

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: January 7, 1998 Revised: \_\_\_\_\_

Subject: Nursing Home Facilities; Employee Screening

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Carter</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 208 requires a Division of Administrative Hearings law judge to schedule a hearing within 120 days, unless both parties waive that time period, for consideration of an action by the Agency for Health Care Administration against a nursing home facility's license relating to the health, safety, or welfare of nursing home residents. Licensure actions relating to the suspension of a facility's license are excluded from the 120-day time frame to preserve a requirement that hearings relating to suspensions be held within 90 days.

Additionally, the committee substitute requires nursing home facilities, as a condition of licensure, to screen their employees and applicants under final consideration for employment in accordance with the employment screening law, ch. 435, F.S. The required screening involves background checks through the state's Central Abuse Registry and the Florida Department of Law Enforcement, and, in certain circumstances, the Federal Bureau of Investigation. The employee or applicant must pay for the screening, but a facility may reimburse an employee. A screening that qualifies an employee or applicant to work in a nursing home facility remains valid for 12 months when certain conditions are met. Licensed nursing home administrators are authorized to acknowledge to other licensed nursing home administrators the receipt of a qualifying or disqualifying screening report, but are prohibited from disclosing report contents. The Agency for Health Care Administration and the Department of Health are required to conduct exemption hearings for persons whose screening disqualifies them from employment in a nursing home facility and are required to adopt rules to implement the background screening requirements. Nursing home employees are required to comply with the screening requirements by October 1, 1998, and persons applying for nursing home employment on or after July 1, 1998, must comply with the screening requirements of the bill.

This committee substitute amends section 400.121 and creates section 400.215, Florida Statutes. This committee substitute also reates one undesigned provision of law.

## **II. Present Situation:**

The Agency for Health Care Administration licenses nursing homes under part II of ch. 400, F.S. A nursing home license is valid for one year. Through its licensure regulation duties, the Legislature has delegated to AHCA responsibility for ensuring that nursing homes operate in a financially sound and accountable manner and the nursing home residents receive a minimum level of quality care. In addition to licensure regulation, AHCA administers certificate-of-need regulation of nursing homes and it is the designated state agency responsible for Medicaid reimbursement of nursing home services.

There are 665 nursing homes licensed to operate in the state with an aggregated total of 78,000 beds. The statewide nursing home occupancy rate ranges from 89 percent to 92 percent. There are approximately 59,500 staff employed in nursing home facilities. This number represents an estimated: 665 licensed nursing home administrators; 3,300 nurses; 32,500 CNAs; 1,000 physical therapists, occupational therapists, speech therapists; 2,000 medical directors, dietitians, pharmacists; and 20,000 staff who are not health care professionals such as maintenance workers, laundry personnel, dietitians, activities personnel, social services personnel, orderlies, and housekeepers. A number of volunteers may provide services to nursing home residents as well. Additionally, there are 73 skilled nursing units operated in hospitals that are licensed under ch. 395, F.S., the hospital licensure law. Hospital-based skilled nursing units are regulated under federal guidelines pertaining to Medicare reimbursement.

The Central Abuse Registry under the Department of Children and Family Services is the repository of information pertaining to allegations and findings of abuse, neglect, or exploitation of children and the elderly. The registry is established under s. 415.103, F.S. The Florida Department of Law Enforcement (FDLE) is the state agency delegated responsibility for conducting statewide criminal history screenings relating to employment screening under s. 435.03, F.S.

Currently, only 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 certified nursing assistant 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 + \$24 for FBI screening).

Chapter 42 *Code of Federal Regulations* 483.13(c), relating to nursing homes certified to receive Medicare and Medicaid reimbursement, states that "facilities must not employ persons who have been found guilty of abusing, neglecting, or mistreating residents by a court of law or who have had a finding entered in the State nurse aide registry concerning abuse, neglect, or mistreatment of residents or misappropriation of their property." This regulation further states that "an aide or other facility staff found guilty of neglect, abuse, or mistreating residents or misappropriation of property by a court of law, must have his or her name entered into the nurse aide registry or licensing authority as being unfit for service."

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 400.121, F.S., relating to denial, suspension, and revocation of nursing home facility licenses, to require the Division of Administrative Hearings to hold a hearing on a licensure action by AHCA against a nursing home licensee, at the licensee's request, within 120 days after the request for the hearing is received, unless both parties waive the time period, to consider licensure actions based on findings that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility. The administrative law judge must render a decision within 30 days after the hearing. A hearing for consideration of a licensure suspension must be held within 90 days, as currently required.

**Section 2.** Creates s. 400.215, F.S., requiring employee screening for nursing home facility employees, to:

*Subsection (1)* Designates, as a condition of licensure, that nursing home facilities are responsible for Level 1 screening, in accordance with ch. 435, F.S., of all employees and applicants under final consideration for employment. A screened employee who discontinues working for the facility that has had him or her screened for more than 12 months is required to again undergo Level 1 screening before re-starting employment with the facility. Additionally, a screened applicant whose screening did not disqualify him or her from working in a nursing home facility, who has not been unemployed for more than 6 months since completion of the screening, or who does not immediately accept employment from the facility that caused the screening to be

performed, may not be required to be re-screened during the 12-month period following completion of screening.

*Subsection (2)* Prohibits an applicant who is employed to work directly with nursing home facility residents from doing so until the facility's administrator has obtained written findings evidencing completion of Level 1 screening, as provided in ch. 435, F.S. An employee or applicant who is qualified through Level 1 screening to work in a nursing home facility, but who has not continuously resided in the state for the previous 5 years prior to the Level 1 screening completion date, is authorized to work in a conditional status until receipt of FBI screening results.

*Subsection (3)* Authorizes a nursing home administrator licensed under s. 468.1645, F.S., to acknowledge to another licensed nursing home administrator receipt of a qualifying or a disqualifying screening report. However, the contents of such reports may not be disclosed.

*Subsection (4)* Imposes responsibility for payment of screening fees on the employee or applicant applying for screening and requires the employee or applicant make payment directly to FDLE and the Department of Children and Family Services. Facilities are permitted to reimburse employees for the costs of screening.

*Subsection (5)* Requires the Department of Health and AHCA to hold exemption hearings to determine which employees or applicants subject to the provisions of this section who have been disqualified from employment through screening should be granted an exemption from such disqualification.

*Subsection (6)* Requires AHCA and the Department of Health to adopt rules to implement the background screening requirements contained in the bill.

**Section 3.** Provides for the applicability of the provisions of the bill to require that employees who are subject to the provisions of the bill who are employed by a licensed nursing home facility on the effective date of the bill must comply with the screening requirements provided in the bill by October 1, 1998. Applicants who are subject to the screening requirements provided in the bill who apply for employment on or after July 1, 1998, are required to comply with the bill's requirements.

**Section 4.** Provides a July 1, 1998, effective date.

#### **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 Section 24(a) of Article I 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, Section 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

According to the Agency for Health Care Administration, the cost of Level 1 screening totals \$21 (\$6 for abuse registry screening and \$15 for state criminal background screening). Level 2 screening costs an additional \$24 for federal criminal background screening for a total of \$45.

Based on an estimated total of 27,000 nursing home employees (59,500 total nursing home employees minus 32,500 CNAs who are already required to be screened) who would be subject to the bill's screening requirements, aggregate costs of background screening for nursing home employees could range from a low of \$567,000 (Level 1 screening @ \$21 x 27,000) to a high of \$1,215,000 (Level 2 screening @ \$45 x 27,000). The total costs to applicants for employment in nursing homes is indeterminable.

The nursing home industry will also incur increased costs associated with reimbursement of some screening costs as well as costs relating to continued pursuit of employees when an applicant or an employee is disqualified from working in a position for which screening is required. Costs incurred by nursing homes may be anticipated to be passed through to nursing home residents which may result in higher out-of-pocket costs for private-pay residents and higher Medicare and Medicaid costs.

Approximately 80 percent 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* reimbursement.

**C. Government Sector Impact:**

Because significant workload increase is anticipated as a result of the screening requirements of the bill, AHCA projects it will incur increased costs and projects that FDLE and the Department of Children and Families will also incur additional costs.

The Department of Children and Family Services indicates that a fee increase will be needed to accommodate timely processing of such a large volume increase in abuse screenings (additional staffing may be needed also). The department stated that screenings actually cost \$18. However, s. 415.107(10), F.S., limits the department to a fee of only one-third the cost of screening, i.e., \$6.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.