HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1565 Department of Health
SPONSOR(S): Professions & Public Health Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Professions & Public Health Subcommittee		Morris	McElroy

SUMMARY ANALYSIS

PCS for HB 1565 makes numerous changes to programs under the Department of Health (DOH) and health care professions regulated by Medical Quality Assurance (MQA) within DOH.

DOH administers the Targeted Outreach for Pregnant Women Act (TOPWA) which supports high risk pregnant women that aim to prevent heath issues for themselves and their newborns. The PCS updates the TOPWA to account for current medication options, information on HIV, and mental health issues that may lead to a pregnancy being high risk.

MQA regulates health care practitioners in this state. MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health facilities and 40 health care professions. Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory authority and licensure authority for MQA. The PCS:

- Updates institutional accreditation references for chiropractic medicine, clinical laboratory personnel, and mental clinical social workers and marriage and family therapists;
- Clarifies DOH's ability to prosecute nurses licensed under ch. 464, F.S.;
- Removes obsolete references to DOH issued licensure examinations for clinical social workers and marriage and family therapists;
- Clarifies education, training, and temporary certification requirement for midwives;
- Removes obsolete form and fee requirements for fingerprinting of orthotists and prosthetists;
- Clarifies educational requirements for psychologists applying for licensure by endorsement; and
- Allows DOH to continue to issue licenses to marriage and family therapy graduates until July 1, 2026, while such programs seek accreditation.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Targeted Outreach for Pregnant Women

Current Situation

The Targeted Outreach for Pregnant Women Act (TOPWA) supports targeted outreach programs that aim to prevent vertical HIV transmission and other health issues by linking high-risk pregnant women with services that can help them have healthier pregnancies and deliveries and can aid them in ensuring their newborn gets a healthy start.[1] In 2019, there were 453 HIV-exposed births in Florida.[2]

TOPWA programs aim to provide outreach and linkage services to pregnant women who may not seek proper prenatal care, who suffer from substance-use disorders, or who are living with HIV or are at increased risk for HIV acquisition.[3] Many of the women targeted by TOPWA programs would not otherwise receive prenatal care or know their HIV status. In 2019, there were seven funded TOPWA programs in Florida.[4] TOPWA programs provided services to 7,703 women from January 2016 to July 2020. Black women represented 48 percent of enrollees, Hispanic women represented 39 percent, and white women represented 10 percent.[5] Women living with HIV made up just under 10 percent of TOPW enrollments.[6]

If a pregnant woman tests positive for HIV, medical interventions, like antiretroviral (ARV) medication and delivery by caesarian section, can greatly reduce her risk of transmitting the virus to her baby during childbirth.[7] Prevention methods, like avoiding breastfeeding, can reduce her risk of transmitting the virus to her child post childbirth. Providing ARV medication to the newborn also decreases the chances of seroconversion in the event of an HIV-exposed birth.[8] DOH has developed a program, Baby Rxpress, which provides a six-week course of ARV medication to HIV-exposed newborns at no cost to the mother.[9] In 2019, this program filled 304 prescriptions to 264 HIV-exposed newborns.[10]

TOPWA programs aim to engage women into care who very likely do not already have knowledge of or access to these interventions. Without these types of interventions, a mother's chances of transmitting HIV to her newborn can be up to 45 percent.[11] With these interventions, the chances of transmission are less than 2 percent.[12]

There were no known perinatal HIV transmissions in 2019; however, DOH does not have a definitive status on roughly 25 percent of the 453 HIV-exposed births.[13]

Effect of Proposed Changes – Targeted Outreach for Pregnant Women

[1] Department of Health, *Targeted Outreach for Pregnant Women Act,* http://stlucie.floridahealth.gov/programs-and-services/infectious-disease-services/hiv-aids/topwa.html (last visited March 10, 2021).
[2] E-mail correspondence with DOH, dated Jan. 28, 2021 on file with the Professions and Public Health Subcommittee.
[3] Id.
[4] Id.
[5] Id.
[6] Id.
[7] Id.
[8] Id.
[9] Department of Health, *Baby Rxpress,* http://www.floridahealth.gov/diseases-and-conditions/aids/Prevention/_documents/topwa/baby-rxpress-program-description-2018.pdf (last visited March 10, 2021).
[10] *Supra,* note 2.
[11] Id.
[12] Id.
[13] Id.

The PCS adds pregnant women who are suffering from mental health problems to the list of outreach targets. It also includes mental health services as a linkage option.

The PCS revises the duties of DOH's administration of the TOPWA and the information and services DOH provides to the women it serves. The PCS requires DOH to encourage high-risk pregnant women to be tested for other sexually transmitted diseases, in addition to HIV, as specified by rule. The PCS requires DOH to provide pregnant women to have HIV with information on the need for ARV medication for their newborn, their medication options, and how to access medication after hospital discharge. The PCS removes a reference to a specific type of ARV medication DOH may provide information on and incorporates more general information on ARV medications, allowing for additional options. The PCS requires DOH to educate pregnant women who have HIV on the importance or engaging in and continuing HIV care. Lastly, the PCS requires DOH to conduct additional follow up for HIV-exposed newborns to ensure final HIV status is known and necessary linkages to care are made.

Institutional Accreditation

Current Situation

Accreditation is the recognition from an accrediting agency that an institution maintains a certain level of educational standards. Institutional accreditation normally applies to an entire institution and indicates that each entity of a school contributes to the achievement of the school's objectives. This does not necessarily mean that all parts of the school have the same quality level of education.[14]

Accrediting agencies issue accreditations.[15] Institutions or programs that request an agency's evaluation and that meet an agency's criteria are then accredited by that agency.[16] Accrediting agencies are organizations made up of educational professionals that:[17]

- Establish the operating standards for educational or professional institutions and programs;
- Determine if a school meets those standards; and
- Publically announce their findings through the issuance of accreditations.

While the United States Department of Education (DOE) does not issue accreditations, it does hold agencies accountable by ensuring that such agencies enforce their accreditation standards effectively. As part of DOE oversight, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit.[18]

The DOE issued finalized regulations in the Federal Register in October 2019 relating to institutional accrediting agencies.[19] DOE issued a letter of guidance on February 26, 2020, specifying that final regulations omit references to "regional" and "national" accreditation.[20] The letter specifies, "[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, became effective January 1, 2021.

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[14] U.S. Department of Homeland Security – Study in the States, *The Basics of School Accreditation,* https://studyinthestates.dhs.gov/the-basics-of-school-accreditation (last visited March 10, 2021).
[15] Id. *See also* U.S. Department of Education, *Database of Accredited Postsecondary Institutions and Programs,* https://ope.ed.gov/dapip/#/home (last visited March 10, 2021).
[16] U.S. Department of Education, *Database of Accredited Postsecondary Institutions and Programs,* https://ope.ed.gov/dapip/#/home (last visited March 10, 2021).
[17] *Supra,* note 14.
[18] *Supra,* note 16.
[19] 84 C.F.R § 58834 (2020). The new regulations delayed implementation of changes to DOE staff's review of accrediting agency applications for initial or renewal of recognition under 34 C.R.R. § 602.32(d) until January 1, 2021. The new regulations also delayed implementation of changes to DOE staff's process for responding to accrediting agency applications and allowing agency responses within 180 days under 34 C.F.R. § 602.32(h) until July 1, 2021.
[20] U.S. Department of Education, Re: Final Accreditation and State Authorization Regulations (February 26, 2021) https://sacscoc.org/app/uploads/2020/03/State-Authorization-Letter-w-Diane-Signature-2.26.19.pdf (last visited March 10, 2021).

Chiropractic Medicine

Chapter 460, F.S., is the practice act for chiropractic medicine that sets the minimum requirements for safe practice in the state. The Board of Chiropractic Medicine under DOH enforces the practice act, including licensure, monitoring, and ensuring safe practice of chiropractic professionals.[21]

A chiropractic physician is authorized to adjust, manipulate, and treat the human body by manual, mechanical, electrical, or natural methods.[22] Chiropractic physicians may not prescribe or administer legend drugs, perform surgery, or practice obstetrics.[23] Licensure requirements for chiropractic physicians include:[24]

- Graduation from a chiropractic college accredited by the Council on Chiropractic Education;
- Passage of the National Board of Chiropractic Examiners; and
- Passage of a background screening.

Clinical Laboratory Directors

A clinical laboratory is the physical location in which services are performed to provide information or materials for use in the diagnosis, prevention, or treatment of a disease or the identification or assessment of a medical or physical condition.[25] Services performed in clinical labs include:

- The examination of fluids or other materials taken from the human body;[26]
- The examination of tissue taken from the human body;[27] and
- The examination of cells from individual tissues or fluid taken from the human body.[28]

Clinical laboratories are regulated under part I of ch. 483, F.S. Clinical laboratories must meet appropriate standards to maintain compliance with federal laws and regulations.[29] Such standards include overall standards of performance that comply with the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA), and the federal rules adopted thereunder, for a comprehensive quality assurance program[30] and standards of performance in the examination of specimens for clinical laboratory proficiency testing programs using external quality control procedures.[31]

The Board of Clinical Laboratory Personnel (Board) oversees the licensure and regulation of clinical laboratory personnel, including supervisors, technologists, technicians, directors, and public health laboratory personnel. Generally, licensure requirements for clinical laboratory personnel include passage of an exam designated by the Board, completion of a medical technology training program, and completion of applicable education requirements.[32]

To qualify as a clinical laboratory director, an individual must:[33]

- Have four years of clinical laboratory experience, with two years of experience or national certification in the specialty to be directed
- Be a physician licensed under chs. 458 or 459, F.S.;

[21] Florida Department of Health, *Board of Chiropractic Medicine,* https://floridaschiropracticmedicine.gov/ (last visited March 10, 2021).
[22] Section 460.403(9)(c), F.S.
[23] Id. However, there are limited exceptions for ordering, storing, and administering legend drugs and performing surgeries.
[24] Section 460.406, F.S.
[25] Section 483.041, F.S.
[26] Section 483.041(2)(a), F.S.
[27] Section 483.041(2)(b), F.S.
[28] Section 483.041(2)(c), F.S.
[29] Section 483.021, F.S.
[30] Section 483.051(2)(a), F.S.
[31] Section 483.051(2)(b), F.S.
[32] Section 483.809, F.S. and ch. 64B3-5, F.A.C.
[33] Section 483.824, F.S.

- Hold a doctoral degree in a chemical, physical, or biological science from a regionally accredited institution and maintain national certification requirements equal to those required by the federal Health Care Financing Administration; or
- For the subspecialty of oral pathology, be a physician licensed under chs. 458 or 459, F.S., or a dentist licensed under ch. 466, F.S.

Effect of Proposed Changes – Institutional Accreditation

The PCS removes all references to "regional" accreditation replacing such references with "institutional" accreditation for chiropractic medicine and clinical laboratory directors.

Nursing

Current Situation

The Board of Nursing (Board) within DOH, oversees the licensure and regulation of certified nursing assistants, licensed practical nurses, registered nurses, and advanced registered nurse practitioners. The Board has the authority to adopt rules to implement ch. 464, F.S., which regulates the practice of nursing in this state.[34]

Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assist individuals with tasks relating to the activities of daily living, such as those associated with personal care, nutrition and hydration, maintaining mobility, toileting, safety and cleaning, end-of-life care, cardiopulmonary resuscitation and emergency care.[35] An applicant for certification as a CNA must complete an approved training program, pass a competency examination, and pass a background screening.[36] A CNA who is certified in another state or territory of the U.S. or in the District of Columbia, is listed on that state's CNA registry[37] and has not been found to have committed abuse, neglect, or exploitation in that state, is eligible for certification by endorsement in Florida.[38]

Licensed Practical Nurses

A licensed practical nurse (LPN) is licensed to practice "practical nursing," which is the performance of selected acts, including the administration of treatments and medications, under the direction of a registered nurse, licensed physician, or a licensed dentist, and responsibility for making decisions based on the individual's educational preparation and experience in nursing.[39] To be licensed as an LPN, among other things, an individual must complete a board-approved education program consisting of 50 percent clinical training.[40]

Registered Nurses

A registered nurse (RN) is licensed to practice "professional nursing," which is the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences.[41] To be licensed as an RN, among other things, an individual must complete an associate's degree consisting of 50 percent clinical

[34] Section 464.006, F.S.
[35] Section 464.201(5), F.S.
[36] Section 464.203, F.S. *See also* Department of Health, Board of Nursing, *Certified Nursing Assistant (CNA) by Examination*, available at http://floridasnursing.gov/licensing/certified-nursing-assistant-examination/ (last visited November 25, 2019). An applicant who fails the competency examination 3 times, may not take the exam again until he or she completes an approved training program.
[37] A CNA Registry is a listing of CNAs who received certification and maintain an active certification. (r. 64B9-15.004, F.A.C.)
[38] Section 464.203(1)(c), F.S.
[39] Section 464.003(18), F.S.
[40] Section 464.019(1)(b), F.S., and r. 64B9-2.021, F.A.C.
[41] Section 464.003(19), F.S.

training or a bachelor's degree consisting of 40 percent clinical training from a board-approved education program.[42]

Advanced Practice Registered Nurses

In Florida, an advanced practice registered nurse (APRN)[43] is licensed in one of four roles: a certified nurse practitioner, certified nurse midwife, clinical nurse specialist, or certified registered nurse anesthetist.[44]

The Board provides by rule the eligibility criteria for applicants to be licensed as APRNs and the applicable regulatory standards for APRN nursing practices. Additionally, the Board is responsible for administratively disciplining an APRN who commits an act prohibited under ss. 464.018 or 456.072, F.S.

Section 464.003(2), F.S., defines the term "advanced or specialized nursing practice" to include, in addition to practices of professional nursing that registered nurses are authorized to perform, advanced-level nursing acts approved by the Board as appropriate for APRNs to perform by virtue of their post-basic specialized education, training, and experience. Advanced or specialized nursing acts may only be performed if authorized under a supervising physician's protocol.[45] In addition to advanced or specialized nursing practices, APRNs are authorized to practice certain medical acts, as opposed to nursing acts, as authorized within the framework of an established supervisory physician's protocol.[46]

To be eligible to be licensed as an APRN, an applicant must be licensed as a registered nurse, have a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills, and submit proof that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.[47] A nursing specialty board must:[48]

- Attest to the competency of nurses in a clinical specialty area;
- Require a written examination prior to certification;
- Require nurses to complete a formal program prior to eligibility for examination;
- Maintain program accreditation or review mechanism that adheres to criteria which are substantially equivalent to requirements in Florida; and
- Identify standards or scope of practice statements appropriate for each nursing specialty.

Effect of Proposed Changes – Nursing

The PCS clarifies DOH's ability to prosecute licensees under ch. 464, F.S., who had adjudication withheld in their court cases after having entered a plea of nolo contender or guilty to an offense prohibited in ch. 435, F.S., or domestic violence under s. 741.20, F.S.

Midwifery

Current Situation

Chapter 467, F.S., is the practice act for midwifery (Act). DOH licenses and regulates the practice of midwifery in this state. Midwifery is the practice of supervising a normal labor and childbirth, with the informed consent of the parent, advising the parents as to the progress of childbirth, and rendering prenatal and postpartal care.[49] The Council of Licensed Midwifery assists and advises DOH on midwifery, including the development of rules relating to regulatory requirements. These regulations

[42] Section 464.019(1)(b), F.S., and Rule 64B9-2.021, F.A.C.
[43] Section 464.003(3), F.S.
[44] Section 464.012(4), F.S. In 2018, the Florida Legislature changed the occupational title from "Advanced Registered Nurse Practitioner" to "Advanced Practice Registered Nurse," and reclassified a CNS as a type of APRN (*see* ch. 2018-106, Laws of Fla.).
[45] Section 464.012(3)-(4), F.S.
[46] Section 464.003, F.S., and s. 464.012, F.S.
[47] Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.
[48] Rule 64B9-4.002(3), F.A.C.
[49] Section 467.003(8), F.S.

include training requirements, the licensure examination, responsibilities of midwives, emergency care plans, and reports and records to be filed by licensed midwives.[50]

Licensure

An individual must graduate from an approved midwifery program and pass a licensure examination to be eligible for licensure as a midwife.[51] A licensed midwife must submit a general emergency care plan to DOH, which addresses consultation with other health care providers, emergency transfer protocols, and access to neonatal intensive care units and obstetrical units or other patient care areas with his or her application for licensure and licensure renewal.[52] A licensed midwife must also submit proof of professional liability coverage of at least $100,000, with an annual aggregate of at least $300,000.[53]

DOH may issue a license by endorsement for midwifery applicants who:[54]

- Holds a valid certificate or diploma from a foreign institution of medicine or from midwifery program in another state provided the requirements for licensure or certification in another country or another state are equivalent to or exceed that which is required for licensing in Florida; or
- Holds a valid certificate or license to practice midwifery in another state provided the requirements for licensure or certification in another state are equivalent to or exceed that which is required for licensing in Florida; and
- Has completed a 4-month prelicensure course conducted by an approved program; and
- Has successfully passed the licensed midwifery examination.

DOH may also issue a temporary certificate to a midwife who qualifies for licensure by endorsement to practice in areas of critical need.[55] The fee for a temporary certificate is $50 in addition to the fee required for licensure.[56]

Midwifery Students

The Act uses the terms “applicant” and “student midwife” interchangeably. It also sets standards for admission, education, and clinical training in the context of student requirements, which, according to DOH, may cause confusion. As an example, a student must have a high school diploma or the equivalent to enroll in a program, but the statutes do not clearly state that a high school diploma is a requirement for licensure.[57]

The use of the undefined term “midwifery student” has led to unlicensed persons attempting to work with clients and complete clinical requirements without enrolling in or being educated by an approved midwifery program, as well as midwives attempting to serve as preceptors who are not affiliated with an approved midwifery program.[58]

The Act does not include any provisions explicitly allowing a new midwifery program to be provisionally approved nor does it provide clear guidance to schools regarding the circumstances under which DOH may rescind the approval of a program.

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[50] Section 467.004, F.S.
[51] Section 467.011, F.S. Section 467.0125, F.S. DOH no longer administers licensure examinations.
[52] Section 467.017, F.S.
[53] Rule 64B24-7.013, F.A.C. An applicant does not have to submit proof of professional liability insurance if the applicant practices exclusively as an officer, employee, or agent of the federal government, practices only in conjunction with teaching duties at an approved midwifery school that provides such coverage on the applicant’s behalf, or who does not practice midwifery in this state and provides proof of such.
[54] Section 467.0125(1), F.S.
[55] Section 467.0125(2), F.S.
[56] Section 467.0125(2)(f), F.S.
[57] *Supra,* note 2.
[58] Id. In general, health care practitioners do not start seeing clients in a clinical setting until they have completed prerequisite portions of a course of study and are near the end of their educational program.

Effect of Proposed Changes – Midwifery

The PCS makes numerous clarifying changes to the midwifery practice act.

The PCS clarifies that a preceptor may not supervise a midwifery student unless the student has been enrolled in an approved midwifery program. This clarifies that an individual cannot begin their clinical practice before enrolling in an approved midwifery program and will explicitly conform midwifery training with the requirements of other medical professions, with students having to complete the majority of their classroom training before working with patients in a clinical setting.

The PCS clarifies licensing requirements and updates licensing methods. The PCS prohibits endorsement without a license or certification in another state, territory or jurisdiction and creates a pathway to licensure by examination for applicants who have completed education equivalent to or exceeds that which is required for licensing in Florida in a state, territory, or jurisdiction that does not license midwives. These revisions do not change what is actually required to qualify for a midwifery license, but instead clarify licensure requirements allowing applicants to better understand those requirements.[59]

The PCS clarifies education and training requirements for approved midwifery programs. The PCS allows midwifery programs to be provisionally approved for five years. This change conforms to the five-year period that such programs can be provisionally licensed by the U.S. Department of Education's Commission for Independent Education when seeking accreditation status. DOH will be able to give provisional approval to a new program who has meet all requirements except for showing their students have an 80% passage rate on the national exam. Programs provisionally approved will have five years to demonstrate the required exam approval rate after they are preliminary approved. This time period allows completion of the three-year education program for at least one cohort of students, and for those students to take the exam before the Department tries to determine the passing rate.[60]

The PCS clarifies the requirements for temporary certification of a midwife to practice in an area of critical need. The PCS allows a midwife certified to practice in an area of critical need to report a new area of critical need or relinquish the certificate within a specified timeframe following a change in an areas designated status, rather than being immediately subject to disciplinary action, while retaining the DOH's ability to revoke a certificate for non-compliance.[61]

The PCS removes obsolete references to the DOH issued exam for midwifery licensure as DOH no longer administers licensure examinations.

Lastly, the PCS clarifies the circumstances under which DOH may rescind the approval of a midwifery program.

Orthotists and Prosthetists

Current Situation

The Board of Orthotists and Prosthetists oversees the licensure and regulation of orthotists[62] and prosthetists.[63] A person applying for licensure must first apply to DOH to take the appropriate licensure examination. The board may accept the exam results of a national orthotic or prosthetic, standards

[59] Id.
[60] Id.
[61] Id.
[62] An orthotist is a health care professional who evaluates, formulates treatment, measures, designs, fabricates, assembles, fits, adjusts, services, or provides necessary training to accomplish the fitting of an orthosis or a pedorthic device (s. 468.80(9)-(10), F.S.)
[63] An prosthetist is a health care professional who evaluates, formulates treatment, measures, designs, fabricates, assembles, fits, adjusts, services, or provides necessary training to accomplish the fitting of a prosthesis (s. 468.80(15)-(16), F.S.)

organization in lieu of administering the state exam.[64] The board must verify that an applicant for licensure examination meets the following requirements:[65]

- Has completed the application form and paid all applicable fees;
- Is of good moral character;
- Is 18 years of age or older;
- Has completed the appropriate educational preparation, including practical training requirements; and
- Has successfully completed an appropriate clinical internship in the professional area for which the license is sought.

In addition to the requirements listed above, an applicant must meet the following requirements for each license sought:[66]

- A Bachelor of Science degree in Orthotics and Prosthetics from a regionally accredited college or university from an accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree with a certificate in orthotics or prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent;
- An internship of one year of qualified experience or a residency program recognized by the board;
- Completion of the mandatory classes;[67] and
- Passage of the state orthotic examination or board-approved orthotic examination if applying for an orthotist license, or the state prosthetic examination or board-approved examination if applying for a prosthetist license.

Background Screening

Chapter 435, F.S., establishes standard procedures and requirements for criminal history background screening of prospective employees. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[68] and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[69]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[70] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.[71]

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.[72] Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.[73] For a level 1 screening, this is the only

[64] Section 468.803(4), F.S. The Board has approved the American Board for Certification in Orthotics, Prosthetics, and Pedorthics (ABC) exam for orthotist and prosthetist applicants (r. 64B14-4.001, F.A.C.)
[65] Section 468.803(2), F.S.
[66] Section 468.803(5), F.S. Licenses must be renewed biennially.
[67] Pursuant to r. 64B14-5.005, F.A.C., mandatory courses include two hours on Florida laws and rules, two hours on the prevention of medical errors, one hour on infection disease control, and a CPR certification course.
[68] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited March 10, 2021).
[69] Section 435.04, F.S.
[70] Section 435.05(1)(a), F.S.
[71] Sections 435.03(1) and 435.04(1)(a), F.S.
[72] Section 435.05(1)(b)-(c), F.S.
[73] Id.

information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[74] For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[75] As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[76]

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, certain offenses under Florida law, or similar law of another jurisdiction.[77]

Health Care Practitioner Background Screening Under Ch. 456, F.S.

Section 456.0135, F.S., requires physicians, physician assistants, chiropractic physicians, podiatric physicians, nurses, certified nursing assistants, pharmacy owners, athletic trainers, massage therapists, and massage establishment owners to undergo a Level 2 background screening as a part of the licensure process. The appropriate regulatory board reviews the background screening results of an applicant or licensee to determine if there is a disqualifying offense. The only automatic disqualifying offenses for licensure are the following offenses under federal law or Florida law, or similar law in another jurisdiction:[78]

- A felony under:
  - Chapter 409, related to social and economic assistance;
  - Chapter 817, relating to fraudulently practices; and
  - Chapter 893, relating to drug abuse prevention and control.
- A felony under 21 U.S.C. ss. 801-970, relating to controlled substances, or 42 U.S.C. ss. 1395-1396, relating to health insurance for the aged and disabled, if the sentence and any subsequent probation ended less than 15 years before the date of application.

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, DCF) to exempt applicants from that disqualification under certain circumstances:[79]

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

[74] Section 435.05(1)(b), F.S.
[75] Section 435.05(1)(c), F.S.
[76] Section 435.05(1)(d), F.S.
[77] Section 435.04(2), F.S.
[78] Section 456.0635, F.S.
[79] Section 435.07(1), F.S.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[80] career offender,[81] or sexual offender (unless not required to register)[82] cannot ever be exempted from disqualification.[83]

Effect of Proposed Changes – Orthotists and Prosthetists

The PCS removes obsolete references to form and fee requirements for background screening of the practice of orthotics, prosthetics, and pedorthics which are no longer required to be collected by DOH.

The PCS removes all references to "regional" accreditation replacing such references with "institutional" accreditation for Orthotists and Prosthetists.

Psychologists

Current Situation

The Board of Psychology oversees the licensure and regulation of psychologists.[84] To receive a license to practice psychology, an individual must:[85]

- Meet one of the following educational requirements:
  - Received a doctoral-level psychological education from an institution that had institutional accreditation from an agency recognized by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada, and had programmatic accreditation from the American Psychological Association;[86] or
  - Received the equivalent of a doctoral-level education from a program at a school or university located outside of the United States, which is officially recognized by the government of the country in which it is located as a program or institution to train students to practice professional psychology.
- Complete 2 years or 4,000 hours of supervised experience;
- Pass the Examination for Professional Practice in Psychology;[87] and
- Pass an examination on Florida laws and rules.

The American Psychological Association (APA) is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation as the national accrediting authority for professional education and training in psychology.[88]

Applicants for licensure by endorsement must:[89]

- Be a diplomate in good standing with the American Board of Professional Psychology;
- Hold a doctoral degree in psychology with at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the U.S. within the 25 years preceding the date of application.

Effect of Proposed Changes – Psychologists

[80] Section 775.261, F.S.
[81] Section 775.261, F.S.
[82] Section 943.0435, F.S.
[83] Section 435.07(4)(b), F.S.
[84] Section 490.004, F.S.
[85] Section 490.005(1), F.S.
[86] Section 490.003(3), F.S., defines doctoral-level education as a Psy.D, an Ed.D., or a Ph.D in psychology.
[87] Rule 64B19-11.001, F.A.C.
[88] American Psychological Association, *Understanding APA Accreditation*, available at http://www.apa.org/ed/accreditation/about/index.aspx (last visited March 10, 2021).
[89] Section 490.006, F.S.

The PCS allows a psychologist applying by endorsement, who has 10 years licensed experience, to obtain licensure regardless of whether the doctoral program was APA accredited. This will streamline licensure by endorsement while maintaining the needed accreditation and educational standards for licensure by examination.[90]

Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Current Situation

Licensed Clinical Social Workers

Licensed clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering to prevent and treat undesired behavior and enhance of mental health.[91] An applicant seeking licensure as a clinical social worker must:[92]

- Possess a master's or doctoral degree from an accredited program;
- Have a least two years' experience in clinical social work;
- Pass a theory and practice examination approved by DOH; and
- Demonstrate knowledge of laws and rules governing the practice.

Licensed Clinical Social Workers must pass an examination offered by the American Association of State Social Worker Boards.[93] In 1999, the American Association of State Social Worker Boards changed its name to the Association of Social Work Boards.[94]

Marriage and Family Therapists

Marriage and family therapy incorporates marriage and family therapy, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.[95] An applicant seeking licensure as a mental health counselor must:[96]

- Possess a master's degree from an a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and board-approved graduate courses;[97]
- Complete two years of post-master's supervised experience under the supervision of a licensed marriage and family therapist with five years of experience or the equivalent who is a qualified supervisor as determined by the board;
- Pass a board-approved examination; and
- Demonstrate knowledge of laws and rules governing the practice.

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[90] Department of Health, Agency Analysis of 2021 House Bill 1565 (March 12, 2021).
[91] Section 491.003(7), F.S.
[92] Section 491.005(1), F.S.
[93] Id.
[94] Association of Social Work Boards, *History*, available at https://www.aswb.org/about/history/ (last visited March 10, 2021).
[95] Id.
[96] Section 491.005(3), F.S. An individual may qualify for a dual license in marriage and family therapy if he or she passes an examination in marriage and family therapy and has held an active license for at least three years as a psychologist, clinical social worker, mental health counselor, or advanced registered nurse practitioner who is determined by the Board of Nursing to be a specialist in psychiatric mental health (s. 491.0057, F.S.)
[97] Ch. 2020-133, Laws of Fla, required applicants for licensure as a marriage and family therapist to graduate from an accredited program or an accredited Florida university program.

DOH must verify that an applicant's education matches the specified courses and hours as outlined in statute. However, there are organizations that accredit marriage and family therapy education programs, including the Commission on Accreditation for Marriage and Family Therapy Education and the Council for the Accreditation of Counseling and Related Educational Programs that establish the minimum standards to meet the requirements to practice the profession.[98]

Mental Health Counselors

A mental health counselor is an individual who uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development and is based on research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.[99] To qualify for licensure as a mental health counselor, an individual must:[100]

- Have a master's degree from a mental health counseling program accredited by the Council of the Accreditation of Counseling and Related Educational Programs, or a program related to the practice of mental health counseling that includes coursework and a 700-hour practicum, internship, or fieldwork of which at least 280 hours must be in direct client services;
- Have at least two years of post-master's supervised clinical experience in mental health counseling;
- Pass an examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors; and
- Pass an eight-hour course on Florida laws and rules approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.[101]

After July 1, 2025, applicants for licensure as a mental health counselor must hold a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Education Programs.[102]

Effect of Proposed Changes – Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

The bill removes all references to "regional" accreditation replacing such references with "institutional" accreditation for clinical social workers and marriage and family therapists.

The PCS allows DOH to continue to license marriage and family therapy students or graduates who have graduated from an unaccredited program until July 1, 2026. This will eliminate a barrier to licensure for such students.[103]

The PCS also removes obsolete references to DOH issued licensure examinations.

B. SECTION DIRECTORY:

Section 1 Amends s. 381.0045, F.S., relating to targeted outreach for pregnant women.
Section 2 Amends s. 460.406, F.S., relating to licensure by examination.
Section 3 Amends s. 464.018, F.S., relating to disciplinary actions.
Section 4 Amends s. 467.003, F.S., relating to definitions.

[98] *See* Commission on Accreditation for Marriage and Family Therapy Education, *What Are the Benefits of COAMFTE Accreditation*, available at https://www.coamfte.org/COAMFTE/Accreditation/About_Accreditation.aspx (last visited March 10, 2021), and Council for the Accreditation of Counseling and Related Educational Programs, *About CACREP*, available at https://www.cacrep.org/about-cacrep/ (last visited March 10, 2021).
[99] Sections 491.003(6) and (9), F.S.
[100] Section 491.005(4), F.S.
[101] Section 491.005(4), F.S., and r. 64B4-3.0035, F.A.C.
[102] Ch. 2020-133, Laws of Fla.
[103] *Supra,* note 2.

Section 5 Amends s. 467.009, F.S., relating to midwifery programs; education and training requirements.
Section 6 Amends s. 467.011, F.S., relating to licensure by examination.
Section 7 Amends s. 467.0125, F.S., relating to licensure by endorsement.
Section 8 Amends s. 467.205, F.S., relating to approval of midwifery programs.
Section 9 Amends s. 468.803, F.S., relating to license, registration, and examination requirements.
Section 10 Amends s. 483.824, F.S., relating to qualifications of clinical laboratory director.
Section 11 Amends s. 490.003, F.S., relating to definitions.
Section 12 Amends s. 490.005, F.S., relating to licensure by examination.
Section 13 Amends s. 490.0051, F.S., relating to provisional licensure; requirements.
Section 14 Amends s. 491.005, F.S., relating to licensure by examination.
Section 15 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 may experience an increase in workload to conduct rulemaking and updating online application websites to implement the provisions of the PCS, the impact of which can be absorbed within current resources.[104]

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 PCS does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

[104] *Supra,* note 90.

DOH has sufficient rulemaking authority to implement the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES