

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1942

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Employment Screening of Medical Clinic Administrators

DATE: March 23, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Wilson	HC	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1942 requires administrators of medical clinics to successfully complete level 1 background screening and the owner or operator of the medical clinic to be responsible for the cost of such screening.

This bill creates an undesignated section of law.

II. Present Situation:

Chapter 98-171, Laws of Florida,¹ initiated background screening requirements for applicants for licensure, certification, and registration of health care facilities and health care services. As a result, effective July 1, 1998, the owners, employees, administrators and financial officers of health care entities were required to submit to criminal history checks by law enforcement agencies and screening through the central abuse registry of the Department of Children and Family Services. The categories of facility types or service providers whose licensure applicants are subject to background screening requirements are: abortion clinics; adult day care centers; adult family-care homes; ambulatory surgical centers; assisted living facilities; birth centers; clinical laboratories; crisis stabilization units; drug-free workplace laboratories; durable medical equipment providers; health care service pools; home health agencies; homemaker, sitter, companion agencies; home medical equipment providers; homes for special services; hospices; hospitals; intermediate care facilities for the developmentally disabled; multiphasic health testing centers; nurse registries; nursing homes; organ procurement organizations, tissue banks, eye banks; prescribed pediatric extended care centers; residential treatment facilities; transitional living facilities; and, utilization review agencies.

¹ Note that the background screening requirements of ch. 98-171, L.O.F., are subject to repeal unless re-enacted by July 1, 2001. SB 688 currently before the Legislature provides for repeal of the July 1, 2001 sunset provision.

The 1998 legislation gave the Agency for Health Care Administration (AHCA) authority to prohibit licensure, certification, or registration of unsuitable background screening applicants. This authority has as its objective the prevention of harm to patients, residents, and recipients of health care services and products by undesirable applicants for licensure. The agency began implementation of the program on October 1, 1998.

Upon application for licensure as one of the specified health care facilities or service providers, managing employees must submit to a level 2 background screening by AHCA. Also subject to screening are members of the board of directors, officers, and persons owning 5 percent or more of the entity, if AHCA has probable cause to believe that any such individual has been convicted of an offense contemplated by the level 2 screening criteria.

Background screening must conform to level 2 employment screening, under chapter 435, F.S., which until September 1, 2000, included screening through the FBI's databases, state criminal records checks, and an abuse registry check. The abuse registry check was discontinued effective September 1, 2000. The screening requirements may be waived if an applicant provides proof of such screening within the previous 5 years in conjunction with any other state health care licensure, certification, or registration requirements.

An applicant entity subject to level 2 screening must submit to AHCA, along with the application for initial or renewal licensure: (1) a description and explanation of any exclusions, permanent suspensions, or terminations from the Medicare or Medicaid programs or submit proof of compliance with Medicare or Medicaid program ownership and control-interest disclosure requirements; and (2) for a member of its board of directors, its officers, or any individual owning 5 percent or more of the applicant entity, a description and explanation of any conviction of an offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. An exception is provided for a director of a not-for-profit organization when the director serves solely in a voluntary capacity, does not regularly participate in the day-to-day operational decisions of the organization, receives no remuneration for services on the board of directors, has no financial interest, and has no family member with a financial interest in the organization, if the director and the organization include a statement in the licensure application affirming such a relationship.

Level 1 Background Screens

Employees of nursing homes who: provide personal care or services to residents, have access to resident living areas, or have access to resident funds or other personal property, must complete a level 1 background screening under s. 400.215, F.S. The owner or administrator of an assisted living facility must conduct level 1 background screening on all employees hired on or after October 1, 1998, who perform personal services for residents under s. 400.4174, F.S.

Level 1 screenings must include, but not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies. Any person required to have a level 1 background screening must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under: s. 415.111, F.S., relating to abuse, neglect or exploitation of a vulnerable adult; s. 782.04, F.S.,

relating to murder; s. 782.07, F.S., relating to manslaughter of an elderly person, disabled person, or child; s. 782.071, F.S., relating to vehicular homicide; s. 782.09, F.S., relating to the killing of an unborn child by injury to the mother; s. 784.011, F.S., relating to assault on a minor; s. 784.021, F.S., relating to aggravated assault; s. 784.03, F.S., relating to battery of a minor; s. 784.045, F.S., relating to aggravated battery; s. 787.01, F.S., relating to kidnapping; s. 787.02, F.S., relating to false imprisonment; s. 794.011, F.S., relating to sexual battery; former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority; chapter 796, F.S., relating to prostitution; s. 798.02, F.S., relating to lewd and lascivious behavior; chapter 800, F.S., relating to lewdness and indecent exposure; s. 806.01, F.S., relating to arson; chapter 812, F.S., relating to felony theft or robbery; s. 817.563, F.S., relating to felony sale of fraudulent controlled substances; s. 825.102, F.S., relating to abuse or neglect of an elderly or disabled person; s. 825.1025, F.S., relating to a lewd or lascivious act involving an elderly or disabled person; s. 825.103, F.S., relating to felony exploitation of an elderly or disabled person; s. 826.04, F.S., relating to incest; s. 827.03, F.S., relating to abuse or neglect of a child; s. 827.04, F.S., relating to contributing to the delinquency or dependency of a child; former s. 827.05, F.S., relating to neglect of a child; s. 827.071, F.S., relating to sexual performance by a child; chapter 847, F.S., relating to obscene literature; chapter 893, F.S., relating to drug abuse prevention and control, if a felony or if a child is involved; and s. 741.30, F.S., relating to domestic violence.

Costs of Background Screening

The cost of each level 1 background screening is a minimum of \$15 for a statewide criminal correspondence check through the Florida Department of Law Enforcement,² plus any additional cost of employment history checks. Local criminal records checks through local law enforcement agencies are optional, but will almost surely be at added expense.³

Medical Clinics Subject to Regulation

The term “medical clinic” is referenced in: s. 316.1933(2)(c), F.S.; s. 327.352(1)(e)5., F.S.; s. 327.353(2)(c), F.S.; s. 641.31071(5)(b)7., F.S.; s. 641.35(10), F.S.; s. 627.6561(5)(b)7., F.S.; and s. 943.325(10)(e), F.S. However, no definition of the term “medical clinic” is found in the statutes and there is no such entity subject to licensure by AHCA or any other agency. Commonly, the term “medical clinic” is often used to refer to ambulatory surgical centers licensed under chapter 395, F.S., or the offices of physicians, medical group practices, podiatrists, optometrists, dentists, or other health care professionals individually licensed under chapters 458, 459, 461, 463, and 466, F.S. The term may as well refer to ambulatory care centers as defined under s. 408.07(5), F.S.⁴

² Background checks may be accomplished through the Florida Department of Law Enforcement, AHCA or a third party vendor. Third party vendors may charge a premium above \$15.

³ Abuse registry screenings through the Department of Children and Family Services were previously \$6 each, but such cost is no longer charged.

⁴ Note that the definition of “health care facility” under s. 408.07(23), F.S. includes ambulatory surgical centers and ambulatory care centers, as well as: hospices, nursing homes, hospitals, diagnostic imaging centers, therapy centers, clinical laboratories, home health agencies, cardiac catheterization laboratories, medical equipment suppliers, substance dependency treatment centers, physical rehabilitation centers, lithotripsy centers, birthing centers, and nursing home components housed within continuing care facilities.

III. Effect of Proposed Changes:

Section 1. Creates an undesignated section of law to require an entity that owns or operates a medical clinic to perform a level 1 background screening on any person hired as an administrator. The administrator must successfully complete the background screening. The employer entity is responsible for the costs of the background screening.

Section 2. Provides that if this bill becomes law, it shall become effective July 1, 2001.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Owners or operators of medical clinics will be required to pay for the costs of background screening for administrators hired for the clinics.

C. Government Sector Impact:

The background screening unit in the Florida Department of Law Enforcement will experience an increase in the number of level 1 background screens performed.

VI. Technical Deficiencies:

There is no definition of the term “medical clinic” in the bill or in the Florida Statutes, therefore, it is difficult to ascertain what entities this bill addresses.

VII. Related Issues:

The bill contains no enforcement mechanism as to those medical clinics that fail to comply with the background screening requirements.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
