

Professions and Public Health Subcommittee

Wednesday, March 3, 2021
10:00 AM - 12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Will Robinson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Professions & Public Health Subcommittee

Start Date and Time: Wednesday, March 03, 2021 10:00 am

End Date and Time: Wednesday, March 03, 2021 12:00 pm

Location: Webster Hall (212 Knott)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 17 Podiatric Medicine by Bell, Killebrew
HB 29 Dispensing Medicinal Drugs by Willhite
HB 245 Massage Therapy by Chaney
HB 497 Dentistry and Dental Hygiene Examinations by Buchanan
HB 725 Nonopioid Alternatives Educational Materials by Plakon
HB 803 Access to Health Care Practitioner Services by Caruso
HB 7001 OGSR/Nurse Licensure Compact by Government Operations Subcommittee, Garrison

This meeting will be live-streamed on https://thefloridachannel.org/. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 03/01/2021 4:01PM by Osborne.Erin

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 17 Podiatric Medicine
SPONSOR(S): Bell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Rahming	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

A podiatric physician diagnoses or provides medical, surgical, palliative, and mechanical treatment of ailments affecting the human foot and leg. Podiatric medicine also includes the amputation of toes and other parts of the foot, but does not include amputation of the entire leg or foot.

Medical assistants are non-licensed personnel that may assist a physician in all aspects of a medical practice under the direct supervision and responsibility of a physician. Current law does not specifically authorize podiatric physicians to utilize medical assistants in their practices.

Section 456.0301, F.S., requires health care practitioners with authority to prescribe controlled substances to take a board-approved 2-hour continuing education course on safe and effective prescribing of controlled substances biennially offered by certain statewide professional organizations of physicians. However, if a licensee's practice act requires the licensee to complete a 2-hour course on safe and effective prescribing of controlled substances, the licensee is exempt from the requirements of s. 456.0301, F.S. Podiatric physicians are required to complete 40 hours of continuing professional education biennially, but their practice act does not specifically require continuing education on controlled substances.

The bill requires podiatric physicians to complete a 2-hour continuing education course on safe and effective prescribing of controlled substances as a part of the 40 hours of continuing professional education required for biennial licensure renewal. Podiatric physicians will no longer be subject to the requirements of s. 456.0301, F.S., including the requirement that the course be offered only by certain physician organizations.

Currently, individuals may enter into direct health care agreements with allopathic physicians, osteopathic physicians, chiropractic physicians, nurses, or dentists, or a health care group practice for the provision of health care services. The bill adds podiatric physicians to the list of health care providers who may offer such agreements.

The bill has no fiscal impact on the Department of Health. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Podiatric Medicine

Podiatric medicine is the diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg.[1] It also includes the amputation of toes or other parts of the foot, but does not include the amputation of the entire foot or leg. A podiatric physician is authorized to prescribe drugs specifically related to his or her scope of practice.[2]

Licensure Requirements

Florida law requires a podiatric physician to meet the following requirements for licensure:[3]

- Be at least 18 years of age;
- Hold a degree from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association;
- Have successfully completed one of the following clinical experience requirements:
  - One year of residency in a residency program approved by the Board of Podiatric Medicine (board);[4] or
  - Ten years of continuous, active licensed practice of podiatric medicine in another state immediately preceding application and completion of at least the same continuing education requirements during those ten years as are required of podiatric physicians licensed in this state;
- Successfully complete a background screening; and
- Obtain passing scores on the national examinations administered by the National Board of Podiatric Medical Examiners.[5]

A license to practice podiatric medicine must be renewed biennially.

Continuing Education

A podiatric physician must complete 40 hours of continuing education as a part of the biennial licensure renewal, which must include:[6]

- At least one hour on risk management (five hours for first renewal[7]);
- At least one hour on the laws and rules related to podiatric medicine;
- At least two hours on the prevention of medical errors;
- A board approved course on HIV/AIDS (first renewal only)[8]; and
- One hour on human trafficking (first renewal only).[9]

[1] S. 461.003(5), F.S.
[2] *Id.*
[3] S. 461.006, F.S.
[4] If it has been more than four years since the completion of the residency, an applicant must have two years of active, licensed practice of podiatric medicine in another jurisdiction in the four years immediately preceding application or successfully complete a board-approved postgraduate program or board-approved course within the year preceding application.
[5] R. 64B18-11.002, F.A.C.
[6] S. 461.007(3), F.S., and r. 64B18-17, F.A.C.
[7] R. 64B18-17.005, F.A.C.
[8] R. 64B18-17.001(12), F.A.C.
[9] S. 456.0341, F.S.

Controlled Substance Prescribers

Effective July 1, 2018, every person registered with the United States Drug Enforcement Administration and authorized to prescribe controlled substances, must complete a 2-hour continuing education course on prescribing controlled substances.[10] The course must include information on the current standards for prescribing controlled substances, particularly opiates; alternatives to these standards; nonpharmacological therapies; prescribing emergency opioid antagonists; and the risks of opioid addiction following all stages of treatment in the management of acute pain.

The course can only be offered by a statewide professional association of physicians in this state that is accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 Credit or the American Osteopathic Category 1-A continuing medical education credit as part of each biennial license renewal.[11] Currently the course is provided by the:[12]

- Florida Medical Association;
- Florida Osteopathic Medical Association;
- Florida Academy of Family Physicians;
- InforMed; and
- Emergency Medicine Learning and Resource Center

This requirement does not apply to a licensee who is required by his or her applicable practice act to complete a minimum of two hours of continuing education on the safe and effective prescribing of controlled substances.[13] This requirement applies to podiatric physicians because their practice act does not specifically require completion of two hours of continuing education on the safe and effective prescribing of controlled substances.

Medical Assistants

A medical assistant is a multi-skilled person that assists in all aspects of a medical practice under the direct supervision and responsibility of a physician.[14] There are no formal educational requirements for becoming a medical assistant in most states, including Florida.[15] Most medical assistants have postsecondary education, such as a certificate; however, others enter the occupation with a high school diploma and learn through on-the-job training.[16]

A medical assistant assists with patient care management, executes administrative and clinical procedures, and performs managerial and supervisory functions. In Florida, a medical assistant may perform the following duties under the direct supervision of a physician: [17]

- Clinical procedures, including:
    - Performing aseptic procedures;
    - Taking vital signs;
    - Preparing patients for physician care;
    - Performing venipunctures and nonintravenous injections; and
    - Observing and reporting patients' signs and symptoms;
- Administering basic first aid;
- Assisting with patient examinations or treatments;

[10] S. 1, ch. 2018-13, Laws of Fla., codified at s. 456.0301, F.S.
[11] *Id*.
[12] Department of Health, *Take Control of Controlled Substances*, http://www.flhealthsource.gov/FloridaTakeControl/ (last visited Jan. 26, 2021). To access a list of providers, select Podiatric Medicine.
[13] Section 456.0301, F.S.
[14] Section 458.3485, F.S.
[15] United States Department of Labor, *Occupational Outlook Handbook: Medical Assistants*, (last rev. Sept. 1, 2020), https://www.bls.gov/ooh/healthcare/medical-assistants.htm#tab-4 (last visited Jan. 26, 2021).
[16] *Id*.
[17] S. 458.3485(2), F.S

- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administering medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures and general administrative duties required by the physician; and
- Performing dialysis procedures, including home dialysis.

Medical assistants are not required to be licensed, certified, or registered to practice in Florida.

Direct Health Care Agreements

Under current law, individuals may contract directly with certain health care providers, outside the scope of insurance, for the provision of health care services.[18] Since a direct health care agreement is not considered health insurance, it is exempt from the Florida Insurance Code and the Office of Insurance Regulation does not have authority to regulate such agreements.[19] These direct health care agreements must:[20]

- Be in writing;
- Be signed by the health care provider or their agent and the patient, the patient's legal representative, or the patient's employer;
- Allow either party to terminate the agreement by giving the other party 30 days' advance written notice;[21]
- Describe the scope of health care services that are covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund to the patient, the patient's legal representative, or the patient's employer of monthly fees paid in advance if the health care provider stops offering health care services for any reason;
- State that the agreement is not health insurance and that the health care provider will not bill the patient's health insurance policy or plan for services covered under the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and does not replace the employer's workers' compensation obligations.

Currently, individuals may only contract with allopathic physicians, osteopathic physicians, chiropractic physicians, nurses, or dentists, or a health care group practice for health care services that are within the competency and training of the health care provider.[22] An individual may not directly contract with a podiatric physician for the provision of health care services.

Effect of Proposed Bill

Medical Assistants

The bill defines "physician" as a person who is licensed as a physician under ch. 458, F.S., or as a podiatric physician under ch. 461, F.S.

The bill authorizes podiatric physicians to use medical assistants in the same manner and under the same conditions as an allopathic physician.

[18] S. 624.27, F.S. Health care services means the screening, assessment, diagnosis, and treatment of a patient conducted within the competency and training of the health care provider for the purpose of promoting health or detecting and managing disease or injury.
[19] S. 624.27(2), F.S.
[20] S. 624.27(4), F.S.
[21] The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.
[22] S. 624.27(1)(b), F.S.

Continuing Education

The bill requires podiatric physicians to complete two hours of continuing education on safe and effective prescribing of controlled substances, as a part of the 40 hours of continuing professional education required for each biennial licensure renewal. This will exempt podiatric physicians from the requirement in s. 456.0301, F.S., including the requirement that the course be offered only by certain physician organizations.

Direct Health Care Agreements

The bill authorizes individuals to directly contract with podiatric physicians for the provision of health care services. The bill retains the contract requirements that are currently required for other health care practitioners offering direct health care agreements.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 458.3485, F.S., relating to medical assistants.
Section 2: Amends s. 461.007, F.S., relating to renewal of license.
Section 3: Creates s. 461.0155, F.S., relating to medical assistants.
Section 4: Amends s. 624.27, F.S., relating to direct health care agreements; exemption from code.
Section 5: Provides an effective date of July 1, 2021.

II. 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:

Organizations currently authorized to offer the course may experience a loss in revenue since additional organizations may be eligible to provide the controlled substances continuing education course.

Podiatric physicians may establish practices that use direct health care agreements to provide health care services without concern of facing regulatory action, which may increase access to podiatric care.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rule-making authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On January 27, 2021, the Senate Committee on Health Policy adopted an amendment to SB 170 and reported the bill favorably as a committee substitute. The amendment:

- Removed Section 1 of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to podiatric medicine; amending s. 458.3485, F.S.; defining the term "physician" to include podiatric physicians; amending s. 461.007, F.S.; authorizing the Board of Podiatric Medicine to require a specified number of continuing education hours related to the safe and effective prescribing of controlled substances; creating s. 461.0155, F.S.; providing for governance of podiatric physicians who are supervising medical assistants; amending s. 624.27, F.S.; revising the definition of the term "health care provider" to include podiatric physicians; providing an effective date.

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

Section 1. Subsection (1) of section 458.3485, Florida Statutes, is amended to read:

458.3485 Medical assistant.—

(1) DEFINITION.—As used in this section:~~,~~

(a) "Medical assistant" means a professional multiskilled person dedicated to assisting in all aspects of medical practice under the direct supervision and responsibility of a physician. This practitioner assists with patient care management, executes administrative and clinical procedures, and often performs

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

managerial and supervisory functions. Competence in the field also requires that a medical assistant adhere to ethical and legal standards of professional practice, recognize and respond to emergencies, and demonstrate professional characteristics.

(b) "Physician" means a person who is licensed as a physician under this chapter or as a podiatric physician under chapter 461.

Section 2. Subsection (3) of section 461.007, Florida Statutes, is amended to read:

461.007 Renewal of license.—

(3) The board may by rule prescribe continuing education, not to exceed 40 hours biennially, as a condition for renewal of a license, with a minimum of 2 hours of continuing education related to the safe and effective prescribing of controlled substances. The criteria for such programs or courses shall be approved by the board.

Section 3. Section 461.0155, Florida Statutes, is created to read:

461.0155 Medical assistants.—A podiatric physician who is supervising a medical assistant shall be governed by s. 458.3485.

Section 4. Paragraph (b) of subsection (1) of section 624.27, Florida Statutes, is amended to read:

624.27 Direct health care agreements; exemption from code.—

(1) As used in this section, the term:

(b) "Health care provider" means a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or chapter 466, or a health care group practice, who provides health care services to patients.

Section 5. This act shall take effect July 1, 2021.

HB 29

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 Dispensing Medicinal Drugs
SPONSOR(S): Willhite and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Rahming	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Pharmacists and authorized prescribers may dispense medicinal drugs in this state. Authorized prescribers include allopathic and osteopathic physicians, podiatrists, dentists, optometrists, advanced practice registered nurses and physician assistants.

Currently, an authorized prescriber may dispense up to a 24-hour supply of a medicinal drug to an emergency department patient of a hospital that holds an appropriate institutional pharmacy permit, provided that the treating physician determines that the medicinal drug is needed and that community pharmacy services are not readily accessible to the patient. If the patient needs more than a 24-hour supply of a drug, the prescriber must provide the patient with a prescription for use after the initial 24-hour period.

HB 29 expands this authorization to allow all authorized prescribers treating hospital patients, not just physicians, to prescribe medicinal drugs under these circumstances and extends patient eligibility to include a hospital inpatient upon discharge. The bill also authorizes a hospital pharmacy to dispense the greater of a 48-hour supply of a medicinal drug or a supply of a medicinal drug that is sufficient to last a patient until the end of next business day. The bill also authorizes a hospital pharmacy to dispense up to a 72-hour supply of a medicinal drug if the patient is located in an area in which a state of emergency is declared.

The bill corrects current statutory language to reflect that it is the hospital pharmacy that dispenses the medicinal drug, rather than the prescriber.

The bill has an insignificant, negative fiscal impact on the Department of Health, which current resources are adequate to absorb. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Practice of Pharmacy

The Florida Pharmacy Act (Act) regulates Florida pharmacies and imposes minimum requirements for safe practice.[1] The Board of Pharmacy (board) within the Department of Health (DOH) is tasked with adopting rules to implement the provisions of the Act and setting standards of practice.[2]

Dispensing of Medicinal Drugs

Pharmacists, licensed under the Act, are authorized to dispense medicinal drugs[3] in this state, and authorized prescribers may dispense medicinal drugs to their patients.[4] Authorized prescribers include allopathic and osteopathic physicians, podiatrists, dentists, optometrists, advanced practice registered nurses and physician assistants.[5] A prescriber who dispenses medicinal drugs for a fee or remuneration of any kind, must:[6]

- Register with his or her professional licensing board as a dispensing practitioner and pay the fee established by the board;
- Comply with and be subject to all state and federal laws, rules, and regulations applicable to pharmacists and pharmacies;
- Give each patient a written prescription and advise the patient that the prescription may be filled in the practitioner's office or at any pharmacy, orally or in writing; and
- Verify the identity of a patient who is not known to the dispenser before dispensing a controlled substance.

Pharmacy Regulation

A person must obtain a DOH-issued permit to operate one of five types of pharmacies:

- **Community pharmacy** – Where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.[7]
- **Institutional pharmacy** – Hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility locations where medicinal drugs are compounded, dispensed, stored, or sold.[8]
- **Nuclear pharmacy** – Where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, other than hospitals.[9]
- **Special pharmacy** - Locations where medicinal drugs are compounded, dispensed, stored, or sold if these locations do not otherwise meet an applicable pharmacy definition in s. 465.003, F.S.[10]

[1] Ch. 465, F.S.
[2] Ss. 465.005, 465.0155(1), and 465.022, F.S.
[3] A medicinal drug is a substance or preparation commonly known as a prescription or legend drug, which by federal or state law may only be dispensed pursuant to a prescription. *See* s. 465.003(8), F.S.
[4] Section 465.0276, F.S.
[5] For limitations on an optometrist's authority to prescribe or dispense a medicinal drug, see s. 463.0055, F.S.; for an advanced practice registered nurse's limitations, see s. 464.012; and for a physician assistant's limitations, see ss. 458.347(4)(e) or 459.022(4)(e), F.S.
[6] S. 465.0276(2), F.S.
[7] Ss. 465.003(11)(a)1. and 465.018, F.S.
[8] Ss. 465.003(11)(a)2. and 465.019, F.S.
[9] Ss. 465.003(11)(a)3. and 465.0193, F.S.
[10] Ss. 465.003(11)(a)4. and 465.0196, F.S.

- **Internet pharmacy** – Locations not otherwise licensed or issued a pharmacy permit within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state to fill or refill prescriptions or to dispense, distribute, or otherwise practice pharmacy in this state.[11]

All permitted pharmacies must pass an on-site inspection before DOH will issue an initial permit and any time a pharmacy changes its ownership or address.[12]

Institutional Pharmacies

All institutional pharmacies must designate a consultant pharmacist of record.[13] The consultant pharmacist's responsibilities include:[14]

- Maintaining all drug records required by law;
- Ordering and evaluating laboratory or clinical testing when necessary for the proper performance of the consultant pharmacist's responsibilities;[15]
- Conducting drug regimen reviews as required by state or federal law; and
- Inspecting the facility and preparing a written report to be filed at the permitted facility monthly.

There are four types of institutional pharmacy permits issued by the board to institutional pharmacies:[16]

- Class I Institutional permits are issued to institutional pharmacies in which all medicinal drugs are administered from individual prescription containers to individual patients and in which medicinal drugs are not dispensed on the premises, except that licensed nursing homes[17] may purchase medical oxygen for administration to residents.
- Class II Institutional permits are issued to institutional pharmacies that employ a registered pharmacist who consults with and dispenses medicinal drugs to patients on the premises of the institution, for use on the premises of the institution.
- Modified Class II Institutional permits are issued to institutional pharmacies in a short-term, primary care treatment center that meet all the requirements for a Class II permit, except space and equipment requirements.
- Class III Institutional permits are issued to institutional pharmacies, including central distribution facilities, affiliated with a hospital that provide the same services that are authorized by a Class II institutional pharmacy permit. Additionally, an Class III Institutional pharmacy may:
    - Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
    - Prepare prepackaged drug products;
    - Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are appropriately permitted;
    - Provide the above-listed services to an entity under common control which holds an active health care clinic establishment permit.[18]

Class III Institutional pharmacies must also maintain policies and procedures which address:[19]

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[11] Ss. 465.003(11)(a)5. and 465.0197, F.S.
[12] R. 64B16-28(1)(d), F.A.C.
[13] S. 465.019(5), F.S., and r. 64B16-28.501, F.A.C.
[14] S. 465.0125, F.S., and r. 64B16-28.501, F.A.C.
[15] A consultant pharmacist may only order these tests for patients under the care of a licensed home health agency and when authorized by a licensed allopathic physician, osteopathic physician, podiatric physician, or dentist. The consultant pharmacist must complete additional training and meet additional qualifications in the practice of institutional pharmacy, as required by the board. *See* s. 465.0125.
[16] S. 465.019, F.S.
[17] Nursing homes are licensed under part II, ch. 400, F.S.
[18] A health care clinic establishment permit is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned or operated by a business entity. *See* s. 499.01(2)(r), F.S.
[19] S. 465.019(1)(d), F.S.

- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.

Dispensing by Institutional Pharmacies

An institutional pharmacy must hold a community pharmacy permit to dispense medicinal drugs to outpatients.[20] However, an authorized prescriber may dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided that the treating physician determines that the medicinal drug is warranted and community pharmacy services are not readily accessible.[21] If the patient needs more than a 24-hour supply of a medicinal drug, an authorized prescriber must dispense a 24-hour supply of the medicinal drug and provide the patient with a prescription for use after the initial 24-hour period.[22] Such dispensing must be in accordance with the hospital's procedures.

For any drug dispensed from the emergency department of a hospital, the prescriber must create, and the consultant pharmacist of record must maintain, a patient record which includes the following:[23]

- Patient name and address;
- Drug and strength of the prescribed and/or dispensed;
- Quantity prescribed and/or dispensed;
- Directions for use;
- Prescriber/Dispenser;
- Prescriber's Drug Enforcement Administration (DEA) registration, if applicable; and
- Reason community pharmacy services were not readily accessible.

Any dispensed medications must be properly labeled and may not exceed the greater of a 24-hour supply or the minimal dispensable quantity.[24]

Effect of Proposed Changes

HB 29 expands the authorization to prescribe and dispense medicinal drugs in hospital settings. It allows all authorized prescribers treating hospital patients, not just physicians, to prescribe, and allows hospital pharmacies to dispense, a limited supply of medicinal drugs when the prescriber determines the medicinal drug is warranted and community pharmacy services are unavailable.
The bill authorizes a hospital pharmacy to dispense the greater of a 48-hour supply of a medicinal drug or a supply of a medicinal drug that is sufficient to last a patient of the hospital's emergency department until the end of the next business day. The bill also authorizes a hospital inpatient, upon discharge, to receive this limited supply of a medicinal drug if community pharmacy services are not available. The bill further authorizes a hospital pharmacy to dispense a supply of a medicinal drug that will last up to 72 hours if the patient is located in an area of the state in which a state of emergency is declared.

Prescribers and pharmacies must comply with current law when prescribing or dispensing controlled substances. The bill corrects current statutory language to reflect that it is the hospital pharmacy that dispenses the medicinal drug, rather than the prescriber.

[20] S. 465.019(4), F.S.
[21] *Id.*
[22] *Id.*
[23] R. 64B16-28.6021, F.A.C.
[24] *Id.*

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.019, F.S., relating to institutional pharmacies; permits.
Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH will incur insignificant, nonrecurring costs associated with amending adopted rules, which current resources are adequate to absorb.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce costs that may be incurred by patients who have difficulty accessing a community pharmacy after visiting an emergency department of a hospital or being discharged from inpatient care at a hospital from returning to the emergency department or hospital to obtain additional relief.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Board of Pharmacy has sufficient rulemaking authority under s. 465.005, F.S., to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to dispensing medicinal drugs; amending s. 465.019, F.S.; authorizing certain hospitals to dispense a limited supply of medicinal drugs to a patient of an emergency department of a hospital or a patient discharged from a hospital under certain circumstances; providing drug supply requirements for the prescribing or dispensing of such drugs in specified areas; authorizing a prescriber to provide a patient with a prescription for medicinal drugs for use beyond the initial prescription period under certain circumstances; requiring the prescribing or dispensing of a controlled substance to comply with certain statutory requirements; providing an effective date.

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

Section 1. Subsection (4) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(4)(a) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, ~~an individual licensed to prescribe~~ medicinal drugs ~~in~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~this state~~ may be dispensed by ~~dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of~~ a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge, if the prescriber ~~provided that the physician~~ treating the patient in such hospital ~~hospital's emergency department~~ determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing must be for a supply of the drug that will last:

1. Up to 48 hours; or

2. Through the end of the next business day,

whichever is greater.

(b) Notwithstanding subparagraph (a)1., if a state of emergency has been declared and is in effect for an area of the state pursuant to s. 252.36, a supply of a medicinal drug that will last up to 72 hours may be prescribed and dispensed under paragraph (a) in that area ~~from the emergency department must be in accordance with the procedures of the hospital~~. ~~For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-hour supply of such drug to the patient and must provide the patient with a prescription for such drug for~~

~~use after the initial 24-hour period.~~

(c) A prescriber who prescribes medicinal drugs under this subsection may provide the patient with a prescription for such drug for use beyond the initial prescription period if the prescriber determines that such use is warranted. Any prescribing or dispensing of a controlled substance under this subsection must comply with the applicable requirements of ss. 456.44 and 465.0276.

(d) The board may adopt rules ~~necessary~~ to implement ~~carry out the provisions of~~ this subsection.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 245

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 245 Massage Therapy
SPONSOR(S): Chaney
TIED BILLS: **IDEN./SIM. BILLS:** SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Guzzo	McElroy
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, and may be aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice in this state.

HB 245 expands the scope of practice for massage therapy by authorizing a massage therapist to perform a massage therapy assessment to determine the course of massage therapy treatment.

Current law authorizes a message therapist to use their hand, foot, arm, or elbow during the course of message therapy treatment. The bill authorizes a message therapist to also use their knee during the course of massage therapy treatment.

The bill also changes the term “massage” to “massage therapy” throughout statutes to standardize terminology.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Massage Therapy

Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body.[1] Massage is therapeutic and a massage therapist must know anatomy and physiology and understand the relationship between the structure and function of the tissues being treated and the total function of the body.[2]

Chapter 480, F.S., entitled the "Massage Practice Act" governs the practice of massage therapy in Florida. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice, including massage therapists and massage establishments.[3]

Massage Therapist Licensure

A massage therapist is a person who administers massage for compensation.[4] To qualify for licensure as a massage therapist, an applicant must:

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a Board-approved massage school;
- Undergo background screening; and
- Pass an examination.[5]

A massage therapist is required to renew its license every two years and must complete 24 hours of continuing education for each renewal period.[6]

As of February 24, 2021, there are 38,875 actively licensed massage therapists in Florida.[7]

Massage Schools

A person seeking licensure as a massage therapist is required to complete a course of study at a Board-approved massage school. The Board requires the course of study to be comprised of at least 500 hours, completed at a rate of no more than six hours per day and no more than 30 hours per week.

[1] S. 480.033(3), F.S.
[2] S. 480.032, F.S.
[3] S. 480.035, F.S.
[4] S. 480.033(4), F.S.
[5] S. 480.041(1), F.S.
[6] S. 480.0415, F.S., and rule 64B7-28.009, F.A.C.
[7] Department of Health, FLHealthSource.gov, Public Data Portal (search by Board/Council "Board of Massage Therapy", then by Profession "massage therapist", then by license status "practicing statuses only"), available at https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders, (last visited February 24, 2021).

The education must include:

- 150 hours of anatomy and physiology;
- 100 hours of basic massage theory and history;
- 125 hours of clinical practicum;
- 76 hours of allied modalities;
- 15 hours of business;
- 15 hours of theory and practice of hydrotherapy;
- 10 hours of Florida laws and rules;
- 4 hours of professional ethics;
- 3 hours of HIV/AIDS education; and
- 2 hours of medical errors.[8]

In addition to the training above, a massage therapy student seeking to provide colonic irrigation[9] services must be certified by the Board to provide such services. Prior to passing an exam, the student must complete a course of study in colonic irrigation, which must include a minimum of 100 classroom hours, consisting of:

- 50 hours in theory, anatomy, physiology, pathology of the colon and digestive system and principles of colon hygiene;
- 45 hours of clinical practicum that includes 20 treatments; and
- 5 hours in sterilization techniques and equipment training.[10]

Colonic Irrigation Apprenticeship Training Programs

As an alternative to completing a course of study in colonic irrigation, a licensed massage therapist may be certified to provide colonic irrigation services upon completing a colonic irrigation apprenticeship training program.[11] An apprentice must act under the direct supervision of a sponsor who is a licensed massage therapist, certified to practice colonic irrigation, and have practiced colonic irrigation for at least three years.[12]

The apprenticeship must be completed within 12 months of commencement and must consist of at least 1,448 hours of training, including:

- 300 hours of anatomy;
- 300 hours of physiology;
- 20 hours of basic massage theory and history;
- 50 hours of theory and the practice of hydrotherapy;
- 25 hours of Florida Laws and Rules regulating the practice of massage therapy;
- 50 hours of allied modalities;
- 700 hours of clinical practicum; and
- 3 hours of HIV/AIDS instruction.[13]

Upon completion of the above training, the apprentice must pass a Board-approved exam.[14]

Effect of the Bill

[8] Rule 64B7-32.003(1), F.A.C.
[9] Colonic irrigation is a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water (s. 480.033(6), F.S.).
[10] Rule 64B7-32.005(1), F.A.C.
[11] S. 480.041(5)(b), F.S., and rule 64B7-29, F.A.C.
[12] Rule 64B7-29.001, F.A.C.
[13] Rule 64B7-29.003, F.A.C.
[14] Rule 64B7-25.001(2)(d), F.A.C.

HB 245 expands the scope of practice for massage therapy to include performing massage therapy assessment. The bill defines “massage therapy assessment” as the determination of the course of massage therapy treatment by a massage therapist. Currently, a massage therapist may perform a massage on a patient, but there is no specific statutory authority for a massage therapist to assess the patient to determine the course of treatment.

Current law authorizes a message therapist to use their hand, foot, arm, or elbow during the course of message therapy treatment. The bill authorizes a message therapist to also use their knee during the course of massage therapy treatment.

The bill changes the term “massage” to “message therapy” throughout statutes to standardize terminology, including revising the title of ch. 480, F.S., from “Massage Practice” to “Massage Therapy Practice.”

B. SECTION DIRECTORY:

Section 1: Renames ch. 480, F.S.
Section 2: Amends s. 480.031, F.S., relating to the “Massage Practice Act.”
Section 3: Amends s. 480.032, F.S., relating to purpose.
Section 4: Amends s. 480.033, F.S., relating to definitions.
Section 5: Amends s. 477.013, F.S., relating to definitions.
Section 6: Amends s. 477.0135, F.S., relating to exemptions.
Section 7: Amends s. 477.0265, F.S., relating to prohibited acts.
Section 8: Amends s. 480.034, F.S., relating to exemptions.
Section 9: Amends s. 480.035, F.S., relating to Board of Massage Therapy.
Section 10: Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
Section 11: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.
Section 12: Amends s. 480.046, F.S., relating to grounds for disciplinary action by the board.
Section 13: Amends s. 480.0465, F.S., relating to advertisement.
Section 14: Amends s. 480.047, F.S., relating to penalties.
Section 15: Amends s. 480.052, F.S., relating to power of county or municipality to regulate massage.
Section 16: Amends s. 480.0535, F.S., relating to documents required while working in a massage establishment.
Section 17: Amends s. 627.6407, F.S., relating to massage.
Section 18: Amends s. 627.6619, F.S., relating to massage.
Section 19: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.
Section 20: Amends s. 641.31, F.S., relating to health maintenance contracts.
Section 21: Amends s. 823.05, F.S., relating to places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.
Section 22: Provides an effective date of July 1, 2021.

II. 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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to massage therapy; renaming ch. 480, F.S., as "Massage Therapy Practice"; amending s. 480.031, F.S.; conforming a provision to changes made by the act; amending s. 480.032, F.S.; revising the purpose of ch. 480, F.S.; amending s. 480.033, F.S.; revising and providing definitions; amending ss. 477.013, 477.0135, 477.0265, 480.034, 480.035, 480.041, 480.043, 480.046, 480.0465, 480.047, 480.052, 480.0535, 627.6407, 627.6619, 627.736, 641.31, and 823.05, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Chapter 480, Florida Statutes, entitled "Massage Practice," is renamed "Massage Therapy Practice."

Section 2. Section 480.031, Florida Statutes, is amended to read:

480.031 Short title.—This act ~~shall be known and~~ may be cited as the "Massage Therapy Practice Act."

Section 3. Section 480.032, Florida Statutes, is amended to read:

480.032 Purpose.—The Legislature recognizes that the

practice of massage therapy is potentially dangerous to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage therapy is a therapeutic health care practice, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage therapy in the ~~this~~ state; however, restrictions shall be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

Section 4. Section 480.033, Florida Statutes, is amended to read:

480.033 Definitions.—As used in this act:

(1)~~(5)~~ "Apprentice" means a person approved by the board to study colonic irrigation under the instruction of a licensed massage therapist practicing colonic irrigation.

(2)~~(1)~~ "Board" means the Board of Massage Therapy.

(3)~~(9)~~ "Board-approved massage therapy school" means a facility that meets minimum standards for training and

curriculum as determined by rule of the board and that is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state or a college or university that is eligible to participate in the William L. Boyd, IV, Effective Access to Student Education Grant Program.

(4) ~~(6)~~ "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.

(5) ~~(2)~~ "Department" means the Department of Health.

(6) ~~(11)~~ "Designated establishment manager" means a massage therapist who holds a clear and active license without restriction, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at the establishment.

(7) "Establishment" or "massage establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage therapy.

(8) ~~(10)~~ "Establishment owner" means a person who has ownership interest in a massage establishment. The term includes an individual who holds a massage establishment license, a general partner of a partnership, an owner or officer of a corporation, and a member of a limited liability company and its subsidiaries who holds a massage establishment license.

(9) ~~(8)~~ "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage or to operate an establishment.

(10) ~~(4)~~ "Massage therapist" means a person licensed as required by this act, who performs ~~administers~~ massage therapy, including massage therapy assessment, for compensation.

(11) ~~(3)~~ "Massage therapy" means the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, regardless of whether ~~or not~~ such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

(12) "Massage therapy assessment" means the determination of the course of massage therapy treatment.

Section 5. Subsection (13) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(13) "Skin care services" means the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology

or specialty salon, and such services may not involve massage therapy, as defined in s. 480.033 ~~s. 480.033(3)~~, through manipulation of the superficial tissue.

Section 6. Paragraph (a) of subsection (1) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(1) This chapter does not apply to the following persons when practicing pursuant to their professional or occupational responsibilities and duties:

(a) Persons authorized under the laws of this state to practice medicine, surgery, osteopathic medicine, chiropractic medicine, massage therapy, naturopathy, or podiatric medicine.

Section 7. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033 ~~s. 480.033(3)~~, except those practices or activities defined in s. 477.013.

Section 8. Subsection (4) of section 480.034, Florida Statutes, is amended to read:

480.034 Exemptions.—

(4) An exemption granted is effective to the extent that

an exempted person's practice or profession overlaps with the practice of massage therapy.

Section 9. Subsection (2) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

(2) Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage therapy for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a high school equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments are ~~will be~~ subject to confirmation by the Senate.

Section 10. Subsections (1) and (4) and paragraph (b) of subsection (5) of section 480.041, Florida Statutes, are amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(1) Any person is qualified for licensure as a massage therapist under this act who:

(a) Is at least 18 years of age or has received a high school diploma or high school equivalency diploma;

(b) Has completed a course of study at a board-approved massage therapy school that meets standards adopted by the board; and

(c) Has received a passing grade on a national examination designated by the board.

(4) Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage therapy.

(5) The board shall adopt rules:

(b) Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033 ~~s. 480.033(6)~~, by massage therapists.

Section 11. Subsection (14) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.—

(14) Except for the requirements of subsection (13), this section does not apply to a physician licensed under chapter 457, chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage therapy on the physician's patients at the physician's place of practice. This subsection does not restrict investigations by the department for violations of chapter 456 or this chapter.

Section 12. Paragraphs (a), (b), (c), (f), (g), (h), (i),

and (o) of subsection (1) of section 480.046, Florida Statutes, are amended to read:

480.046 Grounds for disciplinary action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to procure a license to practice massage therapy by bribery or fraudulent misrepresentation.

(b) Having a license to practice massage therapy revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(f) Aiding, assisting, procuring, or advising any unlicensed person to practice massage therapy contrary to ~~the provisions of~~ this chapter or to a rule of the department or the board.

(g) Making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(h) Being unable to practice massage therapy with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of

material or as a result of any mental or physical condition. In enforcing this paragraph, the department ~~shall have~~, upon probable cause, may ~~authority to~~ compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, constitutes ~~shall constitute~~ an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage therapy with reasonable skill and safety to clients.

(i) Gross or repeated malpractice or the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.

(o) Practicing massage therapy at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by ~~rules adopted by the~~ board rule, may provide massage therapy services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade

show.

Section 13. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage establishment licensed under ~~the provisions of~~ this act shall include the number of the license in any advertisement of massage therapy services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment under ~~pursuant to the provisions of~~ s. 480.043(7), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 14. Paragraphs (a), (b), and (c) of subsection (1) of section 480.047, Florida Statutes, are amended to read:

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a massage therapist or to practice massage therapy unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage therapy in this state at a board-approved massage therapy school.

(c) Permit an employed person to practice massage therapy unless duly licensed as provided herein.

Section 15. Section 480.052, Florida Statutes, is amended to read:

480.052 Power of county or municipality to regulate massage therapy.—A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

Section 16. Subsections (1) and (2) of section 480.0535, Florida Statutes, are amended to read:

480.0535 Documents required while working in a massage establishment.—

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therapy therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. A valid government identification for the purposes of this section is:

(a) A valid, unexpired driver license issued by any state, territory, or district of the United States;

(b) A valid, unexpired identification card issued by any state, territory, or district of the United States;

(c) A valid, unexpired United States passport;

(d) A naturalization certificate issued by the United States Department of Homeland Security;

(e) A valid, unexpired alien registration receipt card (green card); or

(f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

(2) A person operating a massage establishment must:

(a) Immediately present, upon the request of an investigator of the department or a law enforcement officer:

1. Valid government identification while in the establishment.

2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage therapy in the establishment.

(b) Ensure that each employee and any person performing massage therapy in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

Section 17. Section 627.6407, Florida Statutes, is amended

to read:

627.6407 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of treatments.

Section 18. Section 627.6619, Florida Statutes, is amended to read:

627.6619 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of treatments.

Section 19. Paragraph (a) of subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal

injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III

of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or

indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage <u>therapy</u> as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage <u>therapy</u> or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 20. Subsection (37) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(37) All health maintenance contracts that provide coverage for massage must also cover the services of persons licensed to practice massage <u>therapy</u> pursuant to chapter 480 if the massage is prescribed by a contracted physician licensed

under chapter 458, chapter 459, chapter 460, or chapter 461 as medically necessary and the prescription specifies the number of treatments. Such massage services are subject to the same terms, conditions, and limitations as those of other covered services.

Section 21. Subsection (3) of section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.—

(3) A massage establishment as defined in s. 480.033 ~~s. 480.033(7)~~ which operates in violation of s. 480.0475 or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 22. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 497 Dentistry and Dental Hygiene Examinations
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Rahming	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Board of Dentistry, within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act. A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures. A dental hygienist provides education and preventive and delegated therapeutic dental services.

Currently, all applicants for licensure as a dentist or dental hygienist must pass a practical examination developed by the American Board of Dental Examiners, Inc. (ADEX), in addition to meeting other qualifications.

HB 497 authorizes the Board of Dentistry to accept passing scores on the examinations produced by the Western Regional Examining Board for licensure as a dentist or dental hygienist, in addition to the ADEX examinations it currently accepts.

The bill has an insignificant, negative fiscal impact on the DOH, which current resources are adequate to absorb. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Dentistry

The Board of Dentistry, within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.[1] A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.[2] A dental hygienist provides education, preventive and delegated therapeutic dental services.[3]

Dental Licensure

Any person wishing to practice dentistry in this state must apply to the DOH and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for and pass the following licensure examinations:

- The National Board of Dental Examiners dental examination (NBDE);
- A written examination on Florida laws and rules regulating the practice of dentistry; and
- The American Dental Licensing Examination, a practical or clinical examination developed by the American Board of Dental Examiners.[4]

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association Commission on Dental Accreditation or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.[5]

Dental Hygiene Licensure

Any person wishing to be licensed as a dental hygienist must apply to DOH and meet the following qualifications:[6]

- Be 18 years of age or older;
- Be a graduate of an accredited dental hygiene college or school;[7] and
- Obtain a passing score on the:
    - National Board Dental Hygiene Examination;
    - Dental Hygiene Examination, a practical or clinical examination developed by the American Board of Dental Examiners, Inc.; and
    - A written examination on Florida laws and rules regulating the practice of dental hygiene.

A dental hygienist may also apply to be certified to administer local anesthesia, under the direct supervision of a dentist, to a non-sedated, adult patient if the dental hygienist is certified in basic or

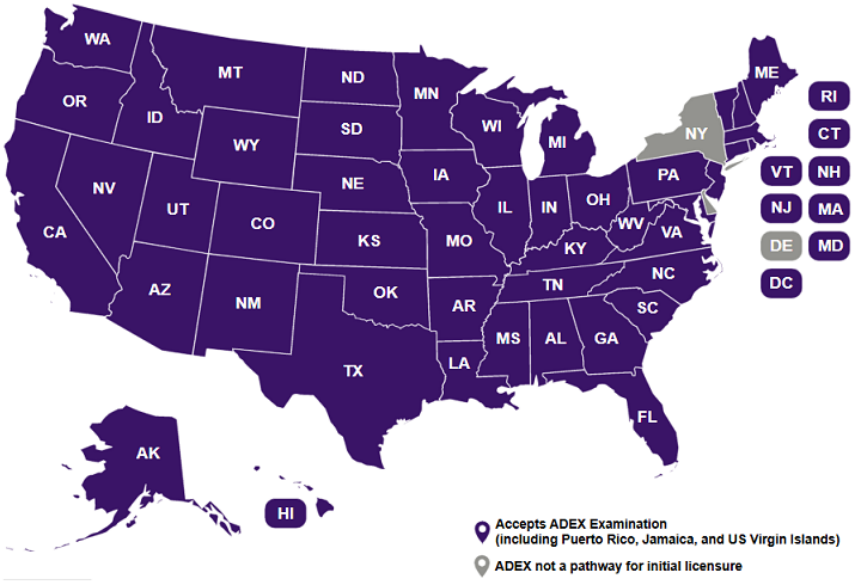
[1] S. 466.004, F.S.
[2] S. 466.003(3), F.S.
[3] Ss. 466.003(4)-(5), F.S.
[4] A passing score is valid for 365 days after the date the official examination results are published. The same is true for a passing score on the American Dental Licensing Examination administered in another state on or after Oct. 1, 2011.
[5] S. 466.006(2), F.S.
[6] S. 466.007, F.S.
[7] If the school is not accredited, the applicant must have completed a minimum of 4 years of postsecondary dental education and received a dental school diploma, which must be reviewed and approved by the Board of Dentistry.

advanced cardiac life support and successfully completes an accredited course that includes a minimum of 30 hours of didactic training, 30 hours of clinical experience, and additional training in specified areas.[8]

American Board of Dental Examiners

The American Board of Dental Examiners, Inc. (ADEX) is an organization of state and regional dental boards that provides for the ongoing development of uniform national dental and dental hygiene licensure examinations.[9] ADEX was created in 2003, with representatives from four regional testing agencies and 12 states. At the time ADEX was created, there were 16 different dental and dental hygiene examinations.[10]

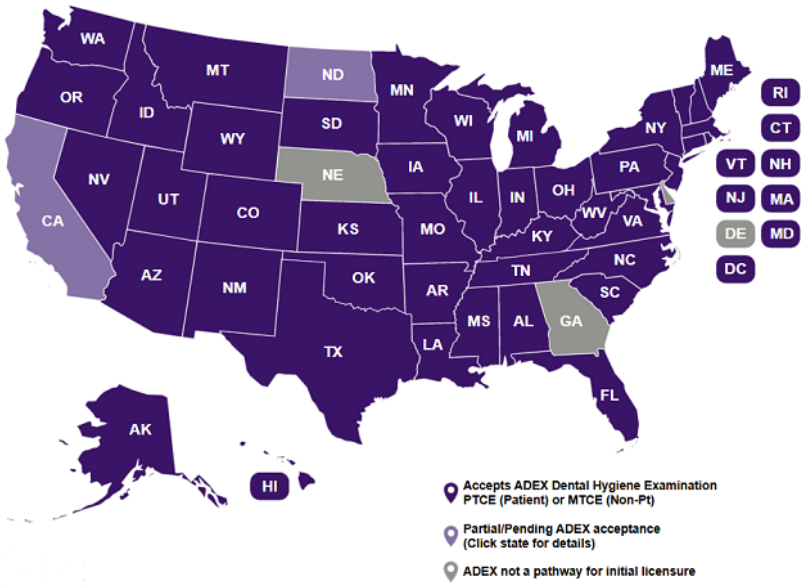
The Commission on Dental Competency Assessment (CDCA), formerly known as the Northeast Regional Board, and the Council of Interstate Testing Agencies (CITA) administers the ADEX dental licensure examination to graduates of accredited dental schools and students in their senior year at an accredited dental school.[11] The ADEX dental examination consists of three portions: a computer-based examination, simulated clinical examinations, and clinical examinations on live patients.[12] The ADEX examination is widely accepted for dental licensure.[13]



As with the dental examination, CDCA and CITA administer the ADEX dental hygiene examination.[14] The ADEX dental hygiene examination consists of two portions: a computer-simulated examination and a clinical examination on live patients.[15] The ADEX examination is widely accepted for dental hygiene licensure.[16]

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[8] S. 466.017(5), F.S.
[9] American Board of Dental Examiners, Inc., *About ADEX*, https://adexexams.org/about-adex/ (last visited Feb. 22, 2021).
[10] *Id*.
[11] Commission on Dental Competency Assessments (CDCA), *Registration and DSE OSCE Manual: 2020 ADEX Dental Examination Series*, https://www.cdcaexams.org/documents/manuals/Dental_DSE_OSCE2020.pdf (last visited Feb. 22, 2021).The cost of the ADEX dental examinations is $2,295; however, additional fees may be assessed, such as a facility or score report fee. The fee is reduced for partial exams and retakes. *See* CDCA, *Dental (ADEX)*, https://www.cdcaexams.org/dental-exams/ (last visited Feb. 22, 2021).
[12] *Id.* at p. 4. The simulated clinical examinations assesses skills related to endodontics and fixed prosthodontics. The clinical examinations on live patients assesses skills related to restorative and periodontal procedures.
[13] CDCA, *2021 ADEX Acceptance Map*, https://www.cdcaexams.org/adex-acceptance-map/ (last visited Feb. 22, 2021).
[14] CDCA, *Candidate Registration and CSCE OSCE Manual: 2020 ADEX Dental Hygiene Examination*, available at https://www.cdcaexams.org/documents/manuals/Dental_Hygiene_Candidate_Registration2020.pdf (last visited Feb. 22, 2020). The cost of the ADEX dental hygiene examinations is $995; however, additional fees may be assessed, such as a facility or score report fee. *See* CDCA, *Dental Hygiene (ADEX)*, https://www.cdcaexams.org/dental-hygiene-adex-exam/ (last visited Feb. 22, 2021).
[15] *Id*.
[16] CDCA, *supra* note 13.



Florida only accepts the ADEX examinations and the Legislature found, when specifying the ADEX examination for use in dental licensure, that the ADEX examinations, in both structure and functions, consistently meet generally accepted testing standards and that it adequately and reliably measures an applicant's ability to practice dentistry.[17] The DOH contracts with the CDCA to administer the ADEX examinations, as well as the jurisprudence examinations.[18] In Fiscal Year 2019-2020, 869 dentists and 562 dental hygienists applied to the take the ADEX examinations.[19]

Western Regional Examining Board

The Western Regional Examining Board (WREB) was created in 1976, after Utah and Oregon made an arrangement to have a simultaneous dental licensure examination.[20] WREB offered its first dental examination in 1977 and its dental hygiene examination in 1979.[21]

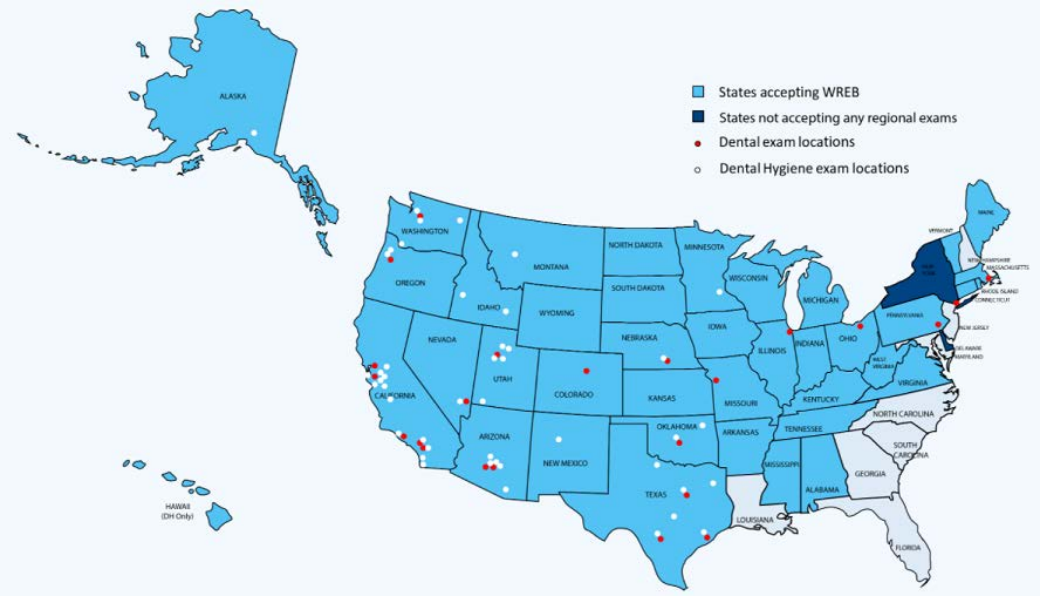
The WREB dental examination consists of three sections: operative, endodontics, and comprehensive treatment planning.[22] The operative section is performed on a live patient and the candidate must complete up to two restorative procedures. The endodontics section is simulated and the comprehensive treatment planning section is a computer-based written examination. A periodontal examination, which is performed on a live patient, and a prosthodontics examination, which is a simulated examination, are available for candidates in those states that require the examinations.[23]

The WREB dental hygiene examination assesses the candidates on patient qualification, extraoral and intraoral evaluation, calculus detection and removal, tissue management, periodontal assessment, and professional judgment.[24]

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[17] S. 466.006(1)(a), F.S.
[18] Florida Department of Health (DOH), *2021 Agency Legislative Bill Analysis for HB 497*, p. 3 (Feb. 24, 2021).
[19] *Id*.
[20] Western Regional Examining Board (WREB), *About Us*, available at https://wreb.org/about-us/ (last visited Mar. 1, 2021). The members of the Western Regional Examining Board include Alaska, Arizona, Arkansas, Idaho, Illinois, Iowa, Kansas, Minnesota, Mississippi, Missouri, Montana, Nebraksa, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Texas, Utah, Washington, West Virginia, and Wyoming. California and Hawaii are dental member states only.
[21] *Id*.
[22] Western Regional Examining Board, *2021 WREB Exam Procedures*, available at https://wreb.org/Candidates/Dental/2021_Dental_PDFs/2021_WREB_Exam_Procedures.pdf (last visited Feb. 11, 2021). The WREB dental examination costs $2,560 plus an additional school use fee that varies by site. *See* Western Regional Examining Board, *2021 Dental Exam Fees*, available at https://wreb.org/dental-candidates/2019-dental-exam-fees/ (last visited Feb. 11, 2021).
[23] *Id*. Florida requires a periodontal examination for licensure.
[24] WREB, *2020 Dental Hygiene Examination Candidate Guide*, available at https://wreb.org/Candidates/Hygiene/hygienePDFs/2020_DH_Forms/2020_WREB_Candidate_Guide_HYG_v11012019.pdf (last visited Feb. 22, 2021). The WREB dental hygiene examination costs $1,175 plus a school use fee, which varies by site. *See* Western Regional

The Western Regional Examining Board's licensure examinations are widely accepted for licensure.[25]



The WREB does not administer a state-specific jurisprudence examination. Florida does not accept the WREB dentist or dental hygiene examinations for licensure.

Effect of Proposed Changes

HB 497 authorizes the Board of Dentistry to accept passing scores on the examinations produced by the Western Regional Examining Board for licensure as a dentist or dental hygienist, in addition to the ADEX examinations it currently accepts.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 466.006, F.S., relating to examination of dentists.
Section 2: Amends s. 466.007, F.S., relating to examination of dental hygienists.
Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DOH will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System (LEIDS) to record examination results received from the WREB dental examination. Additionally, a new web service will be required to support receiving examination results from the WREB on candidates applying for licensure in Florida, which current resources can absorb.[26]

Examining Board, *Dental Hygiene, Local Anesthesia, and Restorative Exam Fees*, https://wreb.org/hygiene-candidates/2018-hygiene-exam-fees/ (last visited Feb. 22, 2021).
[25] WREB, *supra* note 20.
[26] DOH, *supra* note 18, pp. 5-6.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Dentists and dental hygienists who have received acceptable scores on the WREB examinations will not incur additional expenses to take the ADEX examinations when applying for Florida licensure.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Dentistry has sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to dentistry and dental hygiene examinations; amending ss. 466.006 and 466.007, F.S.; authorizing the use of certain examinations produced by the Western Regional Examining Board to measure an applicant's ability to practice the profession of dentistry or dental hygiene; providing an effective date.

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

Section 1. Subsection (1), paragraph (b) of subsection (4), paragraph (a) of subsection (5), and paragraph (a) of subsection (6) of section 466.006, Florida Statutes, are amended to read:

466.006 Examination of dentists.—

(1)(a) It is the intent of the Legislature to reduce the costs associated with an independent state-developed practical or clinical examination to measure an applicant's ability to practice the profession of dentistry and to use the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., or the Western Regional Examining Board (WREB) Dental Examination in lieu of an independent state-developed practical or clinical examination. The Legislature finds that the American Dental Licensing Examination and the

CODING: Words stricken are deletions; words underlined are additions.

WREB Dental Examination, in both their ~~its~~ structure and function, consistently meet ~~meets~~ generally accepted testing standards and have ~~has~~ been found, as they are ~~it is~~ currently organized and operating, to adequately and reliably measure an applicant's ability to practice the profession of dentistry.

(b) Any person desiring to be licensed as a dentist shall apply to the department to take the licensure examinations and shall verify the information required on the application by oath. The application shall include two recent photographs. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee set by the board, which shall not exceed $425 plus the actual per-applicant ~~per applicant~~ cost to the department for purchase of some or all of the examination from the American Board of Dental Examiners, the WREB, or a ~~its~~ successor entity, if any, provided the board finds the successor entity's clinical examination complies with ~~the provisions of~~ this section. The examination fee may be refundable if the applicant is found ineligible to take the examinations.

(4) Notwithstanding any other provision of law in chapter 456 pertaining to the clinical dental licensure examination or national examinations, to be licensed as a dentist in this state, an applicant must successfully complete both of the following:

(b) A practical or clinical examination, which must be the

American Dental Licensing Examination produced by the American Board of Dental Examiners, Inc., the WREB Dental Examination, or an examination produced by a ~~its~~ successor entity, if any, that is administered in this state, provided that the board has attained, and continues to maintain thereafter, representation on the board of directors of the American Board of Dental Examiners, the examination development committee of the American Board of Dental Examiners, and such other committees of the American Board of Dental Examiners or the Western Regional Examining Board as the board deems appropriate by rule to ensure ~~assure~~ that the standards established herein are maintained organizationally. A passing score on the American Dental Licensing Examination or the WREB Dental Examination administered in this state is valid for 365 days after the date the official examination results are published.

1. As an alternative to such practical or clinical examination, an applicant may submit scores from an American Dental Licensing Examination or a WREB Dental Examination previously administered in a jurisdiction other than this state after October 1, 2011, and such examination results shall be recognized as valid for the purpose of licensure in this state. A passing score on the American Dental Licensing Examination or the WREB Dental Examination administered out of state shall be the same as the passing score for the American Dental Licensing Examination or the WREB Dental Examination administered in this

state. The examination results are valid for 365 days after the date the official examination results are published. The applicant must have completed the examination after October 1, 2011. This subparagraph may not be given retroactive application.

2. If the date of an applicant's passing American Dental Licensing Examination or passing WREB Dental Examination scores from an examination previously administered in a jurisdiction other than this state under subparagraph 1. is older than 365 days, such scores are nevertheless valid for the purpose of licensure in this state, but only if the applicant demonstrates that all of the following additional standards have been met:

a. The applicant completed the American Dental Licensing Examination or the WREB Dental Examination after October 1, 2011. This sub-subparagraph may not be given retroactive application.~~;~~

b. The applicant graduated from a dental school accredited by the American Dental Association Commission on Dental Accreditation or its successor entity, if any, or any other dental accrediting organization recognized by the United States Department of Education. ~~Provided,~~ However, if the applicant did not graduate from such a dental school, the applicant may submit proof of having successfully completed a full-time supplemental general dentistry program accredited by the American Dental Association Commission on Dental Accreditation of at least 2

consecutive academic years at such accredited sponsoring institution. Such program must provide didactic and clinical education at the level of a D.D.S. or D.M.D. program accredited by the American Dental Association Commission on Dental Accreditation. For purposes of this sub-subparagraph, a supplemental general dentistry program does not include an advanced education program in a dental specialty.~~;~~

c. The applicant currently possesses a valid and active dental license in good standing, with no restriction, which has never been revoked, suspended, restricted, or otherwise disciplined, from another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.~~;~~

d. The applicant submits proof that he or she has never been reported to the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, or the American Association of Dental Boards Clearinghouse. This sub-subparagraph does not apply if the applicant successfully appealed to have his or her name removed from the data banks of these agencies.~~;~~

e.(I)(A) The applicant submits proof of having been consecutively engaged in the full-time practice of dentistry in another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico in the 5 years immediately preceding the date of application for licensure in

this state; or

(B) If the applicant has been licensed in another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico for less than 5 years, the applicant submits proof of having been engaged in the full-time practice of dentistry since the date of his or her initial licensure.

(II) As used in this section, "full-time practice" is defined as a minimum of 1,200 hours per year for each and every year in the consecutive 5-year period or, when applicable, the period since initial licensure, and must include any combination of the following:

(A) Active clinical practice of dentistry providing direct patient care.

(B) Full-time practice as a faculty member employed by a dental or dental hygiene school approved by the board or accredited by the American Dental Association Commission on Dental Accreditation.

(C) Full-time practice as a student at a postgraduate dental education program approved by the board or accredited by the American Dental Association Commission on Dental Accreditation.

(III) The board shall develop rules to determine what type of proof of full-time practice is required and to recoup the cost to the board of verifying full-time practice under this section. Such proof must, at a minimum, be:

(A) Admissible as evidence in an administrative proceeding;

(B) Submitted in writing;

(C) Submitted by the applicant under oath with penalties of perjury attached;

(D) Further documented by an affidavit of someone unrelated to the applicant who is familiar with the applicant's practice and testifies with particularity that the applicant has been engaged in full-time practice; and

(E) Specifically found by the board to be both credible and admissible.

(IV) An affidavit of only the applicant is not acceptable proof of full-time practice unless it is further attested to by someone unrelated to the applicant who has personal knowledge of the applicant's practice. If the board deems it necessary to assess credibility or accuracy, the board may require the applicant or the applicant's witnesses to appear before the board and give oral testimony under oath.~~;~~

f. The applicant submits documentation that he or she has completed, or will complete before he or she is licensed in this state, continuing education equivalent to this state's requirements for the last full reporting biennium.~~;~~

g. The applicant proves that he or she has never been convicted of, or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice

of a health care profession in any jurisdiction.~~;~~

h. The applicant has successfully passed a written examination on the laws and rules of this state regulating the practice of dentistry and the computer-based diagnostic skills examination.~~; and~~

i. The applicant submits documentation that he or she has successfully completed the applicable examination administered by the Joint Commission on National Dental Examinations or its successor organization.

(5)(a) The practical examination required under subsection (4) shall be the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., the WREB Dental Examination, or an examination developed by a ~~its~~ successor entity, if any, provided the board finds that the successor entity's clinical examination complies with ~~the provisions of~~ this section~~,~~ and includes ~~shall include~~, at a minimum, all of the following:

1. A comprehensive diagnostic skills examination covering the full scope of dentistry and an examination on applied clinical diagnosis and treatment planning in dentistry for dental candidates.~~;~~

2. Two restorations on a live patient or patients. The board by rule shall determine the class of such restorations.~~;~~

3. A demonstration of periodontal skills on a live patient.~~;~~

4. A demonstration of prosthetics and restorative skills in complete and partial dentures and crowns and bridges and the utilization of practical methods of evaluation, specifically including the evaluation by the candidate of completed laboratory products such as, but not limited to, crowns and inlays filled to prepared model teeth.~~;~~

5. A demonstration of restorative skills on a mannequin which requires the candidate to complete procedures performed in preparation for a cast restoration.~~;~~

6. A demonstration of endodontic skills.~~; and~~

7. A diagnostic skills examination demonstrating ability to diagnose conditions within the human oral cavity and its adjacent tissues and structures from photographs, slides, radiographs, or models pursuant to rules of the board. If an applicant fails to pass the diagnostic skills examination in three attempts, the applicant is ~~shall~~ not ~~be~~ eligible for reexamination unless she or he completes additional educational requirements established by the board.

The department shall require a mandatory standardization exercise for all examiners before ~~prior to~~ each practical or clinical examination and shall retain for employment only those dentists who have substantially adhered to the standard of grading established at such exercise.

(6)(a) It is the finding of the Legislature that absent a

threat to the health, safety, and welfare of the public, the relocation of applicants to practice dentistry within the geographic boundaries of this state, who are lawfully and currently practicing dentistry in another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, based on their scores from the American Dental Licensing Examination or the WREB Dental Examination administered in a state other than this state, is substantially related to achieving the important state interest of improving access to dental care for underserved citizens of this state and furthering the economic development goals of the state. Therefore, in order to maintain valid active licensure in this state, all applicants for licensure who are relocating to this state based on scores from the American Dental Licensing Examination or the WREB Dental Examination administered in a state other than this state must actually engage in the full-time practice of dentistry inside the geographic boundaries of this state within 1 year after ~~of~~ receiving such licensure in this state. The Legislature finds that, if such applicants do not actually engage in the full-time practice of dentistry within the geographic boundaries of this state within 1 year after ~~of~~ receiving such a license in this state, access to dental care for the public will not significantly increase, patients' continuity of care will not be attained, and the economic development goals of the state will not be

significantly met.

Section 2. Paragraph (b) of subsection (4) and subsections (5) and (6) of section 466.007, Florida Statutes, are amended to read:

466.007 Examination of dental hygienists.—

(4) Effective July 1, 2012, to be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(b) A practical or clinical examination approved by the board. The examination shall be the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc., (ADEX), the Western Regional Examining Board (WREB) Dental Hygiene Examination, or an examination produced by a ~~its~~ successor entity, if any, if the board finds that the successor entity's clinical examination meets or exceeds the provisions of this section. The board shall approve the ADEX Dental Hygiene Examination or the WREB Dental Hygiene Examination if the board has attained and continues to maintain representation on the ADEX House of Representatives, the ADEX Dental Hygiene Examination Development Committee, and such other ADEX Dental Hygiene or WREB Dental Hygiene committees as the board deems appropriate through rulemaking to ensure that the standards established in this section are maintained organizationally. The ADEX Dental Hygiene Examination, the WREB Dental Hygiene Examination, or an ~~the~~ examination produced by a ~~its~~ successor

entity is a comprehensive examination in which an applicant must demonstrate skills within the dental hygiene scope of practice on a live patient and any other components that the board deems necessary for the applicant to successfully demonstrate competency for the purpose of licensure.

(5) Effective July 1, 2012, an applicant who has completed the ADEX Dental Hygiene Examination or the WREB Dental Hygiene Examination in a jurisdiction other than this state and who has obtained a passing score may practice dental hygiene in this state if the applicant:

(a) Has successfully completed the National Board Dental Hygiene Examination at any time before the date of application;

(b) Has been certified by the American Dental Association Joint Commission on National Dental Examinations at any time before the date of application, as specified by state law;

(c) Has successfully completed a written examination on the laws and rules of this state regulating the practice of dental hygiene;

(d) Has not been disciplined by a board, except for citation offenses or minor violations; and

(e) Has not been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession.

(6)(a) A passing score on the ADEX Dental Hygiene Examination or the WREB Dental Hygiene Examination administered

out of state must be considered the same as a passing score for the ADEX Dental Hygiene Examination or the WREB Dental Hygiene Examination administered in this state.

(b) If an applicant fails to pass the ADEX Dental Hygiene Examination or the WREB Dental Hygiene Examination in three attempts, the applicant is not eligible to retake the examination unless the applicant completes additional education requirements as specified by the board.

Section 3. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 725 Nonopioid Alternatives Educational Materials
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Grabowski	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Substance abuse affects millions of people in the U.S. each year. Drug overdoses have steadily increased and now represent the leading cause of accidental death in the U.S., the majority of which involve an opioid. In Florida, opioids (licit and illicit) were responsible for more than 6,000 deaths in 2019. The National Institute of Health reports that the majority of heroin users first misused a prescription opioid.

The Department of Health (DOH) publishes an educational pamphlet regarding the use of non-opioid alternatives to treat pain on its website. Current law requires that health care practitioners, except pharmacists, discuss non-opioid alternatives with a patient or the patient's representative prior to prescribing, ordering, dispensing, or administering opioids. A health care practitioner must also provide a printed copy of the DOH-developed pamphlet to a patient or the patient's representative and document the discussion in the patient's medical record. The law exempts emergency and hospice care from these requirements.

HB 725 modifies the existing requirements by allowing practitioners to provide each patient with an electronically transmitted copy of the DOH pamphlet as an alternative to a printed pamphlet.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[2] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[3] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[4]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[5] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[6]

Opioid Abuse

Opioids are psychoactive substances derived from the opium poppy, or their synthetic analogues.[7] They are commonly used as pain relievers to treat acute and chronic pain. An individual experiences pain as a result of a series of electrical and chemical exchanges among his or her peripheral nerves, spinal cord, and brain.[8] Opioid receptors occur naturally and are distributed widely throughout the central nervous system and in peripheral sensory and autonomic nerves.[9] When an individual experiences pain, the body releases hormones, such as endorphins, which bind with targeted opioid receptors.[10] This disrupts the transmission of pain signals through the central nervous system and reduces the perception of pain.[11] Opioids function in the same way by binding to specific opioid receptors in the brain, spinal cord, and gastrointestinal tract, thereby reducing the perception of pain.[12] Opioids include:[13]

- Buprenorphine (Subutex, Suboxone);

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[1] World Health Organization, *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited February 23, 2021).
[2] Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders,* (last rev. April 2019), available at http://www.samhsa.gov/disorders/substance-use (last visited February 23, 2021).
[3] National Institute on Drug Abuse*, Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 23, 2021).
[4] Id.
[5] *Supra* note 2.
[6] Id.
[7] World Health Organization, *Information Sheet on Opioid Overdose*, (Aug. 2018), available at http://www.who.int/substance_abuse/information-sheet/en/ (last visited February 23, 2021).
[8] National Institute of Neurological Disorders and Stroke, *Pain: Hope through Research*, (last rev. Aug. 13, 2019), available at https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Hope-Through-Research/Pain-Hope-Through-Research (last visited February 23, 2021).
[9] Gjermund Henriksen, Frode Willoch; *Brain Imaging of Opioid Receptors in the Central Nervous System,* 131 BRAIN 1171-1196 (2007), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2367693/ (last visited February 23, 2021).
[10] Id.
[11] Id.
[12] Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *SAMHSA Opioid Overdose Prevention Toolkit: Facts for Community Members* (2013, rev. 2014) 3, available at https://www.integration.samhsa.gov/Opioid_Toolkit_Community_Members.pdf (last visited February 23, 2021).
[13] Florida Department of Law Enforcement, Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2019 Annual Report*, (Nov. 2020), available at http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2019-Annual-Drug-Report.aspx (last visited February 23, 2021).

- Codeine;
- Fentanyl (Duragesic, Fentora);
- Fentanyl Analogs;
- Heroin;
- Hydrocodone (Vicodin, Lortab, Norco);
- Hydromorphone (Dilaudid, Exalgo);
- Meperidine;
- Methadone;
- Morphine;
- Oxycodone (OxyContin, Percodan, Percocet);
- Oxymorphone;
- Tramadol; and
- U-47700.

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.[14] Opioids can create a euphoric feeling because they affect the regions of the brain involved with pleasure and reward, which can lead to abuse.[15] Continued use of these drugs can lead to the development of tolerance and psychological and physical dependence.[16] This dependence is characterized by a strong desire to take opioids, impaired control over opioid use, persistent opioid use despite harmful consequences, a higher priority given to opioid use than to other activities and obligations, and a physical withdrawal reaction when opioids are discontinued.[17] Nearly 80 percent of people who use heroin first misused prescription opioids.[18]

An overabundance of opioids in the body can lead to a fatal overdose. In addition to their presence in major pain pathways, opioid receptors are also located in the respiratory control centers of the brain.[19] Opioids disrupt the transmission of signals for respiration in the identical manner that they disrupt the transmission of pain signals. This leads to a reduction, and potentially cessation, of an individual's respiration. Oxygen starvation will eventually stop vital organs like the heart, then the brain, and can lead to unconsciousness, coma, and possibly death.[20] Within three to five minutes without oxygen, brain damage starts to occur, soon followed by death.[21] However, this does not occur instantaneously as people will commonly stop breathing slowly, minutes to hours after the drug or drugs were used.[22]

An opioid overdose can be identified by a combination of three signs and symptoms referred to as the "opioid overdose triad": pinpoint pupils, unconsciousness, and respiratory depression.[23]

The drug overdose death rate involving opioids has increased by 200% since 2000 and has now become the leading cause of accidental deaths in the United States.[24] Opioid-involved overdoses accounted for 69 percent of drug overdose deaths in 2018.[25] Nationwide, in 2017, there were 47,600

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[14] *Supra* note 7.
[15] National Institute on Health, National Institute on Drug Abuse, *Misuse of Prescription Drugs: What Classes of Prescription Drugs Are Commonly Misused?*, (rev. Dec. 2018), available at https://www.drugabuse.gov/publications/research-reports/misuse-prescription-drugs/which-classes-prescription-drugs-are-commonly-misused (last visited February 23, 2021).
[16] *Supra* note 9.
[17] *Supra* note 7.
[18] National Institute on Health, National Institute on Drug Abuse, *Prescription Opioids and Heroin: Prescription Opioid Use Is a Risk Factor for Heroin Use*, (rev. Jan. 2018), available at https://www.drugabuse.gov/publications/research-reports/relationship-between-prescription-drug-heroin-abuse/prescription-opioid-use-risk-factor-heroin-use (last visited February 23, 2021).
[19] K.T.S. Pattinson, *Opioids and the Control of Respiration*, BRITISH JOURNAL OF ANAESTHESIA, Volume 100, Issue 6, pp. 747-758, available at http://bja.oxfordjournals.org/content/100/6/747.full (last visited February 23, 2021).
[20] Harm Reduction Coalition*, Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects* (Fall 2012), http://harmreduction.org/wp-content/uploads/2012/11/od-manual-final-links.pdf (last visited February 23, 2021).
[21] Id. at 9.
[22] Id. at 9.
[23] *Supra* note 7.
[24] Rose Rudd, MSPH, et. al., *Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014,* Morbidity and Mortality Weekly Report (MMWR) 64(50); Jan. 1, 2016, at 1378-82, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm?s_cid=mm6450a3_w (last visited February 23, 2021).
[25] Centers for Disease Control and Prevention, *Drug Overdose Deaths*, (last rev. Mar 19, 2020), available at https://www.cdc.gov/drugoverdose/data/statedeaths.html (last visited February 23, 2021).

deaths that involved an opioid (licit or illicit), and 17,029 people died from overdoses involving prescription opioids.[26] In 2019, Florida had the following opioid-involved deaths:[27]

Opioid	Caused Death	Present at Death
Oxycodone	510	671
Hydrocodone	165	393
Methadone	174	144
Morphine	984	871
Fentanyl	3,244	411
Fentanyl Analogs	922	496
Heroin	809	145

Controlled Substance Prescribing in Florida: Chronic Pain

Every physician, podiatrist, or dentist, who prescribes controlled substances in the state to treat chronic nonmalignant pain,[28] must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.[29] Before prescribing controlled substances to treat chronic nonmalignant pain, a practitioner must:[30]

- Complete a medical history and a physical examination of the patient which must be documented in the patient's medical record and include:
    - The nature and intensity of the pain;
    - Current and past treatments for pain;
    - Underlying or coexisting diseases or conditions;
    - The effect of the pain on physical and psychological function;
    - A review of previous medical records and diagnostic studies;
    - A history of alcohol and substance abuse; and
    - Documentation of the presence of one or recognized medical indications for the use of a controlled substance.
- Develop a written plan for assessing the patient's risk for aberrant drug-related behavior and monitor such behavior throughout the course of controlled substance treatment;
- Develop a written individualized treatment plan for each patient stating the objectives that will be used to determine treatment success;
- Discuss the risks and benefits of using controlled substances, including the risks of abuse and addiction, as well as the physical dependence and its consequences with the patient; and
- Enter into a controlled substance agreement with each patient that must be signed by the patient or legal representative and by the prescribing practitioner and include:
    - The number and frequency of prescriptions and refills;
    - A statement outlining expectations for patient's compliance and reasons for which the drug therapy may be discontinued; and
    - An agreement that the patient's chronic nonmalignant pain only be treated by a single treating practitioner unless otherwise authorized and documented in the medical record.

A prescribing practitioner must see a patient being treated with controlled substances for chronic nonmalignant pain at least once every three months and must maintain detailed medical records relating to such treatment.[31] Patients at special risk for drug abuse or diversion may require

[26] L. Scholl, et. al. *Drug and Opioid-Involved Overdose Deaths – United States, 2013-2017*, Morbidity and Mortality Weekly Report (MMWR) 64(50); Jan. 4, 2019, at 1378-82, available at https://www.cdc.gov/mmwr/volumes/67/wr/mm675152e1.htm?s_cid=mm675152e1_w (last visited February 23, 2021).
[27] *Supra* note 13. "Caused death" means that the medical examiner determined the drug played a causal role in the death. "Present at death" means the medical examiner determine that the drug is present or identifiable but may not have played a causal role in the death.
[28] "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.
[29] Chapter 2011-141, s. 3, Laws of Fla. (creating s. 456.44, F.S., effective July 1, 2011).
[30] Section 456.44(3), F.S.
[31] Section 456.44(3)(d), F.S.

consultation with or a referral to an addiction medicine physician or a psychiatrist.[32] The prescribing practitioner must immediately refer a patient exhibiting signs or symptoms of substance abuse to a pain management physician, an addiction medicine specialist, or an addiction medicine facility.[33]

Controlled Substance Prescribing in Florida: Acute Pain

The Boards of Dentistry, Medicine, Nursing, Optometry, Osteopathic Medicine, and Podiatric Medicine, have adopted rules establishing guidelines for prescribing a controlled substance to treat acute pain.[34] Under these guidelines, a health care practitioner must:[35]

- Conduct a medical history and physical examination of the patient and document the patient's medical record, including the presence of one or more recognized medical indications for the use of a controlled substance;
- Create and maintain a written treatment plan, including any further diagnostic evaluations or other treatments planned including non-opioid medications and treatments;
- Obtain informed consent and agreement for treatment, including discussing the risks and benefits of using a controlled substance; expected pain intensity, duration, options; and use of pain medications, non-medication therapies, and common side effects;
- Periodically review the treatment plan;
- Refer the patient, as necessary, for additional evaluation and treatment in order to meet treatment goals;
- Maintain accurate and complete medical records; and
- Comply with all controlled substance laws and regulations.

A health care practitioner who fails to follow the guidelines established by the appropriate regulatory board is subject to disciplinary action against his or her license.

Continuing Education on Controlled Substance Prescribing

All health care practitioners who are authorized to prescribe controlled substances must complete a board-approved 2-hour continuing education course, if not already required to complete such a course under his or her practice act.[36] The course must address:

- Current standards on prescribing controlled substances, particularly opiates;
- Alternatives to the current standards on controlled substance prescribing;
- Nonpharmacological therapies;
- Prescribing emergency opioid antagonists; and
- Information on the risks of opioid addiction following all stages of treatment in the management of acute pain.

The course may be taken in a long-distance format and must be included in the continuing education required for the biennial renewal of a health care practitioner's license. The Department of Health (DOH) may not renew the license of a prescriber who fails to complete this continuing education requirement.

[32] Section 456.44(3)(e), F.S.
[33] Section 456.44(3)(g), F.S.
[34] Rules 64B5-17.0045, 64B8-9.013, 64B9-4.017, 64B13-3.100, 64B15-14.005, 64B18-23.002, F.A.C., respectively. *See also* s. 456.44(4), F.S.
[35] Id.
[36] Section 456.0301, F.S. Pursuant to s. 464.013(3)(b), F.S., an advanced registered nurse practitioner must complete at least 3 hours of continuing education hours on the safe and effective prescribing of controlled substances each biennial renewal cycle. Section 466.0135, F.S., requires dentists to complete at least 2 continuing education hours on the safe and effective prescribing of controlled substances for license renewal. Rules 64B8-30.005(6) and 64B15-6.0035(6), F.A.C., requires physician assistants who prescribe controlled substances to complete 3 hours of continuing education on the safe and effective prescribing of controlled substance medications.

Non-Opioid Alternatives

Using a non-opioid treatment option may eliminate the need for an opioid or reduce the amount of opioids used. The Center for Disease Control and Prevention's (CDC) guidelines for treating chronic pain indicate that non-pharmacologic therapy and non-opioid pharmacologic therapy are the preferred manners of treatment for chronic pain.[37] Examples of non-opioid treatments include:[38]

- Non-opioid medications, such as non-steroidal anti-inflammatory agents (NSAIDs), acetaminophen, corticosteroids, and topical products;
- Behavioral interventions, such as meditation;
- Environmental-based interventions, such as lighting alterations and music therapy; and
- Physical interventions, such as surgery, chiropractic care, acupuncture, physical therapy, and massage therapy.

The CDC also advises that opioid therapy should only be considered if the expected benefit to the patient outweighs the risk, and if used, should be combined with non-pharmacologic and non-opioid pharmacologic therapy.[39]

Florida Law on Non-Opioid Alternatives

DOH is required to develop and publish on its website, an educational pamphlet regarding the use of non-opioid alternatives to treat pain under current law.[40] The pamphlet addresses:[41]

- Nonopioid alternatives, including non-opioid medications and non-pharmacological therapies; and
- Advantages and disadvantages of using each of the non-opioid alternatives.

All health care practitioners, except pharmacists, must discuss non-opioid alternatives for treating pain with their patients prior to providing anesthesia or prescribing, ordering, dispensing, or administering an opioid.[42] The health care practitioner must discuss the advantages and disadvantages of using a non-opioid alternative, document the discussion in the patient's record, and provide the patient with a printed copy of the DOH-developed pamphlet.[43] The only exception to this requirement is when a health care practitioner is providing emergency care or hospice services.[44]

The law also allows for a practitioner to inform the patient's representative, instead of the patient, of non-opioid alternatives for treating pain and discuss the advantages and disadvantages of using such alternatives. A health care practitioner must document any such discussion in the patient's medical record.[45]

Effect of the Proposed Changes

[37] Centers for Disease Control and Prevention, *Nonopioid Treatments for Chronic Pain,* available at https://www.cdc.gov/drugoverdose/pdf/nonopioid_treatments-a.pdf (last visited February 23, 2021).
[38] The Joint Commission, *Non-Pharmacologic and Non-Opioid Solutions for Pain Management*, QUICK SAFETY 44 (Aug. 2018), available at https://www.jointcommission.org/assets/1/23/QS_Nonopioid_pain_mgmt_8_15_18_FINAL1.PDF (last visited February 23, 2021).
[39] *Supra* note 37.
[40] Chapter 2019-123, L.O.F., codified at s. 456.44(7), F.S. The website and pamphlet may be accessed at http://www.floridahealth.gov/programs-and-services/non-opioid-pain-management/index.html (last visited February 23, 2021).
[41] Id.
[42] Section 456.44(7)(c), F.S.
[43] Id.
[44] "Emergency care and services" means medical screening, examination, and evaluation by a physician or other authorized personnel under the supervision of a physician to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relive or eliminate the emergency medical condition, within the service capability of the facility (s. 395.002, F.S.). "Hospice services" means items and services furnished to a patient and family by a hospice, or by others under arrangements with such a program, in a place of temporary or permanent residence used as the patient's home for the purpose of maintaining the patient at home; or, if the patient needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the hospice inpatient facility (s. 400.601, F.S.).
[45] *Supra* note 42.

HB 725 modifies the existing requirements on practitioners by allowing them to provide each patient with an electronically transmitted copy of the DOH pamphlet as an alternative to a printed pamphlet.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.44, F.S., relating to controlled substance prescribing.
Section 2: Provides an effective date of July 1, 2021.

II. 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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking is not necessary to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to nonopioid alternatives educational materials; amending s. 456.44, F.S.; authorizing certain health care practitioners to provide an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain to certain persons electronically; providing an effective date.

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

Section 1. Paragraph (c) of subsection (7) of section 456.44, Florida Statutes, is amended to read:

456.44 Controlled substance prescribing.—

(7) NONOPIOID ALTERNATIVES.—

(c) Except when a patient is receiving care in a hospital critical care unit or emergency department or a patient is receiving hospice services under s. 400.6095, before providing care requiring the administration of anesthesia involving the use of an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812, or prescribing or ordering an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 for the treatment of pain, a health care practitioner who prescribes or orders an opioid drug must:

1. Inform the patient or the patient's representative of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

available nonopioid alternatives for the treatment of pain, which may include nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner.

2. Discuss with the patient or the patient's representative the advantages and disadvantages of the use of nonopioid alternatives, including whether the patient is at a high risk of, or has a history of, controlled substance abuse or misuse and the patient's personal preferences.

3. Provide the patient or the patient's representative with an electronically transmitted or a printed copy of the educational pamphlet described in paragraph (b).

4. Document the nonopioid alternatives considered in the patient's record.

Section 2. This act shall take effect July 1, 2021.

CODING: Words stricken are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 803 Access to Health Care Practitioner Services
SPONSOR(S): Caruso
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee		Morris	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 803 incentivizes physicians to provide pro bono health care services to certain low-income individuals and provides an opportunity for physicians from other jurisdictions and retired physicians to provide health services to low-income and medically underserved individuals in this state.

The bill requires Department of Health (DOH) to waive the renewal fee of a physician who demonstrates the provision of at least 160 hours of pro bono medical services to certain populations within the biennial licensure renewal period. Demonstration of 120 hours gains an exemption from the 40 hours of continuing medical education required for license renewal.

The bill authorizes both the Board of Medicine and the Board of Osteopathic Medicine to issue a limited number of restricted licenses to physicians not licensed in Florida who contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medically underserved area. An applicant for a restricted license must hold an active, unencumbered license to practice medicine in another jurisdiction of the U.S. or Canada and pass a background screening. Prior to the end of the 36-month contract, the physician must take and pass the appropriate licensing exam to become fully licensed in this state. Breach of contract precludes full licensure.

The bill also creates a registration process for retired physicians to provide volunteer health care services if the physician held an active license status to practice and maintained such license in good standing in this state or in another jurisdiction of the United States or Canada for at least 20 years and contracts with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area. Such a physician must work under the supervision of a non-retired physician who holds an active, unencumbered license, provide only medical services of the type and within the specialty performed by the physician prior to retirement, and not perform surgery or prescribe controlled substances. These physicians are exempt from any application, licensure, unlicensed activity, and renewal fees. Registration must be renewed biennially to demonstrate compliance with registration requirements.

The “Access to Health Care Act” was enacted in 1992 to encourage health care providers to provide care to low-income persons. The bill redefines low-income persons to include individuals that do not have health insurance and have a family income that does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill has an indeterminate, insignificant, negative fiscal impact on DOH. The bill has no impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Allopathic Physicians

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

Allopathic Licensure by Examination

To be licensed by examination as an allopathic physician, an individual must:[1]

- Be at least 21 years of age;
- Be of good moral character;
- Have not committed an act or offense that would constitute the basis for disciplining a physician, pursuant to s. 458.331, F.S.;
- Have completed 2 years of post-secondary education which includes, at a minimum, courses in fields such as anatomy, biology, and chemistry prior to entering medical school;
- Meet one of the following medical education and postgraduate training requirements:
    - Graduated from an allopathic medical school recognized and approved by an accrediting agency recognized by the U.S. Office of Education or recognized by an appropriate governmental body of a U.S. territorial jurisdiction, and has completed at least one year of approved residency training;
    - Graduated from an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute as meeting the standards required to accredit U.S. medical schools, and has completed at least one year of approved residency training; or
    - Graduated from an allopathic foreign medical school that has not been certified pursuant to statute; has an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG),[2] has passed that commission's examination; and has completed an approved residency or fellowship of at least 2 years in one specialty area;
- Submit to a background screening by the DOH; and
- Have obtained a passing score on:
    - The United States Medical Licensing Examination (USMLE);
    - A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or
    - The Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX), if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the United States or Canada, and has practiced for a period of at least 10 years.

Allopathic Licensure by Endorsement

[1] Section 458.311(1), F.S.

[2] A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination. (Section 458.311, F.S.)

An individual who holds an active license to practice medicine in another jurisdiction may seek licensure by endorsement to practice medicine in Florida.[3] The applicant must meet the same requirements for licensure by examination. To qualify for licensure by endorsement, the applicant must also submit evidence of the licensed active practice of medicine in another jurisdiction for at least two of the preceding four years, or evidence of successful completion of either a board-approved postgraduate training program within two years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure.[4]

When the allopathic board determines that any applicant for licensure by endorsement has failed to meet, to the allopathic board's satisfaction, each of the appropriate requirements for licensure by endorsement, it may enter an order requiring one or more of the following terms:[5]

- Refusal to certify to DOH an application for licensure, certification, or registration;
- Certification to DOH of an application for licensure, certification, or registration with restrictions on the scope of practice of the licensee; or
- Certification to DOH of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the allopathic board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

Allopathic License Renewal

Physician licenses are renewed biennially. The current fee for the timely renewal of a license is $360; this fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.[6] However, renewal fees are waived for a physician holding a restricted license or temporary certificate for practice in areas of critical need who submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.[7]

Within each biennial licensure renewal period, a physician must complete 40 hours of continuing medical education (CME) courses approved by the allopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;[8]
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;[9]
- Two hours of CME relating to the prevention of medical errors;[10] and
- Two hours of CME on prescribing controlled substances.[11]

The allopathic board authorizes up to 5 hours of the required CME hours to be fulfilled by the performance of pro bono services to indigent or underserved persons or in areas of critical need.[12] The allopathic board has approved as pro bono service sites, federally funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH. The licensee must obtain prior approval for such services to apply against the CME requirement if pro bono services are to be provided to any other entity.

[3] Section 458.313, F.S.
[4] Section 458.313(c), F.S.
[5] Section 458.313(7), F.S.
[6] Rule 64B8-3.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of $100 must be paid at the time of renewal.
[7] Id.
[8] Section 456.031, F.S.
[9] Section 456.033, F.S.
[10] Section 456.013(7), F.S.
[11] Section 456.0301, F.S.
[12] Rule 64B8-13.005(9), F.A.C. Indigency is persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

DOH may not renew a license until a licensee complies with all CME requirements.[13] The allopathic board may also take action against a license for failure to comply with CME requirements.

Osteopathic Physicians

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board), in conjunction the DOH. The chapter provides, among other things, general licensure requirements, including by examination for medical school graduates and licensure by endorsement requirements.

Osteopathic General Licensure

To be licensed as an osteopathic physician, an individual must have:[14]

- Completed at least three years of pre-professional post-secondary education;
- Not committed, or be under investigation in any jurisdiction for, an act or offense that would constitute the basis for disciplining an osteopathic physician, unless the osteopathic board determines such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against by the licensing authority in any jurisdiction;
- Not received less than a satisfactory evaluation from an internship, residency, or fellowship training program;
- Submitted to a background screening by the DOH;
- Graduated from a medical college recognized and approved by the American Osteopathic Association;
- Successfully completes an internship or a residency of at least 12 months in a program accredited by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education; and
- Obtained a passing score, as established by rule of the osteopathic board, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the osteopathic board, no more than five years prior to applying for licensure.[15]

Osteopathic Licensure by Endorsement

If an applicant for a license to practice osteopathic medicine is licensed in another state, the applicant must have actively practiced osteopathic medicine within the two years prior to applying for licensure in this state.[16] If it has been more than two years since the active practice of osteopathic medicine and more than two years since completion of a resident internship, residency, or fellowship and if the osteopathic board determines that the disruption in practice has adversely affected the osteopathic physician's present ability to practice, the osteopathic board may:[17]

- Deny the application;
- Issue the license with reasonable restrictions or conditions; or
- Issue the license upon receipt of documentation confirming the applicant has met any reasonable conditions of the osteopathic board.

Osteopathic License Renewal

[13] Section 456.031, F.S.
[14] Section 459.0055(1), F.S.
[15] However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.
[16] Section 459.0055(2), F.S.
[17] Id.

Osteopathic physician licenses are renewed biennially. The current fee for the timely renewal of a license is $400; this fee also applies to limited licenses and temporary certificates for practice in areas of critical need.[18] However, the renewal fees are waived if an osteopathic physician holding a restricted license or temporary certificate for practice in areas of critical need submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.[19]

Within each biennial licensure renewal period, an osteopathic physician must complete 40 hours of CME courses approved by the osteopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;[20]
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;[21]
- Two hours of CME relating to the prevention of medical errors;[22]
- A one-hour course on profession and medical ethics education;
- A one-hour course on the federal and state laws related to the prescribing of controlled substances;[23] and
- Two hours of CME on prescribing controlled substance.[24]

The osteopathic board authorizes up to 10 hours of the required CME hours to be fulfilled by the performance of pro bono medical services to indigent or underserved persons or in areas of critical need.[25] The osteopathic board has approved federally-funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH as pro bono sites. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply to the CME requirement.

DOH may not renew a license until a licensee complies with all CME requirements.[26] The osteopathic board may also take action against a license for failure to comply with CME requirements.[27]

Financial Responsibility

Both allopathic and osteopathic physicians must carry malpractice insurance or demonstrate proof of financial responsibility as a condition of licensure or renewal of licensure. A physician may meet this requirement by:

- Maintaining financial liability coverage in an amount of at least $100,000 per claim, with a minimum annual aggregate of at least $300,000 if the licensee does not have hospital privileges;
- Maintaining financial liability coverage in an amount of at least $250,000 per claim, with a minimum annual aggregate of at least $750,000 if the licensee has hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least $100,000 per claim, with a minimum aggregate availability of at least $300,000 if the licensee does not have hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least $250,000 per claim, with a minimum aggregate availability of at least $750,000 if the licensee has hospital privileges; or

[18] Rule 64B15-10.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of $100 must be paid at the time of renewal.
[19] Id.
[20] Section 456.031, F.S.
[21] Section 456.033, F.S.
[22] Section 456.013(7), F.S.
[23] Rule 64B15-13.001, F.A.C.
[24] Section 456.0301, F.S.
[25] Rule 64B15-13.005, F.A.C. Indigency refers to persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.
[26] Section 456.0361, F.S.
[27] Section 456.0361(2). F.S.

- Not obtaining malpractice insurance or demonstrating financial ability but agreeing to satisfy any adverse judgments and prominently posting a notice in the reception area to notify all patients of such decision.[28]

Physician Licensure for Volunteer and Low-Income Practice

Allopathic Restricted Licenses

Current law authorizes the allopathic board to issue restricted licenses to practice medicine in this state, without examination, for physicians who contracts to practice for 24 months solely in the employ of the state or a federally funded community health center or migrant health center. An applicant for a restricted license must also: [29]

- Meet the requirements for licensure by examination; and
- Have actively practiced medicine in another jurisdiction for at least two years of the immediately preceding four years or has completed board-approved postgraduate training within the year preceding submission of the application.

A restricted licensee must take and pass the licensure examination prior to completion of the 24-month practice period.[30] A restricted licensee who breaches the terms of his or her contract is prohibited from being licensed as a physician in this state.[31]

The allopathic board may issue up to 100 restricted licenses annually.[32]

Osteopathic Limited Licenses

Current law authorizes the osteopathic board to issue limited licenses to certain osteopathic physicians who will only practice in areas of critical need or in medically underserved areas. A limited license may be issued to an individual who:[33]

- Submits the licensure application and required application fee of $100;
- Provides proof that he or she has been licensed to practice osteopathic medicine in any jurisdiction of the United States in good standing for at least 10 years;
- Has completed at least 40 hours of continuing education within the preceding two year period; and
- Will only practice in the employ of public agencies, nonprofit entities, or agencies or institutions in areas of critical need or in medically underserved areas.

If it has been more than three years since the applicant has actively practiced osteopathic medicine, the full-time director of the local county health department must supervise the applicant for at least six months after issuance of the limited license.[34]

The osteopathic board must review the practice of each physician who holds a limited license at least biennially to ensure that he or she is in compliance with the practice act and rules adopted thereunder.[35]

Temporary Certificate for Practice in Areas of Critical Need

[28] Sections 458.320, F.S., and 459.0085, F.S.
[29] Section 458.310, F.S.
[30] Section 458.310(3), F.S.
[31] Section 458.310(4), F.S.
[32] Section 458.310(2), F.S.
[33] Section 459.0075, F.S., and r. 64B15-12.005, F.A.C.
[34] Section 459.0075(2), F.S.
[35] Section 459.0075(5), F.S.

The Boards of Medicine and Osteopathic Medicine (collectively "boards") may issue a temporary certificate to practice in areas of critical need to an allopathic or osteopathic physician who will practice in an area of critical need. An applicant for a temporary certificate must: [36]

- Be actively licensed to practice medicine in any jurisdiction of the U.S.;
- Be employed by or practice in a county health department, correctional facility, Department of Veterans' Affairs clinic, federally-funded community health care center, or any other agency or institution designated by the State Surgeon General and provides health care to underserved populations; or
- Practice for a limited time to address critical physician-specialty, demographic, or geographic needs for this state's workforce as determined by the Surgeon General.

The boards are authorized to administer an abbreviated oral examination to determine a physician's competency, but a written examination is not required.[37] The boards may deny the application, issue the temporary certificate with reasonable restrictions, or require the applicant to meet any reasonable conditions of the allopathic or osteopathic board prior to issuing the temporary certificate if it has been more than three years since the applicant has actively practiced and the respective board determines the applicant lacks clinical competency, adequate skills, necessary medical knowledge, or sufficient clinical decision-making.[38]

Fees for the temporary certificate for practice in areas of critical need include a $300 application fee and $429 initial licensure fee; however, these fees may be waived if the individual is not compensated for his or her practice.[39] The temporary certificate is only valid for as long as the Surgeon General determines that critical need remains an issue in this state.[40] However, the boards must review the temporary certificate holder at least annually to ensure that he or she is in compliance with the practice act and rules adopted thereunder.[41] A board may revoke or restrict the temporary certificate for practice in areas of critical need if noncompliance is found.[42]

Florida Volunteer Protection Act

The Florida Volunteer Protection Act (FVPA), s. 768.1355, F.S., limits the civil liability for volunteers. Under the FVPA, any person who volunteers to perform any service for any nonprofit organization, without compensation from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization when acting within the scope of any official duties.[43] The FVPA exempts volunteers from civil liability for any act or omission which results in personal injury or property damage if:[44]

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.

If a volunteer is determined not to be liable pursuant to these provisions, the nonprofit organization for which the volunteer was performing services when the damages were caused is liable for the damages

[36] Sections 458.315, and 459.0076, F.S.
[37] Id.
[38] Sections 458.315(3)(b), and 459.0076(3)(b), F.S.
[39] Rules 64B8-3.003, and 64B15-10.002, F.A.C.
[40] Sections 458.315(3), and 459.0076(3), F.S.
[41] Sections 458.315(3)(c), and 459.0076(3)(c), F.S.
[42] Id.
[43] Section 768.1355, F.S. Compensation does not include reimbursement for actual expenses, a stipend under the Domestic Service Volunteer Act of 1973 (i.e. Americorps and SeniorCorps), or other financial assistance that is valued at less than two-thirds of the federal minimum wage.
[44] Section 768.1355(1), F.S.

to the same extent as the nonprofit organization would have been liable if the liability limitation under the Act had not been provided.[45]

Access to Health Care Act

The "Access to Health Care Act" (Act), s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons.[46] Low-income persons include:

- A person who is Medicaid-eligible;
- A person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level;[47] or
- Any eligible client of DOH who voluntarily chooses to participate in a program offered or approved by the department.

Health care providers under the Act include, among others, allopathic and osteopathic physicians.[48] DOH administers the Act through the Volunteer Health Services Program, which works with DOH entities and community and faith-based health care providers to promote access to quality health care for the medically underserved and uninsured in this state.[49]

The Act grants sovereign immunity[50] to health care providers who execute a contract with a governmental contractor[51] and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., so have sovereign immunity while acting within the scope of duties required under the Act.[52] Therefore, the state will defend a health care provider covered under the Act in any action alleging harm or injury, and any recovery would be limited to $200,000 for one incident and a total of $300,000 for all recoveries related to one incident.

A contract under the Act must pertain to volunteer, uncompensated services for which the provider may not receive compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[53]

The Act establishes several contractual requirements for government contractors and health care providers. The contract must require the government contractor to retain the right of dismissal or

[45] Section 768.1355(3), F.S.
[46] Section 766.1115, F.S.
[47] The federal poverty level is $12,880 for a single person and $26,500 for a family of four. U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2021,* (Jan. 13, 2021), available at https://aspe.hhs.gov/poverty-guidelines (last visited Feb. 23, 2021).
[48] Section 766.1115(3)(d), F.S.,
[49] DOH, *Volunteer Health Services*, available at http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/index.html (last visited Feb. 23, 2021).
[50] The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent. According to United States Supreme Court Justice Oliver Wendell Holmes, citing the noted 17th century Hobbes work, *Leviathan*, "a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." State governments in the United States, as sovereigns, inherently possess sovereign immunity. Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. When an officer, employee, or agency of the state is sued, the state steps in as the party litigant and defends against the claim. A person may recover no more than $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000. The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature. *See* Black's Law Dictionary, 3rd Pocket Edition, 2006; *Kawananakoa v Polyblank*, 205 U.S. 349, 353 (1907); Fla. Jur. 2d, Government Tort Liability, Sec. 1.; Section 768.28, F.S.
[51] A governmental contractor is the DOH, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity. Section 766.1115(3)(c), F.S.
[52] Section 766.1115(4), F.S.
[53] Section 766.1115(3)(a), F.S.

termination of any health care provider delivering services under the contract[54] and to have access to the patient records of any health care provider delivering services under the contract.[55] The health care provider must, under the contract, report adverse incidents and information on treatment outcomes to the governmental contractor.[56] The governmental contractor or the health care provider must make patient selection and initial referrals.[57] The health care provider is subject to supervision and regular inspection by the governmental contractor.[58]

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.[59]

In Fiscal Year 2019-2020, 13,340 licensed health care professionals (plus an additional 8,591 clinic staff volunteers) provided 421,412 health care services under the Act.[60] The clinics and organizations who participate in the program report that a total of 879,467 hours were donated at a value of approximately $183 million.[61]

Since February 15, 2000, 12 claims have been filed against the Volunteer Health Services Program.[62]

Effect of Proposed Changes

Restricted Licenses to Practice Medicine or Osteopathic Medicine

The bill amends the criteria for the allopathic board to issue restricted licenses to practice allopathic medicine, and authorizes the osteopathic board to issue restricted licenses to practice osteopathic medicine to physicians who contract to practice for 36 months in certain settings. The contract must be for employment by:

- This state;
- A federally funded community health center;
- A migrant health center;
- A free clinic that only delivers medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or
- A health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.[63]

The bill increases the number of restricted licenses that each board may issue from 100 to 300; however, the bill authorizes the boards to issue an unlimited number of restricted licenses to physicians who hold active, unencumbered licenses in Canada. To obtain a restricted license, an applicant must:

- Submit a completed application;
- Be at least 21 years old;
- Be of good moral character;

[54] Section 766.1115(4)(a), F.S
[55] Section 766.1115(4)(b), F.S
[56] Section 766.1115(4)(c), F.S
[57] Section 766.1115(4)(d), F.S
[58] Section 766.1115(4)(f), F.S.
[59] Section 766.1115(5), F.S.
[60] Department of Health, *Volunteer Health Care Provider Program Annual Report, Fiscal Year 2019-2020*, (Dec. 2020), available at http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHCPPAnnualReport19-20.pdf (last visited Feb. 23 2021).
[61] Id at p. 5.
[62] Id at p. 23.
[63] As of February 22, 2021, Florida has 751 health professional shortage areas and 130 medically underserved areas. *See* https://data.hrsa.gov/topics/health-workforce/shortage-areas (last visited Feb. 23, 2021) (hover over Florida on the map to get the number of health professional shortage areas and click on the State Summary of Medically Underserved Areas/Populations to obtain the number of medically underserved areas).

- Have not committed an act or offense that would constitute the basis for disciplining a physician pursuant to s. 458.331, F.S., or an osteopathic physician pursuant to ch. 459, F.S.;
- Submit to a background screening by DOH; however, a Canadian applicant must also provide the applicable board with a printed or electronic copy of his or her fingerprint-based, national Canadian criminal history records check, which must have been completed within six months of the date of application;
- Submit evidence of the active licensed practice of medicine or osteopathic medicine, as appropriate in another jurisdiction for at least two of the immediately preceding four years, or completion of postgraduate training approved by the appropriate board within the year immediately preceding the filing of an application;
- Enter into a contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.

Additionally, an osteopathic physicians applying for a restricted license must demonstrate:

- Completion of at least three years of pre-professional postsecondary education;
- That he or she is not under investigation in any jurisdiction that would constitute a violation of the osteopathic medicine practice act: and
- That he or she has not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against, by the licensing authority in any jurisdiction.

Prior to the conclusion of the contracted practice period, an allopathic or osteopathic physician must take the appropriate licensure examination to become fully licensed in this state. However, a physician who breaches the terms of the employment contract may not be licensed as a physician in this state.

The bill also repeals the authority of the Board of Medicine to adopt rules related to the criteria for the issuance of restricted licenses. However, both the allopathic and osteopathic boards have broad grants of rulemaking authority to adopt rules implementing statutes related to the licensure and regulation of physicians.[64] Therefore, the boards may adopt any rules necessary to implement the restricted licenses.

The bill maintains current law authorizing limited licenses for osteopathic physicians.

Volunteer Retired Physician Registration

The bill creates a registration program to allow retired physicians to practice medicine under contract with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area, as designated by the U.S. Department of Health and Human Services.

The bill authorizes a retired physician to register as a volunteer retired physician if the physician:

- Submits an application to the board within two years after changing the license to practice from active status to retired status for an allopathic physician, of if he or submits an application to board no more than six months before the license permanently expires and no later than two years after such expiration for an osteopathic physician;
- Provides proof of active medical practice for at least three of the five years immediately preceding the date on which the license changed from active status to retired status;
- Has held an active license to practice medicine or osteopathic medicine and maintained such license in good standing in this state or in another jurisdiction or the United States or Canada for at least 20 years;

[64] *See* s. 458.309 and 459.005, F.S.

- Works under the supervision of a non-retired allopathic physician or osteopathic physician, as applicable, who holds an active, unencumbered license;
- Only provides medical services of the type and within the specialty performed by the physician prior to retirement; and
- Does not perform surgery or prescribe controlled substances.

DOH must waive all application, licensure, unlicensed activity, and renewal fees for retired physicians who qualify for registration under the provisions of the bill. Registration must be renewed biennially to demonstrate compliance with registration requirements. A board may deny, revoke, or impose restrictions or conditions on a registration if there is a violation of the practice act or the core licensing statute (ch. 456, F.S.). A board may also revoke or deny a registration for failure to comply with registration requirements.

Licensure Renewals

The bill requires DOH to waive the licensure renewal fee of an allopathic or osteopathic physician who demonstrates to DOH, in a manner provided by department rule, that he or she has provided at least 160 hours of pro bono medical services to indigent persons or medically underserved populations within the biennial renewal period.

If an allopathic or osteopathic physician provides documentation to DOH that he or she has provided at least 120 hours of pro bono medical services within the biennial licensure period, he or she is exempt from the 40 hours of continuing medical education required for license renewal. This exemption would also apply to any of the specific courses, such as the courses on domestic violence, prevention of medical errors, and prescribing controlled substances, that are calculated as a part of the required 40 hours of continuing medical education.

A physician may receive both the waiver of the licensure renewal fee and an exemption from the continuing medical education requirements if the required number of pro bono hours are provided.

Physician Licensure by Examination

Currently, allopathic physicians who hold an active unencumbered license to practice medicine in Canada who have practiced at least 10 years may use a passing score for the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure in this state. The bill clarifies the requirement that allopathic physicians licensed in Canada must practice for 10 years to use the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure in this state.

Access to Health Care Act

The bill increases the eligibility for services under the Act by amending the definition of low-income to mean a person without health insurance and whose family income does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 456.013, F.S., relating to department; general licensing provisions.
Section 2 Amends s. 458.310, F.S., relating to restricted licenses.
Section 3 Creates s. 458.3105, F.S., relating to registration of volunteer retired physicians.
Section 4 Amends s. 458.311, F.S., relating to licensure by examination; requirements; fees.
Section 5 Amends s. 458.319, F.S., relating to renewal of license.
Section 6 Creates s. 459.00751, F.S., relating to restricted licenses.
Section 7 Creates s. 459.00752, F.S., relating to registration of volunteer retired osteopathic physicians.
Section 8 Amends s. 459.008, F.S., relating to renewal of licenses and certificates.

Section 9 Amends s. 766.1115, F.S., relating to health care providers; creation of agency relationship with governmental contractors.

Section 10 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate negative fiscal impact on DOH associated with the loss of application, licensure, unlicensed activity, and/or renewal fees for those physicians who qualify for the waiver of such fees. It is unknown how many may qualify, but it is not likely to be significant.

2. Expenditures:

   The bill has an indeterminate, insignificant, negative fiscal impact on DOH relating to rulemaking and processing restricted licenses and registrations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Physicians performing pro bono medical services may not have to pay licensure renewal fees or pay for continuing education courses.

Entities providing continuing education courses may experience reduced enrollment if physicians provide at least 120 hours of pro bono medical services and take advantage of the continuing education exemption.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Both the allopathic and osteopathic boards have sufficient rulemaking authority to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to access to health care practitioner services; amending s. 456.013, F.S.; exempting physicians and osteopathic physicians who provide a certain number of hours of pro bono services from continuing education requirements; amending s. 458.310, F.S.; revising the eligibility criteria for a restricted license; creating s. 458.3105, F.S.; establishing a registration program for volunteer retired physicians; providing eligibility criteria for such registration; requiring biennial registration renewal; requiring the Department of Health to waive certain fees; authorizing the Board of Medicine to deny, revoke, or impose restrictions or conditions on a registration for certain violations and noncompliance; amending s. 458.311, F.S.; revising the physician licensure criteria for Canadian applicants; amending s. 458.319, F.S.; requiring the department to waive a physician's license renewal fee under certain circumstances; deleting an obsolete date; creating s. 459.00751, F.S.; providing legislative intent; authorizing the Board of Osteopathic Medicine to issue a restricted license to qualified applicants; providing eligibility criteria for such license; requiring a restricted licensee to take and

successfully complete a specified licensure examination to become fully licensed; prohibiting licensure if a restricted licensee breaches the terms of an employment contract; creating s. 459.00752, F.S.; establishing a registration program for volunteer retired osteopathic physicians; providing eligibility criteria for such registration; requiring biennial registration renewal; requiring the Department of Health to waive certain fees; authorizing the Board of Osteopathic Medicine to deny, revoke, or impose restrictions or conditions on a registration for certain violations or noncompliance; amending s. 459.008, F.S.; requiring the department to waive an osteopathic physician's license or certificate renewal fee under certain circumstances; deleting an obsolete date; amending s. 766.1115, F.S.; revising the definition of the term "low-income" for purposes of the Access to Health Care Act; providing an effective date.

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

Section 1. Subsections (6) and (9) of section 456.013, Florida Statutes, are amended to read:

456.013 Department; general licensing provisions.—

(6) As a condition of renewal of a license, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine shall each require licensees which they respectively regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years. The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment. This provision may ~~shall~~ not be construed to limit the number of hours that a licensee may obtain in risk management or cost containment to be credited toward satisfying the 40 or more required hours. This provision may ~~shall~~ not be construed to require the boards to impose any requirement on licensees except for the completion of at least 40 hours of continuing education every 2 years. Each of such boards shall determine whether any specific continuing education requirements not otherwise mandated by law shall be mandated and shall approve criteria for, and the content of, any continuing education mandated by such board. Notwithstanding any other provision of law, the board, or the department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a

member of a probable cause panel following the expiration of a board member's term. Other boards within the Division of Medical Quality Assurance, or the department if there is no board, may adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, for serving as a volunteer expert witness for the department in a disciplinary case, or for serving as a member of a probable cause panel following the expiration of a board member's term.

(9) Any board that currently requires continuing education for renewal of a license, or the department if there is no board, shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. However, a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 who submits to the department documentation proving that he or she has completed at least 120 hours of pro bono services within a biennial licensure period is exempt from the continuing education requirements established by board rule under subsection (6). The board, or the department if there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing

education under this subsection. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department if there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department if there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for administering continuing education requirements adopted by the boards or the department if there is no board.

Section 2. Subsections (2) and (3) of section 458.310, Florida Statutes, are amended to read:

458.310 Restricted licenses.—

(2) The board ~~of Medicine~~ may annually~~, by rule, develop criteria and, without examination,~~ issue restricted licenses authorizing the practice of medicine in this state ~~annually~~ to up to 300 persons and to an unlimited number of physicians who hold active, unencumbered licenses to practice medicine in Canada if such applicants complete all of the following ~~100 persons to practice medicine in this state who~~:

(a) Submit to the department a completed application form.

(b)~~(a)~~ Meet the requirements of s. 458.311(1)(b), (c), (d), and (g). A Canadian applicant must also provide the board

with a printed or electronic copy of his or her fingerprint-based, national Canadian criminal history records check, conducted within 6 months after the date of application.~~;~~

(c)~~(b)~~ Show evidence of the active licensed practice of medicine in another jurisdiction for at least 2 years of the immediately preceding 4 years, or completion of board-approved postgraduate training within the year immediately preceding the filing of an application.~~; and~~

(d)~~(c)~~ Enter into a contract to practice for a period of up to 36 ~~24~~ months ~~solely~~ in the employ of the state, ~~or~~ a federally funded community health center, or a migrant health center; or a free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or a health care provider in a health professional shortage area or medically underserved area designated by the United States Department of Health and Human Services~~, at the current salary level for that position~~. The board may ~~of Medicine shall~~ designate other areas of critical need in the state where these restricted licensees may practice.

(3) Before the end of the contracted ~~24-month~~ practice period, the restricted licensee ~~physician~~ must take and successfully complete the licensure examination under s. 458.311 to become fully licensed in this state.

Section 3. Section 458.3105, Florida Statutes, is created to read:

458.3105 Registration of volunteer retired physicians.—

(1) A retired physician may register under this section to practice medicine as a volunteer retired physician if he or she completes all of the following:

(a) Submits an application to the board on a form developed by the department within 2 years after the date on which his or her license changed from active to retired status.

(b) Provides proof to the department that he or she actively practiced medicine for at least 3 of the 5 years immediately preceding the date on which his or her license changed from active to retired status.

(c) Has held an active license to practice medicine and maintained such license in good standing in this state or in at least one other jurisdiction of the United States or Canada for at least 20 years.

(d) Contracts with a health care provider to provide free, volunteer medical services to indigent persons or medically underserved populations in health professional shortage areas or medically underserved areas designated by the United States Department of Health and Human Services.

(e) Works under the supervision of a nonretired physician who holds an active, unencumbered license.

(f) Only provides medical services of the type and within the specialty that he or she performed before retirement and does not perform surgery or prescribe a controlled substance as

defined in s. 893.02.

(2) The retired physician shall apply biennially to the board for renewal of his or her registration by demonstrating to the board compliance with this section.

(3) The department shall waive all application, licensure, unlicensed activity, and renewal fees for qualifying retired physicians under this section.

(4) The board may deny, revoke, or impose restrictions or conditions on a registration for any violation of this chapter or chapter 456 or rules adopted thereunder, or deny or revoke a registration for noncompliance with this section.

Section 4. Paragraph (h) of subsection (1) of section 458.311, Florida Statutes, is amended to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:

(h) Has obtained a passing score, as established by rule of the board, on the licensure examination of the United States Medical Licensing Examination (USMLE); or a combination of the United States Medical Licensing Examination (USMLE), the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or for the

purpose of examination of any applicant who was licensed on the basis of a state board examination and who is currently licensed in at least one other jurisdiction of the United States ~~or Canada,~~ and who has practiced pursuant to such licensure for a period of at least 10 years, or any applicant who holds an active, unencumbered license to practice medicine in Canada and who has practiced pursuant to such licensure for a period of at least 10 years, use of the Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX) upon receipt of a passing score as established by rule of the board. However, for the purpose of examination of any applicant who was licensed on the basis of a state board examination before ~~prior to~~ 1974, who is currently licensed in at least three other jurisdictions of the United States or Canada, and who has practiced pursuant to such licensure for a period of at least 20 years, this paragraph does not apply.

Section 5. Subsection (1) of section 458.319, Florida Statutes, is amended to read:

458.319 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application, evidence that the applicant has actively practiced medicine or has been on the active teaching faculty of an accredited medical school for at least 2 years of the immediately preceding 4 years, and a fee not to exceed $500; provided, however, that if the licensee is either a resident

physician, assistant resident physician, fellow, house physician, or intern in an approved postgraduate training program, as defined by the board by rule, the fee may ~~shall~~ not exceed $100 per annum. If the licensee demonstrates to the department, in a manner set by department rule, that he or she has provided at least 160 hours of pro bono medical services to indigent persons or medically underserved populations within the biennial renewal period, the department shall waive the renewal fee. If the licensee has not actively practiced medicine for at least 2 years of the immediately preceding 4 years, the board shall require that the licensee successfully complete a board-approved clinical competency examination before ~~prior to~~ renewal of the license. "Actively practiced medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, including physicians practicing administrative medicine. An applicant for a renewed license must also submit the information required under s. 456.039 to the department on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the statewide criminal background check of the applicant. The applicant must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the department for a

national criminal background check of the applicant for the initial renewal of his or her license ~~after January 1, 2000~~. If the applicant fails to submit either the information required under s. 456.039 or a set of fingerprints to the department as required by this section, the department shall issue a notice of noncompliance, and the applicant will be given 30 additional days to comply. If the applicant fails to comply within 30 days after the notice of noncompliance is issued, the department or board, as appropriate, may issue a citation to the applicant and may fine the applicant up to $50 for each day that the applicant is not in compliance with the requirements of s. 456.039. The citation must clearly state that the applicant may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the applicant disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the applicant does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the applicant's last known address. If an applicant has submitted fingerprints to the department for a national criminal history check upon initial licensure and is renewing his or her license for the first time, then the applicant need only submit the information and fee required for a statewide criminal

history check.

Section 6. Section 459.00751, Florida Statutes, is created to read:

459.00751 Restricted licenses.—

(1) It is the intent of the Legislature to provide medical services to all residents of this state at an affordable cost.

(2) The board may annually issue restricted licenses authorizing the practice of osteopathic medicine in this state to up to 300 persons and to an unlimited number of osteopathic physicians who hold active, unencumbered licenses to practice osteopathic medicine in Canada if such applicants complete all of the following:

(a) Submit to the department a completed application form.

(b) Meet the requirements of s. 459.0055(1)(b), (c), (d), (e), (f), (g), and (j). A Canadian applicant must also provide the board with a printed or electronic copy of his or her fingerprint-based, national Canadian criminal history records check, conducted within 6 months after the date of application.

(c) Show evidence of the active licensed practice of osteopathic medicine in another jurisdiction for at least 2 years of the immediately preceding 4 years, or completion of board-approved postgraduate training within the year immediately preceding the filing of an application.

(d) Enter into a contract to practice osteopathic medicine for a period of up to 36 months in the employ of the state, a

federally funded community health center, or a migrant health center; a free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or a health care provider in a health professional shortage area or medically underserved area designated by the United States Department of Health and Human Services. The board may designate other areas of critical need in the state where these restricted licensees may practice.

(3) Before the end of the contracted practice period, the restricted licensee must take and successfully complete the licensure examination under s. 459.0055 to become fully licensed in this state.

(4) If the restricted licensee breaches the terms of the employment contract, he or she may not be licensed as an osteopathic physician in this state under any licensing provisions.

Section 7. Section 459.00752, Florida Statutes, is created to read:

459.00752 Registration of volunteer retired osteopathic physicians.—

(1) A retired osteopathic physician may register under this section to practice osteopathic medicine as a volunteer retired osteopathic physician if he or she completes all of the following:

(a) Submits an application to the board on a form

developed by the department no earlier than 6 months before the date on which his or her license permanently expires and no later than 2 years after such expiration.

(b) Provides proof to the department that he or she actively practiced osteopathic medicine for at least 3 of the 5 years immediately preceding the date on which his or her license changed from active to retired status.

(c) Has held an active license to practice osteopathic medicine and maintained such license in good standing in this state or in at least one other jurisdiction of the United States or Canada for at least 20 years.

(d) Contracts with a health care provider to provide free, volunteer medical services to indigent persons or medically underserved populations in health professional shortage areas or medically underserved areas designated by the United States Department of Health and Human Services.

(e) Works under the supervision of a nonretired osteopathic physician who holds an active, unencumbered license.

(f) Only provides medical services of the type and within the specialty that he or she performed before retirement and does not perform surgery or prescribe a controlled substance as defined in s. 893.02.

(2) The registrant shall apply biennially to the board for renewal of his or her registration by demonstrating to the board compliance with this section.

(3) The department shall waive all application, licensure, unlicensed activity, and renewal fees for qualifying applicants under this section.

(4) The board may deny, revoke, or impose restrictions or conditions on a registration for any violation of this chapter or chapter 456 or rules adopted thereunder, or deny or revoke a registration for noncompliance with this section.

Section 8. Subsection (1) of section 459.008, Florida Statutes, is amended to read:

459.008 Renewal of licenses and certificates.—

(1) The department shall renew a license or certificate upon receipt of the renewal application and fee. If the applicant for a renewed license or certificate demonstrates to the department, in a manner set by department rule, that he or she has provided at least 160 hours of pro bono osteopathic medical services to indigent persons or medically underserved populations in health professional shortage areas or medically underserved areas designated by the United States Department of Health and Human Services within the biennial renewal period, the department shall waive the renewal fee. An applicant for a renewed license must also submit the information required under s. 456.039 to the department on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the department ~~of Health~~ for the statewide criminal background check of the applicant. The

applicant must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the department for a national criminal background check of the applicant for the initial renewal of his or her license ~~after January 1, 2000~~. If the applicant fails to submit either the information required under s. 456.039 or a set of fingerprints to the department as required by this section, the department shall issue a notice of noncompliance, and the applicant will be given 30 additional days to comply. If the applicant fails to comply within 30 days after the notice of noncompliance is issued, the department or board, as appropriate, may issue a citation to the applicant and may fine the applicant up to $50 for each day that the applicant is not in compliance with the requirements of s. 456.039. The citation must clearly state that the applicant may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the applicant disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the applicant does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the applicant's last known address. If an applicant has

submitted fingerprints to the department for a national criminal history check upon initial licensure and is renewing his or her license for the first time, then the applicant need only submit the information and fee required for a statewide criminal history check.

Section 9. Paragraph (e) of subsection (3) of section 766.1115, Florida Statutes, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(e) "Low-income" means:

1. A person who is Medicaid-eligible under Florida law;

2. A person who is without health insurance and whose family income does not exceed 400 ~~200~~ percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

3. Any client of the department who voluntarily chooses to participate in a program offered or approved by the department and meets the program eligibility guidelines of the department.

Section 10. This act shall take effect July 1, 2021.

HB 7001

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB GOS 21-01 OGSR/Nurse Licensure Compact
SPONSOR(S): Government Operations Subcommittee, Garrison
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Roth	Smith
1) Professions & Public Health Subcommittee		Guzzo	McElroy
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Nurse Licensure Compact (NLC) allows a nurse to have one license, issued by the primary state of licensure, with the privilege to practice in other compact states. The NLC applies to registered nurses and licensed practical or vocational nurses. The NLC was enacted into Florida law in 2016.

Current law provides a public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by the Department of Health or the Board of Nursing pursuant to the NLC. A nurse's personal identifying information may be disclosed, however, by the state that originally reported the information to the coordinated licensure information system, to the extent permitted by the reporting state's law. Current law also provides a public meeting exemption for portions of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators at which matters specifically exempted from disclosure are discussed.

The bill saves from repeal the public record exemption and public meeting exemption, which will repeal on October 2, 2021, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Access to Public Records and Meetings

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[5] The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[6] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[7]

In addition to the Florida Constitution, Florida law specifies conditions under which public access must be provided to government records and meetings. The Public Records Act[8] guarantees every person's

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] FLA. CONST. art. I, s. 24(a).
[6] FLA. CONST. art. I, s. 24(b).
[7] *Id.*
[8] Chapter 119, F.S.

right to inspect and copy any state or local government public record.[9] The Sunshine Law[10] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[11]

The Legislature may create an exemption to public records or open meetings requirements. An exemption must specifically state the public necessity justifying the exemption[12] and must be tailored to accomplish the stated purpose of the law.[13]

Nurse Licensure Compact

The Nurse Licensure Compact (NLC) was designed as a multistate agreement establishing a mutual recognition system between states for the licensure of registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN). Prior to the compact's enactment, the National Council of State Boards of Nursing (NCSBN) produced a model bill for state legislatures to enact in order for their respective states to join the compact.[14] The compact was revised and expanded and was enacted into Florida law in 2016,[15] and implemented statewide on January 19, 2018.[16]

A nurse who is issued a multi-state license[17] from a state that is party to the NLC is permitted to practice in any state that is also party to the compact. A nurse with a multistate license privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located.[18] A party state may continue to issue a single-state license[19] and authorize practice only in that state.

The NLC permits a state to take adverse action against the multistate licensure privilege of any nurse practicing in that state.[20] The home state has the exclusive authority to take adverse action against the

[9] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

[10] Section 286.011, F.S.

[11] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

[12] FLA. CONST. art. I, s. 24(c).

[13] *Id.*

[14] National Council of State Boards of Nursing (NCSBN), *Licensure Compacts*, available at https://www.ncsbn.org/compacts.htm (last visited February 5, 2021). The NCSBN arose out of the recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needed to be a separate entity from the American Nurses Association and Council on State Boards of Nursing, which represents professional nurses. NCSBN's membership is now comprised of boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety and welfare, and protecting the public by ensuring that safe and competent nursing care is provided by licensed nurses. The NCSBN is the vehicle through which these entities act and counsel together on matters of common interest.

[15] Chapter 2016-139, L.O.F.; codified as s. 464.0095, F.S.

[16] Florida Department of Health, *Florida's Enhanced Nurse Licensure Compact to be Implemented Statewide January 19, 2018*, available at http://www.floridahealth.gov/newsroom/2018/01/011818-nursing-compact.html#:~:text=Florida's%20Enhanced%20Nurse%20Licensure%20Compact%20to%20be%20Implemented%20Statewide%20January%2019%2C%202018,-Contact%3A&text=Tallahassee%2C%20Fla.,Nurse%20Licensure%20Compact%2C%20or%20eNLC. (last visited February 25, 2021).

[17] "Multistate license" means a license to practice as a registered nurse (RN) or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege. Section 464.0095, Art. II, (10), F.S.

[18] Section 464.0095, Art. III, (5), F.S.

[19] "Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state. Section 464.0095, Art. II, (15), F.S.

[20] Section 464.0095, Art. III, (4), F.S.

home state license, including revocation and suspension.[21] The NLC requires all participating states to report to the coordinated licensure information system (CLIS)[22] all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of information.[23]

The Department of Health (DOH) licenses nurses while the Board of Nursing regulates the practice of nursing in Florida. DOH collects and provides certain information to the NCSBN CLIS system on all RNs and LPN/LVNs with NLC multistate licenses practicing in Florida. Some of the information collected by DOH are the NCSBN ID numbers, mothers' maiden names, dates of birth, social security numbers, race, and home phone number of the RNs and LPN/LVNs.

All party states may access the CLIS to see licensure and disciplinary information for nurses licensed in the party states.[24] The CLIS includes a nurse's personal identifying information, licensure classification information and statuses, public emergency and final disciplinary action information, and status information about multistate licensure privileges from all party states. A party state may designate the information it contributes to the CLIS as confidential, prohibiting its disclosure to nonparty states.[25] State licensing boards must report disciplinary information, significant investigative information, and denials of applications to the CLIS promptly.[26]

The NLC established the Interstate Commission of Nurse Licensure Compact Administrators (commission)[27] to oversee and administer the operation and provisions of the NLC.[28] The head of each state's licensing board,[29] or his or her designee, must serve as the state's delegate to the commission. The NLC grants the commission authority to promulgate uniform rules relating to the implementation and administration of the NLC.[30] The commission may also take action against a party state if a party state fails to meet its obligations under the NLC, including termination of membership after exhausting all other means of compliance.[31]

[21] *Id.*
[22] "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards. Section 464.0095, Art. II, (5), F.S.
[23] Section 464.0095, Art. III, (4), F.S.
[24] Section 464.0095, Art. IV, (1), F.S.
[25] Section 464.0095, Art. VI, (4), F.S.
[26] Section 464.0095, Art. VI, (3), F.S.
[27] "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators established by this compact. Section 464.0095, Art. II, (3), F.S.
[28] NCSBN, *The Interstate Commission of Nurse Licensure Compact Administrators: Final Rules* (January 1, 2019), available at https://www.ncsbn.org/finalrules.pdf (last visited February 25, 2021).
[29] "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses. Section 464.0095, Art. II, (9), F.S.
[30] Section 464.0095, Art. VII, (7)(a), F.S.
[31] Section 464.0095, Art. IX, (4), F.S.

All commission meetings are open to the public and must be publicly noticed.[32] Both meetings and hearings for proposed rules must be noticed at least 60 days prior to each meeting on the NLC's website and on the website of each party state's licensing board or published in the publication in which each state would otherwise post proposed rules.[33] The NLC also provides for public comment opportunities through both oral and written testimony.[34] Closed meetings are permitted if the commission is discussing:[35]

- A party state's noncompliance with its obligations under the NLC;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to a specific employee or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusations against a person of a crime or formal censuring a person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with the NLC; or
- Matters specifically exempted from disclosure by federal or state law.

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.[36]

Public Record and Public Meeting Exemptions under Review

In 2016, the Legislature created a public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by DOH or the Board of Nursing pursuant to the NLC.[37] Such information is exempt[38] from public record requirements. However, a nurse's personal identifying information may be disclosed by the state that originally reported the information to the coordinated licensure information system, to the extent permitted by the reporting state's law.[39] The Legislature also created a public meeting exemption for portions of a meeting of the commission, at which matters specifically exempted from disclosure are discussed, including recordings, minutes, and records generated during an exempt meeting.[40]

[32] Section 464.0095, Art. VII, (2)(d), F.S.
[33] Section 464.0095, Art. VIII, (3), F.S.
[34] Section 464.0095, Art. VIII, (7)(a), F.S.
[35] Section 464.0095, Art. VII, (2)(e), F.S.
[36] Section 464.0095, Art. VII (2)(f), F.S.
[37] Chapter 2016-97, L.O.F.; codified as s. 464.0096(1), F.S.
[38] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).
[39] Section 464.0096(1), F.S.
[40] Chapter 2016-97, L.O.F.; codified as s. 464.0096(2), F.S.

The 2016 public necessity statement[41] for the exemptions provides that:

The Legislature finds that the public record and public meeting exemptions are necessary because protection of such information is required under the NLC, which the state must adopt in order to become a party state to the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact. Furthermore, without the public meeting exemption, the state will be prohibited from becoming a party state to the NLC.[42]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2021, unless reenacted by the Legislature.[43]

During the 2020 interim, the House Government Operations Subcommittee sent DOH a questionnaire as part of its review under the Open Government Sunset Review Act.[44] According to DOH, 18,458 RNs and 2,744 LPN/LVNs, who received their initial nursing license in Florida, currently hold NLC multistate licenses.[45] Additionally, 12,988 RNs and 2,375 LPN/LVNs, received their initial nursing license in a state other than Florida, and currently hold NLC multistate licenses permitting them to practice in Florida.[46] DOH staff recommends that the exemption be reenacted, noting the exemption language is uniform throughout the United States.[47]

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption and public meeting exemption. Thereby maintaining the public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by DOH or the Board of Nursing pursuant to the NLC; and maintaining the public meeting exemption for portions of a meeting of the commission at which matters specifically exempted from disclosure are discussed.

B. SECTION DIRECTORY:

Section 1: Amends s. 464.0096, F.S., to save from repeal the public record exemption and public meeting exemption for certain personal identifying information held by DOH or the Board of Nursing pursuant to the NLC as well as recordings, minutes, and records generated during an exempt meeting.

Section 2: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[41] Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."
[42] Section 2, ch. 2016-97, L.O.F.
[43] Section 381.82(3)(d)4., F.S.
[44] Open Government Sunset Review Questionnaire, DOH Response, October 5, 2020, on file with the House Government Operations Subcommittee.
[45] *Id.* at p. 2.
[46] *Id.*
[47] *Id.* at p. 8.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 464.0096, F.S., which provides an exemption from public records requirements for certain information held by the Department of Health or the Board of Nursing pursuant to the Nurse Licensure Compact and an exemption from public meeting requirements for certain meetings of the Interstate Commission of Nurse Licensure Compact Administration; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Section 464.0096, Florida Statutes, is amended to read:

464.0096 Nurse Licensure Compact; public records and meetings exemptions.—

(1) A nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number, obtained from the coordinated licensure information system, as defined in s. 464.0095, and held by the department or the board is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated licensure information system

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

authorizes the disclosure of such information by law. Under such circumstances, the information may only be disclosed to the extent permitted by the reporting state's law.

(2)(a) A meeting or portion of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators established under s. 464.0095 at which matters specifically exempted from disclosure by federal or state statute are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Recordings, minutes, and records generated during an exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.