

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 12, 1998 Revised: _____

Subject: Health Quality Assurance

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 714 provides background screening requirements for applicants for health care facility licensure administered by the Agency for Health Care Administration, requires certain health care entities to conduct employment background screening for all direct-care employees, and requires abuse registry screening for certain administrative employees. The bill also:

- ◆ amends the Drug-Free Workplace Act to authorize use of body hair, excluding hair from the pubic area, as specimens for purposes of drug testing, as provided under the Act. This modification of law is applicable to public sector and private sector workplaces;
- ◆ substantially revises provisions relating to licensure of home health agencies to increase the application processing time from 60 to 90 days; to establish an inspection deficiency classification scheme; to define terms; to revise requirements for supervision of patient care; to expand exemptions from licensure requirements; and to expand penalties for operating without a license;
- ◆ repeals licensure of designated health care services providers under s. 455.661, F.S.;
- ◆ makes numerous cross reference, conforming, and other technical revisions.

This bill amends the following sections of the Florida Statutes: 112.0455, 383.302, 383.305, 383.308, 383.309, 383.31, 383.312, 383.313, 383.318, 383.32, 383.324, 383.325, 383.327, 383.33, 383.331, 390.015, 391.206, 393.063, 393.067, 394.4787, 394.67, 394.875, 394.876, 394.877, 394.878, 394.879, 394.90, 394.902, 394.903, 394.904, 394.907, 395.002, 395.0199, 400.051, 400.071, 400.411, 400.414, 400.417, 400.4174, 400.4176, 400.461, 400.462, 400.464,

400.471, 400.474, 400.484, 400.487, 400.491, 400.497, 400.506, 400.509, 400.512, 400.555, 400.556, 400.557, 400.606, 400.607, 400.619, 400.801, 400.805, 430.04, 455.654, 468.505, 483.101, 483.106, and 483.30.

This bill creates sections 381.60225, 395.0055, 400.5572, 400.6065, and 400.6194, Florida Statutes. This bill repeals section 455.661, Florida Statutes. This bill creates three undesignated sections of law.

II. Present Situation:

Agency for Health Care Administration

Chapter 92-33, Laws of Florida, transferred health facility regulation from the Department of Health and Rehabilitative Services (HRS) to the Agency for Health Care Administration (AHCA or agency), which was created by s. 1 of chapter 92-33, Laws of Florida. Effective July 1, 1994, regulatory jurisdiction over health care professionals was transferred to the agency from the Department of Business and Professional Regulation. However, effective July 1, 1997, chapter 96-403, Laws of Florida, moved the Division of Medical Quality Assurance, which is responsible for 28 regulatory boards and councils from the agency to the Department of Health. The Department of Health is required to contract with AHCA for consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance or its regulatory boards or councils.

The agency administers 25 regulatory programs relating to health care facilities and health care services, totaling approximately 15,500 licensed providers. Licensure for these providers occurs either annually or biennially. Most facilities and programs that are subject to licensure regulation by AHCA are required, by statute, to undergo on-site survey inspections to determine compliance with minimum quality-of-care standards.

Employment Background Screening

The public is at risk from providers who have a history of fraud, abuse, or other crimes that may form a pattern of behavior and a mode of doing business that is continuously repeated. Assisted living facilities, adult day care centers, crisis stabilization units, nursing homes, home health agencies, nurse registries, homemaker, companion, (adult) sitter services, intermediate care facilities for the developmentally disabled, residential treatment facilities, and short-term residential treatment facilities all currently comply with background screening requirements for certain employees and owners.

The law requires that, for Florida Department of Law Enforcement (FDLE) background screenings that result in reports of criminal offenses, an explanation be provided to AHCA in writing giving the circumstances regarding the offense, the outcome of the legal action, any court documents regarding the offense, information as to the injury to any victim, and any other facts relevant to an offense. Section 415.107, F.S., requires that “hits” (a finding of a reported incident)

resulting from abuse background screenings that are proposed confirmed (this means a report of abuse, neglect, or exploitation is made and the adult protective investigator alleges that there is a preponderance of evidence that abuse, neglect, or exploitation occurred and the alleged perpetrator is identified) be explained in writing. The person identified must provide information regarding the circumstances surrounding the incident, the nature of the situation, any harm to the victim, and the history of the person since the incident, or other information that indicates the person is not a danger to the safety or well-being of aged persons or disabled adults. Failure, on the part of the person identified, to satisfactorily resolve the background screening issues can result in denial of an assisted living facility, adult day care center, or adult family care home license. Confirmed reports of abuse, neglect, or exploitation can result in denial of an assisted living facility, adult day care center, or adult family care home license.

All certified nursing assistants working in nursing homes are required to undergo employment background screening, including central abuse registry screening, conducted by FDLE and the Department of Children and Family Services, as provided under chapter 435, F.S. Section 400.512, F.S., states that all staff who enter a patient's home and the administrator of the home health agency delivering services to the patient must be screened by FDLE and the Department of Children and Family Services through the central abuse registry. Homemakers, companions, sitters, and nurse registries also fall under s. 400.512, F.S., screening requirements. When direct-care staff fail to meet screening requirements in nursing homes, home health agencies, nurse registries, and homemaker, companion, and adult sitter services agencies, those individuals must be barred from employment. There are no background screening requirements for abortion clinics, ambulatory surgical centers, birthing centers, clinical laboratories, drug-free workplace laboratories, homes for special services, hospices, hospitals, multiphasic health testing centers, organ and tissue procurement organizations, prescribed pediatric extended care centers, private utilization review agents, radiation therapy centers, or transitional living facilities.

The Drug-Free Workplace Act

Chapter 112, F.S., provides for the regulation of public officers and employees. Under part I of this chapter the term, "employer," is defined to mean the state or any county, municipality, or special district or any subdivision or agency of any of these governmental entities, but does not include any law enforcement agency or firefighting agency in the state. The term, "employee," is defined as an individual employed by any employer. Part I of chapter 112, F.S., relates to the conditions of employment, retirement, and travel expenses between public employers and public employees. This part lays out the general guidelines for public employers in their relationships with their employees.

Chapter 96-289, Laws of Florida, amended s. 112.0455, F.S., to authorize AHCA, under the Drug-Free Workplace Act, to adopt rules using criteria established by the United States Department of Health and Human Services as guidelines for modeling the state drug-testing program for analysis of, among other specimen types: urine, hair, and blood specimens. The agency may determine the appropriate minimum specimen amounts for drug testing, but only in conformity with the act. Also, standards were added to the law relating to collecting of hair

specimens, transporting hair specimens to the testing facility, and screening hair specimens for: marijuana, cocaine, opiate/synthetic narcotics and metabolites, phencyclidine, and amphetamines. Additionally, standards were provided for screening quality control. Furthermore, hair testing facilities are required to enroll with and demonstrate to an “independent group” satisfactory performance in an established proficiency testing program. Satisfactory performance of drug testing facilities is required based on maintaining an “overall testing event score” that is equivalent to passing proficiency scores for other drug testing matrices. Unsuccessful performance by a testing facility is defined as “failure to achieve satisfactory performance in two consecutive testing events, or two out of three consecutive testing events.”

Home Health Agencies

The Agency for Health Care Administration licenses home health agencies. The agency must process a licensure application, complete with its supporting documentation, within 60 days of receipt. There are approximately 1,792 licensed home health agencies. The number of home health agencies is growing at the rate of approximately 30 facilities per month. As a result of fraud, Operation Restore Trust was developed by the federal Health Care Financing Administration to investigate fraud by Medicare providers, including home health agencies; Florida was one of the states targeted for investigation. Operation Restore Trust fraud detection recommendations have been incorporated into the licensure and Medicare certification survey processes currently conducted by AHCA. These measures have increased survey inspection time by 25 percent due to billing reviews and interviews of certain patients.

III. Effect of Proposed Changes:

Section 1. Amends subsection 112.0455(12), F.S., providing drug-testing standards for laboratories under the Drug-Free Workplace Act, to require each applicant for licensure to operate a laboratory that is authorized to conduct initial and confirmatory drug tests under the Act, to submit to background screening, as specified in the bill. The background screening requirements are imposed on the licensure applicant’s managing employee and financial officer, and may be imposed on an *individual who is an applicant* if AHCA has *probable cause to believe* that the individual has been convicted of an offense that would prohibit the individual’s employment under chapter 435, F.S., relating to employment screening. Background screening, as provided in the bill, must conform to level 2 employment screening, including FBI, state-criminal-records checks, and an abuse registry check. However, this screening requirement 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 requirements.

An applicant must submit to AHCA, along with the application for initial and renewal licensure: (1) a description and explanation of any exclusions, permanent suspensions, or terminations to which it is subject under 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.

A provisional license may be issued to applicants who have met the standards for the abuse registry check and the state criminal records check, but for whom AHCA has not yet received the results of the FBI criminal records check or to applicants who are waiting for a response from AHCA to a request for exemption from disqualification from employment as provided under chapter 435, F.S. The agency may grant a license to an applicant after the agency receives the FBI results report for each individual who is made subject to the background screening requirements of this section, but only if such reports confirm 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 to an applicant if the applicant or a managing employee has been found guilty of, regardless of adjudication, 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 who is granted or whose managing employee is granted an exemption from disqualification. The agency may deny or revoke a license if the applicant: (1) has falsely represented or omitted a material fact in the application relating to exclusion, permanent suspension, or termination from the Medicare or Medicaid program or relating to 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 provided in chapter 435, F.S.; or (2) has been excluded, permanently suspended, or terminated from the Medicare or Medicaid program.

Paragraph 112.0455(13)(b), F.S., is amended to include hair from the body, excluding the pubic area, as an authorized source for specimen collection for purposes of drug-use testing under the Drug-Free Workplace Act. This expansion of authorized specimens applies to both public and private work settings.

Section 2. Creates s. 381.60225, F.S., to provide for background screening of applicants for certification to operate organ procurement organizations, tissue banks, and eye banks. (See the description in section 1 of the bill for the screening requirements.)

Section 3. Amends s. 383.302, F.S., providing definitions used in the Birth Center Licensure Act, to define the term "agency" and to delete the term and the definition of the term "department."

Section 4. Amends s. 383.305, F.S., providing licensure requirements for birth centers, to: change references to the regulatory agency from HRS to AHCA; and add background screening requirements for licensure applicants. (See the description in section 1 of the bill for the screening requirements.)

Sections 5-16. Amend ss. 383.308, 383.309, 383.31, 383.312, 383.313, 383.318, 383.32, 383.324, 383.325, 383.327, 383.33, and 383.331, F.S., relating to birth centers, to change references to “department” to “agency” and make other technical revisions.

Section 17. Amends s. 390.015 F.S., providing requirements for application for abortion clinic licensure, to establish background screening requirements for licensure applicants. (See the description in section 1 of the bill for the screening requirements.)

Section 18. Amends s. 391.206, F.S., providing licensure requirements for prescribed pediatric extended care centers, to establish background screening requirements for licensure applicants. (See the description in section 1 of the bill for the screening requirements.)

Section 19. Amends s. 393.063, F.S., providing definitions used in the Developmental Disabilities Prevention and Community Services Act, to define the term “agency.”

Section 20. Amends s. 393.067, F.S., providing requirements relating to licensure of residential facilities, to establish background screening requirements for persons applying for licensure to operate intermediate care facilities for the developmentally disabled. (See the description in section 1 of the bill for the screening requirements.)

Section 21. Amends s. 394.4787, F.S., providing definitions relating to hospital reimbursement for indigent mental health services and relating to use of certain Public Medical Assistance Trust Fund monies for purchasing acute care mental health services, respectively, to conform a cross-reference to the definition of “specialty psychiatric hospital,” as defined in the hospital and ambulatory surgical center licensure law.

Section 22. Amends s. 394.67, F.S., providing definitions used under the Community Alcohol, Drug Abuse, and Mental Health Services Act, to define the terms “agency,” “applicant,” “director,” and “managing employee”; modify the definition of the terms “department,” “district plan,” and “residential treatment facility”; move into alphabetical order the terms “client,” “crisis stabilization unit,” “licensed facility,” “premises,” and “residential treatment facility”; and delete the term “alcohol, drug abuse, and mental health planning council.” The term: “department” is changed to mean the Department of Children and Family Services; “district plan” is changed to no longer require preparation of the combined district alcohol, drug abuse, and mental health plan by the alcohol, drug abuse, and mental health planning council; and “residential treatment facility” is modified by deleting from inclusion within this term short-term residential treatment facilities for treatment of mental illness.

Sections 23-32. Amend ss. 394.875, 394.876, 394.877, 394.878, 394.879, 394.90, 394.902, 394.903, 394.904, and 394.907, F.S., providing licensure requirements relating to crisis stabilization units and residential treatment facilities, to: add background screening requirements for persons applying for licensure to operate a crisis stabilization unit or residential treatment facility (See the description in section 1 of the bill for the screening requirements.); change references to the Department of Children and Family Services to: add a provision for AHCA to be

consulted regarding various regulatory activities, provide for joint regulatory jurisdiction between these two agencies in other instances, and transfer the licensure of crisis stabilization units and residential treatment facilities to AHCA; delete requirements for information about the character and competency of the applicant and administrator of the facility currently required as a part of the licensure application process and which would be covered by the background screening requirements of the bill; change references from the Mental Health Facility Licensing Trust Fund to the Health Care Trust Fund; and making other technical changes.

Section 33. Amends s. 395.002, F.S., providing definitions relating to licensure regulations pertaining to hospitals and ambulatory surgical centers, to: define the terms “applicant,” “director,” and “managing employee” that are used in a new section establishing screening requirements for hospital and ambulatory surgical center licensure applicants and conform cross-references.

Section 34. Creates s. 395.0055, F.S., to require background screening of persons applying for licensure to operate a hospital or ambulatory surgical center. (See the description in section 1 of the bill for the screening requirements.)

Section 35. Amends s. 395.0199, F.S., relating to private utilization review regulation, to establish background screening requirements for persons applying to register to perform private utilization review in Florida. (See the description in section 1 of the bill for the screening requirements.)

Section 36. Amends paragraph 400.051(1)(b), F.S., relating to homes or institutions exempt from nursing home licensure, to conform a cross-reference to the term “general hospital,” as defined in the hospital and ambulatory surgical center licensure law.

Section 37. Amends s. 400.071, F.S., providing for licensure of nursing home facilities, to add background screening requirements for persons applying for licensure to operate a nursing home facility. (See the description in section 1 of the bill for the screening requirements.)

Sections 38-40. Amend ss. 400.411, 400.414, and 400.417, F.S., providing for licensure of assisted living facilities, to: (1) establish background screening requirements for persons applying for initial and renewal licensure to operate an assisted living facility (See the description in section 1 of the bill for the screening requirements.); (2) authorize AHCA to take action against an assisted living facility license when it determines that the facility owner or administrator is not of suitable character or competency, as required under employment screening standards contained in s. 435.04, F.S., or the owner or administrator has retained an employee who is not of suitable character or competency under employment screening standards, as indicated by the results of the employee’s criminal-history background screening; and (3) require an applicant for licensure renewal that has not complied with the background screening requirements of section 38 to complete such screening, and to require applicants for renewal that have previously completed background screening to submit to AHCA, under penalty of perjury, a notarized affidavit of compliance with the background screening provisions.

Sections 41 and 42. Amend ss. 400.4174 and 400.4176, F.S., providing for reports of abuse in assisted living facilities and providing for notice of change of an assisted living facility administrator, respectively, to: (1) require the facility owner or operator to conduct level 1 background screening, including criminal-history record checks and abuse-registry checks, on all employees hired on or after October 1, 1998, who perform personal services; (2) authorize AHCA to exempt such a person from employment disqualification, as provided under chapter 435, F.S.; (3) provide for alternative means of proving compliance with the level 1 background screening requirements of this section; and (4) make other technical changes.

Sections 43 and 44. Amend ss. 400.461 and 400.462, F.S., providing the short title and purpose of the Home Health Services Act and providing definitions used in the Act, respectively, to: (1) revise a cross reference; (2) define the additional terms “administrator,” “agency,” “client,” “director of nursing,” “home health aide,” “home infusion therapy provider,” “home infusion therapy,” “organization,” “personal care,” “physician,” and “skilled care;” and (3) revise the meaning of “certified nursing assistant,” “companion” or “sitter;” “department;” “home health agency;” “home health services;” “homemaker;” “nurse registry;” and “staffing services.”

Section 45. Amends s. 400.464, F.S., relating to licensure of home health agencies, to: rearrange the placement of several provisions within this section; limit to one the number of home health agency licenses that certain entities exempt from certificate-of-need requirements may request for the provision of Medicare and non-Medicare home health services to facility residents and non-Medicare home health services to non-residents; and require an organization that offers or advertises to the public *any service for which licensure or registration is required under this part* to include in the advertisement its license number or registration number, failure to do so is subject to an administrative fine of not less than \$100, in addition to other sanctions already in existence. The following are exempted from home health agency licensure requirements: (1) a home health agency that is operated by the federal government; (2) certain home health services provided by certain specified state agencies, including, subject to compliance with a department [of Elderly Affairs]-approved grievance resolution procedure, services directly provided through a program or contract of the Department of Elderly Affairs and services provided through a program of community care for disabled adults, subject to professional licensure of personnel; any program offered through the Department of Health, a community health center, or a rural health network which relates to environmental assessments, case management, health education, personal care services, family planning, or follow-up treatment or for purposes of monitoring and tracking disease; and services provided to certain persons who have developmental disabilities; (3) certain specified health care professionals, whether incorporated or not, *who are acting alone within the scope of their professional license* to provide care to patients at home; (4) a home health aide or certified nursing assistant, who acts within occupational guidelines and who provides hands-on care to patients at home; (5) natural persons providing personal care services to up to 12 individuals or families in any calendar year in their place of residence provided such natural persons do not commercially advertise that they provide such services; (6) the delivery of instructional services in home dialysis and home dialysis supplies or equipment; (7) delivery of nursing home services to facility residents by a licensed nursing home; (8) delivery of assisted living facility services to facility residents by a licensed assisted living facility; (9) delivery of

hospice services to hospice patients by a licensed hospice; (10) hospitals for services that they are licensed to deliver; (11) delivery of community residential services by a licensed community residential home; (12) a not-for-profit, community-based agency that provides early intervention services to infants and toddlers; (13) certified rehabilitation agencies and comprehensive outpatient rehabilitation facilities that are Medicare certified; and (14) delivery of adult family-care home services by a licensed adult family-care home to serve the residents of its facility.

Section 46. Amends s. 400.471, F.S., relating to home health agency licensure, to increase from 60 days to 90 days the period of time: (1) allowed AHCA to issue a license after receipt of the required documentation, and (2) by which an application for licensure renewal must be submitted prior to the expiration of the existing license. Adds background screening requirements for persons applying for licensure to operate a home health agency. (See the description in section 1 of the bill for the screening requirements.) With respect to background screening, an applicant that has applied for a certificate of need within the preceding 12-month period may submit proof submitted for the CON process along with an attestation that there has been no substantial change in facts and circumstances underlying the original submission.

Several additional requirements are imposed on home health agencies in this bill. New requirements include: (1) the financial statement must be signed by a certified public accountant; (2) submission of proof of the statutorily minimum amount of \$250,000 per claim of malpractice insurance (covering the medical, negligence, and economic interests of clients) and liability insurance (covering death, injury, or disability of a human being and property) with an initial application for licensure and each annual licensure renewal application; (3) restricting when a home health agency must submit satisfactory proof of its financial ability to comply with licensure requirements to when *there is evidence of financial instability*; (4) prohibiting the transfer of a home health agency license to an immediate family member or member of the transferor's household following conviction, assessment, or exclusion from the Medicare or Medicaid program; (5) satisfaction of a Medicare certification survey, in addition to obtaining a CON, before AHCA may issue a license to a home health agency that authorizes it to receive Medicare reimbursement; and (6) payment of all administrative fines assessed against it under the home health agency licensure law before AHCA may issue a home health agency a license.

Section 47. Amends s. 400.474, F.S., to authorize penalties to be imposed on an owner of a home health agency for operating without a home health agency license if that owner has in the past operated or currently operates a licensed home health agency. Operation of an unlicensed home health agency is designated a third degree felony. The Agency for Health Care Administration is authorized to issue a cease and desist order for activities of unlicensed home health agencies and may impose a moratorium. When AHCA determines that an unlicensed home health agency has received government reimbursement for services provided, it is required to make a fraud referral to the appropriate government reimbursement program. The Agency for Health Care Administration may deny, revoke, or suspend the license of a home health agency, or may impose an administrative fine of up to \$5,000 on a home health agency when: (1) it fails to provide at least one statutorily defined home health service, as provided in this bill, *directly* to patients for a *period of 6 consecutive months*; (2) AHCA is unable to obtain entry to the home health agency

for purposes of licensure survey, complaint investigation, surveillance visit, or monitoring visit; (3) a licensure applicant or licensed home health agency has falsely represented a material fact in its application, or has omitted any material fact from its application; (4) an applicant, owner, or person who has a 5 percent or greater interest in a licensed entity has been previously found by a regulatory authority to have violated standards or conditions that relate to home health-related licensure or certification or to the quality of home health-related services provided, or has been or is currently excluded, suspended or terminated from, or has involuntarily withdrawn from, participation in the Medicaid program of any state, the Medicare program, or any other governmental health care or health insurance program.

Section 48. Amends s. 400.484, F.S., providing for AHCA's right to inspect home health agencies, to establish an inspection deficiency structure that would classify a deficiency as either: class I (following patient death, injury, or determination of imminent patient harm) sanctionable by levying an administrative fine of \$5,000 for each occurrence and each day that the deficiency exists and immediate revocation of license or imposition of a moratorium on acquiring new patients until the deficiency is corrected; class II (based on a finding of direct adverse effect on patient health, safety, or security) sanctionable by levying an administrative fine of \$1,000 for each occurrence and each day that the deficiency exists; class III (based on a finding of indirect adverse effect on patient health, safety, or security) sanctionable by levying an administrative fine of up to \$500 for each occurrence and each day that an uncorrected or repeated deficiency exists; and class IV (due to an act, omission, or practice related to a required report, form, or document which does not have the potential to negatively affect a patient) sanctionable by levying an administrative fine of up to \$200 for each occurrence and each day that the uncorrected or repeated deficiency exists.

Section 49. Amends s. 400.487, F.S., providing for patient assessment, establishment and review of a plan of care, and provision of services to home health agency patients, to clarify that a home health agency providing skilled care must have the attending physician for the patient establish treatment orders that are signed by the physician within 21 days after the start of care. The treatment orders must serve as the basis of the plan of care. They may both be incorporated into one document, prepared by the home health agency that describes the services to be provided to the patient, the frequency of service provision, and other pertinent information required by administrative rule. For clients in need of home health aide services, homemaker services, or companion services when the services do not require a physician's order, the home health agency must establish a service-provision plan and maintain a record of the services provided, made available to the client upon request. Additionally, the home health agency to which a patient is admitted for care that is to provide nursing services must provide the initial admission visit, all service evaluation visits, and the discharge visit using qualified personnel on its payroll. All services provided to patients by others under contractual arrangements must be managed by the admitting home health agency, which is made fully responsible for ensuring that all care provided through its employees or contract staff is in compliance with licensure requirements. Skilled care provided, directly or under contract, must be supervised and coordinated in keeping with the plan of care.

Section 50. Amends s. 400.491, F.S., relating to clinical records for patients of home health agencies, to require a clinical record for each such patient that receives skilled care, and for each client that receives nonskilled care a service-provision plan which must be maintained by the home health agency for 1 year following termination of services. Extraneous language is deleted and a cross reference is corrected.

Section 51. Amends s. 400.497, F.S., requiring AHCA to adopt rules establishing minimum standards for home health agencies, nurse registries, and homemaker and companion services, to: (1) require that the rules include supervision requirements of all home health agency personnel, including home health aides; (2) require AHCA to allow shared staffing, if the home health agency is licensed, is part of a retirement community that provides multiple levels of care, and is located on one campus; and (3) include requirements for verification of employment history for prospective employees, onsite and electronic accessibility of supervisory personnel, and plans of treatment.

Section 52. Amends s. 400.506, F.S., providing for licensure of nurse registries, to add background screening requirements for persons applying for licensure to operate a nurse registry. (See the description in section 1 of the bill for the screening requirements.) Additionally, persons referred by a nurse registry are required to provide current documentation that they are free from any communicable disease. (To whom the documentation is to be provided is not stated.) Authorizes licensed nurse registries to refer home health aides under the same circumstances and subject to the same limitations as certified nursing assistants. Language relating to nurse registry referrals to private residences is deleted.

Section 53. Amends s. 400.509, F.S., providing for registration of persons providing domestic maid services, companion services, or homemaker services, but who do not provide a home health service, to make this section, as amended, inapplicable to an individual who provides services under a contract with the Department of Children and Family Services and who has undergone background screening to qualify for the provision of services to the developmentally disabled. This section is amended to establish background screening requirements for persons applying for registration to provide domestic maid services, companion services, or homemaker services. (See the description in section 1 of the bill for the screening requirements.) Also deletes the term “sitter services” and changes from “client” to “patient” terms descriptive of homemaker and companion services.

Section 54. Amends s. 400.512, F.S., relating to background screening of home health agency personnel, nurse registry personnel, and companions and homemakers; establishes alternative proofs of compliance with background screening requirements; and deletes language repetitive of provisions contained in chapter 435, F.S.

Section 55. Amends s. 400.555, F.S., providing for licensure of adult day care centers, to add background screening requirements for persons applying for licensure to operate an adult day care center. (See the description in section 1 of the bill for the screening requirements.)

Section 56. Amends s. 400.556, F.S., providing for AHCA disciplinary actions against an adult day care center license, owner, operator, or employee, to replace as a basis for such disciplinary action a confirmed report of adult abuse, neglect, or exploitation that has been upheld through the administrative hearing process with a failure of persons who are subject to level 2 background screening, as a condition of licensure as an assisted living facility, to meet the screening standards of the employee screening law or that the center has retained an employee who is subject to level 1 background screening, as required for licensure of an assisted living facility, who does not meet the screening requirements of the employee screening law and who has not been exempted from disqualification by AHCA.

Section 57. Amends s. 400.557, F.S., providing for the expiration and renewal of an adult day care center license and issuance of a conditional license or permit for the time-limited operation of an adult day care center, to add a requirement that licensure applicants submit along with their application an affidavit of compliance with background screening requirements for adult day care centers, as provided in s. 400.5572, F.S., created in section 58 of the bill.

Section 58. Creates s. 400.5572, F.S., to provide for background screening of direct-care employees of adult day care centers, to: (1) require the facility owner or operator to conduct level 1 background screening, as required under chapter 435, F.S., including criminal-history record checks and abuse-registry checks, on all employees hired on or after October 1, 1998, who perform basic or supportive and optional services as defined in s. 400.551, F.S.; (2) authorize AHCA to exempt such a person from employment disqualification, as provided under chapter 435, F.S.; (3) provide alternative proofs of compliance with level 1 background screening requirements; and (4) require that AHCA be notified of a confirmed report of adult abuse, neglect, or exploitation when a protective investigator knows that the individual for which such a confirmation is received is an employee, volunteer, operator, or owner of an adult day care center.

Section 59. Amends s. 400.606, F.S., relating to hospice licensure, to add background screening requirements for persons applying for licensure to operate a hospice. This section is amended to require that each applicant for licensure to operate a hospice submit with its application information about certain specified sanctions under the Medicare and Medicaid programs by which the applicant has been disciplined. However, the applicant may submit proof of compliance with Medicare or Medicaid program disclosure ownership and control interest requirements as an alternative to submitting information about past sanctioning under those programs.

Section 60. Creates s. 400.6065, F.S., providing for background screening of hospice personnel, to add level 2 background screening as a part of the licensure process. (See the description in section 1 of the bill for the screening requirements.)

Section 61. Amends s. 400.607, providing for AHCA disciplinary actions against a hospice license, to authorize such disciplinary action upon a determination that: (1) persons who are subject to level 2 background screening, as a condition of hospice licensure, do not meet the employee screening law requirements and have not been exempted from disqualification by

AHCA; or (2) an officer, board member, or person owning 5 percent or more of the hospice has been sanctioned by the Medicare or Medicaid program.

Section 62. Amends s. 400.619, F.S., providing for licensure of adult family-care homes, to add background screening requirements for persons applying for licensure to operate an adult family-care home. (See the description in section 1 of the bill for the screening requirements.)

Section 63. Creates s. 400.6194, F.S., providing grounds on which AHCA may base disciplinary action taken against an adult family-care home license, to authorize such disciplinary action against a licensee for: failure to comply with background screening requirements, as provided in the bill; intentional or negligent acts that materially affect the health, safety, or welfare of the residents of an adult family-care home resident; failure to comply with other specified regulatory requirements; submission of fraudulent information or omission of material facts on a license application or other AHCA required document; failure to pay an assessed administrative fine; violation of licensure regulations that result in conditions or practices that directly threaten the physical or emotional health, safety, or welfare of residents; failure to correct certain cited fire code violations; failure to submit a completed initial license application or to complete an application for licensure renewal within the specified timeframes; or exclusion, permanent suspension, or termination of the provider from the Medicare or Medicaid program.

Section 64. Amends s. 400.801, F.S., providing for licensure of homes for special services, to add background screening requirements for persons applying for licensure to operate a home for special services. (See the description in section 1 of the bill for the screening requirements.)

Section 65. Amends s. 400.805, F.S., providing for licensure of transitional living facilities, to add background screening requirements for persons applying for licensure to operate a transitional living facility. (See the description in section 1 of the bill for the screening requirements.)

Section 66. Amends subsection 430.04(2), F.S., providing duties and responsibilities of the Department of Elderly Affairs, to add a new responsibility to a list of responsibilities delegated to the department in its oversight of area agencies on aging that is grounds for disciplinary action against such an agency. The department is required to take disciplinary action against an area agency on aging on the additional basis that the agency *failed to implement and maintain a department-approved client grievance resolution procedure*.

Section 67. Amends s. 455.654, F.S., providing definitions relating to the “Patient Self-Referral Act,” to delete a cross reference to s. 455.661, F.S., relating to the licensure of designated health care services.

Section 68. Amends s. 468.505(1), F.S., providing statutory construction clarifying that various licensed professionals are not prohibited or restricted in their practice, services, or activities as relates to dietetics and nutrition practice, to correct a cross reference to the term “hospital,” as defined in the hospital and ambulatory surgical center law.

Section 69. Amends s. 483.101, F.S., providing for licensure of clinical laboratories, to establish background screening requirements for persons applying for licensure to operate a clinical laboratory. (See the description in section 1 of the bill for the screening requirements.)

Section 70. Amends s. 483.106, F.S., providing for a certificate of exemption for a clinical laboratory to perform waived tests, to change the reference to one of the individuals required to apply for a certificate of exemption from “operator” to “director.”

Section 71. Amends s. 483.30, F.S., providing for licensure of multiphasic health testing centers, to add background screening requirements for persons applying for licensure to operate a multiphasic health testing center. (See the description in section 1 of the bill for the screening requirements.)

Section 72. Repeals s. 400.661, F.S., providing for licensure of designated health care facilities.

Section 73. Appropriates \$127,609 from the Health Care Trust Fund to AHCA to fund two full-time positions to implement and administer a background screening exemption program pertaining to direct-care employees of assisted living facilities and adult day care centers, in accordance with requirements of the employment screening law, chapter 435, F.S.

Section 74. Makes the background screening requirements contained in the bill applicable to any individual or entity that applies on or after July 1, 1998, for renewal of a license, certificate, or registration.

Section 75. Provides a July 1, 1998, effective date.

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:

Persons applying for state licensure, certification, or registration will incur additional costs related to those regulations resulting from the background screening requirements established throughout this bill. According to the Agency for Health Care Administration, the cost of Level 1 screening totals \$21 (\$6 for abuse registry screening and \$15 for state criminal background screening). Level 2 screening costs an additional \$24 for federal criminal background screening for a total of \$45. Approximately 80% of nursing home facilities which receive Medicaid reimbursement are at the rate ceiling. Those facilities would not be able to recoup the costs associated with this screening through the Medicaid *per diem* reimbursement. Staff has not obtained comparable statistics relating to Medicare or Medicaid reimbursement rate structures for other health care facility types.

The provisions in the bill relating to personal care services may have the effect of limiting consumer options to such an extent that prices for such services will increase dramatically and will be even more difficult than present to influence through market dynamics. As provided in the bill, personal care services, such as bathing, dressing, or assisting a person with eating, may be provided, offered, or advertised by only a home health agency licensed by the state with some very limited exceptions.

C. Government Sector Impact:

Because significant workload increase is anticipated as a result of the screening requirements of the bill, AHCA projects it will incur increased costs and projects that FDLE and the Department of Children and Families will also incur additional costs.

The Department of Children and Family Services indicates that a fee increase will be needed to accommodate timely processing of such a large volume increase in abuse screenings (additional staffing may be needed also). The department stated that screenings actually cost \$18. However, s. 415.107(10), F.S., limits the department to a fee of only one-third the cost of screening, i.e., \$6.

VI. Technical Deficiencies:

Section 44 of the bill, provides for the regulation of personal care services as a home health service through a combination of definitions. However, the manner in which the regulation is set up is circuitous, and possibly not achieved. Personal care services are not explicitly designated in the definition of the term "home health services." Apparently the intent is to subsume personal

care services under home health services through home health aide services which includes *hands-on personal care* as one of the listed services attributed to a home health aide. Home health aide services is a listed home health service. It is not clear whether *hands-on personal care is being used as if it is synonymous to personal care services*, but it is the only comparable reference to personal care services staff is able to locate that could reasonably provide a premise for language exempting certain state agencies from home health licensure for the provision of personal care services. The bill creates a definition of “personal care” to mean, but is not limited to, *assisting a patient in the activities of daily living, such as dressing, grooming, bathing, eating, or personal hygiene; assisting in physical transfer and ambulation; and supervising the self-administration of medications*. Since a new subsection 400.464(5), F.S., provides that *an organization may not provide, offer, or advertise home health services to the public unless the organization has a valid license or is specifically exempt under this part*, consumers are limited to obtaining personal care services from home health agencies, with some very limited exceptions.

Additionally, the term “organization” is defined in section 44 of the bill to mean *a corporation, government or governmental subdivision or agency, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. The term does not include an entity that provides services using only volunteers*. The underlined clause highlights a concept that is within the general usage of the term “organization,” but raises some problematic implications as the term “organization” is used in the bill.

Because *persons*, in the legal sense of the word, may include natural and corporate beings, it would apply to non-professional and professional individuals. Since professionals may incorporate themselves, individually or jointly with others, as a professional association, inclusion of the clause underlined above within the meaning of “organization” and the use of the word “organization” in the definition of “home health services” appears to have the effect of requiring two or more family members, friends, licensed physicians, nurses, therapists, or other health care professionals or allied workers such as home health aides or certified nursing assistants (CNAs), to obtain a home health agency license to provide personal care once the provisions of the bill become law, even though the health care professionals may currently provide services, defined in the bill as home health services, in a patient’s or client’s home, so long as the service rendered falls within their scope of practice or training. Thus, two or more physicians or two or more CNAs working together, whether or not they are set up as a business entity, will be required to be licensed as a home health agency to provide personal care and other home health services, as specified in the bill. If they provide services individually, as allowed under an exemption provided in the bill, they are limited to 12 patients or clients, individuals or families, in a 12-month period.

One explanation for the all encompassing scope of the changes made in the bill to the home health agency licensure law is the background screening required. However, physicians and CNAs are already subject to such screening. Of concern, also, is the ability for other health care services to be added to the list of home health services that will further restrict who can provide an increasingly wider array of health care services to consumers.

The restrictions placed on the provision of personal care, as created in this bill, may violate state and federal antitrust laws. Antitrust law regulation seeks to ensure that sufficient competitiveness exists in the marketplace so that, the reasoning goes, a rational market-determined price will emerge. This bill appears to relegate the delivery of personal care through an oligopolistic market structure, if not an outright industry monopoly, whereby the home health industry dominates the commercial market to an extent that it will be able to control costs. Since exemptions in the bill limit other potential competitors to providing home health services to only the patients or clientele who come to them for services, prohibits open-market availability, and limits the availability of personal care provided by natural persons, who are also prohibited from commercially advertising their services, the bill appears to have the effect of setting up the home health industry as the sole legitimate provider of personal care in the state.

VII. Related Issues:

This comment is generally applicable to all of the background screening requirements created in this bill. This comment is directed toward screening of owners, directors, and administrators of health care facilities or entities offering health care services, and not screening of employees providing care. Authority should be clearly and specifically delegated. As provided in the bill, the delegation of authority for background screening of owners, directors, and all administrative personnel operating health care facilities should not allow for agency discretion of who is to be subject to the background screening requirement. Additionally, the required background screening targets various violent crimes and drug-related offenses. While it is not desirable to have persons with such backgrounds operating health care facilities, it is not clear how such background screening will enhance future provision of health care services. Screening of the positions cited would more appropriately focus on fraud and other so-called white collar crimes, which are not addressed under chapter 435, F.S.

According to the Department of Children and Family Services, for Fiscal Year 1995-1996, screening of 46,500 certified nursing assistants generated 34 disqualifications and 184 queries that required further review under level 1 screening as provided in chapter 435, F.S., and, for Fiscal Year 1996-1997, screening of 50,100 certified nursing assistants generated 31 disqualifications and 176 queries that required further review. Although level 2 screening that includes FBI screening may detect other potential disqualifications, since this screening also is directed toward violent crimes and drug-related offenses, its usefulness appears limited if the objective is to minimize licensure of persons likely to engage in fraudulent business activities.

A tremendous amount of additional background screening must be performed by the Department of Children and Family Services. The department is restricted in charging for such screening and does not recover its costs under current fees. While it provides basically the same service as the Florida Department of Law Enforcement, which charges \$15 for a reputational background screening, the department is limited to \$6 to screen for abuse, neglect, and exploitation of the elderly and children. The added workload created by the bill without additional funding sufficient to cover the cost of services provided by the Department of Children and Family Services may result in paralyzing the abuse registry screening process resulting in more lengthy delays in

obtaining reports than already is being experienced. The Department of Children and Families and the Agency for Health Care Administration have begun discussions relating to establishing a mechanism for the agency to perform the background screening tasks provided for in the bill. However, a fiscal impact will certainly result should the discussions materialize into such a function for the agency.

VIII. Amendments:

None.

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