

STORAGE NAME: h1575.lt

DATE: March 20, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs and Long Term Care
ANALYSIS**

BILL #: HB 1575

RELATING TO: Nursing Homes

SPONSOR(S): Representative Rubio & others

TIED BILL(S): SB 2210

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

- (1) Elder Affairs and Long Term Care
 - (2) Health Care Licensing and Regulation
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

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 the applicant, entities which support and/or control the applicant, and any problematic financial and service delivery histories that these parties might have.

HB 1575 defines "controlling person" and requires that information be provided in the application for license about any ownership interest that this party has held in any licensed health or residential care provider in the last 5 years. The bill requires that this information include any financial or service delivery problems which the controlling person or persons may have experienced.

Background information is also requires about the applicant, the person(s) under whose management or supervision the facility will be conducted, and the licensed administrator.

HB1575 requires that information about the background and qualifications of the applicant or licenseholder, controlling person(s), and partner, officer, director or managing employee of the applicant be submitted.

The bill has no estimated fiscal impact.

The bill shall take effect on July 1, 2000.

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:

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 Chapter 400, F.S., assisted living facilities, adult family care homes, adult day care centers, crisis stabilization units, nursing homes, home health agencies, nurse registries, homemaker, companion and sitter services, intermediate care facilities for the developmentally disabled, residential treatment facilities and short term residential treatment facilities) currently have statutory requirements for background screening for certain employees and owners.

The typical ad hoc establishment of a legal entity for the specific purpose of owning and licensing a nursing home provides limits on liability and a more distinct financial and accounting entity. The creation of this legal entity, however, may obscure the identity of the person or persons which control the facility. The Agency for Health Care Administration describes the process of identifying common ownership of corporations or common controlling authority of legal entity as a difficult one which requires analysis of the data on file with the Division of Corporations of the Secretary of State.

Chapter 400

Part II of Chapter 400, F.S., (400.011-400.335) 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 400.021, F.S., and include the term "administrator" to describe the individual who has general administrative charge of the nursing facility.

Application for License

400.062, F.S., requires that each facility have a license in order to operate. The Agency for Health Care Administration (AHCA) grants these licenses.

400.071, F.S., outlines the process which facilities must follow in order to apply for a license. The following information is currently required by 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.
- Name of facility's licensed administrator.

Description

- Location of the facility
- Total number of beds, including number of Medicaid and Medicare beds.
- 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 names and addresses of any nursing home with which the applicant or employees have been affiliated within the last 5 years, and a report of any criminal convictions involving the applicant or employees.
- Copies of any civil verdict or judgement 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.
- 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 both a state (FDLE) and national (FBI) records are checked.
- The agency may require "Level 2" background screening of members of the board of the directors or any officer or any individual owning 5% or more of the licensee.
- 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 5% or more of the applicant. 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.

- 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:

HB 1575 requires additional information from applicants for nursing home licenses in order to provide a more detailed picture of the applicant, entities which support and/or control the applicant, and any problematic financial and service delivery histories that these parties might have.

Specifically, HB 1575 defines "controlling person" and requires that information be provided in the application for license about any ownership interest that this party has held in any licensed health or residential care provider in the last 5 years. The bill requires that this information include any financial or service delivery problems which the controlling person or persons may have experienced. Similar historical information is also requested about the applicant, the person(s) under whose management or supervision the facility will be operated, and the licensed administrator.

In addition, HB1575 requires that information about the background and qualifications of the applicant or licenseholder, controlling person(s), and partner, officer, director or managing employee of the applicant be submitted.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Definition

HB 1575 amends 400.021 to include the definition of "controlling person." "Controlling person" is defined as follows:

"A person or entity that has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction on the management, expenditure of money, or policies of an institution or other person."

Examples of people who do and do not meet this definition are provided.

Section 2: Application for License

HB 1575 amends the application for nursing home license, defined in 400.071, by requiring that the following information be included:

1. Name(s) of any controlling person or persons.
2. Signed affidavit disclosing any financial or ownership interest that the people named in the application have held in the last 5 years in any licensed health or residential care provider. Specifically, information about financial, licensure, and/or legal problems is requested.

Section 3

Amends s. 397.405, F.S., relating to exemptions from licensure, to make conforming changes.

Section 4: Enactment Clause

This act shall take effect on 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 has estimated no fiscal impact to implement this bill.

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 an 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.

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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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Elder Affairs and Long Term Care:

Prepared by:

Staff Director:

Amy Smoyer

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