

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 would eliminate the current practice of screening newly certified nursing assistants who apply for work in a nursing facility twice (once for certification and once for employment in a nursing home) in the 90-day period following their certification by the Board of Health.

The Board of Health would be required to conduct a level 1 or level 2 background screening according to the same standards as nursing homes are required to meet when hiring certified nursing assistants.

In 1995 (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 provides for two levels of screening:

- Level 1 includes a statewide criminal records check;
- a Level 2 check 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 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. Requiring background screening on the above criteria and rather than by job title has the effect of requiring staff such dietary aides, housekeeping, recreation 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, they 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.

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

Approximately 1,000 applicants seek certification every month. Approximately 550 of those receive a level 2 screening. Each screened application is handled by three FTE (full time equivalent) staff; six FTEs touch each application that required a review because of findings on the background screenings; and, 9 FTEs handle applications of those whose background screening requires board review.

Certified Nursing Assistants are governed by Part II of chapter 464, F.S. Specifically:

464.203 (1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required Level I or Level II screening pursuant to s. [400.215](#) and meets one of the following requirements...

C. SECTION DIRECTORY:

Section 1. The bill amends section 464.203, F.S., to add a requirement that applicants for the Certified Nursing Assistant (CNA) certificate who have not lived, continuously, in Florida for the past five years, must pass the Level 2 screening requirements in chapter 435, F.S. It deletes the existing reference to chapter 400.215, F.S., which is related to employment screening for nursing home workers. Further, the bill provides that any employing entity required to conduct a level 1 or 2 background screening as a qualification for employment would not have to rescreen the applicant if the applicant:

- had been certified by the Board in the 90 days immediately preceding their employment application; and,
- provided an affidavit attesting that he or she had not been convicted of a disqualifying offense subsequent to that screening.

Section 2. This section corrects a cross-reference.

Section 3. Provides an effective date: upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No revenue is generated by this bill.

2. Expenditures:

No new expenditures are required and some savings might accrue from a decline in the number of background screenings conducted.

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 a level 1 and \$47.00 for a 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:

Not applicable.

2. Other:

B. RULE-MAKING AUTHORITY:

No new rule making authority is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The Board of Health currently screens CNA applicants before granting certification. They do this on criteria other than chapter 435. The bill does not resolve the problem that employment screening for nursing home workers must be based on chapter 435, F.S.

The Board provided this information to staff:

For licensure/certification, the Board of Nursing uses wide discretion in determining eligibility in its mission to protect the public. So a CNA who has several petit theft convictions may not get a certificate because the board feels they are a threat to the public to steal possessions of vulnerable clients. Petit theft is not on the list of disqualifying offenses requiring an exemption. So even though the person could work in long term care, the board may not grant a certificate because of the patterns of offenses. In addition, the board may grant a certificate with conditions, such as probation, inservice hours, or enrollment in the Intervention

Project for Nurses. **Therefore, the list of offenses in 435 which require an exemption is not specifically related to certification.** That's why the board itself recommended not tying the background screening to either 400 or 435, because it just confuses people time after time. ***The staff clear background screening per guidelines from the board;*** when indicated, the case goes to the CNA Council for recommendation to the board and the board later approves or rejects the recommendation. *(emphasis added)*

2. The bill proposes that if a CNA has been screened by the Board no more than 90 days before employment in a nursing facility that the facility would not have to repeat the background screening. Current law allows a screened person to be out of work up to 180 days before having to be re-screened. The two different time frames may be challenging for applicants to understand and for affected persons to implement operationally.
3. The bill seeks to reduce duplicative screening of nursing home workers and has highlighted confusion in the implementation of current law regarding background screening.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES