

**STORAGE NAME:** h3089s1.ltc

**DATE:** January 29, 1998

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
Elder Affairs & Long Term Care  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** PCS/HBs 3089 and 171

**RELATING TO:** Screening of Nursing Home Personnel

**SPONSOR(S):** Committee on Elder Affairs & Long Term Care and Representatives Brooks, Diaz de la Portilla, Littlefield and others

**COMPANION BILL(S):** CS/SB 208

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

- (1) Elder Affairs & Long Term Care
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

This bill requires Level 1 or Level 2 background screening for nursing facility staff or prospective employees who have or are expected to have "regular, unsupervised" contact with residents. All such staff must meet the standards prescribed in Level 1 and persons who have not lived in the state continuously for the preceding five years must undergo level 2 screening.

It allows nursing facilities to reimburse employees for the costs associated with obtaining the required background reports.

Licensed professionals whose professional licensure requires screening no less stringent than that provided in this bill do not have to be re-screened to work in a nursing facility. 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.

The act would take effect on October 1, 1998.

The bill does not have a significant fiscal impact.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

There are approximately 700 licensed nursing facilities caring for about 70,000 residents annually in the nearly 80,000 beds available statewide. The Fishkind and Associates Report: "*The Economic and Fiscal Impact of Florida's Nursing Home Industry*" prepared for Florida Health Care (November 5, 1997) approximated the nursing home workforce to be 73,000 full and part-time jobs. Those jobs include:

- ▶ licensed nursing home administrators,
- ▶ nurses,
- ▶ certified nursing assistants (approximately 40% of all staff),
- ▶ physical, speech, and occupational therapists,
- ▶ medical directors, dietitians, and pharmacists,
- ▶ maintenance, laundry, dietary,
- ▶ activities, social services, and
- ▶ other unlicensed staff.

Additionally, there are 73 skilled nursing units operated in hospitals licensed under chapter 395, F.S., the hospital licensure law. Hospital-based skilled nursing units are also regulated under federal guidelines. Chapter 42 of the Code of Federal Regulation (CFR) relating to nursing homes participating in Medicaid or Medicare requires 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 into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.

Under current state 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 costs are \$6 for the abuse registry check and \$15 for the FDLE criminal records check.

The Department of Children and Family Services (DCFS) maintains the Abuse Registry and Tracking System, established under 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.

The Department of Children and Family Services searches the abuse registry and reports a "pass or fail" to the inquiring facility. FDLE returns to the requesting nursing facility a copy of the employee or applicant's screening results, known as the applicant's "rap sheet," and the facility then the facility assesses the record to determine qualification for employment.

A CNA is who is disqualified from employment because of the screening results may request a hearing from the Department of Health (DOH) to determine whether the person may be granted an exemption from disqualification for employment as provided in 435.07, F.S. If an exemption from disqualification is granted, the CNA may be employed by a nursing facility.

In fiscal year 1995-96, the Department of Children and Family Services (DCFS) screened 46,500 CNAs through the Central Abuse Registry. Of those screened, thirty-four (.08%) had confirmed reports of adult abuse, neglect, or exploitation and were not cleared as qualified for employment. Another 184 applicants required further research after the initial screening because investigations or appeals to findings of abuse, neglect, or exploitation were pending.

The Certified Nursing Assistant Program which processes CNA registration and exemption hearings for the background screening was 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. Current law does not provide a residency requirement as a trigger for background screening. The screening requirements are summarized in the following table:

<b>Level 1</b>	<b>Level 2</b>
Abuse Registry check for employees and employers licensed or registered pursuant to chapter 400.	Abuse Registry check for employees and employers licensed or registered pursuant to chapter 400.
Employment history checks	Employment history checks
Statewide criminal records correspondence check through FDLE	Fingerprinting for all checks prescribed in this section
No record of having committed an act of domestic violence as defined in 741.30, F.S.	Statewide criminal and juvenile records checks through FDLE and FBI
	May include local criminal records checks through local law enforcement
	Must submit annually, under penalty of perjury, an affidavit of compliance with the provisions of this section.
	No record of having committed an act of domestic violence as defined in 741.30, F.S.
	Employers must submit annually, under penalty of perjury, an affidavit of compliance that all employees have been screened and all new hires are being screened.

Persons screened under this section must have 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.

Past Legislatures identified certain jobs, usually working with children, disabled or other vulnerable persons, as "positions of trust or responsibility" and required that persons working in those positions be of "good moral character." The following chart catalogues some of those positions and the screening requirements associated with them.

<b>Who</b>	<b>Subject to</b>	<b>Citation</b>
<i>Developmental Services</i>	<b>Abuse check not prescribed</b>	
"Direct service providers" who are unrelated to their client.	Level 2	393.0655
Family members and others living in the home of the direct service provider who are over age 12 (in some instances)	For persons aged 12 -18: delinquency records only. Others: Level 2.	393.063
Volunteers who work less than 40 hours per month or who assist intermittently and who work under the direct and constant supervision of personnel who are screened.	Not required to be screened.	393.063(14)(c)
A person paid by the developmentally disabled person or the person's family.	Not required to be screened	393.063(14)(e)
A physician, nurse, or other professional subject to DBPR* acting in their scope of practice. * Now part of the Dept. of Health.	Not required to be screened.	393.063(4)(d)
<i>Mental Health</i>	<b>No abuse registry check required</b>	
Mental health professionals	Level 2	394.4572
Students interns	Exempt if the facility is not primarily for the treatment of minors and are under direct supervision, in the physical presence, of a licensed mental health professional.	394.4572(1)(b)
Part -time personnel	Exempt if working in a facility licensed under 395 who have less than 15 hours/week direct patient contact.	394.4572(1)(c)

Volunteer	Exempt if assists less than 40 hours per month and is under the direct and constant supervision of persons who have met Level 2 screening requirements.	394.4572(1)(d)
Persons screened according to 393, 394, 397, 402, 409, and teachers under 231 who have not been unemployed more than 90 days and who sign an affidavit of compliance.	Not required to be screened	394.4572(3)
<i>Substance Abuse</i>	<b>No abuse registry check required</b>	
Service persons who have direct contact with unmarried minors or developmentally disabled persons.	Level 2 screening	397.451(1) 397.451(3)
Members of foster family and persons residing with a foster family.	Between ages 12 - 18: delinquency records Over age 18: Level 2	397.451(1)(d)
Volunteers who work on an intermittent basis for less than 40 hours/month.	Not required to be screened.	397.451(1)(e)
Persons screened pursuant to 393, 394, 397, 402, 409, or teachers who have not been unemployed more than 90 days and sign an affidavit.	Not required to be screened	397.451(4)
<i>Child Care Settings</i>	<b>Abuse check not prescribed</b>	DC&FS policy is to check registry
Child care personnel.	Level 2	402.305(2)(a)
Family foster homes, residential child caring agencies, child-placing agencies.	Level 2	409.175
Human resource personnel screened pursuant to 393, 394, 397, 402, 409 or teachers per 231 who have not been unemployed more than 90 days and sign an affidavit.	Not required to be screened	409.1757
<i>Nursing Homes and Related Health Care Facilities.</i>		
Certified Nursing Assistants	Level 1, abuse, and domestic violence check	400, Part II

Assisted Living Facility	Not required to be screened. But upheld finding of abuse, neglect, or exploitation can result in denial, revocation, or suspension of the license.	400, Part III
Home Health Agency, Sitters, Companions, Homemakers	Level 1 abuse, domestic violence check	400, Part IV
Nurse Registry	Level 1, abuse, & domestic violence check	400, Part IV
Adult Day Care Center	Not required to be screened. License can be denied, suspended or revoked in case of upheld finding of abuse, neglect, exploitation.	400 Part V
Hospice	Not required to be screened.	400 Part VI
Adult Family Care Home	Level 1 & abuse registry	400 Part VII

**B. EFFECT OF PROPOSED CHANGES:**

The proposed changes would require all nursing facilities employees, or prospective employees, who have or are expected to have “regular, unsupervised contact” with the residents to complete a level 1 background screening. In addition, applicants and staff who have not lived in the state for the preceding five years would be required to complete the level 2 screening. Persons whose professional licensure requires screening no less stringent than that prescribed in this bill would be exempted. Current law only requires background screening for Certified Nursing Assistants (CNAs).

There is a fiscal impact on employees and prospective employees of nursing homes. There is also a fiscal impact on the nursing home industry and on the Department of Children & Family Services, the Department of Health and the Agency for Health Care Administration.

**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?

No.

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

Additional persons will be subject to screening and then have the right to request an exemption hearing from AHCA or from the DOH if they are disqualified from employment.

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

No.

- 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

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

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?

N/A

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

No.

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?

No.

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. STATUTE(S) AFFECTED:

400, F.S.

E. SECTION-BY-SECTION RESEARCH:

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

**Section 1.** AHCA would be required to screen all nursing home employees or prospective employees who have "regular, unsupervised contact with residents" according to the provisions in chapter 435, F.S.

### Screening Standards

Level 1 screening standards would apply to all affected nursing home employees and applicants. Applicants who have not lived in the state continuously for the preceding five years would in addition to the level 1 screening also have to meet the standards of the level 2 screening. The agency is permitted to grant an exemption to the disqualification from work as is already provided in s. 435.06.

### Persons Exempt & Sharing Results

Personnel whose professional licensure requires screening which is no less stringent than that provided in this section do not have to repeat the screening to work in a nursing facility.

Further, persons who have been fingerprinted and screened and who have not been unemployed for more than 90 days after that may attest to the completion of the screenings. The bill provides that the attestation be made under the penalty of perjury.

A licensed nursing home administrator is permitted to tell another licensed nursing home administrator about a qualifying or disqualifying screening report and the date of that report.

### Costs

Applicants are responsible for the costs of obtaining the screenings. Nursing facilities may reimburse employees for these expenses.

### Rules

AHCA is directed to promulgate rules to implement this section.

**Section 2.** Subsection (5) of section 400.211, F.S., is repealed. That section prescribed screening procedures for certified nursing assistants working in nursing homes licensed pursuant to chapter 400, Part II.

**Section 3.** This act shall take effect on July 1 of the year in which it is enacted.

## **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 exemptions hearings per year. Therefore, AHCA has projected the need for two professional staff and one support staff to implement this legislation. The affected agencies report the following estimated costs:

Agency for Health Care Administration	\$15,314	Expense & OCO standard package for 3 FTEs: 2 professional 1 clerical FTE
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2. Recurring Effects:

The affected departments report the following projections of recurring costs.

Agency for Health Care Administration	\$159,367 yr 1 \$144,053 yr 2	3 FTEs to process projected 400 additional exemption hearings/yr
Department of Children & Family Services	\$360,000	20,000 additional screenings. \$120,000 recouped thru fees, leaving \$240,000 in costs
Department of Health	\$0	

3. Long Run Effects Other Than Normal Growth:

None are projected.

4. Total Revenues and Expenditures:

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

1. Non-recurring Effects:

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

2. Recurring Effects:

The Florida Association of Counties reports 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. Medicaid pays for approximately 66% of the nursing home bed days in the state.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

It is anticipated that a level 1 screening will cost \$21 and the level 2 will cost \$45 per person screened. The bill requires that all staff, current and future, be screened.

AHCA estimates that approximately 20,000 non-CNA staff in addition to the 32,500 CNAs (already subject to screening) would yield a maximum number of 52,500 persons subject to screening. The following shows one projection for minimum and maximum costs based on the assumption of screening 100% of the staff.

52,500 x \$21 for level 1 screening = \$1,102,500

52,500 x \$45 for level 2 screening = \$2,362,500

2. Direct Private Sector Benefits:

Representatives of the nursing home industry report that they anticipate some shielding benefit from liability law suits by checking and knowing the criminal backgrounds of their employees. The various state agencies which have jurisdiction over subjects covered by the bill report that vulnerable citizens will have enhanced protection by screening persons working in the nursing facilities.

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:**

Representatives of the nursing facility industry have sought assurance that the costs associated with the required screenings would be reimbursable by Medicaid either through the per diem payments or another method. Approximately 80% of the nursing facilities are at the maximum per diem rate (referred to as the "rate ceiling").

To reimburse the facilities for these costs and not exclude the facilities at the rate ceiling, AHCA proposes that the facilities bill these costs directly through the area Medicaid offices. The costs would not then be included in the facility's cost report on which the per diem rate is set. This method would be consistent with the current direct for billing for CNA tuition and examination costs incurred by nursing homes.

AHCA estimates the cost to Medicaid for the non-CNAs would be \$590,000 of which about \$322,000 would be federal match and the remainder general revenue.

**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.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties 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:**

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The PCS differs from the bill in the following ways:

1. Who is screened: *All employees or prospective employees*, not all "persons".
2. Work pending FBI results: *Indefinite*, not 65 days.

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3. Exempt from screening: *Licensed professionals whose licensure requirements include screening no less stringent than this section, not the list of specific licensed or certified providers and CNAs.*
4. Sharing results of screening: *A licensed facility administrator may acknowledge receipt of screening to another licensed facility administrator.* The bill as originally filed did not address this issue.

**VII. SIGNATURES:**

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Legislative Research Director:

Melanie Meyer

Tom Batchelor, Ph.D.