

**STORAGE NAME:** h0567.hcl

**DATE:** February 17, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE LICENSING & REGULATION  
ANALYSIS**

**BILL #:** HB 567

**RELATING TO:** Nursing

**SPONSOR(S):** Representative Boyd and others

**TIED BILL(S):**

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

- (1) HEALTH CARE LICENSING & REGULATION
  - (2) GOVERNMENTAL RULES & REGULATIONS
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

This bill transfers part XV, of ch. 468, F.S., relating to certified nursing assistants, to ch. 464, F.S., moving responsibility and rulemaking authority for the regulation of certified nursing assistants from the Department of Health to the Board of Nursing. The bill makes technical changes to accommodate the transfer of this regulation from the department to the board.

The bill requires hospitals, home health agencies, and all other health agencies to submit to the Board of Nursing beginning in January 2001, the names and work titles of all unlicensed individuals employed by them to perform health care services under the supervision of licensed nurses.

Also, it requires advanced registered nurse practitioners to comply with the practitioner profiling and credentialing laws. Individuals requesting certification or recertification as advanced registered nurse practitioners must submit certain information, including a set of fingerprints, and pay fees to cover the cost of obtaining the required background screening. The bill provides penalties for those failing to comply with the new profiling and credentialing requirements. An effective date of July 1, 2000, is provided.

This bill has a significant fiscal impact on the Department of Health and the Board of Nursing. The department estimates that it will need nine new full time employees to implement the provisions of this bill. This will cost the department \$286,877 in the first year and \$237,609 each following year. The bill does not appropriate any revenues to the department.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The federal government has created guidelines pursuant to the Code of Federal Regulation, Title 42, ss. 483.150-158, which establish basic requirements regarding nurses aides, that must be met by states. All state policies relating to certified nursing assistants (CNAs) must comply with the federal guidelines. These federal regulations outline the required training programs and competency evaluations for CNAs, require states to establish a registry of CNAs, and set up procedures by which states may receive federal reimbursement for some costs associated with CNA programs.

Certified nursing assistants are currently regulated in Florida by the Department of Health. The department oversees the discipline and certification of all CNAs. The Department of Health indicates that there is confusion among individuals who supervise and employ CNAs regarding the mechanism for their discipline. The department also asserts that the Board of Nursing is recognized and accepted by nurses and employers as an effective disciplinary body.

The department is responsible for ensuring that a statewide registry of certified nursing assistants is maintained. The Department of Health contracts with the Agency for Health Care Administration (AHCA) to maintain this registry.

In order to become certified as a CNA an individual must:

1. Successfully complete an approved training program and achieve a minimum score on the nursing assistant competency examination; or
2. Be at least 18 years of age, hold a high school diploma or its equivalent, and achieve a minimum score on the nursing assistant competency examination.

The Department of Education approves certified nursing assistant education programs.

While AHCA maintains a registry of CNAs, no state agency has collected information related to unlicensed persons who perform health care services under the supervision of licensed nurses.

In Florida, profiling and credentialing of allopathic, osteopathic, chiropractic, and podiatric physicians is required. Advanced registered nurse practitioners (ARNPs) are not required to be credentialed or profiled.

**C. EFFECT OF PROPOSED CHANGES:**

The bill transfers part XV, ch. 468, F.S., to ch. 464, F.S., consolidating and placing the regulation of certified nursing assistants under the Board of Nursing. It also transfers the authority to approve certified nursing assistant education programs to the Board of Nursing from the Department of Education. It transfers the responsibility for the maintenance of the state registry of CNAs to the board from the Department of Health.

The bill creates a new requirement that all hospitals, home health agencies, and other health agencies in Florida that employ unlicensed individuals to perform health care services under the supervision of licensed nurses report the names and work titles of those employees to the Board of Nursing.

The bill includes advanced registered nurse practitioners under the credentialing and profiling programs administered by the Department of Health. ARNPs are required upon applying for initial licensure, or upon seeking renewal of a license to submit certain information to the department including a set of fingerprints.

HB 567 creates penalties for ARNPs who fail to comply with the new credentialing and profiling requirements.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Renumbers ss. 468.821 through 468.829, F.S., as ss. 464.201 through 464.209, respectively, and designates them as part II of ch. 464, F.S. Amends said sections to transfer regulatory authority of certified nursing assistants from the Department of Health to the Board of Nursing, replaces "department" with "board."

**Section 2.** Amends s. 20.43, F.S., to place nursing assistants in the correct numerical sequence in the list of boards and professionals under the oversight of the Division of Medical Quality Assurance.

**Sections 3-15.** Amend ss. 39.01, 39.304, 110.131, 232.46, 240.4075, 246.081, 310.102, 381.0302, 384.30, 384.31, 394.455, 395.0191, and 400.021, F.S., to make technical changes inserting "part I of" before "chapter 464" to reflect that ch. 464, F.S., is divided into two parts, where part I addresses licensed nurses and part II addresses nursing assistants.

**Section 16.** Amends s. 400.211, F.S., to require that any individual that works as a nursing assistant in a nursing home must be certified under part II of ch. 464, F.S. Makes technical changes to reflect that ch. 464, F.S., has two parts.

**Sections 17- 41.** Amend ss. 400.402, 400.407, 400.4255, 400.426, 400.462, 400.464, 400.506, 400.6105, 401.23, 401.252, 408.07, 408.706, 409.908, 415.1085, 455.501, 455.597, 455.604, 455.621, 455.664, 455.667, 455.677, 455.687, 455.694, 455.707, and 458.348, F.S., to make technical changes inserting "part I of" and "part II of chapter 464" to reflect that ch. 464, F.S., is divided into two parts, where part I addresses licensed nurses and part II addresses nursing assistants.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Advanced registered nurse practitioners will have to bear the cost of providing fingerprints and the other required information. Also, they will have to pay fees to cover the cost of obtaining a background check using the fingerprints they submit.

**D. FISCAL COMMENTS:**

The Department of Health indicates that in order to implement the provisions in the bill they will need one nurse consultant, two regulatory specialists, and six full time OPS positions. The nurse consultant will approve certified nursing assistant education programs. This function is currently accomplished as part of the duties included in two positions held within the Department of Education.

One of the regulatory specialists will be added to the compliance unit with the Board of Nursing office to assist with the additional disciplinary workload that will be created due to the transfer of the regulation of CNAs to the Board of Nursing. The second regulatory specialist will be added to the Credentialing and Profiling Unit within the Bureau of Operations to assist in the investigation and research of profiling and credentialing responses and background responses received from ARNPs.

The six OPS positions will be divided evenly between the Board of Nursing and the Profiling and Credentialing Unit. The three OPS positions with the board will perform data entry operations related to employer reporting of unlicensed individuals working under the supervision of licensed nurses. The Department of Health estimates that 10,000 employers will supply employee data to the board. The three OPS positions with the Credentialing and Profiling Unit will be responsible for the initial and ongoing updating of profiling and credentialing information.

In most instances, licensure programs run by the state are supported through fees paid by licensees to obtain a license. However, federal regulations pursuant to the Code of Federal Regulation, Title 42, s. 483.156, prohibit states from imposing "any charges related to registration on [CNAs]." This makes it impossible for the state to use licensing fees to fund the CNA program.

Pursuant to s. 455.641, F.S., the Department of Health imposes a \$5 unlicensed activity fee upon every initial or renewal licensure. This fee is deposited into a special account within the Medical Quality Assurance Trust Fund. Currently, this account has a balance of \$8.5 million. The department has identified this as a possible source from which to appropriate funds for this bill, since it requires the Board of Nursing to compile a list of all unlicensed employees that provide health care services under the supervision of a licensed nurse.

The bill should have a positive fiscal impact on the Department of Education due to the transferral to the Board of Nursing the responsibility for approving certified nursing assistant education programs.

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 expend funds or take any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers rulemaking authority regarding the certification of certified nursing assistants from the Department of Health to the Board of Nursing.

C. OTHER COMMENTS:

**Department of Health**

The department proposed the following amendments to the bill:

1. Provide the appropriate boards within the Department of Health authority to grant exemptions from disqualification to certain individuals in accordance with s. 435.07, F.S.
2. Make technical changes to ensure that certain references to ch. 464, F.S., refer to both licensed nurses and CNA.

Pursuant to ch. 97-237, L.O.F., the Department of Health is required to develop, by the year 2000, a schedule and procedures for each practitioner within the health care profession to begin participation in the department's practitioner profiling and credentialing program. The department has provided a schedule that includes the phase-in of certain professions over a two year period.

**STORAGE NAME:** h0567.hcl

**DATE:** February 17, 2000

**PAGE 7**

The first phase begins July 1, 2001, and includes practitioners that have direct access to patients, have a high level of interaction with patients, and present a greater potential for harm to the public. Nurses, including ARNPs, are included within the first group of practitioners scheduled to be phased-in.

The department has recently completed the process of profiling nearly 56,000 allopathic, osteopathic, chiropractic, and podiatric physicians. The Profiling & Credentialing Unit within the Department of Health will need time to evaluate the system and to implement necessary improvements. This bill requires the department to begin profiling ARNPs in July 2000. It would be beneficial to the department to delay beginning this process until July 1, 2001, in accordance with the department's proposed schedule for phasing-in new health care professions. A delay of one year would help ensure that the process of profiling ARNPs would occur in an efficient and cost-effective manner.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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Andrew "Andy" Palmer

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Lucretia Shaw Collins