

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.)

BILL: SB 2094

SPONSOR: Senator Forman

SUBJECT: Certified Nursing Assistants

DATE: April 16, 1999

REVISED: 04/21/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2094 creates part XV, chapter 468, Florida Statutes, to require the Department of Health to regulate the practice of certified nursing assistants in Florida. The bill provides requirements for certification. Additionally, the department is authorized to deny, suspend, or revoke certification of certified nursing assistants and to impose administrative penalties for the commission of prohibited acts specified in the bill.

Furthermore, the bill: authorizes the department to issue a letter of exemption from disqualification of certification; requires the department to maintain a registry of certified nursing assistants; provides for a first-degree misdemeanor penalty for a certified nursing assistant or applicant for certification who makes any false statement or fails to disclose information with respect to any voluntary or paid employment or licensure as a certified nursing assistant; gives the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration and the child abuse screening system maintained by the Department of Children and Families; requires each employer of certified nursing assistants to submit to the Department of Health a list of names and social security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months; exempts an employer who terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination or denial; provides that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall remain open and available to the public; and authorizes the department to adopt rules for the implementation of part XV, chapter 468, F.S.

This bill amends section 400.211, F.S., 1998 Supplement, and creates ss. 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828, F.S., and two sections that are not designated in the Florida Statutes.

II. Present Situation:

Pursuant to requirements of federal law under Chapter 42 *Code of Federal Regulations* 483, states have established registries and programs for nursing assistant training and competency evaluation. For a nursing assistant training and competency evaluation program to be approved by a state, it must at a minimum consist of: no less than 75 clock hours of training; a specified curriculum of subject areas; no less than 16 hours of supervised practical training in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse; training that ensures that students do not perform any services for which they have not been trained and been found proficient by the instructor; and competency evaluation procedures that allow an aide to choose between a written and an oral examination. The required curriculum of the nursing assistant training program must provide training in the following areas before a nursing assistant can have any direct contact with a nursing home resident: communication and interpersonal skills; infection control; safety/emergency procedures; promoting residents' independence and respecting resident's rights; basic nursing skills; taking and recording vital signs; measuring and recording height and weight; caring for the residents' environment; recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; caring for residents when death is imminent; personal care skills; mental health and social service needs of residents, such as how to respond to resident behavior; care of and communicating with cognitively impaired residents; and basic restorative skills, such as training the resident in self care according to the resident's abilities, and care and use of prosthetic and orthotic devices. A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the nursing assistant begins a nursing assistant training and competency evaluation program may not be charged for any portion of the program.

Section 400.211, F.S., provides that a person must be certified as a nursing assistant to serve as a nursing assistant in any nursing home, except a registered nurse or practical nurse licensed in Florida. The Department of Health has responsibility for the certification of nursing assistants. The Department of Health must issue a certificate to any person who has met one of the following: successful completion of a nursing assistant program in a state-approved school and a minimum score of 75 percent on the written portion of the Florida Nursing Assistant Certification Test approved by the department and administered by state-approved test site personnel; achievement of a minimum of 75 percent on the written and performance portions of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel; or receipt of current certification in another state, being on that state's registry of certified nursing assistants, having no findings of abuse, and having a minimum score of 75 percent on the written portion of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel. An oral examination may be administered upon request.

The Department of Health may deny, suspend, or revoke the certification of any person to serve as a nursing assistant, based upon written notification from a court of competent jurisdiction, law

enforcement agency, or administrative agency of any finding of guilt of, regardless of adjudication, or a plea of nolo contendere or guilty to, any offense set forth in the level 1 screening standards of ch. 435, F.S., or any confirmed report of abuse of a vulnerable adult.

Certification requirements must be met within 4 months of a person's initial employment as a nursing assistant in a licensed facility. Persons who are not certified as nursing assistants in Florida may be employed by a nursing facility for up to 4 months, if they are enrolled in a state-approved nursing assistant program or if they have been positively verified by a state-approved test site as certified and on the registry in another state with no findings of abuse, but who have not completed the required written examination. Any person certified as a nursing assistant on or after September 30, 1990, who has not worked for pay as a nursing assistant in a nursing-related occupation for a consecutive 24-month period must be recertified to be eligible to work in a nursing facility.

Pursuant to s. 400.215, F.S., the Agency for Health Care Administration must establish and maintain a database of screened nursing home employees. The database is to maintain background screening information obtained through level 1 and level 2 screening and abuse registry screening based on the Agency for Health Care Administration's electronic access to the Central Abuse Registry and Tracking System in the Department of Children and Family Services. Nursing homes may reimburse job applicants and employees for their screening costs. The Agency for Health Care Administration is required, as allowable, to reimburse nursing facilities for the cost of the background screening; the reimbursements are excluded from the Medicaid reimbursement rate ceilings and payment targets.

Certified nursing assistants (CNAs) working in nursing homes are required to undergo background screening. Certified nursing assistants are subject to criminal history screening and abuse and neglect screening in accordance with s. 400.215, F.S. A CNA who is disqualified from employment because of screening results may request a hearing from the Department of Health to determine whether he or she may be exempted, as provided in s. 435.07, F.S. If an exemption is granted, the CNA may be employed by a nursing home. Professionals licensed by the Department of Health, Division of Medical Quality Assurance are exempt from nursing home-based employment screening.

Chapter 435, F.S., relating to employment screening, provides for two levels of review of an individual's past. Level 1 screening requires criminal history screening through FDLE's database and screening for a history of abuse, neglect, or exploitation through the Department of Children and Family Services. Level 2 screening, which is more comprehensive in that it is a national search involving use of a fingerprint card, includes search of delinquency records, and requires FBI screening. Level 1 screening costs \$21 (\$6 for abuse screening and \$15 for FDLE statewide criminal background screening) and Level 2 screening costs \$45 (\$21 for Level 1 screening and \$24 for FBI screening).

III. Effect of Proposed Changes:

Section 1. Creates pt. XV, ch. 468, F.S., (ss. 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828).

Section 468.821, F.S., provides definitions for the part. “Approved training program” means a course of training conducted by a public or private educational center licensed by the Department of Education to implement the basic curriculum for nursing assistants which is approved by the Department of Education or a training program operated by a nursing home that has been awarded a gold seal (as proposed in section 9 of CS/CS/SBs 834, 1140 and 1612 which has not become law). “Certified nursing assistant” means a person who meets the qualifications specified in pt. XV, ch. 468, F.S., and who is certified by the Department of Health as a CNA. “Registry” means the listing of CNAs maintained by the Department of Health.

Section 468.822, F.S., requires the Department of Health to maintain, or contract with or approve another entity to maintain, a state registry of CNAs. The registry must consist of a database which includes: the name of each CNA in Florida; other identifying information defined by department rule; certification status of the CNA; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided by screenings under ch. 435, F.S.; and any disciplinary action taken against the certified nursing assistant. The registry must be accessible to individuals, employers, and other state agencies. The Department of Health must establish testing procedures for use in certifying nursing assistants and must adopt rules regulating the practice of CNAs to enforce pt. XV, ch. 468, F.S. The department may contract with or approve another entity or organization to provide the examination services, including development and administration of examinations. The provider of examination services must pay all reasonable costs and expenses incurred by the department in evaluating the provider’s application and performance during the delivery of examination services and procedures for maintaining the CNA registry.

Section 468.823, F.S., provides that the department must issue a certificate to practice as a CNA to any person who demonstrates a minimum competency to read and write and meets one of the following requirements: successful completion of an approved training program and achievement of a minimum score, established by department rule, on the nursing assistant competency examination, which includes a written portion and skills-demonstration portion approved by the department and which is administered at a site and by personnel approved by the department; achievement of a minimum score, established by rule of the department, on the nursing assistant competency examination and has a high school diploma or its equivalent or is at least 18 years of age; or receipt of current certification in another state, being on that state’s registry of CNAs, having no findings of abuse, and successfully completing a national nursing assistant evaluation in order to receive certification in that state. If the applicant fails to pass the nursing assistant competency examination in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program. An oral examination must be administered as a substitute for the written portion of the examination upon request. The oral examination must be administered at a site and by personnel approved by the department. The department must adopt rules to provide for the initial certification of certified nursing assistants. A certified nursing assistant must notify the department in writing within 30 days of any change in name or address in accordance with s. 455.717, F.S.

Section 468.824, F.S., authorizes the Department of Health to deny, suspend, or revoke the certification of any nursing assistant, impose an administrative fine not to exceed \$150 for each count or separate offense, or impose probation or restriction of certification, including corrective actions such as retraining or compliance with an approved treatment program for impaired

practitioners based on specified grounds. The bill specifies grounds for which a CNA may be subject to discipline for professional misconduct. The department is authorized to exempt applicants from disqualification from certification or disqualification of employment in accordance with the requirements of ch. 435, F.S., and issue a letter of exemption. After January 1, 2000, the department must notify an applicant seeking an exemption from disqualification from certification or employment of its decision to approve or deny the request within 30 days after the date the department receives all required documentation.

Section 468.825, F.S., provides that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall be open and available to the public.

Section 468.826, F.S., exempts an employer who terminates or denies employment to a CNA whose certification is inactive as shown on the CNA registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination or denial of employment, regardless of whether the employee has filed for an exemption pursuant s. 468.824(1), F.S. The licensed facility, its governing board, agents, investigators, witnesses, employees, or any other person may not be liable for any cause of action for damages for any action taken in good faith without intentional fraud in carrying out s. 468.826, F.S.

Section 468.827, F.S., provides criminal penalties and makes it a first degree misdemeanor punishable by up to 1 year in prison and an administrative fine for knowingly or intentionally failing to disclose, or making a false statement in any application for voluntary or paid employment or licensure as a CNA, a material fact used in making a determination as to such person's qualifications.

Section 468.828, F.S., requires the Agency for Health Care Administration to allow the Department of Health to electronically access its background screening database and records and the Department of Children and Families must allow the Department of Health to electronically access its central abuse registry and tracking system under ch. 415, F.S. An employer or its agents may not use criminal records, juvenile records, or information obtained from the central abuse hotline under ch. 415, F.S., for any purpose other than determining if the person meets the requirements of this part. Such records and information obtained by the department shall remain confidential and exempt from the Public Records Law. The bill provides that the requirements of the Omnibus Budget Reconciliation Act of 1987, as amended, for the certification of nursing assistants shall prevail if they are in conflict with the requirements of pt. XV of ch. 468, F.S., for nursing facilities certified to provide care under Medicare or Medicaid.

Section 2. Requires each employer of certified nursing assistants to submit, by October 1, 1999, and by October 1 of every year thereafter, to the Department of Health a list of names and social security numbers of each person employed by the employer as a CNA in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months. Employers of CNAs may submit this information electronically through the department's Internet site. The department must update the CNA registry upon receipt of the lists of CNAs, and must complete the first of such updates by December 31, 1999. Each CNA whose name is not

reported to the department on October 1, 1999, must be assigned an inactive certification on January 1, 2000. A CNA may change the inactive status of their certification by submitting documentation to the department that he or she was employed for a minimum of 8 hours for monetary compensation as a CNA in a nursing-related occupation during the preceding 24 months. The requirements of this section repeal October 2, 2001.

Section 3. Amends s. 400.211, F.S., to delete certification requirements for CNAs which are replaced by those specified in section 1 of the bill and make other conforming changes to include references to pt. XV of ch. 468, F.S.

Section 4. Authorizes six additional positions to the Department of Health for purposes of implementing this bill.

Section 5. Provides for the bill to take effect on October 1, 1999.

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:

Section 24 of Article I of the State Constitution governs the creation and expansion of exemptions relating to public records and meetings, to provide in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Art. I, s. 24, Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The bill creates, by implication, public records and meetings law exemptions to the extent the existing exemptions for a health care professional's participation in the impaired practitioner treatment program applicable to professions in part II, ch. 455, F.S., apply to the newly created regulation for persons engaging in the practice of certified nursing assistants. To date, the disciplinary provisions and participation in the impaired practitioner treatment program have not been extended to CNAs registered by the Department of Health.

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:**

The bill does not require any fees for the regulation of CNAs.

42 *Code of Federal Regulation* 483.152 provides reimbursement for any individual who becomes employed within 12 months after completing a nursing assistant training and competency evaluation program. States must provide for the reimbursement of costs incurred on a pro rata basis during the period in which the individual is employed as a nursing assistant.

B. Private Sector Impact:

To the extent employers of nursing assistants may rely on the background screening requirements for the certification of nursing assistants in addition to their own employment screening they may save associated costs.

C. Government Sector Impact:

The Department of Health will incur costs to implement the newly created regulation of certified nursing assistants. As of June 30, 1998, certified nursing assistants incurred a deficit of \$436,615 in the trust fund used by the Department of Health to implement their registration. To implement the bill's requirements to regulate CNA's, the department estimates it will need 6 positions and \$1,635, 707(\$181,122 recurring) in fiscal year 1999-2000 and \$373,407 in fiscal year 2000-2001. To implement the provisions of the bill that involve the operation of the electronic database for the registry, the department indicated it needs 2 positions and non-recurring expenses equal to \$1,272,164 and recurring expenses equal to \$142,101.

In addition to the six positions authorized under the bill, the Agency for Health Care Administration will require five positions (2 Investigation Specialist II, 1 Sr. Consumer Complaint Analyst, 1 Senior Attorney, and 1 Administrative Assistant) to enforce and administer the consumer complaints and investigations required under the bill.

VI. Technical Deficiencies:

The definition of "approved training program" on page 2 of the bill includes a training program operated under s. 400.141 (line 17). Section 400.141, F.S., does not include a training program, however, this section is amended by CS/CS/SBs 834, 1140 and 1612 to authorize a nursing home that has been awarded a gold seal to provide certified nursing assistant training. If CS/CS/SBs 834, 1140 and 1612 does not become law and this bill becomes law, the reference to a training program operated under s. 400.141 will be meaningless.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:

Corrects a statutory reference relating to training programs for certified nursing assistants.

#2 by Health, Aging and Long-Term Care:

Removes “compliance with an approved treatment program for impaired practitioners” as one of the penalties the department can impose.

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