HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1579 Health Care Practitioner Discipline
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

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 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, including discipline of practitioners.

Under current law, DOH must issue an emergency order suspending the license of a licensed physician, chiropractor, podiatrist, naturopath, optometrist, nurse, nursing assistant, pharmacist, dentist, optician, or hearing aid specialist who pleads guilty to or is convicted of certain violations of federal law and offenses relating to Medicare, fraud, drug offenses, and reproductive battery. PCS for HB 1579 expands DOH's authority to issue an emergency suspension order to all licensed health care practitioners and adds homicide to the list of offenses that DOH must issue an emergency suspension order.

PCS for HB 1579 also requires DOH to issue an emergency order suspending the license if a health care practitioner is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of certain offenses in this state or similar offenses in another jurisdiction. The PCS also includes such offenses as acts that constitute grounds for discipline of a licensed health care practitioner.

The bill has a negative, indeterminate fiscal impact on DOH. The bill has no fiscal impacts on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Health Care Professional Licensure

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners. MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.[1] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA. MQA is statutorily responsible for the following boards and professions established within the division:[2]

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.;
- Medical physicists, as provided under part IV of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.;

Background Screening

[1] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, p. 6, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/2019-2020-annual-report.pdf (last visited on March 16, 2021).
[2] S. 456.001(4), F.S; Id.

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,[3] 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.[4]

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.[5] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.[6]

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.[7] Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.[8] For a level 1 screening, this is the only 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.[9] 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.[10] 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.[11]

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.[12]

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:[13]

[3] 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 16, 2021).
[4] Section 435.04, F.S.
[5] Section 435.05(1)(a), F.S.
[6] Sections 435.03(1) and 435.04(1)(a), F.S.
[7] Section 435.05(1)(b)-(c), F.S.
[8] Id.
[9] Section 435.05(1)(b), F.S.
[10] Section 435.05(1)(c), F.S.
[11] Section 435.05(1)(d), F.S.
[12] Section 435.04(2), F.S.
[13] Section 456.0635, F.S.

- 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 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 to exempt applicants from that disqualification under certain circumstances:[14]

- 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.

Only the appropriate regulatory board, or the DOH when there is no board, may grant an exemption from disqualification to a person under the licensing jurisdiction of that board or the DOH, as applicable.[15]

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,[16] career offender,[17] or sexual offender (unless not required to register)[18] cannot be exempted from disqualification.[19]

Discipline

Section 456.072, F.S., authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner's licensure for a number of offenses, including but not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession;
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession; or
- Engaging or attempting to engage in sexual misconduct as defined in s. 456.063, F.S.

Sexual misconduct involves a health care practitioner engaging, or attempting to engage, in verbal or physical sexual activity outside the scope of the professional practice of his or her health care profession with a patient or client, or an immediate family member, guardian, or representative of a patient or client.[20]

If the board or DOH finds that a licensee committed a violation, the board or DOH may:[21]

- Refuse to certify, or to certify with restrictions, an application for a license;

[14] Section 435.07(1), F.S.
[15] Section 456.36, F.S.
[16] Section 775.261, F.S.
[17] Section 775.261, F.S.
[18] Section 943.0435, F.S.
[19] Section 435.07(4)(b), F.S.
[20] Section 456.063, F.S. A person who commits such sexual misconduct is disqualified from licensure in this state.
[21] Section 456.072(2), F.S.

- Suspend or permanently revoke a license;
- Place a restriction on the licensee's practice or license;
- Impose an administrative fine not to exceed $10,000 for each count or separate offense; if the violation is for fraud or making a false representation, a fine of $10,000 must be imposed for each count or separate offense;
- Issue a reprimand or letter of concern;
- Place the licensee on probation;
- Require a corrective action plan;
- Refund fees billed and collected from the patient or third party on behalf of the patient; or
- Require the licensee to undergo remedial education.

Emergency Suspension of Practitioner Licenses

Under current law, DOH must issue an emergency order suspending the license of a licensed physician, chiropractor, podiatrist, naturopath, optometrist, nurse, nursing assistant, pharmacist, dentist, optician, or hearing aid specialist who pleads guilty to or is convicted of certain violations of federal law and offenses relating to Medicare, fraud, drug offenses, and reproductive battery. The PCS expands DOH's authority to issue an emergency suspension order to all licensed health care practitioners and adds homicide to the list of offenses that DOH must issue an emergency suspension order:[22]

- 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;
- A misdemeanor or felony under:
  - 18 U.S.C. s. 669, relating to theft or embezzlement in connection with health care;
  - 18 U.S.C. ss. 285-287, relating to taking or using papers relating to claims, conspiracy to defraud the government with respect to claims, and false, fictitious of fraudulent claims;
  - 18 U.S.C. s. 371, relating to conspiracy to commit offense or to defraud United States;
  - 18 U.S.C. s. 1001, relating to statements or entries generally;
  - 18 U.S.C. s. 1035, relating to false statements relating to health care matters;
  - 18 U.S.C. s. 1341, relating to frauds and swindles;
  - 18 U.S.C. s. 1343, relating to fraud by wire, radio, or television;
  - 18 U.S.C. s. 1347, relating to health care fraud;
  - 18 U.S.C. s. 1349, relating to attempt and conspiracy;
  - 18 U.S.C. s. 1518, relating to obstruction of criminal investigations of health care offenses; or
  - 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.
- A felony under s. 784.086, F.S., relating to a reproductive battery.

DOH is not currently authorized to suspend the license of a health care practitioner who is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to a felony under ch. 782, F.S., relating to homicide. DOH is also not currently authorized to issue an emergency order suspending the license of a health care practitioner upon his or her arrest for any violation.

Effect of the Bill

The bill requires DOH to issue an emergency order suspending the license of a health care practitioner who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to any offense under s. 456.074, F.S.

The bill adds a felony under ch. 782, F.S., relating to homicide, to the list of offenses in which case DOH must issue an emergency suspension order.

[22] Section 456.074(1), F.S.

The bill also requires DOH to issue an emergency order suspending the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar offenses in another jurisdiction:

- Section 393.135(2), F.S., relating to sexual misconduct against an individual with a developmental disability;
- Section 394.4593(2), F.S., relating to sexual misconduct against a patient of a receiving or treatment facility or otherwise in the custody of the Department of Children and Families;
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025(2), F.S., relating to luring or enticing a child;
- Section 787.06(3)(b),(d), (f), or (g), F.S., relating to human trafficking for commercial sexual activity;
- Former s. 787.06(3)(h), F.S., relating to human trafficking of a child under the age of 15 for commercial sexual activity;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery, excluding s. 794.011(10), F.S.;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- Section 794.08, F.S., relating to female genital mutilation;
- Former s. 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former s. 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S., relating to deriving support from the proceeds of prostitution;
- Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons younger than 16 years of age;
- Section 810.145(8), F.S., relating to video voyeurism of a minor;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.011, F.S., relating to prohibited acts in connection with obscene, lewd, etc., materials;
- Section 847.012, F.S., relating to materials harmful to minors;
- Section 847.013, F.S., relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;
- Section 847.0133, F.S., relating to the protection of minors from obscene materials;
- Section 847.0135, F.S., relating to computer pornography, prohibited computer usage, or traveling to meet minors, excluding s. 847.0135(6) F.S.;
- Section 847.0137, F.S., relating to transmission of child pornography by electronic device or equipment;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment;
- Section 847.0145, F.S., relating to the selling or buying of minors;
- Section 856.022, F.S., relating to loitering or prowling in close proximity to children;
- Section 895.03, F.S., relating to racketeering activity, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive;
- Section 916.1075(2), F.S., relating to sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability;
- Section 985.701(1), F.S., relating to sexual misconduct against a juvenile offender; or
- Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in the bill.

Under the bill, being found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any offense listed above, or a similar offense in another jurisdiction, as acts that constitute grounds for discipline of any licensed health care practitioner.

A licensed health care practitioner who has his or her license suspended by emergency order will not be able to practice for the duration of the suspension.

B. SECTION DIRECTORY:

Section 1 Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.
Section 2 Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
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:

DOH may experience an increase in workload related to investigating complaints against a health care practitioner and issuing disciplinary actions or emergency suspension orders, the impact of which is likely negative, insignificant, and indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed health care practitioners who are arrested for certain offenses may experience a decrease in revenue associated with the suspension of a professional license because he or she will not be able to practice his or her profession for the duration of the suspension.

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:

Current law provides sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES