

STORAGE NAME: h3089s2.ltc

DATE: February 23, 1998

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

BILL #: CS/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 YEAS 7 NAYS 0
- (2) Health & Human Services Appropriations
- (3)
- (4)
- (5)

I. SUMMARY:

The bill provides a procedure for administrative hearings and decisions by administrative law judges on cases in which the Agency for Health Care Administration (AHCA) seeks to take adverse action on a nursing facility's license.

The bill requires Level 1 or Level 2 background screening for nursing facility staff or prospective employees who are expected to or whose responsibilities may require them to provide personal care or services, to have access to resident living areas, or to have access to resident's funds or other personal property. The bill allows employees awaiting the results of FBI screening to work in conditional status.

AHCA would receive and process requests, develop a fee schedule, establish and maintain a data base, and provide information to certain entities. Employees would be responsible for the costs of screening, but facilities could reimburse employees for the costs associated with obtaining the required background screening reports. The bill provides for exemptions from employment disqualification. It provides exemptions from screening and rescreening in certain instances. Both AHCA and the Department of Health (DOH) are authorized to promulgate rules.

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 July 1. The bill has a fiscal impact. Current law provides that nursing facilities support the costs of regulation through fees.

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 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.

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 assesses the record to determine qualification for employment.

A CNA who is disqualified from employment because of the screening results may request a hearing from the (DOH) to determine whether the person may be granted an exemption from disqualification for employment as provided in s. 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, 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 DOH 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:

Level 1	Level 2
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 s. 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 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.

Who	Subject to	Citation
<i>Developmental Services</i>	Abuse check not prescribed	
"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>	Abuse check not required	
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>	No abuse registry check required	
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 chapters 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>	Abuse check not prescribed	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 chapters 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 administrative law judges in the Department of Administrative Hearings would be required to render a decision thirty days after submission of proposed orders in cases brought as a result of regulatory actions taken by AHCA against a nursing facility's license.

The proposed changes would require all nursing facilities employees, or prospective employees, who meet the prescribed criteria to be screened at level 1 pursuant to chapter 435 including a check of the abuse registry and a determination of whether a conviction of an act of domestic violence exists. In addition, applicants who have not lived in the state for the preceding five years would be required to complete the level 2 screening. Specific provisions are provided for persons who are employed on the effective date of this bill.

AHCA would establish and maintain an electronic data base with the results of all screening requests. AHCA would be permitted to disclose to certain entities whether a person was qualified or disqualified. AHCA and DOH would be permitted to grant exemptions to disqualification from employment. AHCA and DOH would promulgate administrative rules. Persons awaiting FBI results would be permitted to work in a conditional status. Requirements for re-screening are provided.

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 DCFS, DOH and AHCA.

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:

Chapter 400, F.S.

E. SECTION-BY-SECTION RESEARCH:

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

Section 1. The bill amends s. 400.121 which governs the denial, suspension, revocation of license, moratorium on admissions, and administrative fines. It modifies

the time lines for administrative hearing and for the administrative law judge to render a decision.

Section 2. AHCA would be required to screen, as provided in chapter 435, all nursing home employees or prospective employees who are expected to or whose responsibilities might require them to:

- ▶ provide personal care or services,
- ▶ have access to resident living areas, or
- ▶ have access to resident funds or other personal property.

The Department of Children & Family Services (DCFS) is directed to provide electronic access to the central abuse registry and tracking system to AHCA. The agency is directed to incorporate those abuse reports into the database.

Screening Standards

Nursing facilities would be required to have evidence that the person had a satisfactory level 1 screening before allowing an employee to work with patients. The facility would submit the necessary screening to AHCA.

Applicants who have not lived in the state continuously for the five years immediately preceding the date of request for background screening would also have to meet the standards of the level 2 screening. Those persons subject to level 2 screening would be permitted to work in a "conditional status" up to 180 days while awaiting the written findings evidencing completion of the screening. Persons who attest in writing under penalty of perjury that they meet the residency requirement do not have to submit to a level 2 screening.

Persons who do not meet the standards would be disqualified from employment pursuant to s. 435.06.

Persons Exempt from Screening

Personnel who have been screened and qualified as required by this section do not have to be screened to be employed by a nursing facility if:

- ▶ they have not been unemployed for more than 180 days after a qualifying screening, and
- ▶ they attest, under penalty of perjury, that they have not been convicted of a disqualifying offense since the screening.

Level 2 Rescreening

Employees or prospective employees who have qualified under level 2 standards and lived in the state continuously subsequent to that screening do not have to undergo another level 2 screening as a condition of employment if they change jobs.

Persons Employed on Effective Date of This Act

Persons employed in nursing homes on the effective date of this act would not be subject to rescreening if the facility had written evidence of qualifying level 1 screening results. Any current employee who meets the level 1 requirements but who does not meet the residency requirement must attest in writing under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction.

Sharing Results

The agency shall establish and maintain a database of background screening information. The Florida Department of Law Enforcement (FDLE) is directed to provide, timely, the results of statewide screening to AHCA electronically.

The bill provides that facilities licensed pursuant to chapters 393, 394, 395, 397 or 400 may receive information about whether a person has qualified under level 1 or level 2. Upon request from an entity authorized or required by law to screen its employees or applicants, AHCA may notify the administrator whether the employee or applicant qualified under level 1 or level 2 screening.

Costs

Applicants are responsible for the costs of obtaining the screening. Nursing facilities may reimburse employees for these expenses. Payment is submitted to AHCA. AHCA is to establish a fee schedule to cover the costs of level 1 and level 2 screening and the abuse registry check.

Exemptions from Disqualification for Employment

AHCA may grant an exemption to disqualification for a person who has not received a professional license or certification from DOH. Persons who are licensed or certified by DOH would seek exemption from that department.

Rules

AHCA and DOH are directed to promulgate rules to implement this section.

Section 3. 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 4. 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:

AHCA projects non-recurring costs of approximately \$201,000 for year 1. DOH does not project any non-recurring costs associated with this bill.

Hardware for data system	\$36,000
Software development for data system	\$125,000
OCO (<i>standard package</i>)	\$22,000
Expense (<i>standard package</i>)	\$18,000
TOTAL	\$200,000

*these amounts are rounded to nearest 1,000.

2. Recurring Effects:

AHCA estimates the following expenditures:

	Year 1	Year 2
Operational unit - personnel	\$283,408	\$283,408
Expense (standard package)	\$64,484	\$64,484
Total costs for unit operations	\$347,892	\$347,892
Screenings:		
level 1 \$14 x 24,210 persons	\$338,940	\$251,440
level 2 (\$14+24) x 6,040 persons =	\$229,520	\$170,620
Total screening costs	\$568,460	\$422,060
		422,060
		<u>+347,892</u>
Total screenings & unit costs	\$916,352	\$769,952

	YEAR 1	YEAR 2
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Non-Recurring	200,000	
Total Recurring	<u>+916,352</u>	
Total Recurring & non-recurring	\$1,116,352	\$769,952

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:

AHCA anticipates charging one fee per person screened to each requesting facility. They project that the costs of the screenings from FDLE and the central abuse registry would be a total of \$14. To that AHCA would add the costs of maintaining the screening activities. The agency is continuing to refine the cost analysis, but a fee of \$16 is projected at this time.

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.

By creating and maintaining one central data base on background screenings, nursing facilities and other authorized entities may realize time saving benefits, and would avoid paying for the screening of applicants whose screening results are available in the data base.

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

Some private companies provide a background screening service to nursing homes. These companies gather the information necessary and then batch requests together and forward them to AHCA and FDLE. The bill, as written, would not inhibit or prohibit this service.

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 is evaluating other payment methods.

AHCA is continuing to evaluate the costs and potential revenues associated with implementation of this bill. The projection at this time is a total fee of \$30 per person screened. A portion of those costs are anticipated to be eligible for Medicaid matching funds at a rate of 50:50, federal and state.

The \$30 fee AHCA is considering compares with the cost now of \$21 for level 1 when the facility handles the screening requests without using an outside provider. For those facilities that have an outside contractor handle their screening requests, the typical handling fee in addition to the screening costs is \$11, making a total cost of \$32 per person screened.

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 CS/HBs 3089 and 171 differ from the bill in the following ways:

1. All employees or applicants whose work fits the provided criteria must be screened.
2. Persons subject to level 2 may work 180 days pending FBI results.
3. Persons are exempt from screening if not unemployed for more than 180 days after completing screening and attest, under penalty of perjury, no conviction of a disqualifying offense since the screening.
4. AHCA is authorized to provide the *qualified* or *disqualified* status of person named in inquiries from entities authorized or required by statute to screen employees.
5. AHCA would have electronic access to the central abuse registry and tracking system in DCFS. FDLE is directed to return, timely, the results of statewide criminal records checks electronically to AHCA.
6. AHCA would receive and process requests for all the components of level 1 and level 2 screening including fingerprint cards for FBI inquiries, and checks of the abuse registry.
7. AHCA would establish a fee schedule to cover the costs associated with the screening requirements.
8. Employees would not have to be rescreened as of the effective date of this bill if the facility has written evidence that the person had qualified. The bill provides that current employees who have not met the residency requirement can attest to not having been convicted of a disqualifying offense.

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9. Section 400.215, is amended providing procedure for administrative hearings and decisions by the administrative law judge when AHCA seeks to take an adverse action against a nursing facility's license.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Legislative Research Director:

Melanie Meyer

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

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