

STORAGE NAME: h1575s1a.hcl

DATE: April 17, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: CS/HB 1575

RELATING TO: Nursing Homes

SPONSOR(S): Committee on Elder Affairs & Long Term Care and Representatives Rubio, Fasano, and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 10 NAYS 0
 - (2) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1575 amends Part II of Chapter 400, F.S., to require additional information from applicants for nursing home licenses in order to provide a more detailed picture of both the applicant and the entity which supports and/or controls the applicant and to reveal any previous financial or care-related deficiencies that these parties might have.

CS/HB 1575 defines "controlling person" and requires that certain information be provided by the applicant for licensure about any ownership interest that the applicant, the person who will manage the facility, any controlling person as defined in s. 400.021, F.S., or the licensed administrator has held in the last five years in any licensed health or residential care facility which has closed due to financial problems, filed bankruptcy, had a judgment filed against it for unpaid debt, had a receiver appointed, had a license denied, suspended, or revoked, or has had an injunction issued against it which was initiated by a regulatory agency. The bill requires reporting certain information that would indicate any financial or care-related instability which the controlling person or persons may have experienced.

In conjunction with an application for initial or change-of-ownership licensure, such information may be considered by the Agency for Health Care Administration in its decision to approve or deny an application for a license.

The bill has no estimated fiscal impact.

The bill shall take effect on July 1, 2000.

The bill was amended at the April 17, 2000, meeting of the Health Care Licensing & Regulation Committee. See section **VI. Amendments or Committee Substitute Changes** for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

CS/HB 1575 expands the information required for a nursing facility license. It requires the Agency for Health Care Administration to collect and review more information.

B. PRESENT SITUATION:

Background Screening of Nursing Facility Administrators

The public is at risk from providers who have a history of fraud, abuse, exploitation, or other crimes that may be repeated. Because of this, the facilities covered by Part II of chapter 400, F.S., (nursing homes and related facilities) currently have statutory requirements for background screening of certain employees and owners.

The typical ad hoc establishment of a legal entity for the specific purpose of owning and operating a licensed nursing home provides limits on liability and creates a more distinct financial and accounting entity. The creation of this legal entity, however, may obscure the identity of the person or persons which actually control the facility. The Agency for Health Care Administration (AHCA) indicates that the process of identifying common ownership of corporations or common controlling authority of one of these legal entities is a difficult one which requires copious analysis of the data on file with the Division of Corporations of the Department of State.

Part II of chapter 400, F.S.

Part II of Chapter 400, F.S., provides for the development, establishment, and enforcement of basic standards for nursing homes and related health care facilities.

Definitions

The definitions in this Part are set forth in s. 400.021, F.S., and include the term "administrator" to describe an individual who has general administrative charge of the nursing facility.

Application for Licensure

Section 400.062, F.S., requires that each facility have a current license in order to operate. AHCA grants these licenses.

Section 400.071, F.S., outlines the process which applicants must follow in order to obtain a license. The following information is currently required on the application for a license:

Identification

- Name, address, and social security number of the applicant, if an individual;
- If the applicant is a firm, partnership, or association, the name, address, and employer identification number (EIN) of the entity must be included along with the names and addresses of every member;
- If the applicant is a corporation, the names and addresses of every person having at least a 5% interest in the corporation must be included in addition to the corporation's name, address and EIN;
- Name of person or persons under whose management or supervision the facility will be conducted; and
- Name of the facility's licensed administrator.

Description

- Location of the facility;
- Total number of beds, including number of Medicaid and Medicare beds; and
- Number, experience, and training of the employees of the facility;

Moral Standing/Legal Background Information

- Information about the moral character of the applicant and certain employees including: the name and address of any nursing home with which the applicant or employees have been affiliated within the last five years, and a report of any criminal convictions involving the applicant or employees;
- Copies of any civil verdict or judgment involving the applicant within the last 10 years relating to medical negligence, violation of residents' rights, or wrongful death;
- Evidence which establishes the good moral character of the applicant, manager, supervisor, and administrator; and
- A description and explanation of any exclusions, permanent suspensions, or termination of the applicant from the Medicare or Medicaid programs.

Criminal Background Screening

- A "Level 2" criminal background screening is required for the facility administrator and the facility financial officer. A "Level 2" screening requires that both state (Florida Department of Law Enforcement) and national (Federal Bureau of Investigation) records be checked;
- The agency may require "Level 2" background screening of members of the board of directors or any officer or any individual owning 5% or more of the licensee; and
- The applicant must submit a description and explanation of certain criminal convictions (including charges relating to violence and exploitation as defined in Chapter 435, F.S.) by a member of the board of directors, its officers, or any individual owning at least a 5% interest in the entity responsible for managing the facility. Some voluntary officers are exempt from this requirement.

Management Plan

- Proof of financial ability to operate the facility;
- A continuing care agreement, as defined in Chapter 651, F.S.; and
- Applicants must agree to accept Medicaid and Medicare clients on a temporary, emergency basis, secure a certificate of need, and participate in the agency's consumer satisfaction measurement process.

C. EFFECT OF PROPOSED CHANGES:

The bill defines a "controlling person" in relation to nursing homes as:

- A management company or other entity that directs the overall operation of an institution;
- Any person who serves as an officer of, is on the board of directors of, or has 5% or greater ownership interest in a management company or other entity that operates an institution or contracts with another person for the operation of an institution; or
- The applicant, including any person who serves as an officer of, is on the board of directors of, or has a 5% or greater ownership interest in the applicant, or has a 10% or greater ownership interest in the facility.

This bill exempts individuals who serve as directors of not-for-profit organizations that manage facilities, if the director serves on a volunteer basis.

The bill amends Part II of chapter 400, F.S., to require individuals seeking a nursing home license to submit additional information in order to provide a more detailed picture of both the applicant and the entity which supports and/or controls the applicant, and to reveal any previous financial or care-related deficiencies that these parties might have. Applicants are required to submit the names of any controlling persons as defined in s. 400.021, F.S. The applicant must also submit a signed affidavit disclosing any financial or ownership interest that the person who will manage the facility, the controlling persons, or the licensed administrator listed in the application has held in the last five years in any licensed health or residential care facility which has closed due to financial problems, filed bankruptcy, had a judgment filed against it for unpaid debt, had a receiver appointed, had a license denied,

suspended, or revoked, or has had an injunction issued against it which was initiated by a regulatory agency.

AHCA is authorized to use such information as a basis to require additional monitoring of the facility pursuant to s. 400.118, F.S. AHCA may also consider this information when deciding whether to approve or deny a request for licensure. The bill specifies that AHCA may deny an application for an initial or change-of-ownership license based upon the disclosure of this information if it demonstrates financial or care-related instability.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.021, F.S., to include the definition of “controlling person.”

Section 2. Amends s. 400.071, F.S., to require that the persons who will manage the facility, the licensed administrator of the facility, and any controlling persons disclose certain information regarding past financial problems with or regulatory injunctions against any facility in which they have held a financial or ownership position in the past five years. Provides that AHCA may use such information as the basis for additional monitoring pursuant to s. 400.118, F.S. The information may be considered in the decision to approve or deny a request for licensure if it demonstrates financial or care-related instability.

Section 3. Amends s. 400.121, F.S., to provide that AHCA may deny an application for an initial or change-of-ownership license based upon the disclosure of information as required in s. 400.071 (2) (e) and (f), F.S., if such information indicates financial or care-related instability.

Section 4. Amends s. 397.405, F.S., to correct a cross-reference.

Section 5. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**

None.

2. **Expenditures:**

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. **Revenues:**

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Agency for Health Care Administration indicated that this bill will have no fiscal impact on the state.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Elder Affairs & Long Term Care

On March 23, 2000, the Committee on Elder Affairs & Long Term Care adopted a committee substitute for HB 1575. The CS differs from the original bill in the following ways: the definition of "controlling person" is clarified in s. 400.021, F.S.; the required affidavit for license application includes additional specific items related to prior financial or care related instability pursuant to s. 400.071, F.S.; and subsection (7) is added to s. 400.121, F.S., clarifying that AHCA has the authority to deny an application because of information that demonstrates financial or care-related instability.

Health Care Licensing & Regulation

On April 17, 2000, the Committee on Health Care Licensing & Regulation adopted a strike-everything amendment to CS/HB 1575 which is traveling with the bill. The amendment makes the following changes:

- Makes technical corrections to the definition of a controlling person;
- Clarifies the type of information to be provided by applicants for licensure;
- Allows applicants for licensure to change management companies before being denied a license due to financial instability of the management company; and
- Adds requirement that within thirty days of contracting with a new management company, licensed facilities must provide certain information regarding such company to AHCA.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs and Long Term Care:

Prepared by:

Staff Director:

Amy Smoyer

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Andrew "Andy" Palmer

Lucretia Shaw Collins