

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: CS/SB 2210

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Brown-Waite

SUBJECT: Nursing Homes; Controlling Persons

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carter	Wilson	HC	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2210 defines the term “controlling person” for purposes of the nursing home licensure application process. It requires an applicant, or certain other specified persons, as a part of the licensure application process, to submit a signed affidavit disclosing any financial or ownership interest in an entity, licensed to provide health or residential care in any state during the 5-year period preceding the date of the application for nursing home licensure, that was closed; was the subject of a bankruptcy proceeding; had a receiver appointed or a license denied, suspended, or revoked; or had an injunction issued against it which was initiated by a regulatory agency. The bill specifies under what circumstances the Agency for Health Care Administration may deny a nursing home license to an applicant based on information submitted in the required affidavit and requires nursing homes, as an administrative or management function, to submit an affidavit providing financial and ownership information about a management company with which it contracts, within 30 days after the start of the management agreement.

This bill amends the following sections of the *Florida Statutes* (F.S.): 400.021, 400.071, 400.121, 400.141, and 397.405.

II. Present Situation:

Profile of the Nursing Home Industry

A nursing home is a health care facility that provides housing, nursing services, pharmaceutical services, dental services, dietary services, resident activities, social services, and specialized rehabilitative and restorative services, for three or more persons not related to the owner or manager of the facility, for a period exceeding 24 hours. When needed by residents, a nursing home will also arrange for laboratory and radiological services, and mental health services. A person who resides in a nursing home most often does so because of the need for skilled nursing services.

Medicaid is the primary payer, in Florida, for nursing home care and, until the recent emergence of long-term care insurance, it has been the *only* payer for long-term care services. Until private long-term care insurance became available, the only alternative available for payment for long-term nursing home care, other than Medicaid, was private out-of-pocket payment. Medicare has historically paid at a higher rate of reimbursement relative to Medicaid, but Medicare pays only for short-term care and limited services in the nursing home setting.

Fraud is an overall concern for health care. It affects the affordability and the availability of all health care goods and services. One avenue that regulators have used to combat fraud in the health care system is obtaining background information about the persons applying to operate health care facilities, including nursing homes, and persons applying to practice a health care profession. A significant proportion of health care fraud occurs in the Medicaid and Medicare programs.

In recent years, federal and state governments have increasingly focused their resources on preventing and detecting fraudulent activity relating to Medicaid and Medicare reimbursements to health care providers. With annual health care costs in the U.S. now exceeding \$1 trillion, it is estimated that fraud and abuse in the Medicaid program is costing taxpayers billions of dollars each year, nationally, and millions of dollars at the state level. Although inflation and other factors have contributed to overall program costs for Medicaid, it has come to be generally accepted that fraud, related to provider payments, has contributed substantially.

While the states are primarily responsible for policing fraud in the Medicaid program, the Health Care Financing Administration (HCFA) has been providing increased technical assistance and guidance to these efforts. Fraud schemes often cross program lines and HCFA continues to improve information sharing between Medicare and the nation's 57 State Medicaid programs. The Health Care Financing Administration's effort to detect and prevent fraud and abuse in the Medicaid program is based on a partnership and cooperative effort with beneficiaries, Medicaid providers, contractors, and state and federal agencies, such as state Medicaid Fraud Control Units, state Surveillance and Utilization Review Units, the U.S. Department of Health and Human Services Office of the Inspector General (OIG), the Federal Bureau of Investigation, the Department of Justice, and Congress.

One resource that is used to fight health care fraud is the OIG List of Excluded Individuals and Entities (LEIE). This list provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Medicare, Medicaid, and other federal health care programs.* Current Florida law, s. 400.071, F.S., providing content requirements for nursing home licensure applications, requires applicants for licensure to disclose whether they have been previously terminated, as a provider or participant from the Medicaid or Medicare programs.

* This information is available on the Internet at <http://www.hhs.gov/oig/cumsan/index.htm>.

Statutory Nursing Home Licensure Application Requirements

The Agency for Health Care Administration regulates nursing homes under Part II of chapter 400, F.S. Section 400.071, F.S., provides the licensure application requirements with which applicants must comply to obtain a license. The following information is currently required for a completed nursing home license application:

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 percent interest in the corporation must be included in addition to the corporation's name, address, and EIN;
- Name of the 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 5 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 a search be conducted of the criminal history databases of both the state, Florida Department of Law Enforcement, and national, Federal Bureau of Investigation, primary law enforcement agencies;
- The agency may require level 2 background screening of members of the board of directors or any officer or any individual owning 5 percent or more of the licensee entity or facility; 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 percent interest in the entity responsible for managing the facility. Some voluntary officers of not-for-profit corporate entities 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., as appropriate; and
- Applicants must agree to accept Medicaid and Medicare clients on a temporary, emergency basis; secure a certificate of need; and participate in AHCA's consumer satisfaction measurement process.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.021, F.S., providing definitions relating to nursing home regulation, to define the term "controlling person." As defined in the bill, a controlling person, for purposes of the nursing home regulation statute, means:

- (1) *An applicant for licensure and any management company or other entity, related or unrelated, with which the applicant may contract to operate the facility.*
- (2) *Any person who serves as an officer, is on the board of directors, or has a 5-percent or more ownership interest in the applicant. Controlling person does not mean a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest in the corporation or organization. The license application must include a statement from the director and the not-for-profit corporation or organization affirming that the director's relationship to the corporation or organization satisfies these requirements.*

- (3) *Any person who serves as an officer, is on the board of directors, or has a 5-percent or more ownership interest in the management company or other entity with which the applicant may contract to operate the facility.*

Section 2. Amends s. 400.071, F.S., providing nursing home licensure application content requirements, to require that a licensure application name any controlling person, when applicable, that will manage or supervise the nursing home facility. An applicant must submit with the application for licensure a signed affidavit disclosing any financial or ownership interest held within the last 5 years by the applicant, any person managing or supervising a facility on behalf of the applicant, or the licensed administrator of the facility in an entity licensed by the State of Florida or any other state to provide health or residential care which: (a) was closed, voluntarily or involuntarily, and the reason for the closure; (b) has filed for bankruptcy; (c) has had a receiver appointed or a license denied, suspended, or revoked; or (d) has had an injunctive proceeding initiated against it by a regulatory agency.

Section 3. Amends s. 400.121, F.S., providing for denial, suspension, revocation of a nursing home license and other actions and procedures relating to nursing home regulation, to authorize AHCA to deny an application, subject to certain exceptions, for an initial or change-of-ownership nursing home license based upon the information, demonstrating financial or care-related instability of the applicant or any controlling person, disclosed in the affidavit that an applicant must submit with the licensure application, as required by section 2 of the bill. The exceptions to the authorization to deny an application, as provided under this section of the bill, are: (1) demonstration of financial or care-related instability of only the management company, in which case the licensure applicant must be given 30 days within which to remedy the instability or else the application must be denied if the applicant fails to remedy the instability within 31 days after receiving notice from AHCA; (2) demonstration of financial instability of only the management company when the management contract does not require the management company to provide working capital or other financial support to the applicant, in which case AHCA may not use the information to deny the licensure of the applicant but it may use the information as a basis for additional monitoring of the licensed facility, as specified in law; or (3) as relates to licensure renewal, AHCA is empowered to use information that demonstrates financial or care-related instability of the applicant or any controlling person as a basis for additional monitoring of the licensed facility, as specified in law.

Section 4. Amends s. 400.141, F.S., relating to administration and management of nursing home facilities, to require that administrators or managers of nursing home facilities must, within 30 days after the start of a management agreement, submit a signed affidavit containing information about any past financial and care-related instability of the management company, as required under s. 400.121, F.S., as amended in section 3 of the bill.

Section 5. Amends s. 397.405, F.S., providing exemptions from licensure requirements for substance abuse service providers, to conform a cross reference to s. 400.021, F.S., the definition section of the nursing home licensure law, to changes made in the bill.

Section 6. Provides a July 1, 2000, 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:

Licensure applicants may incur some minimal additional costs as a consequence of the changes to law provided in the bill. These costs may result from compliance with the affidavit requirement, when necessary, and incidental costs of gathering information through long distance telephone calls or copying documents or other similar activities.

C. Government Sector Impact:

No additional costs related to the processing of licensure applications are anticipated as a consequence of the changes to current law provided in the bill. The Agency for Health Care Administration anticipates that no fiscal impact will result from this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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