

1 A bill to be entitled
2 An act relating to nursing facilities; amending
3 s. 400.121, F.S.; providing procedure for
4 administrative hearings on certain actions to
5 deny, suspend, or revoke a nursing facility's
6 license; creating s. 400.215, F.S.; requiring
7 background screening for certain nursing
8 facility employees; providing requirements for
9 employers and employees; authorizing
10 conditional status for certain employees;
11 requiring the Agency for Health Care
12 Administration to establish and maintain a
13 database and provide certain information;
14 providing for screening fees; providing for
15 exemptions from disqualification; providing an
16 exemption from rescreening for certain persons;
17 providing for certain sharing of screening
18 information among employers; providing for
19 adoption of rules; specifying dates and
20 conditions for compliance by employees and new
21 applicants; repealing s. 400.211(5), F.S.,
22 relating to screening requirements for
23 certified nursing assistants; providing an
24 effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Subsection (5) is added to section 400.121,
29 Florida Statutes, to read:

30 400.121 Denial, suspension, revocation of license;
31 moratorium on admissions; administrative fines; procedure.--

1 (5) An action taken by the agency to deny, suspend, or
2 revoke a facility's license under this part, in which the
3 agency claims that the facility owner or an employee of the
4 facility has threatened the health, safety, or welfare of a
5 resident of the facility, shall be heard by the Division of
6 Administrative Hearings of the Department of Management
7 Services within 120 days after receipt of the facility's
8 request for a hearing, unless the time limitation is waived by
9 both parties. The administrative law judge must render a
10 decision within 30 days after receipt of a proposed
11 recommended order. This subsection does not modify the
12 requirement that an administrative hearing be held within 90
13 days after a license is suspended under paragraph (4)(b).

14 Section 2. Section 400.215, Florida Statutes, is
15 created to read:

16 400.215 Personnel screening requirement.--

17 (1) The agency shall require background screening as
18 provided in chapter 435 for all employees or prospective
19 employees of facilities licensed under part II who are
20 expected to, or whose responsibilities may require them to:

21 (a) Provide personal care or services to residents;

22 (b) Have access to resident living areas; or

23 (c) Have access to resident funds or other personal
24 property.

25 (2) Employers and employees shall comply with the
26 requirements of s. 435.05.

27 (a) Notwithstanding the provisions of s. 435.05(1),
28 facilities must have in their possession evidence that level 1
29 screening has been completed before allowing an employee to
30 begin working with patients as provided in subsection (1). All
31 information necessary for conducting background screening

1 using level 1 standards as specified in s. 435.03(1) and for
2 conducting a search of the central abuse registry and tracking
3 system as specified in s. 435.03(3)(a) shall be submitted by
4 the nursing facility to the agency. Results of the background
5 screening and the abuse registry check shall be provided by
6 the agency to the requesting nursing facility.

7 (b) Employees qualified under the provisions of
8 paragraph (a) who have not maintained continuous residency
9 within the state for the 5 years immediately preceding the
10 date of request for background screening must complete level 2
11 screening, as provided in chapter 435. Such employees may work
12 in a conditional status up to 180 days pending the receipt of
13 written findings evidencing the completion of level 2
14 screening. Level 2 screening shall not be required of
15 employees or prospective employees who attest in writing under
16 penalty of perjury that they meet the residency requirement.
17 Completion of level 2 screening shall require the employee or
18 prospective employee to furnish to the nursing facility a full
19 set of fingerprints to enable a criminal background
20 investigation to be conducted. The nursing facility shall
21 submit the completed fingerprint card to the agency. The
22 agency shall establish a record of the request in the database
23 provided for in paragraph (c) and forward the request to the
24 Department of Law Enforcement, which is authorized to submit
25 the fingerprints to the Federal Bureau of Investigation for a
26 national criminal history records check. The results of the
27 national criminal history records check shall be returned to
28 the agency, which shall maintain the results in the database
29 provided for in paragraph (c). The agency shall notify the
30 administrator of the requesting nursing facility or the
31 administrator of any other facility licensed under chapter

1 393, chapter 394, chapter 395, chapter 397, or this chapter,
2 as requested by such facility, as to whether or not the
3 employee has qualified under level 1 or level 2 screening. An
4 employee or prospective employee who has qualified under level
5 2 screening and has maintained such continuous residency
6 within the state shall not be required to complete a
7 subsequent level 2 screening as a condition of employment at
8 another facility.

9 (c) The agency shall establish and maintain a database
10 of background screening information which shall include the
11 results of both level 1 and level 2 screening and central
12 abuse registry and tracking system checks. The Department of
13 Law Enforcement shall timely provide to the agency,
14 electronically, the results of each statewide screening for
15 incorporation into the database. The Department of Children
16 and Family Services shall provide the agency with electronic
17 access to the central abuse registry and tracking system. The
18 agency shall search the registry to identify any confirmed
19 report and shall access such report for incorporation into the
20 database. The agency shall, upon request from any facility,
21 agency, or program required by or authorized by law to screen
22 its employees or applicants, notify the administrator of the
23 facility, agency, or program of the qualifying or
24 disqualifying status of the employee or applicant named in the
25 request.

26 (d) Applicants and employees shall be excluded from
27 employment pursuant to s. 435.06.

28 (3) The applicant is responsible for paying the fees
29 associated with obtaining the required screening. Payment for
30 the screening and the abuse registry check shall be submitted
31 to the agency. The agency shall establish a schedule of fees

1 to cover the costs of level 1 and level 2 screening and the
2 abuse registry check. Facilities may reimburse employees for
3 these costs. The Department of Law Enforcement shall charge
4 the agency for a level 1 or level 2 screening a rate
5 sufficient to cover the costs of such screening pursuant to s.
6 943.053(3). The agency shall, as allowable, reimburse nursing
7 facilities for the cost of conducting background screening as
8 required by this section. This reimbursement will not be
9 subject to any rate ceilings or payment targets in the
10 Medicaid Reimbursement plan.

11 (4)(a) As provided in s. 435.07, the agency may grant
12 an exemption from disqualification to an employee or
13 prospective employee who is subject to this section and who
14 has not received a professional license or certification from
15 the Department of Health.

16 (b) As provided in s. 435.07, the Department of Health
17 may grant an exemption from disqualification to an employee or
18 prospective employee who is subject to this section and who
19 has received a professional license or certification from the
20 Department of Health.

21 (5) Any provision of law to the contrary
22 notwithstanding, persons who have been screened and qualified
23 as required by this section and who have not been unemployed
24 for more than 180 days thereafter, and who under penalty of
25 perjury attest to not having been convicted of a disqualifying
26 offense since the completion of such screening, shall not be
27 required to be rescreened. An employer may obtain, pursuant to
28 s. 435.10, written verification of qualifying screening
29 results from the previous employer or other entity which
30 caused such screening to be performed.

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1 (6) The agency and the Department of Health shall have
2 authority to adopt rules pursuant to the Administrative
3 Procedures Act to implement this section.

4 (7) All employees shall comply with the requirements
5 of this section by October 1, 1998. No current employee of a
6 nursing facility as of the effective date of this act shall be
7 required to submit to rescreening if the nursing facility has
8 in its possession written evidence that the person has been
9 screened and qualified according to level 1 standards as
10 specified in s. 435.03(1). Any current employee who meets the
11 level 1 requirement but does not meet the 5-year residency
12 requirement as specified in this section must provide to the
13 employing nursing facility written attestation under penalty
14 of perjury that the employee has not been convicted of a
15 disqualifying offense in another state or jurisdiction. All
16 applicants hired on or after October 1, 1998, shall comply
17 with the requirements of this section.

18 (8) There is no monetary or unemployment liability on
19 the part of, and no cause of action for damages arising
20 against an employer that, upon notice of a disqualifying
21 offense listed under chapter 435 or a confirmed report of
22 abuse, neglect, or exploitation or an act of domestic
23 violence, terminates the employee against whom the report was
24 issued, whether or not the employee has filed for an exemption
25 with the Department of Health or the Agency for Health Care
26 Administration.

27 Section 3. Subsection (5) of section 400.211, Florida
28 Statutes, is repealed.

29 Section 4. This act shall take effect on July 1 of the
30 year in which enacted.

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