

CHAPTER 98-248

Committee Substitute for House Bill Nos. 3089 and 171

An act relating to nursing facilities; amending s. 400.121, F.S.; providing procedure for administrative hearings on certain actions to deny, suspend, or revoke a nursing facility's license; creating s. 400.215, F.S.; requiring background screening for certain nursing facility employees; providing requirements for employers and employees; authorizing conditional status for certain employees; requiring the Agency for Health Care Administration to establish and maintain a database and provide certain information; providing for screening fees; providing for exemptions from disqualification; providing an exemption from rescreening for certain persons; providing for certain sharing of screening information among employers; providing for adoption of rules; specifying dates and conditions for compliance by employees and new applicants; repealing s. 400.211(5), F.S., relating to screening requirements for certified nursing assistants; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 400.121, Florida Statutes, to read:

400.121 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedure.—

(5) An action taken by the agency to deny, suspend, or revoke a facility's license under this part, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility, shall be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's request for a hearing, unless the time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order. This subsection does not modify the requirement that an administrative hearing be held within 90 days after a license is suspended under paragraph (4)(b).

Section 2. Section 400.215, Florida Statutes, is created to read:

400.215 Personnel screening requirement.—

(1) The agency shall require background screening as provided in chapter 435 for all employees or prospective employees of facilities licensed under part II who are expected to, or whose responsibilities may require them to:

- (a) Provide personal care or services to residents;
- (b) Have access to resident living areas; or
- (c) Have access to resident funds or other personal property.

(2) Employers and employees shall comply with the requirements of s. 435.05.

(a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03(1) and for conducting a search of the central abuse registry and tracking system as specified in s. 435.03(3)(a) shall be submitted by the nursing facility to the agency. Results of the background screening and the abuse registry check shall be provided by the agency to the requesting nursing facility.

(b) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Level 2 screening shall not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement. Completion of level 2 screening shall require the employee or prospective employee to furnish to the nursing facility a full set of fingerprints to enable a criminal background investigation to be conducted. The nursing facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (c) and forward the request to the Department of Law Enforcement, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (c). The agency shall notify the administrator of the requesting nursing facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, or this chapter, as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.

(c) The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening and central abuse registry and tracking system checks. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. The Department of Children and Family Services shall provide the agency with electronic access to the central abuse registry and tracking system. The agency shall search the registry to identify any confirmed report and shall access such report for incorporation into the database. The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the

administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.

(d) Applicants and employees shall be excluded from employment pursuant to s. 435.06.

(3) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening and the abuse registry check shall be submitted to the agency. The agency shall establish a schedule of fees to cover the costs of level 1 and level 2 screening and the abuse registry check. Facilities may reimburse employees for these costs. The Department of Law Enforcement shall charge the agency for a level 1 or level 2 screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement will not be subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.

(4)(a) As provided in s. 435.07, the agency may grant an exemption from disqualification to an employee or prospective employee who is subject to this section and who has not received a professional license or certification from the Department of Health.

(b) As provided in s. 435.07, the Department of Health may grant an exemption from disqualification to an employee or prospective employee who is subject to this section and who has received a professional license or certification from the Department of Health.

(5) Any provision of law to the contrary notwithstanding, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, shall not be required to be rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity which caused such screening to be performed.

(6) The agency and the Department of Health shall have authority to adopt rules pursuant to the Administrative Procedures Act to implement this section.

(7) All employees shall comply with the requirements of this section by October 1, 1998. No current employee of a nursing facility as of the effective date of this act shall be required to submit to rescreening if the nursing facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03(1). Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement as specified in this section must provide to the employing nursing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1998, shall comply with the requirements of this section.

(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arising against an employer that, upon notice of a disqualifying offense listed under chapter 435 or a confirmed report of abuse, neglect, or exploitation or an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.

Section 3. Subsection (5) of section 400.211, Florida Statutes, is repealed.

Section 4. This act shall take effect on July 1 of the year in which enacted.

Approved by the Governor May 27, 1998.

Filed in Office Secretary of State May 27, 1998.