

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: CS/SB 688

SPONSOR: Health, Aging and Long-Term Care Committee

SUBJECT: Health Care; Background Screening

DATE: March 21, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill requires the Agency for Health Care Administration to convene an interagency workgroup to study the establishment of uniform background screening requirements for health care licensees. The interagency workgroup is required to review chapter 435, Florida Statutes (F.S.), providing for criminal background screening, and propose updates to the list of criminal offenses used in the screening process, specify appropriate statutes of limitation for disqualifying offenses, and identify any civil actions that might be added to the list of current criminal screens. The workgroup is required to report to the Governor and the Legislature by December 1, 2001. The bill repeals the June 30, 2001, repeal date for the background screening requirements enacted in chapter 98-171, Laws of Florida.

This bill creates two undesignated sections of law.

II. Present Situation:

The Agency for Health Care Administration (AHCA) licenses, certifies, and registers health care facilities, health care providers, and health care services or programs. AHCA is responsible for the regular inspection or survey of those entities and investigates reported complaints.

Chapter 98-171, Laws of Florida, 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. The agency began implementation on October 1, 1998.

The 1998 legislation gave AHCA authority to prohibit licensure, certification, or registration of unsuitable 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.

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.

The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, F.S., on all employees hired on or after October 1, 1998, who perform personal services for residents. Level 1 screening is less stringent than that of level 2 screening.

AHCA is authorized to issue a provisional license to an applicant or a managing employee of the applicant who meets the standards for the state criminal records check, but for whom AHCA has not yet received results from the FBI's criminal records check or to an applicant or managing employee of the applicant who is waiting for a response from AHCA to a request for exemption from disqualification from employment, as provided for under chapter 435, F.S. The agency may grant a license or certify or register an applicant entity after it receives the FBI report, but only if such report confirms that all standards have been met or upon AHCA granting an exemption from disqualification under chapter 435, F.S.

The agency may not grant a license, certify, or register an applicant entity if the applicant, or a managing employee of the applicant, has been found guilty of, or has entered a plea of nolo contendere or guilty to any offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. However, a license may be granted to an applicant or a managing employee of the applicant if AHCA grants an exemption from disqualification. The agency may deny or revoke a license if the applicant or a managing employee of the applicant has falsely represented or omitted a material fact in the application relating to: (1) exclusion, permanent suspension, or termination from the Medicare or Medicaid programs; (2) describing or explaining a board member's, an officer's, or a 5-percent owner's conviction that would preclude employment under level 2 screening standards; or (3) has been excluded, permanently suspended, or terminated from the Medicare or Medicaid program.

Exemption from Employment Disqualification

A prospective employee otherwise disqualified due to a criminal record may apply for exemption from employment disqualification. Facility owners, administrators, financial officers, and personnel are to submit applications to AHCA, while individually licensed health care professionals, including licensed nursing home administrators, must submit requests for exemption from employment disqualification to the Department of Health (DOH).

Eligibility for exemption requires that an individual must not have been adjudicated guilty of a disqualifying felony offense within the previous three years, and, the individual must demonstrate by clear and convincing evidence that she or he will not present a danger if employed within the health care field. Individuals applying for an exemption have the burden of providing sufficient evidence of rehabilitation as to the following criteria: (1) the circumstances surrounding the criminal incident for which an exemption is sought; (2) the time period that has elapsed since the incident; (3) the nature of the harm caused to the victim; (4) a history of the applicant since the incident; and (5) any other evidence or circumstance indicating that the applicant is leading a positive lifestyle.

Due Process

Individuals who request an exemption from employment disqualification and who are denied such an exemption by either DOH or AHCA may request a hearing before an administrative law judge of the Division of Administrative Hearings (DOAH), within the Department of Management Services, as provided under Chapter 120, F.S. An applicant who is unsuccessful at DOAH may appeal the final agency action with the appropriate District Court of Appeal.

Background Screening Vendors and Agencies

Licensed health care providers have the option of obtaining level 1 screening reports from three sources—directly from the Florida Department of Law Enforcement (FDLE), from a third-party vendor, or from AHCA. There are numerous third-party-information vendors throughout Florida that provide applicable services to the health care industry. These companies specialize in brokering information obtained from official repositories such as FDLE, the Department of Highway Safety and Motor Vehicles, professional licensure databases, credit bureaus, and other such sources. While the private-sector information vendor may offer some assistance with report interpretation, providers typically are responsible for interpreting the reports to determine the applicant's employment eligibility.

Repeal of Background Screening Requirements

Section 71 of chapter 98-171, Laws of Florida, prospectively repeals the provisions of law elsewhere created in that act requiring health care licensure applicants to undergo background screening. These provisions of law may be saved from repeal, if prior to the scheduled date of repeal, June 30, 2001, the Legislature reviews and reenacts them.

In preparation for the legislatively mandated review of the background screening requirements, AHCA convened a workgroup, in accordance with subsection (1) of s. 71 of chapter 98-171, Laws of Florida. The workgroup was directed to review the effectiveness of background screening in preventing persons with specified criminal histories from operating health care facilities or programs, and in preventing or deterring health care fraud and abuse. The agency was required to include in the workgroup representatives from, at a minimum: (1) the Statewide Prosecutor's Office, (2) the Attorney General's Office, (3) the Department of Children and Families, and (4) the Department of Elder Affairs. Several divisions within AHCA participated, including: the General Counsel's office, Medicaid Program Integrity, and Medicaid Contract Management, and the workgroup meetings were attended by a variety of other interested parties, both governmental and private-sector. The workgroup submitted its report to the Legislature and the Governor in December 2000.

Findings and Recommendations

Between October 1, 1998, and September 1, 2000, AHCA had conducted an approximate total of 225,000 abuse screenings and 87,000 criminal history screening reports. Also, the agency has reviewed more than 1,200 exemption requests since October 1998. Since July 1997, Medicaid Contract Management has conducted 26,970 Medicaid screenings and has accepted an additional 2,002 screenings from other state agencies. Upon review of the screening results, 127 providers were terminated from participation in the Medicaid program and 110 applications for participation as a Medicaid provider were denied due to a finding of at least one disqualifying criminal offense.

Background screening appears to both preclude licensure of persons with a criminal background, as well as deter such persons from submitting a licensure application. Because background screening is required, the AHCA-convened workgroup concluded that background screening is a means of reducing health care fraud and abuse and that, consequently, there are unknown

numbers of individuals who do not apply for employment or licensure in health care because they are hesitant to reveal their criminal record. Screening requirements seem to reduce some of the liability concerns of facility owners and administrators, as well.

The workgroup concluded that all screening procedures have limitations, and their use does not guarantee that individuals who pass the screens will not abuse those in their care. The need for vigilance in protecting those at risk of victimization is constant. However, it is reasonable to assume that the background screening requirements act as deterrents and are effective methods for reducing the incidence of victimization by caregivers.

The following recommendations were submitted by the workgroup:

- Establish a centralized unit to process screening requests and maintain a database for purposes of licensure, certification, enrollment, and exemption processes.
- Review and amend legislation to ensure uniform screening requirements among licensed facilities and health care service providers.
- Create an interagency task force to propose changes to chapter 435, F.S., providing employment screening guidelines and standards, for legislative approval. The purpose is to review and update the listing of criminal offenses, address statute of limitation issues, and identify civil actions considered for disqualification.

Committee staff found that background screening, as established in chapter 98-171, Laws of Florida, is effective in combating health care provider fraud and abuse because it prevents individuals with established criminal histories from managing health care facilities, services, or programs or from receiving a license, certification, or registration. By preventing such individuals from managing or operating as a health care provider in Florida, the public gains an added measure of protection in obtaining safe and good quality health care services. Committee staff made the following two recommendations in Interim Project Report 2001-043, based on review of the background screening requirements enacted in chapter 98-171, Laws of Florida:

- Reenact the background screening requirements created by chapter 98-171, Laws of Florida.
- Continue the AHCA-convened interagency workgroup to review and update the listing of criminal offenses for disqualifying an applicant through the background screening process, address statute of limitation issues, and identify additional civil actions that should be considered for disqualification as a part of the background screening process.

III. Effect of Proposed Changes:

The bill requires AHCA to convene an interagency workgroup to study how to establish uniform background screening requirements for persons applying for health care licenses and employees. The interagency workgroup is to review chapter 435, F.S., providing for employment screening, and to propose updates to the list of criminal offenses used in the screening process, specify appropriate statutes of limitation for disqualifying offenses, and identify additional civil actions that may be considered as disqualifying. The bill repeals a provision of law enacted in 1998 that specified June 30, 2001, as the repeal date of various provisions of law created by chapter 98-171, Laws of Florida. The effect of repealing that provision would be to allow the continued

enforcement of background screening requirements on affected persons. The workgroup is abolished effective December 1, 2001.

The effective date of the bill is June 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 Article VII, Section 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 Article I, Subsections 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost to an applicant or sponsor for a level 1 background screening is \$15 and the cost of a level 2 background screening is \$39 when the screening application is submitted directly to AHCA or another state agency. A private-sector vendor may apply additional charges. A screening applicant may experience additional costs relating to the screening process in the form of locating and forwarding documentation about past criminal processing. Some additional costs may arise as a result of applying for an exemption from disqualification or, as relates to applicants for certification as a Medicaid provider, in contesting a criminal history finding.

C. Government Sector Impact:

The application fee submitted with the request for screening covers the costs generated by the background screening process. Costs are directly proportionate to the number of applications submitted, because each application requires the same processing, irrespective of the number to be processed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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