would be higher for facilities providing sub-acute care. In those facilities the staffing ratio is higher, in some instances almost two staff per licensed bed. There are approximately 77,000 beds currently licensed. Another 7,500 beds have been approved through the certificate of need process. A conservative estimate of 85,000 affected persons produces a first year fiscal impact of about six million dollars for the industry including auxiliary staff costs.

This estimate does not include "auxiliary staff". There can be 120 or more persons providing ancillary services. Again, in facilities providing a lot of sub-acute care, the number will be higher. These persons include physicians; podiatrists; physical, occupational, and speech therapists; pharmacists, nutritionists, opticians, and counselors.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

Representatives of the nursing home industry have expressed concerns about the fiscal impact. Approximately eighty per cent of the facilities which receive Medicaid reimbursement are at the rate ceiling. Those facilities would not be able to recoup the costs associated with this screening through the Medicaid per diem.

D. FISCAL COMMENTS:

The check through DCFS costs six dollars; the FDLE records check costs fifteen dollars; and, the FBI fingerprint check costs twenty-four dollars. Considering costs to the state agencies, nursing homes for staff they employ and allowing for 85,000 auxiliary providers, the first year fiscal impact is estimated at seven million dollars.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds at a level to trigger the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties to have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Research done in preparation of this document was not able to locate Florida cases of abuse, neglect, or exploitation in which the perpetrator had a federal criminal record which would have been disqualifying under this proposed standard.

The sponsor reported a tragic incident of abuse of a constituent in a nursing facility in south Florida. The resident was badly beaten by a janitor who had a state criminal record.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON Elder Affairs and Long Term Care:

Prepared by:

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