

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 694

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Certified Nursing Assistants

DATE: March 17, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the requirements for conducting the criminal background screening for certification of a certified nursing assistant by the Board of Nursing. In lieu of successfully passing the required Level 1 or Level 2 criminal background screening required under s. 400.215, F.S., the applicant must successfully pass the required background screening in the bill which includes: a determination whether the person seeking the nursing assistant certificate has committed any act that would constitute grounds for discipline in s. 464.204(1), F.S., and a statewide criminal screening through the Florida Department of Law Enforcement (FDLE), including the Level 1 standards under chapter 435, F.S. If the applicant has not maintained continuous residency in Florida for 5 years immediately preceding the date of application, the applicant must pass Level 2 screening under chapter 435, F.S.

After a certificate to practice as a certified nursing assistant has been issued, the Department of Health (DOH) and the Agency for Health Care Administration (AHCA) must post the information relating to background screening on the background–screening database of AHCA, which shall be available only to employers and prospective employers, who, as a condition of employment, are required by law to conduct a background check of certified nursing assistants.

The bill provides, that notwithstanding any law to the contrary, persons who have been screened and qualified by undergoing the required Level 1 or Level 2 screening under chapter 435, F.S., or under s. 464.203, F.S, and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, are not required to be rescreened as a condition of employment in an entity required by law to conduct a background screening. “Screened and qualified under s. 464.203, F.S.,” means that the person subject to such screening at the time of certification by the Board of Nursing does not have any disqualifying offense under chapter 435, F.S., or has

received an exemption from any disqualification under chapter 435, F.S., from the Board of Nursing.

This bill amends ss. 400.211, 400.215, and 464.203, Florida Statutes.

II. Present Situation:

Requirements for Certification as a “Certified Nursing Assistant” in Florida

Part II, chapter 464, F.S., provides for the regulation of certified nursing assistants by the Florida Board of Nursing. The Florida Department of Education was responsible for approving nursing assistant training programs until the Florida Board of Nursing assumed that responsibility on October 1, 2000. The Florida Board of Nursing must issue a certificate to any person who demonstrates minimum competency to read and write and successfully passes the required Level I or Level II criminal background screening required under s. 400.215, F.S.,¹ and meets one of the following criteria:

- Successful completion of an approved training program and achievement of a minimum score on the nursing assistant competency examination;
- Achievement of a minimum score on the nursing assistant competency examination by an applicant who has a high school diploma or its equivalent or who is at least 18 years old;
- Current certification in another state; or
- Completion of the curriculum under the Enterprise Florida Jobs and Education Partnership Grant and achievement of a minimum score on the nursing assistant competency examination.

The nursing assistant competency examination has two parts: (1) a two-hour written test with fifty multiple-choice questions written in English; and (2) a manual skills evaluation that requires the applicant to perform five randomly-selected nursing assistant skills. An oral examination must be administered as a substitute for the written portion of the examination upon an applicant’s request.

Completion of a state-approved training program is not required before an applicant may sit for the nursing assistant competency examination if the applicant is 18 years of age or older, or has a high school diploma or its equivalent. If a nursing assistant applicant was certified, and remained active and in good standing on another state’s certified nursing assistant registry, the applicant can obtain certification from Florida, as long as the applicant successfully passes the required Level 1 or Level 2 criminal background screening under s. 400.215, F.S. An applicant is eligible to take the nursing assistant competency examination three times. After the third attempt the applicant is not eligible for reexamination unless the applicant completes an approved training program.

Certification as a nursing assistant is valid until a nursing assistant allows a period of 24 consecutive months to pass during which the nursing assistant fails to perform any nursing-related services for compensation. When a nursing assistant fails to perform any nursing-related

¹ According to staff of the Florida Board of Nursing, applicants for certification as a nursing assistant have not been subject to Level 1 screening under the board until November 1, 2002 and Level 2 screening until November 1, 2003.

services for monetary compensation for a period of 24 consecutive months, the nursing assistant must complete a new training and competency evaluation program. Nursing assistants must maintain a current address with the Florida Board of Nursing and must complete 18 hours of in-service training during each calendar year.

Background Screening

Pursuant to s. 400.215, F.S., AHCA must require a Level 1 or Level 2 background screening as provided in chapter 435, F.S., for all employees or prospective employees of nursing homes licensed under part II, chapter 400, F.S., who are expected to, or whose responsibilities may require them to: provide personal care or services to residents; have access to resident living areas; or have access to resident funds or other personal property. Every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a Level 1 or Level 2 screening.

Level 1 screening requirements are provided in s. 435.03, F.S. Level 1 screening applies to all employees required by law to be screened as a condition of employment and continued employment. It involves, but is not limited to, employment history checks and a search of the FDLE criminal history databases. Level 1 screening may also include local criminal records checks through local law enforcement agencies. A list of offenses is enumerated under s. 435.03(2), F.S., against which an individual's past is checked. Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense prohibited under the enumerated statutory provisions or under any similar statute of another jurisdiction. Level 1 screening costs \$23.

A nursing home employee who has passed the Level 1 screening but has not maintained continuous residency within Florida for the 5 years immediately preceding the date of request for background screening must complete a Level 2 screening and may work in a conditional status for up to 180 days pending the completion of the Level 2 screening. Level 2 screening must not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement.

Section 400.211, F.S., authorizes persons who are not certified as nursing assistants to be employed by a nursing facility only for 4 months before the certification requirement must have been met. To qualify for employment without being certified as a nursing assistant, the person must have:

- Enrolled in, or have completed a state-approved nursing assistant program;
- Been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state; or
- Preliminarily passed the state certification examination for nursing.

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

Level 2 screening requirements are provided in s. 435.04, F.S. Level 2 security background investigations include, but are not limited to, employment history checks, fingerprinting for all purposes and offenses specified under s. 435.04(1), F.S., statewide criminal and juvenile records checks through the FDLE and a criminal history check through the FBI, and may include local criminal records checks through local law enforcement agencies. A list of offenses is enumerated under s. 435.04(2), F.S., against which an individual's past is checked. The security background investigation must ensure that the person subject to the Level 2 screening has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense prohibited under the enumerated statutory provisions or under any similar statute of another jurisdiction. Level 2 screening costs \$47.

A certified nursing assistant who is a prospective employee may apply for an exemption from employment disqualification under chapter 435, F.S., to the Board of Nursing. An exemption from disqualification gives individuals who are disqualified due to their criminal history, the opportunity to work within a health care facility, despite having a criminal history. Eligibility for an exemption requires that an individual must not have been adjudicated guilty of a disqualifying felony offense within the previous 3 years, and the individual must demonstrate by clear and convincing evidence that he or she 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, including but not limited to: the circumstances surrounding the criminal incident for which an exemption is sought; the time period that has elapsed since the incident; the nature of the harm caused to the victim; a history of the applicant since the incident; and any other evidence or circumstance indicating that the applicant will not present a danger if continued employment is allowed.

III. Effect of Proposed Changes:

The bill revises the requirements in s. 464.203, F.S., for conducting criminal background screening for certification of a certified nursing assistant by the Board of Nursing. In lieu of successfully passing the required Level 1 or Level 2 criminal background screening required under s. 400.215, F.S., the applicant must successfully pass the required background screening in the bill which includes: a determination whether the person seeking the nursing assistant certificate has committed any act that would constitute grounds for discipline in s. 464.204(1), F.S., and a statewide criminal screening through the FDLE, including the Level 1 standards under chapter 435, F.S. If the applicant has not maintained continuous residency in Florida for 5 years immediately preceding the date of application, the applicant must pass Level 2 screening under chapter 435, F.S.

After a certificate to practice as a certified nursing assistant has been issued, DOH and AHCA must post the information relating to background screening on the background-screening database of AHCA, which shall be available only to employers and prospective employers, who, as a condition of employment, are required by law to conduct a background check of certified nursing assistants.

The bill provides, that notwithstanding any law to the contrary, persons who have been screened and qualified by undergoing the required Level 1 or Level 2 screening under chapter 435, F.S., or under s. 464.203, F.S., and who have not been unemployed for more than 180 days thereafter, and

who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, are not required to be rescreened as a condition of employment in an entity required by law to conduct a background screening. "Screened and qualified under s. 464.203, F.S.," means that the person subject to such screening at the time of certification by the Board of Nursing does not have any disqualifying offense under chapter 435, F.S., or has received an exemption from any disqualification under chapter 435, F.S., from the Board of Nursing.

The effective date of the bill is upon becoming a law.

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, 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 Article 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entities that employ certified nursing assistants will save costs associated with the rescreening an applicant who has undergone a criminal background screening by the Board of Nursing within 180 days preceding employment. To do so, the certified nursing assistant must attest to not have been convicted of any disqualifying offenses since the screening by the Board of Nursing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although, under the bill, an employer could accept the certified nursing assistant for employment without having to redo the background screening required under chapter 435, F.S., if applicable, a certified nursing assistant would still have to apply for an exemption if the certified nursing assistant had a disqualifying offense, for employment purposes. For exemptions, a certificate or license is required. So an exemption cannot be granted until a license or certificate has been obtained. According to DOH staff, the Board of Nursing grants or denies exemptions from the disqualifying offenses to both nurses and certified nursing assistants and this is usually communicated in a formal letter.

Under the bill, it is unclear whether the Board of Nursing has statutory authority to inquire, at the time of certification, whether an applicant for certification as a nursing assistant will be seeking future employment at a facility or by an entity that is required by law to obtain Level 1 or 2 screening of the certified nursing assistant under chapter 435 F.S. A similar issue is raised by the Board of Nursing's regulatory jurisdiction over nurses whose prospective employer may or may not have a similar requirement to screen the nurse under chapter 435, F.S., for employment purposes.

Under s. 464.203, F.S., as amended by the bill, the Florida Board of Nursing's decision to certify a nursing assistant is not limited to the disqualifying offenses enumerated under chapter 435, F.S. If the Board of Nursing is granted the authority to only certify a nursing assistant who meets the certification and background screening requirements of chapter 435, F.S., then nursing assistants who would otherwise be able to obtain certification would be effectively barred from doing so under the bill.

VIII. Amendments:

None.