

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 331 w/CS Certified Nursing Assistants  
**SPONSOR(S):** Machek and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 694 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	<u>13 Y, 0 N w/CS</u>	<u>Meyer</u>	<u>Liem</u>
2) <u>Health Care</u>	<u>20 Y, 0 N w/CS</u>	<u>Mitchell</u>	<u>Collins</u>
3) <u>Health Appropriation (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

According to the Department of Health, there has been considerable confusion regarding background screening requirements and duplication of screening for Certified Nursing Assistants (CNAs).

CNAs provide care and assistance related activities of daily living, such as dressing and feeding, toileting and catheter care, change of position, and taking vital signs. They are often the principal caregivers in nursing homes.

HB 331 w/CS specifies that the Board of Nursing screening of applicants for certification as nursing assistants (CNAs) include a screening for disciplinary violations, and depending on their length of residency in Florida:

- A Level 1 screening as provided for in chapter 435, F.S., which involves an employment history and a statewide criminal background check, if they have been continuous residents of Florida for the past five years; and
- A Level 2 screening that includes a fingerprint-based search of the records of the Federal Bureau of Investigations, if the applicant has not maintained continuous residency in the state for the past five years.

The bill provides that, after the Board of Nursing certifies a CNA, the Department of Health and the Agency for Health Care Administration will ensure that the background screening information is posted on the agency's Internet website in the background screening database that will be available to employers and prospective employers, beginning January 1, 2005.

This bill takes effect upon becoming law.

See "Fiscal Comments" section for details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0331c.hc.doc  
**DATE:** April 2, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

The bill eliminates the current practice of re-screening (for employment) Certified Nursing Assistants (CNAs) who apply for work in a nursing facility.

The Board of Nursing is required to conduct a Level 1 or Level 2 background screening as specified in ch. 435, F.S., (which are the same standards as nursing homes are required to meet when hiring Certified Nursing Assistants) in addition to the standards in s. 464.203, F.S.

Certified Nursing Assistants (CNAs) are governed by Part II of chapter 464, F.S. CNAs provide care and assistance related activities of daily living, such as dressing and feeding, toileting and catheter care, change of position, and taking vital signs. They are often the principal caregivers in nursing homes.

In 1995 (ch. 95-228, L.O.F.), the Legislature created chapter 435, F.S., in an effort to consolidate all standards for background screening and requirements related to “good moral character” for licensure or employment into one statutory scheme. The chapter also provides a process for granting an exemption for employment disqualification. AHCA has responsibility for employees who are not licensed or certified, and the Department of Health has responsibility for licensed or certified personnel. Chapter 435, F.S., provides for two levels of screening:

- Level 1 includes a statewide criminal records check; and
- Level 2 requires a fingerprint-based check of the Federal Bureau of Investigations’ data base.

Chapter 400, Part II, F.S., is the statutory framework for nursing homes. Section 400.215, F.S., provides that all personnel in the nursing home who:

- (a) provide personal care or services to residents;
- (b) have access to resident living areas; or
- (c) have access to resident funds or other personal property,

must pass the background screening prescribed in chapter 435, F.S.

Requiring background screening on the above criteria and, rather than by job title, has the effect of requiring staff such dietary aides, housekeeping, recreational therapists, nurses, and other non-licensed, non-certified personnel to pass the background screening. All of those non-licensed, non-certified personnel would be screened by AHCA, and if they had a disqualifying offense, would seek an exemption from employment disqualification from AHCA.

A person may work in a nursing home as a certified nursing assistant for up to four months under certain circumstances without having received certification as a CNA from the Board of Nursing. In this case, the person would be screened by AHCA for employment pursuant to section 400.215, F.S..

Later, if he or she applied to the Board of Nursing to be a CNA, the Board would then screen them to determine their suitability for certification. If they became certified, the Board would then have jurisdiction to provide an exemption from employment disqualification, if it were necessary.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 464.203, F.S., to add new subsections (8) and (9) related to background screening, which specify screening requirements and to provide for posting of results on the agency background screening website beginning January 1, 2005.

**Section 2.** Amends s. 400.211, F.S., to correct a cross-reference.

**Section 3.** Amends s. 400.215, F.S., to eliminate the need for a CNA who was screened for employment, pursuant to s. 464.203, F.S., to have to be rescreened if employed less than 180 days, and to clarify that the screening standards are those established in ch. 435, F.S.

**Section 4.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants for the Certified Nursing Assistant certification would be spared the expense of repeating a background screening if they accepted employment within 90 days of the screening done for certification. Background screenings cost \$23.00 for Level 1 and \$47.00 for Level 2.

D. FISCAL COMMENTS:

This would reduce the workload at the Agency for Health Care Administration by removing the requirement that qualifying CNAs repeat the background screening. Reducing the number of screenings done by AHCA and by nursing homes would result in some savings to Medicaid because some of those costs are reimbursed by Medicaid.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Rulemaking authority is already provided by statute (s. 464.202, F.S.).

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 31, 2004, the Health Care Committee adopted two amendments and reported the bill favorably, with a committee substitute. The amendments provide for the posting of the screening information on the website to be implemented by January 1, 2005; and clarify that the screening requirements of the bill refer to standards established in ch. 435, F.S.