

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 20, 1998 Revised: _____

Subject: Certified Nursing Assistant Practice Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1986 creates part XV, chapter 468, Florida Statutes, to require the Department of Health to regulate the practice of certified nursing assistants in Florida. The bill provides requirements for certification and the renewal of certification, and provides fees for initial certification, certification renewal, and for the issuance of a duplicate certificate. Additionally, the department is authorized to deny, suspend, or revoke certification following a finding or report that the person certified as a nursing assistant, or applying for certification, has committed abuse, neglect, or exploitation. Furthermore, the bill: authorizes the department to issue a letter of exemption from disqualification of certification; requires the department to maintain a registry of certified nursing assistants; provides that a certified nursing assistant is subject to discipline for failure to wear legible and conspicuously displayed identification indicating the practitioner's name and professional title, while practicing as an employee of a hospital, clinic, nursing home, or group practice, or at a commercial establishment, offering health care services to the public; provides for a first-degree misdemeanor penalty for a certified nursing assistant or applicant for certification who makes any false statement or fails to disclose information with respect to any voluntary or paid employment or licensure as a certified nursing assistant; provides for a third-degree felony penalty to falsify or alter a certified nursing assistant certificate or letter of exemption; grants the Florida Department of Law Enforcement authority to establish positions to process the increased workload of conducting criminal history records checks for nursing assistants that are in excess of the total authorized positions after submitting a request to the Administration Commission and the positions shall be funded from the department's Law Enforcement Operating Trust Fund; gives the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration, if created by the 1998 Legislature; and authorizes the department and the Agency for Health Care Administration to adopt rules for the implementation of the Act created by this bill.

This bill amends sections 20.43, 400.211, 400.4255, 400.462, 400.506, 455.624, and 455.667; and creates sections 468.820, 468.821, 468.822, 468.823, 468.824, 468.8245, 468.825, 468.826, and 468.827, Florida Statutes; and several sections that are not designated in the Florida Statutes.

II. Present Situation:

Pursuant to requirements of federal law under Chapter 42 *Code of Federal Regulations* 483, states have established registries and programs for nursing assistant training and competency evaluation. For a nursing assistant training and competency evaluation program to be approved by a state, it must at a minimum consist of: no less than 75 clock hours of training; a specified curriculum of subject areas; no less than 16 hours of supervised practical training in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse; training that ensures that students do not perform any services for which they have not been trained and been found proficient by the instructor; and competency evaluation procedures that allow an aide to choose between a written and an oral examination. The required curriculum of the nursing assistant training program must provide training in the following areas before a nursing assistant can have any direct contact with a nursing home resident: communication and interpersonal skills; infection control; safety/emergency procedures; promoting residents' independence and respecting resident's rights; basic nursing skills; taking and recording vital signs; measuring and recording height and weight; caring for the residents' environment; recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; caring for residents when death is imminent; personal care skills; mental health and social service needs of residents, such as how to respond to resident behavior; care of and communicating with cognitively impaired residents; and basic restorative skills, such as training the resident in self care according to the resident's abilities, and care and use of prosthetic and orthotic devices. A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the nursing assistant begins a nursing assistant training and competency evaluation program may not be charged for any portion of the program.

Section 400.211, F.S., provides that a person must be certified as a nursing assistant to serve as a nursing assistant in any nursing home, except a registered nurse or practical nurse licensed in Florida. The Department of Health has responsibility for the certification of nursing assistants. The Department of Health must issue a certificate to any person who has met one of the following: successful completion of a nursing assistant program in a state-approved school and a minimum score of 75 percent on the written portion of the Florida Nursing Assistant Certification Test approved by the department and administered by state-approved test site personnel; achievement of a minimum of 75 percent on the written and performance portions of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel; or receipt of current certification in another state, being on that state's registry of certified nursing assistants, having no findings of abuse, and having a minimum score of 75 percent on the written portion of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel. An oral examination may be administered upon request.

The Department of Health may deny, suspend, or revoke the certification of any person to serve as a nursing assistant, based upon written notification from a court of competent jurisdiction, law enforcement agency, or administrative agency of any finding of guilt of, regardless of adjudication, or a plea of nolo contendere or guilty to, any offense set forth in the level 1 screening standards of ch. 435, F.S., or any confirmed report of abuse of a vulnerable adult.

Certification requirements must be met within 4 months of a person's initial employment as a nursing assistant in a licensed facility. Persons who are not certified as nursing assistants in Florida may be employed by a nursing facility for up to 4 months, if they are enrolled in a state-approved nursing assistant program or if they have been positively verified by a state-approved test site as certified and on the registry in another state with no findings of abuse, but who have not completed the required written examination. Any person certified as a nursing assistant on or after September 30, 1990, who has not worked for pay as a nursing assistant in a nursing-related occupation for a consecutive 24-month period must be recertified to be eligible to work in a nursing facility.

Certified nursing assistants (CNAs) working in nursing homes are required to undergo background screening. Certified nursing assistants are subject to criminal history screening and abuse and neglect screening in accordance with s. 400.211, F.S., which provides for the regulation of nursing assistants. They are screened under Level 1 screening in ch. 435, F.S. The screening involves a statewide criminal history check using a name search, a search for confirmed adult abuse reports, and a check of employment history. The Department of Children and Family Services performs the abuse search and reports a pass/fail to the employer. The Florida Department of Law Enforcement (FDLE) provides a "rap sheet" to the employer for assessment. Nursing homes are responsible for the costs associated with the screening. A CNA who is disqualified from employment because of screening results may request a hearing from the Department of Health to determine whether he or she may be exempted, as provided in s. 435.07, F.S. If an exemption is granted, the CNA may be employed by a nursing home. Professionals licensed by the Department of Health, Division of Medical Quality Assurance are exempt from nursing home-based employment screening.

Chapter 435, F.S., relating to employment screening, provides for two levels of review of an individual's past. Level 1 screening requires criminal history screening through FDLE's database and screening for a history of abuse, neglect, or exploitation through the Department of Children and Family Services. Level 2 screening, which is more comprehensive in that it is a national search involving use of a fingerprint card, includes search of delinquency records, and requires FBI screening. Level 1 screening costs \$21 (\$6 for abuse screening and \$15 for FDLE statewide criminal background screening) and Level 2 screening costs \$45 (\$21 for Level 1 screening and \$24 for FBI screening).

III. Effect of Proposed Changes:

Section 1. Creates pt. XV, ch. 468, F.S., (ss. 468.820, 468.821, 468.822, 468.823, 468.824, 468.8245, 468.825, 468.826, and 468.827, F.S.) as the Certified Nursing Assistant Act.

Section 468.821, F.S., provides definitions for the part. "Approved training program" means a course of training conducted by a public or private educational center licensed by the Department of Education to implement the basic curriculum for certified nursing assistants which is approved by the Department of Education. "Certified nursing assistant" means a person who meets the qualifications specified in pt. XV, ch. 468, F.S., and who is certified by the Department of Health as a CNA. "Registry" means the listing of CNAs maintained by the Department of Health.

Section 468.822, F.S., provides that the Department of Health must regulate the practice of certified nursing assistants in Florida and must maintain, or contract with or approve another entity to maintain, a state registry of CNAs. The registry must consist of a database which includes: the name of each CNA in Florida who holds active certification; the effective date of certification; and an indication of whether the CNA was reimbursed for the cost of training and testing. The registry must be accessible to individuals, employers, and other state agencies. The Department of Health must establish testing procedures for use in certifying nursing assistants and must adopt rules regulating the practice of CNAs to enforce pt. XV, ch. 468, F.S.

Section 468.823, F.S., provides that a person may not practice as a CNA or use the title "Certified Nursing Assistant" or abbreviation "C.N.A." unless the person is certified by the Department of Health or is a registered nurse or licensed practical nurse licensed in Florida. The department must issue a certificate to practice as a CNA to any person who demonstrates a minimum competency in the English language and the ability to read and write, and who undergoes a Level 1 screening under ch. 435, F.S. The screening involves a statewide criminal history check using a name search, a search for confirmed adult abuse reports, and a check of employment history. If the applicant has not maintained continuous residency within the state for the 5 years immediately preceding the date of application, then the applicant must comply with the requirements for a Level 2 screening as provided in ch. 435, F.S., and may be granted a conditional certification for up to 180 days pending the receipt of written findings of the screening. Level 2 screening is not required if the applicant attests in writing, under penalty of perjury, that he or she meets the residency requirement. If applicable to complete the requirements for Level 2 screening, the applicant must furnish to the Department of Health a full set of fingerprints to enable a criminal background investigation to be conducted. The Department of Health must submit the completed fingerprint card to the Florida Department of Law Enforcement, which may submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the criminal history records check must be returned to the department as a part of the Level 2 screening. The applicant must supply any missing criminal history information or other necessary information to the department within 30 days after the department requests the information or be subject to automatic disqualification from certification. A nursing assistant can satisfy the background screening requirements if the nursing assistant can show evidence that there has not been a break in the nursing assistant's employment for a period greater than 180 days since the completion of a background screening that meets the requirements of ch. 435, F.S., within the last 2 years.

In addition, to qualify for certification as a nursing assistant an applicant must meet one of the following requirements: successful completion of an approved training program and achievement

of a minimum score, established by department rule, on the Florida Nursing Assistant Competency Evaluation, which includes a written portion and skills demonstration portion approved by the department and which is administered at a site and by personnel approved by the department; achievement of a minimum score, established by rule of the department, on the Florida Nursing Assistant Competency Evaluation and a high school diploma or its equivalent or be at least 18 years of age; or receipt of current certification in another state, being on that state's registry of CNAs, having no findings of abuse, and successfully completing a national nursing assistant evaluation in order to receive certification in that state. If the applicant fails to pass the Florida Nursing Assistant Competency Evaluation in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program. An oral examination must be administered as a substitute for the written portion of the examination upon request.

Section 468.824, F.S., authorizes the department to deny, suspend, or revoke the certification of any nursing assistant, based upon written notification from a court of competent jurisdiction, law enforcement agency, or administrative agency of any finding of guilt of, regardless of adjudication, or a plea of nolo contendere or guilty to, any offense set forth in the level 1 screening standards of ch. 435, F.S., or any confirmed report of abuse of a vulnerable adult. The department is authorized to exempt applicants from disqualification from certification. The bill specifies grounds for which a CNA may be subject to discipline for professional misconduct and specifies penalties, which include the imposition of an administrative fine for each count or separate offense up to \$150. The department must, by rule, designate approved treatment programs for impaired practitioners. The department must maintain, or contract with or approve another entity or organization to maintain, a registry of CNAs. A certified nursing assistant must notify the department in writing within 30 days of any change in name or address.

Section 468.8245, F.S., provides that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall remain open and available to the public.

Section 468.825, F.S., provides procedures for the renewal of certificates for nursing assistants and the Department of Health may, by rule, charge a fee no greater than \$35 to issue a duplicate certificate. Section 468.826, F.S., exempts an employer who terminates a CNA whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination, regardless of whether the employee has filed for an exemption pursuant s. 468.824, F.S.

Section 468.827, F.S., provides criminal penalties and makes it a first degree misdemeanor punishable by up to 1 year in prison and an administrative fine for knowingly or intentionally failing to disclose, or making a false statement in any application for voluntary or paid employment or licensure as a CNA, a material fact used in making a determination as to such person's qualifications. It is a third degree felony punishable by up to a 5-year imprisonment and a \$5,000 fine for falsely making, altering, forging, or counterfeiting a CNA certificate or letter of exemption. The Department of Health may deny, suspend, or revoke the certification of any

nursing assistant found to possess a false, altered, forged, or counterfeit certificate or who attempts to use such certificate in an attempt to gain employment.

The Department of Health must adopt rules to provide for the initial certification and biennial renewal of certification of CNAs. An application for certification or renewal must be accompanied by a fee set by the department, which may be no greater than \$35 plus the cost of the applicable background screening.

Section 2. Amends subparagraph 20.43(3)(g)1., F.S., relating to the jurisdiction of the Department of Health, to conform a cross reference to the provisions of the bill by replacing a reference to s. 400.211, F.S., with a reference to pt. XV of ch. 468, F.S.

Section 3. Amends s. 400.211, F.S., to: delete certification requirements for CNAs which are replaced by those specified in section 1 of the bill; eliminate a requirement that nursing homes require persons seeking employment as a CNA to submit an employment history to the facility; no longer require the facility to verify the applicant's employment history in lieu of the extensive background screening completed by the Department of Health specified in section 1 of the bill; provide that the requirements of the Omnibus Budget Reconciliation Act of 1987, as amended, for the certification of nursing assistants shall prevail if they are in conflict with the requirements of pt. XV of ch. 468, F.S.; and make other conforming changes to include references to pt. XV of ch. 468, F.S.

Section 4. Amends s. 400.4255, F.S., relating to the use of licensed personnel in assisted living facilities, to conform a cross reference to the provisions of the bill by replacing a reference to s. 400.211, F.S., with a reference to pt. XV of ch. 468, F.S.

Section 5. Amends s. 400.462, F.S., providing definitions used in part IV of chapter 400, F.S., relating to the regulation of home health agencies, to conform a cross reference to the provisions of the bill by replacing a reference to s. 400.211, F.S., with a reference to pt. XV of ch. 468, F.S.

Section 6. Amends s. 400.506, F.S., providing for the regulation of nurse registries, to conform a cross reference to the provisions of the bill by replacing a reference to s. 400.211, F.S., with a reference to pt. XV of ch. 468, F.S.

Section 7. Amends s. 455.667, F.S., relating to ownership and control of patient records and furnishing of reports or copies of patient records, to conform a cross reference to the provisions of the bill by replacing a reference to s. 400.211, F.S., with a reference to pt. XV of ch. 468, F.S.

Section 8. Recognizes a CNA who holds a valid certificate issued under s. 400.211, F.S., before October 1, 1998, as in compliance with the provisions of this bill and relieves such persons of the duty to renew their certification until October 1, 2000.

Section 9. Grants the Florida Department of Law Enforcement authority to establish positions to process the increased workload of conducting criminal history records checks for nursing

assistants that are in excess of the total authorized positions after submitting a request to the Administration Commission and the positions shall be funded from the department's Law Enforcement Operating Trust Fund.

Section 10. Amends s. 455.624, F.S., to make a certified nursing assistant subject to discipline for failure to wear legible and conspicuously displayed identification, indicating the practitioner's name and professional title, while practicing as an employee of a hospital, clinic, nursing home, or group practice, or at a commercial establishment, offering health care services to the public. Any disciplinary action by the Department of Health for a certified nursing assistant's failure to wear identification is restricted to a notice of noncompliance.

Section 11. Gives the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration, if created by the 1998 Legislature.

Section 12. Provides for the bill to take effect on October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Under the bill, it is unclear whether the person's employer, or the person applying for certification as a nursing assistant, is responsible for payment of the costs associated with the certification, including the specified application fee for certification which may be no greater than \$35 plus the cost of applicable background screening. Certified nursing assistants who request a duplicate certificate are subject to a fee no greater than \$35.

42 *Code of Federal Regulation* 483.152 provides reimbursement for any individual who becomes employed within 12 months after completing a nursing assistant training and competency evaluation program. States must provide for the reimbursement of costs incurred on a pro rata basis during the period in which the individual is employed as a nursing assistant.

B. Private Sector Impact:

To the extent employers of nursing assistants may rely on the background screening requirements for the certification of nursing assistants in addition to their own employment screening they may save associated costs.

C. Government Sector Impact:

The Department of Health will incur costs to implement the newly created regulation of certified nursing assistants and estimates that it will need 6 full-time positions and have costs totaling \$275,010 for 1998-1999 and \$234,690 for 1999-2000. The department estimates projected revenue of \$840,000 each year based on approximately 24,000 certifications at the maximum fee of \$35.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.