

By Representative Sobel

1                                   A bill to be entitled  
2           An act relating to health care; creating part  
3           XV of chapter 468, F.S.; providing definitions;  
4           requiring the Department of Health to maintain,  
5           or contract with or approve another entity to  
6           maintain, a state registry of certified nursing  
7           assistants; authorizing the department to  
8           contract with or approve another entity to  
9           provide examination services for certification  
10          of nursing assistants; providing requirements  
11          for obtaining certification as a certified  
12          nursing assistant; providing for initial  
13          certification; requiring maintenance of current  
14          address with the department; specifying grounds  
15          for disciplinary action; providing penalties;  
16          authorizing the department to exempt an  
17          applicant or certificateholder from  
18          disqualification from certification or  
19          employment; providing for access to records and  
20          meetings held for disciplinary actions;  
21          exempting an employer from liability for  
22          terminating a certified nursing assistant under  
23          certain circumstances; providing penalties for  
24          failure to disclose a material fact under  
25          certain circumstances; providing for access to  
26          background screening information; preserving  
27          confidentiality; providing rulemaking  
28          authority; requiring persons who employ  
29          certified nursing assistants to report certain  
30          information to the department; requiring the  
31          department to update the certified nursing

1           assistant registry; providing for assignment to  
2           inactive certification under certain  
3           circumstances; providing for future repeal of  
4           such reporting, updating, and assignment  
5           provisions; amending ss. 20.43, 400.211,  
6           400.4255, 400.462, 400.506, and 455.667, F.S.,  
7           relating to the department, persons employed as  
8           nursing assistants, the use of licensed  
9           personnel in assisted living facilities, the  
10          regulation of home health agencies, nurse  
11          registries, and the ownership and control of  
12          patient records; deleting existing provisions  
13          relating to certification of nursing assistants  
14          and revising cross references, to conform to  
15          changes made by the act; providing for  
16          immunization of patients and employees of  
17          nursing homes against influenza and pneumonia;  
18          requiring informed written consent; providing  
19          exemptions; providing for reimbursement for the  
20          cost of such immunizations; authorizing  
21          additional positions for the department;  
22          providing an effective date.

23  
24   Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Part XV of chapter 468, Florida Statutes,  
27   consisting of sections 468.821, 468.822, 468.823, 468.824,  
28   468.825, 468.826, 468.827, 468.828, and 468.829, Florida  
29   Statutes, is created to read:

30           468.821 Definitions.--As used in this part, the term:

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1           (1) "Approved training program" means a course of  
2 training conducted by a public sector or private sector  
3 educational center licensed by the Department of Education to  
4 implement the basic curriculum for nursing assistants which is  
5 approved by the Department of Education.

6           (2) "Certified nursing assistant" means a person who  
7 meets the qualifications specified in this part and who is  
8 certified by the department as a certified nursing assistant.

9           (3) "Department" means the Department of Health.

10          (4) "Registry" means the listing of certified nursing  
11 assistants maintained by the department.

12           468.822 Duties and powers of the department.--

13          (1) The department shall maintain, or contract with or  
14 approve another entity to maintain, a state registry of  
15 certified nursing assistants. The registry shall consist of  
16 the name of each certified nursing assistant in this state,  
17 other identifying information defined by department rule,  
18 certification status, the effective date of certification,  
19 other information required by state or federal law,  
20 information regarding any crime or any abuse, neglect, or  
21 exploitation as provided under chapter 435, and any  
22 disciplinary action taken against the certified nursing  
23 assistant. The registry shall be accessible to the public, the  
24 certificateholder, employers, and other state agencies.

25          (2) The department shall adopt by rule testing  
26 procedures for use in certifying nursing assistants and shall  
27 adopt rules regulating the practice of certified nursing  
28 assistants to enforce this part. The department may contract  
29 with or approve another entity or organization to provide the  
30 examination services, including the development and  
31 administration of examinations.

1           (3) A provider shall pay all reasonable costs and  
2 expenses incurred by the department in evaluating the  
3 provider's application and performance during the delivery of  
4 services, including examination services and procedures for  
5 maintaining the certified nursing assistant registry, as  
6 applicable.

7           468.823 Certified nursing assistants; certification  
8 requirement.--

9           (1) The department shall issue a certificate to  
10 practice as a certified nursing assistant to any person who  
11 demonstrates a minimum competency to read and write and meets  
12 one of the following requirements:

13           (a) Has successfully completed an approved training  
14 program and achieved a minimum score, established by rule of  
15 the department, on the nursing assistant competency  
16 examination, which consists of a written portion and  
17 skills-demonstration portion, approved by the department and  
18 administered at a site and by personnel approved by the  
19 department.

20           (b) Has achieved a minimum score, established by rule  
21 of the department, on the nursing assistant competency  
22 examination, which consists of a written portion and  
23 skills-demonstration portion, approved by the department and  
24 administered at a site and by personnel approved by the  
25 department and:

- 26           1. Has a high school diploma, or its equivalent; or  
27           2. Is at least 18 years of age.

28           (c) Is currently certified in another state, is listed  
29 on that state's certified nursing assistant registry, has not  
30 been found to have committed abuse, neglect, or exploitation  
31 in that state, and has successfully completed a national

1 nursing assistant evaluation in order to receive certification  
2 in that state.

3 (2) If an applicant fails to pass the nursing  
4 assistant competency examination in three attempts, the  
5 applicant is not eligible for reexamination unless the  
6 applicant completes an approved training program.

7 (3) An oral examination shall be administered as a  
8 substitute for the written portion of the examination upon  
9 request. The oral examination shall be administered at a site  
10 and by personnel approved by the department.

11 (4) The department shall adopt rules to provide for  
12 the initial certification of certified nursing assistants.

13 (5) A certified nursing assistant shall maintain a  
14 current address with the department in accordance with s.  
15 455.717.

16 468.824 Denial, suspension, or revocation of  
17 certification; disciplinary actions; letter of exemption.--

18 (1) The following acts constitute grounds for which  
19 the department may impose disciplinary sanctions as specified  
20 in subsection (2):

21 (a) Obtaining or attempting to obtain an exemption  
22 from disqualification from certification or employment, or  
23 possessing or attempting to possess a letter of exemption from  
24 disqualification from certification or employment, by bribery,  
25 misrepresentation, deceit, or through an error of the  
26 department.

27 (b) Intentionally violating any provision of this  
28 part, chapter 455, or the rules adopted by the department.

29 (2) When the department finds any person guilty of any  
30 of the grounds set forth in subsection (1), it may enter an  
31 order imposing one or more of the following penalties:

1       (a) Denial, suspension, or revocation of  
2 certification.

3       (b) Imposition of an administrative fine not to exceed  
4 \$150 for each count or separate offense.

5       (c) Imposition of probation or restriction of  
6 certification, including conditions such as retraining,  
7 compliance with an approved treatment program for impaired  
8 practitioners, or other corrective action.

9       (3) The department may, upon the request of a  
10 certificateholder, exempt the certificateholder from  
11 disqualification of certification or disqualification of  
12 employment in accordance with chapter 435 and issue a letter  
13 of exemption. After January 1, 2000, the department must  
14 notify an applicant seeking an exemption from disqualification  
15 from certification or employment of its decision to approve or  
16 deny the request within 30 days after the date the department  
17 receives all required documentation.

18       468.825 Availability of disciplinary records and  
19 proceedings.--Pursuant to s. 455.621, any complaint or record  
20 maintained by the department pursuant to the discipline of a  
21 certified nursing assistant and any proceeding held by the  
22 department to discipline a certified nursing assistant shall  
23 remain open and available to the public.

24       468.826 Exemption from liability.--If an employer  
25 terminates or denies employment to a certified nursing  
26 assistant whose certification is inactive as shown on the  
27 certified nursing assistant registry or whose name appears on  
28 the central abuse registry and tracking system of the  
29 Department of Children and Family Services or on a criminal  
30 screening report of the Department of Law Enforcement, the  
31 employer is not civilly liable for such termination and a

1 cause of action may not be brought against the employer for  
2 damages, regardless of whether the employee has filed for an  
3 exemption from the department under s. 468.824(3). There may  
4 not be any monetary liability on the part of, and a cause of  
5 action for damages may not arise against, any licensed  
6 facility, its governing board or members thereof, medical  
7 staff, disciplinary board, agents, investigators, witnesses,  
8 employees, or any other person for any action taken in good  
9 faith without intentional fraud in carrying out this section.

10 468.827 Failure to disclose a material fact;  
11 penalties.--It is a misdemeanor of the first degree,  
12 punishable as provided in s. 775.082 or s. 775.083, for any  
13 person knowingly or intentionally to fail to disclose, by  
14 false statement, misrepresentation, impersonation, or other  
15 fraudulent means, in any application for voluntary or paid  
16 employment or certification regulated under this part, a  
17 material fact used in making a determination as to such  
18 person's qualifications to be an employee or  
19 certificateholder.

20 468.828 Background screening information; rulemaking  
21 authority.--

22 (1) The Agency for Health Care Administration shall  
23 allow the department to electronically access its background  
24 screening database and records, and the Department of Children  
25 and Family Services shall allow the department to  
26 electronically access its central abuse registry and tracking  
27 system under chapter 415.

28 (2) An employer, or an agent thereof, may not use  
29 criminal records, juvenile records, or information obtained  
30 from the central abuse hotline under chapter 415 for any  
31 purpose other than determining if the person meets the

1 requirements of this part. Such records and information  
2 obtained by the department shall remain confidential and  
3 exempt from s. 119.07(1) as provided in s. 435.09.

4 (3) If the requirements of the Omnibus Budget  
5 Reconciliation Act of 1987, as amended, for the certification  
6 of nursing assistants are in conflict with this part, the  
7 federal requirements shall prevail for those facilities  
8 certified to provide care under Title XVIII (Medicare) or  
9 Title XIX (Medicaid) of the Social Security Act.

10 (4) The department has authority to adopt rules  
11 pursuant to ss. 120.536(1) and 120.54 to implement the  
12 provisions of this part.

13 468.829 Employer reports; update of registry;  
14 assignment to inactive certification.--

15 (1) By October 1, 1999, and by October 1 of every year  
16 thereafter, each employer of certified nursing assistants  
17 shall submit to the department a list of the names and social  
18 security numbers of each person employed by the employer as a  
19 certified nursing assistant in a nursing-related occupation  
20 for a minimum of 8 hours for monetary compensation during the  
21 preceding 24 months. Employers may submit such information  
22 electronically through the department's Internet site.

23 (2) The department shall update the certified nursing  
24 assistant registry upon receipt of the lists of certified  
25 nursing assistants and shall complete the first of such  
26 updates by December 31, 1999.

27 (3) Each certified nursing assistant whose name is not  
28 reported to the department under subsection (1) on October 1,  
29 1999, shall be assigned an inactive certification on January  
30 1, 2000. A certified nursing assistant may reactivate an  
31 inactive certification by submitting documentation to the

1 department that he or she was employed for a minimum of 8  
2 hours for monetary compensation as a certified nursing  
3 assistant in a nursing-related occupation during the preceding  
4 24 months.

5 (4) This section is repealed October 2, 2001.

6 Section 2. Paragraph (g) of subsection (3) of section  
7 20.43, Florida Statutes, 1998 Supplement, is amended to read:  
8 20.43 Department of Health.--There is created a  
9 Department of Health.

10 (3) The following divisions of the Department of  
11 Health are established:

12 (g) Division of Medical Quality Assurance, which is  
13 responsible for the following boards and professions  
14 established within the division:

15 1. Nursing assistants, as provided under part XV of  
16 chapter 468 ~~s. 400.211~~.

17 2. Health care services pools, as provided under s.  
18 402.48.

19 3. The Board of Acupuncture, created under chapter  
20 457.

21 4. The Board of Medicine, created under chapter 458.

22 5. The Board of Osteopathic Medicine, created under  
23 chapter 459.

24 6. The Board of Chiropractic Medicine, created under  
25 chapter 460.

26 7. The Board of Podiatric Medicine, created under  
27 chapter 461.

28 8. Naturopathy, as provided under chapter 462.

29 9. The Board of Optometry, created under chapter 463.

30 10. The Board of Nursing, created under chapter 464.

31 11. The Board of Pharmacy, created under chapter 465.

- 1           22. The Board of Dentistry, created under chapter 466.
- 2           23. Midwifery, as provided under chapter 467.
- 3           24. The Board of Speech-Language Pathology and
- 4     Audiology, created under part I of chapter 468.
- 5           25. The Board of Nursing Home Administrators, created
- 6     under part II of chapter 468.
- 7           26. The Board of Occupational Therapy, created under
- 8     part III of chapter 468.
- 9           27. Respiratory therapy, as provided under part V of
- 10    chapter 468.
- 11          28. Dietetics and nutrition practice, as provided
- 12    under part X of chapter 468.
- 13          29. Athletic trainers, as provided under part XIII of
- 14    chapter 468.
- 15          30. The Board of Orthotists and Prosthetists, created
- 16    under part XIV of chapter 468.
- 17          31. Electrolysis, as provided under chapter 478.
- 18          32. The Board of Massage Therapy, created under
- 19    chapter 480.
- 20          33. The Board of Clinical Laboratory Personnel,
- 21    created under part III of chapter 483.
- 22          34. Medical physicists, as provided under part IV of
- 23    chapter 483.
- 24          35. The Board of Opticianry, created under part I of
- 25    chapter 484.
- 26          36. The Board of Hearing Aid Specialists, created
- 27    under part II of chapter 484.
- 28          37. The Board of Physical Therapy Practice, created
- 29    under chapter 486.
- 30          38. The Board of Psychology, created under chapter
- 31    490.

1           29. School psychologists, as provided under chapter  
2 490.

3           30. The Board of Clinical Social Work, Marriage and  
4 Family Therapy, and Mental Health Counseling, created under  
5 chapter 491.

6  
7 The department may contract with the Agency for Health Care  
8 Administration who shall provide consumer complaint,  
9 investigative, and prosecutorial services required by the  
10 Division of Medical Quality Assurance, councils, or boards, as  
11 appropriate.

12           Section 3. Section 400.211, Florida Statutes, 1998  
13 Supplement, is amended to read:

14           400.211 Persons employed as nursing assistants;  
15 certification requirement.--

16           (1) A person must be certified under part XV of  
17 chapter 468 pursuant to this section, except a registered  
18 nurse or practical nurse licensed in accordance with ~~the~~  
19 ~~provisions of~~ chapter 464 or an applicant for such licensure  
20 who is permitted to practice nursing in accordance with rules  
21 adopted promulgated by the Board of Nursing pursuant to  
22 chapter 464, to serve as a nursing assistant in any nursing  
23 home. ~~The Department of Health shall issue a certificate to~~  
24 ~~any person who:~~

25           ~~(a) Has successfully completed a nursing assistant~~  
26 ~~program in a state-approved school and has achieved a minimum~~  
27 ~~score of 75 percent on the written portion of the Florida~~  
28 ~~Nursing Assistant Certification Test approved by the~~  
29 ~~Department of Health and administered by state-approved test~~  
30 ~~site personnel;~~

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1           ~~(b) Has achieved a minimum score of 75 percent on the~~  
2 ~~written and performance portions of the Florida Nursing~~  
3 ~~Assistant Certification Test approved by the Department of~~  
4 ~~Health and administered by state-approved test site personnel;~~  
5 ~~or~~

6           ~~(c) Is currently certified in another state, is on~~  
7 ~~that state's registry, has no findings of abuse, and has~~  
8 ~~achieved a minimum score of 75 percent on the written portion~~  
9 ~~of the Florida Nursing Assistant Certification Test approved~~  
10 ~~by the Department of Health and administered by state-approved~~  
11 ~~test site personnel.~~

12  
13 ~~An oral examination shall be administered upon request.~~

14           ~~(2) The agency may deny, suspend, or revoke the~~  
15 ~~certification of any person to serve as a nursing assistant,~~  
16 ~~based upon written notification from a court of competent~~  
17 ~~jurisdiction, law enforcement agency, or administrative agency~~  
18 ~~of any finding of guilt of, regardless of adjudication, or a~~  
19 ~~plea of nolo contendere or guilty to, any offense set forth in~~  
20 ~~the level 1 screening standards of chapter 435 or any~~  
21 ~~confirmed report of abuse of a vulnerable adult.~~

22           ~~(2)(3)~~ The following categories of persons who are not  
23 certified as nursing assistants under part XV of chapter 468  
24 ~~this part~~ may be employed by a nursing facility for a period  
25 of 4 months:

26           (a) Persons who are enrolled in a state-approved  
27 nursing assistant program; or

28           (b) Persons who have been positively verified by the  
29 department ~~a state-approved test site~~ as certified and on the  
30 registry in another state with no findings of abuse, but who  
31

1 have not completed the written examination required under s.  
2 468.823 ~~this section.~~

3  
4 The certification requirement must be met within 4 months  
5 after ~~of~~ initial employment as a nursing assistant in a  
6 licensed nursing facility.

7 ~~(4) A person certified under this section on or after~~  
8 ~~September 30, 1990, who has not worked for pay as a nursing~~  
9 ~~assistant in a nursing-related occupation for a period of time~~  
10 ~~during a consecutive 24-month period must be recertified under~~  
11 ~~this section to be eligible to work in a nursing facility.~~

12 (3)~~(5)~~ Nursing homes shall require persons seeking  
13 employment as a certified nursing assistant to submit an  
14 employment history to the facility. The facility shall verify  
15 the employment history unless, through diligent efforts, such  
16 verification is not possible. There shall be no monetary  
17 liability on the part of, and no cause of action for damages  
18 shall arise against, a former employer who reasonably and in  
19 good faith communicates his or her honest opinion about a  
20 former employee's job performance.

21 ~~(6) If the requirements pursuant to the Omnibus Budget~~  
22 ~~Reconciliation Act of 1987, as amended, for the certification~~  
23 ~~of nursing assistants are in conflict with this section, the~~  
24 ~~federal requirements shall prevail for those facilities~~  
25 ~~certified to provide care under Title XVIII (Medicare) or~~  
26 ~~Title XIX (Medicaid) of the Social Security Act.~~

27 ~~(7) The Department of Health may adopt such rules as~~  
28 ~~are necessary to carry out this section.~~

29 Section 4. Paragraph (a) of subsection (1) and  
30 subsection (2) of section 400.4255, Florida Statutes, are  
31 amended to read:

1           400.4255 Use of licensed personnel.--  
2           (1)(a) Persons under contract to the facility,  
3 facility staff, or volunteers, who are licensed according to  
4 chapter 464, or those persons exempt under s. 464.022(1), and  
5 others as defined by rule, may administer medications to  
6 residents, take residents' vital signs, manage individual  
7 weekly pill organizers for residents who self-administer  
8 medication, give prepackaged enemas ordered by a physician,  
9 observe residents, document observations on the appropriate  
10 resident's record, report observations to the resident's  
11 physician, and contract or allow residents or a resident's  
12 representative, designee, surrogate, guardian, or attorney in  
13 fact to contract with a third party, provided residents meet  
14 the criteria for appropriate placement as defined in s.  
15 400.426. Nursing assistants certified pursuant to part XV of  
16 chapter 468 ~~s. 400.211~~ may take residents' vital signs as  
17 directed by a licensed nurse or physician.

18           (2) In facilities licensed to provide extended  
19 congregate care, persons under contract to the facility,  
20 facility staff, or volunteers, who are licensed according to  
21 chapter 464, or those persons exempt under s. 464.022(1), or  
22 those persons certified as nursing assistants pursuant to part  
23 XV of chapter 468 ~~s. 400.211~~, may also perform all duties  
24 within the scope of their license or certification, as  
25 approved by the facility administrator and pursuant to this  
26 part.

27           Section 5. Subsection (1) of section 400.462, Florida  
28 Statutes, is amended to read:

29           400.462 Definitions.--As used in this part, the term:  
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1           (1) "Certified nursing assistant" means any person who  
2 has been issued a certificate after fulfilling the  
3 requirements of part XV of chapter 468 ~~s. 400.211~~.

4           Section 6. Paragraph (a) of subsection (10) of section  
5 400.506, Florida Statutes, 1998 Supplement, is amended to  
6 read:

7           400.506 Licensure of nurse registries; requirements;  
8 penalties.--

9           (10)(a) A nurse registry may refer for contract in  
10 private residences registered nurses and licensed practical  
11 nurses registered and licensed under chapter 464, certified  
12 nursing assistants certified under part XV of chapter 468 ~~s.~~  
13 ~~400.211~~, and sitters, companions, or homemakers for the  
14 purposes of providing those services authorized under s.  
15 400.509(1).

16           Section 7. Paragraph (a) of subsection (2) of section  
17 455.667, Florida Statutes, 1998 Supplement, is amended to  
18 read:

19           455.667 Ownership and control of patient records;  
20 report or copies of records to be furnished.--

21           (2) As used in this section, the terms "records  
22 owner," "health care practitioner," and "health care  
23 practitioner's employer" do not include any of the following  
24 persons or entities; furthermore, the following persons or  
25 entities are not authorized to acquire or own medical records,  
26 but are authorized under the confidentiality and disclosure  
27 requirements of this section to maintain those documents  
28 required by the part or chapter under which they are licensed  
29 or regulated:

30           (a) Certified nursing assistants regulated under part  
31 XV of chapter 468 ~~s. 400.211~~.

1           Section 8. Influenza and pneumonia immunizations shall  
2 be provided to each patient and employee of a nursing home  
3 licensed under part II of chapter 400, Florida Statutes. The  
4 influenza immunization shall be offered annually on or before  
5 September 1, or as soon thereafter as possible for patients  
6 and employees arriving after that date; and the pneumonia  
7 immunization shall be offered at the time of admission or  
8 employment, or as soon thereafter as possible, to each patient  
9 or employee not already having received such an immunization.  
10 An immunization under this section may only be given upon the  
11 informed written consent of the patient or employee, and shall  
12 not be given or offered to any patient or employee who has  
13 stated in writing that such an immunization conflicts with his  
14 or her religious beliefs or who provides written certification  
15 by a physician licensed under chapter 458 or chapter 459 that  
16 such an immunization is unnecessary or hazardous to the  
17 person's health. The nursing home shall provide each  
18 immunization without charge, but may seek reimbursement from  
19 the patient's or employee's health insurance or from Medicaid  
20 or Medicare, if applicable, at a cost not to exceed \$2.50 for  
21 an influenza immunization and \$9 for a pneumonia immunization.

22           Section 9. The Department of Health is authorized six  
23 additional positions for the purposes of implementing this  
24 act.

25           Section 10. This act shall take effect October 1,  
26 1999.

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HOUSE SUMMARY

Creates pt. XV, ch. 468, F.S., to provide for regulation of certified nursing assistants by the Department of Health. Provides certification and practice requirements. Requires maintenance of a state registry of certified nursing assistants. Requires employers of certified nursing assistant to provide certain information to the department on an annual basis, and provides for updating of the registry and assignment to inactive certification pursuant thereto. Provides for immunization of patients and employees of nursing homes against influenza and pneumonia. Requires informed written consent. Provides exemptions. Provides for reimbursement for the cost of such immunizations. See bill for details.