

**STORAGE NAME:** h4445a.hcr

**DATE:** April 15, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE STANDARDS AND REGULATORY REFORM  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 4445

**RELATING TO:** Certified Nursing Assistants

**SPONSOR(S):** Representative Brooks

**COMPANION BILL(S):** SB 1986(I)

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

- (1) HEALTH CARE STANDARDS AND REGULATORY REFORM YEAS 8 NAYS 0
  - (2) FINANCE AND TAXATION
  - (3) GENERAL GOVERNMENT APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 4445 creates a separate practice act for regulation of certified nursing assistants (CNAs) in Part XV of chapter 468, F.S., under the direction of the Department of Health.

It clarifies statutory requirements and provides clear guidance to affected individuals, employers, and state agencies regarding certification, screening, and employment requirements. It provides for renewal of certification and ties background screening to certification and renewal periods, rather than time of employment.

The bill specifies the eligibility criteria for obtaining state certification as a CNA. It addresses the responsibilities of the states's CNA registry and program regarding testing, placement on the registry, suspension, revocation, and exemption authority. Screening requirements and standards are presently established in chapter 435, F.S. It requires level one screening (records check) for initial certification and renewal of certification. It requires level two screening for those individuals that have not maintained continuous residency in Florida for the 5 years immediately preceding application for certification or renewal. It allows for a 180-day conditional employment period for those individuals awaiting the results of a level two screening. An exemption from liability is provided to employers that may terminate an individual that does not have a clear background screening pursuant to screening standards outlined in chapter 435, F.S. The DOH is provided authority to issue exemptions due to disqualification of employment pursuant to chapter 435, F.S., on screening standards.

A maximum application fee of \$35, plus the cost of applicable background screenings, for initial and renewal certifications, in addition to a fee, to be determined by the DOH, for placement on the registry. It specifies as a condition of certification, individuals must demonstrate the ability to read and write the English language. Responsibilities of both the state and employers regarding maintenance of data and reporting of violations are specified. The DOH is to designate approved treatment programs for impaired practitioners and is granted rulemaking authority to implement the provisions of this practice act.

The bill will have a fiscal impact on the State, and no fiscal impact on local government and the private sector in general.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 400.211 and s. 400.512, F.S., provide guidance to individuals, employers, and the State on certification, background screening requirements, and registry of those certified nursing assistants (CNAs) employed by or seeking employment in nursing homes, home health agencies, nurse registries, or as sitters, companions and homemakers. These sections do not provide statutory authority to the Department of Health for the development or enforcement of regulation for this occupation or the individuals certified herein.

Currently, certifications are issued on a lifetime basis and the only scenario that would require recertification is if an individual failed to work during 24 consecutive months, thereby being deemed as lapsed. Only a level one background screening is currently required and is performed in conjunction with employment, not certification. Screening requirements are contained in chapter 435, F.S.

There is no application fee or fee for placement on the registry. Since there are no fees collected to administer the CNA program, it has a deficit of \$104,399. This means the department has expended \$104,399 as of June 30, 1997, of the other medical professions' money, in administering this program.

The certified nursing assistant competency evaluation is currently given in English and Spanish and may be given in a written or oral format. A manual skills portion is also administered. These provisions are pursuant to federal guidelines. A number of the present procedures followed for the CNA program are a result of federal guidelines.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a separate practice act for regulation of certified nursing assistants (CNAs) in Part XV of chapter 468, F.S., under the direction of the Department of Health.

It clarifies statutory requirements and provides clear guidance to affected individuals, employers, and state agencies regarding certification, screening, and employment requirements. It provides for renewal of certification and ties background screening to certification and renewal periods, rather than time of employment.

The bill specifies the eligibility criteria for obtaining state certification as a CNA. It addresses the responsibilities of the states' CNA registry and program regarding testing, placement on the registry, suspension, revocation, and exemption authority. Screening requirements and standards are presently established in chapter 435, F.S. It requires level one screening (records check) for initial certification and renewal of certification. It requires level two screening for those individuals that have not maintained continuous residency in Florida for the 5 years immediately preceding application for certification or renewal. It allows for a 180-day conditional employment period for those individuals awaiting the results of a level two screening. An exemption from liability is provided to employers that may terminate an individual that does not have a clear background screening pursuant to screening standards outlined in chapter 435, F.S. The DOH is provided authority to issue exemptions due to disqualification of employment pursuant chapter 435, F.S. on screening standards.

A maximum application fee of \$35, plus the cost of applicable background screenings, for initial and renewal certifications, in addition to a fee, to be determined by the department, for placement on the registry. The DOH is required to maintain information in the registry pertaining to the reimbursement to individuals for the cost of training and testing in conjunction with obtaining certification. It specifies as a condition of certification, individuals must demonstrate the ability to read and write the English language. Responsibilities of both the state and employers regarding maintenance of data and reporting of violations are specified. The DOH is to designate approved treatment programs for impaired practitioners and is granted rulemaking authority to implement the provisions of this practice act.

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?

Yes. The bill authorizes the department to develop rules to implement the provisions of the new regulation scheme for CNAs.

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

Yes. The Florida Department of Law Enforcement may experience an increase in workload due to the processing of a national level criminal screening for those individuals who have resided in Florida less than 5 years. The Agency for Health Care Administration's Medicaid program may experience an increase in workload in providing the department with data on individuals reimbursed under Titles XVIII and XIV for costs associated with obtaining certification.

(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 See 1.(a)(2) above.

(2) what is the cost of such responsibility at the new level/agency?

The new regulation scheme will require approximately 6 FTEs at a cost of approximately \$235, 000 annually.

(3) how is the new agency accountable to the people governed?

The new regulation scheme gives the department the ability to regulate and where appropriate, discipline CNAs.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

Yes. The bill implements a fee for initial certification, renewal of certification and placement on the registry.

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

N/A

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?

N/A

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?

Individuals obtaining certification would bear the cost of certification or renewal. Employers could be responsible for reimbursement of some of these expenses.

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?

N/A

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?

N/A

- 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:**

Amends s.s. 20.43, 400.211, 400.4255, 400.462, 400.506, and 455.667, F.S. Creates Part XV of chapter 468, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1. Creates Part XV of ch. 468, F.S., which is cited as the "Certified Nursing Assistant Practice Act" under the direction of the Department of Health. It includes sections 468.820 through 468.828, F.S.

It clarifies statutory requirements and provides clear guidance to affected individuals, employers, and state agencies regarding certification, screening, and employment requirements. It provides for renewal of certification and ties background screening to certification and renewal periods, rather than time of employment.

The bill specifies the eligibility criteria for obtaining state certification as a CNA. It addresses the responsibilities of the states' CNA registry and program regarding testing, placement on the registry, suspension, revocation, and exemption authority. Screening requirements and standards are presently established in chapter 435, F.S. It requires level one screening (records check) for initial certification and renewal of certification. It requires level two screening for those individuals that have not maintained continuous residency in Florida for the 5 years immediately preceding application for certification or renewal. It allows for a 180-day conditional employment period for those individuals awaiting the results of a level two screening. An exemption from liability is provided to employers that may terminate an individual that does not have a clear background screening pursuant to screening standards outlined in chapter 435, F.S. The DOH is provided authority to issue exemptions due to disqualification of employment pursuant to chapter 435, F.S., on screening standards.

A maximum application fee of \$35, plus the cost of applicable background screenings, for initial and renewal certifications, in addition to a fee, to be determined by the DOH, for placement on the registry. It specifies as a condition of certification, individuals must demonstrate the ability to read

and write the English language. Responsibilities of both the state and employers regarding maintenance of data and reporting of violations are specified. The DOH is to designate approved treatment programs for impaired practitioners and is granted rulemaking authority to implement the provisions of this practice act.

- Section 2. Technical. Amends s. 20.43, F.S., to add Part XV of chapter 468, F.S., for nursing assistants.
- Section 3. Amends s. 400.211, F.S., to delete obsolete language and to add Part XV of chapter 468, F.S., for nursing assistants.
- Section 4. Technical. Amends s. 400.4255, F.S., to delete obsolete reference and add Part XV of chapter 468, F.S.
- Section 5. Technical. Amends s. 400.462, F.S., to delete obsolete reference and add Part XV of chapter 468, F.S.
- Section 6. Technical. Amends s. 400.506, F.S., to delete obsolete reference and add Part XV of chapter 468, F.S.
- Section 7. Technical. Amends s. 455.667, F.S., to delete obsolete reference and add Part XV of chapter 468, F.S.
- Section 8. Provides that a CNA who holds a valid certification issued pursuant to s. 400.211, F.S., before October 1, 1998, is in compliance with this act and is not subject to renewal of such certification until October 1, 2000.
- Section 9. Provides an effective date of October 1, 1998.

### III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:  
See Fiscal Comments.
2. Recurring Effects:  
See Fiscal Comments.
3. Long Run Effects Other Than Normal Growth:  
See Fiscal Comments.



4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None. However, it is unknown how many certified nursing assistants might require a national level criminal screening for those individuals who have resided in Florida less than 5 years.

2. Direct Private Sector Benefits:

None. However, because of increased screening and other safeguards required by the bill, that part of the population utilizing the services of a CNA may be more assured that questionable persons will be eliminated from the available workforce.

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

None.

D. FISCAL COMMENTS:

According to the Department of Health, implementation of this bill will require 6 FTEs, for a total recurring cost of \$234,690 for years 1 and 2, respectively. Non-recurring cost for year 1 is \$40,320 resulting in total cost of \$275,010 for year 1.

Total projected revenues for the first two years are estimated to be a maximum of \$840,000 annually. This is based on approximately 24,000 original certificates issued annually at a maximum rate of \$35 per person (excludes the cost of screening).

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 authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee adopted a strike everything amendment and one clarifying amendment. Most of the changes included in the strike everything amendment were of a technical or clarifying nature. One substantive issue was to delete the requirement that a CNA had to be able to read and write English. Another issue was to clarify that for a Florida resident to qualify to take the CNA examination, they could: 1) be at least 16 with completion of a training course; 2) have a high school diploma or an equivalent regardless of age; or 3) be at least 18 years of age or older.

The amendment to the amendment provided that if a person employed as a CNA had met the screening requirements of ch. 435, F.S., within the last two years, and had not been unemployed for a period exceeding 180 days, they were exempt from the initial screening requirements of the bill.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS AND REGULATORY REFORM:

Prepared by:

Legislative Research Director:

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Robert W. Coggins

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