

Professions and Public Health Subcommittee

Monday, February 14, 2022
4:00 PM – 6:00 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: Monday, February 14, 2022 04:00 pm

End Date and Time: Monday, February 14, 2022 06:00 pm

Location: Webster Hall (212 Knott)

Duration: 2.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 131 -- Military Medics and Corpsmen of Florida Program
PCS for HB 543 -- Uterine Fibroid Research and Education
PCS for HB 687 -- Free Speech of Health Care Practitioners

For information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 02/10/2022 4:12PM by Osborne.Erin

PCS for HB 131

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 131 Military Medics and Corpsmen of Florida Program
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

Florida is home to approximately 1.5 million veterans. Each year, about 200,000 servicemembers end military service as veterans and either reenter the civilian workforce or enroll in higher education.

Florida is for Veterans, Inc. (Veterans Florida), a non-profit corporation within the Florida Department of Veterans' Affairs (FDVA), promotes Florida as a veteran-friendly state. Veterans Florida encourages and assists retired and recently separated military personnel to keep or make Florida their permanent residence, helps equip veterans for employment opportunities, and promotes the hiring of veterans.

Veterans Florida also administers the Veterans Employment and Training Services Program which links veterans in search of employment with businesses seeking to hire dedicated, well-trained workers. The purpose of the program is to meet the workforce demands of businesses in the state by facilitating access to training and education in high-demand fields for veterans.

PCS for HB 131 directs Veterans Florida to assist veterans who have health care services experience in the armed services with accessing training, education, and employment in health professions related to the veteran's service experience.

The bill has no fiscal impact on FDVA or local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Servicemembers Transitioning to Civilian Status

Each year, about 200,000 servicemembers end military service as veterans and either reenter the civilian workforce or enroll in higher education.[1] Florida is home to 20 military installations[2] and 69,290 military personnel.[3] Florida also has the nation's third-largest veteran[4] population with roughly 1.5 million veterans.[5] Many of these veterans are recently transitioned servicemembers.

Veterans Florida

Veterans Florida,[6] a non-profit corporation within the Florida Department of Veterans' Affairs, was created to promote Florida as a veteran-friendly state.[7] Veterans Florida encourages and assists retired and recently separated military personnel to keep or make Florida their permanent residence, helps equip veterans for employment opportunities, and promotes the hiring of veterans.[8] In Fiscal Year 2020-2021, Veterans Florida assisted 2,697 veterans with career assistance and job placement.[9]

Duties of Veterans Florida include:[10]

- Conducting research to identify the target market and the educational and employment needs of veterans and contract with at least one entity to perform the research.
- Advising the Florida Tourism Industry Marketing Corporation on:
  - The target market;
  - Development and implementation of a marketing campaign to encourage servicemembers to remain in Florida or to make Florida their permanent residence; and
  - Methods for disseminating information to the target market that relate to interests and needs of veterans and facilitate veterans' knowledge of and access to benefits.
- Promoting and enhancing the value of military skill sets to businesses.
- Implementing the Veterans Employment and Training Services Program.
- Managing all appropriated funds to ensure the use of such funds conforms to all applicable laws, bylaws, or contractual requirements.

Veterans Employment and Training Services Program

Veterans Florida administers the Veterans Employment and Training Services Program (Program) to assist in linking veterans in search of employment with businesses seeking to hire dedicated, well-

[1] Department of Defense SkillBridge, *Industry Partners and Employers,* https://dodskillbridge.usalearning.gov/industry-employers.htm (last visited Feb. 9, 2022).
[2] Enterprise Florida, *Florida's Military Profile,* https://www.enterpriseflorida.com/wp-content/uploads/Floridas-Military-Installations-Map.pdf (last visited Feb. 9, 2022).
[3] Florida Military & Defense, *Economic Impact Summary,* (2022), https://www.enterpriseflorida.com/wp-content/uploads/Florida-2022-EIS-Summary-Book-Final.pdf (last visited Feb. 9, 2022).
[4] Section 1.01(14), F.S., defines a "veteran" as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions.
[5] *Supra*, note 3.
[6] In 2015, the Florida Is For Veterans, Inc., Board of Directors approved the fictitious name "Veterans Florida." *See* at http://dos.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G15000027981&rdocnum=G15000027981 (last visited Feb. 9 ,2022). *See also* s. 295.21(5)(e), F.S.
[7] S. 295.21(1), F.S.
[8] S. 295.21(2), F.S.
[9] Veterans Florida, *Annual Report*, (2021), https://www.veteransflorida.org/wp-content/uploads/2021/12/2020-21-Annual-Report.pdf (last visited Feb. 9, 2022).
[10] S. 295.21(3), F.S.

trained workers.[11] The purpose of the Program is to meet the workforce demands of businesses in the state by facilitating access to training and education in high-demand fields for veterans.[12]

Functions of the Program include:[13]

- Conducting marketing and recruiting efforts directed at veterans who reside in or who have an interest in relocating to Florida and who are seeking employment;
- Assisting veterans who reside in or relocate to Florida and who are seeking employment;
- Assisting Florida businesses in recruiting and hiring veterans;
- Creating a grant program to provide funding to assist veterans in meeting the workforce-skill needs of businesses seeking to hire, promote, or generally improve specialized skills of veterans, establishing criteria for approval of requests for funding, and maximizing the use of funding for the grant program; and
- Contracting with one or more entities to administer an entrepreneur initiative program for veterans in Florida that connects business leaders with veterans seeking to become entrepreneurs.

SkillBridge Program

In 2021, the Legislature directed Veterans Florida, through the Veterans Employment and Training Services Program, to serve as the state's principal assistance organization under the Department of Defense (DoD) SkillBridge program.[14] The DoD SkillBridge program grants servicemembers[15] an opportunity to "gain valuable civilian work experience through specific industry training, apprenticeships, or internships" by matching civilian opportunities to a servicemember's job training and work experience.[16] The goal of providing these opportunities is to enhance the servicemember's marketability and post-separation career prospects following separation from duty.[17] Any rank, enlisted person, or officer may apply. Military spouses and veterans may also participate on a space available basis; however, the DoD will not provide pay, allowances, benefits, or other program support to the military spouse or veteran.[18]

Under the SkillBridge program, the servicemember is permitted to use up to the last 180 days of service to train and learn with an industry partner that best matches that applicant's job training and work experience. The training must offer the servicemember a high probability of employment. Throughout the SkillBridge program partnership, the servicemember continues to receive military compensation and benefits. Eligibility for the SkillBridge program is mission-dependent and must be authorized by the unit commander prior to entering into any agreement with interested industry employment partners.[19]

Military Health Professions

Army Medic

An Army medic provides emergency medical treatment in both combat and humanitarian situations for the U.S. Army, Army Reserve , or the Army National Guard. Medics serve as first responders, triaging

[11] S. 295.22, F.S.
[12] S. 295.22(2), F.S.
[13] S. 295.22(3), F.S.
[14] Ch. 2021-66, L.O.F.
[15] The term "servicemember" is generally referred to as being on "active duty." 10 USC s. 101 defines "active duty" as full-time duty in the active military service of the United States. The term includes full-time training duty, annual training duty, and attendance, while in the active military service. The term does not include full-time National Guard duty.
[16] Department of Defense SkillBridge, Program Overview, https://dodskillbridge.usalearning.gov/program-overview.htm (last visited Feb. 9, 2022).
[17] Department of Defense SkillBridge, *Military Members,* https://dodskillbridge.usalearning.gov/military-members.htm (last visited Feb. 9, 2022).
[18] Department of Defense SkillBridge, *Frequently Asked Questions,* https://dodskillbridge.usalearning.gov/faq.htm (last visited Feb. 9, 2022).
[19] *Supra,* note 17.

illness and injuries to save lives. An Army medic is considered an entry level position and requires 16 weeks of advanced training after completion of basic training.[20]

Air Force Medical Technician

Air Force medical technicians are enlisted servicemembers who specialize in:[21]

- Aerospace and operational physiology;
- Aerospace medical services;
- Medical laboratory services;
- Medical material (medications and medical supplies);
- Mental health services;
- Dental assistant;
- Respiratory care practitioner;
- Health services management (administration);
- Dental laboratory services;
- Diagnostic imaging;
- Histopathology;
- Diet therapy;
- Optometry services;
- Bioenvironmental engineering;
- Physical medicine;
- Public health;
- Pharmacy technician services; and
- Surgical assistance.

Each specialty requires a high school diploma, General Education Degree (GED), or a GED with 15 college credits, depending on the position sought. Basic understanding of health care and technical training beyond basic training is required for all positions.[22]

Navy Hospital Corpsman

A navy hospital corpsman is an enlisted sailor in the U.S. Navy who assist health care professionals in providing medical care to Navy personnel and their families. A hospital corpsman may function as a clinical or specialty technician, administrative personnel, or a health care provider. Corpsmen may perform emergency medical treatment, serve as an operating room technician, administer immunizations and intravenous fluids., maintain records, and assist Navy physicians and nurses with various tasks.[23]

Hospital corpsmen must hold a high school diploma or equivalent and be a U.S. citizen. After boot camp, hospital corpsmen report for specialized training in one of the following areas:[24]

- **Hospital Corps "A" School:** Nineteen weeks training in basic principles and techniques of patient care and first aid procedures;
- **Field Medical Service School**: Specialized training on medical services relating to Seabees and Marine Corps units, if accepted into such program; or
- **Advanced Training:** Advanced technical training, or "C" school, which is optional training for those who qualify after "A" school, in positions such as:
    - Behavioral health technician;

[20] U.S. Army, *Combat Medic Specialist*, https://www.goarmy.com/careers-and-jobs/career-match/science-medicine/intensive-care/68w-combat-medic-specialist.html (last visited Feb. 9, 2022).
[21] U.S. Air Force, *Air Force Careers – Medical Technicians & Specialists,* https://www.airforce.com/careers/browse-careers?tags=airforce:careers/subcategory/healthcare/medical-technicians-specialists#careers (last visited Feb. 9, 2022).
[22] Id.
[23] America's Navy, *Hospital Corpsman,* https://www.navy.com/careers/hospital-corpsman (last visited Feb. 9, 2022).
[24] Id.

- Dental hygiene;
- Cardiovascular technician;
- Occupational therapy;
- Optician;
- Pharmacy technician;
- Physical therapy technician;
- Respiratory therapist;
- Surgical technologist; and
- X-Ray technician.

U.S. Coast Guard Health Services Technician

U.S. Coast Guard health services technicians (HS technician) provide emergency health care services and daily medical care for Coast Guard Personnel and their families. HS technicians may assist medical and dental officers, perform diagnostic testing, take X-Rays, perform lab testing, prescribe medication, administer immunizations, and perform minor surgical procedures, depending on training and specialization.[25]

HS technicians must undergo 23 weeks of 'A' school, which includes intensive training in:[26]

- Anatomy;
- Physiology;
- Patient examination;
- Evaluation and treatment; and
- Pharmacology.

Effect of the Bill

The bill directs Veterans Florida to assist veterans who have health care services experience in the armed services with accessing training, education, and employment in health professions related to the veteran's service experience.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 295.21, F.S., relating to Florida Is For Veterans, Inc.
Section 2: Provides an effective date of July 1, 2022.

[25] U.S. Coast Guard, *Health Services Technician,* https://www.gocoastguard.com/reserve-careers/enlisted-careers/view-job-descriptions/hs (last visited Feb. 9, 2022).
[26] Id.

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:

   None. This bill does not appear to affect county of municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Florida Is For Veterans, Inc.; amending s. 295.21, F.S.; requiring Florida Is For Veterans, Inc. to assist certain veterans with accessing training, education, and employment in certain professions; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 295.21, Florida Statutes, is amended to read:

295.21 Florida Is For Veterans, Inc.—

(3) DUTIES.—The corporation shall:

(c) Assist veterans who have armed services health care training, including, but not limited to, training as a medic in the United States Army, a medical technician in the United States Air Force, a hospital corpsman in the United States Navy, or a health services technician in the United States Coast Guard, with accessing training, education, and employment in related health care professions.

(d) ~~(c)~~ Promote and enhance the value of military skill sets to businesses.

Section 2. This act shall take effect July 1, 2022.

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

PCS for HB 543

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 543 Uterine Fibroid Research and Education
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		Rahming	McElroy

SUMMARY ANALYSIS

Uterine fibroids are tumors that grow in a woman's uterus and are the most common benign tumors affecting women. They are rare before puberty, increase in prevalence during the reproductive years, and decrease in size after menopause. Treatment of fibroids depends on a woman's age, general health, symptoms, type of fibroids, whether she is pregnant, and her desire to have children in the future. Treatment ranges from minimally invasive hormonal and medical treatments to major surgical interventions, such as hysterectomy.

The Florida Department of Health (DOH) has programs that provide education on the importance of women's health and well-woman care, and offers follow-up and referral services based on an individual's history and need for medical or social services. However, under current law, DOH is not required to provide women information on fibroids. Additionally, DOH does not have a centralized database to track the diagnosis and treatment of women with fibroids.

Currently, health care providers who diagnose or treat woman with fibroids, such as allopathic and osteopathic physicians licensed under chapters 458 and 459, F.S., respectively, and autonomous advanced practice registered nurses (AAPRNs) registered under s. 464.0123, F.S., are not required to submit information relating to such diagnoses or treatments to DOH.

PCS for HB 543 requires DOH to develop and maintain an electronic database of information related to uterine fibroids that includes, at a minimum, the following information:

- Incidence and prevalence of women diagnosed with fibroids in Florida;
- Demographic attributes of women diagnosed with fibroids in Florida; and
- Treatments and procedures for fibroids used by specified health care providers in Florida.

The bill requires allopathic and osteopathic physicians and AAPRNs who diagnose or treat a woman with fibroids to submit information relating to such diagnosis or treatment to DOH.

The bill also requires DOH to develop and include specified information about fibroids in certain women's health care educational materials, including alternative treatment options to hysterectomy.

The bill has a significant, negative fiscal impact on DOH and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Uterine Fibroids

Uterine fibroids, which are tumors that grow in a woman's uterus,[1] place significant financial burdens on the U.S. health care system and economy, with an estimated $34 billion in associated annual health care costs.[2] These growths are typically benign (noncancerous) and are the most common benign tumor affecting women.[3] They are rare before puberty, increase in prevalence during the reproductive years, and decrease in size after menopause. As many as one in five women have fibroids during their childbearing years and half of all women have them by age 50. Fibroids are also more common in Black than White, Hispanic, or Asian women.[4]

Although the exact cause of fibroids is unknown, they are thought to be caused by hormones in the body and family history or genes.[5] In addition to age, race and ethnic origin, and family history, other known risk factors include:[6]

- Obesity
  - Overweight or obese women are two or three times more likely to get fibroids than normal weight women.
- Eating Habits
  - Eating a lot of red meat and ham is linked with higher risk of fibroids.
- Vitamin D deficiency
  - Vitamin D inhibits fibroid growth, but only 10 percent of Black women had adequate levels.[7]

Diagnosis of Fibroids

Fibroids vary in size and weight[8] and can grow in different parts of the uterus.[9] Although it is possible for just one fibroid to develop, most often there are multiple. Fibroids are not always easy to diagnose, as some women have no symptoms. However, common symptoms are bleeding between periods, heavy bleeding during periods, periods that last longer than normal,

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[1] The uterus is a hollow muscular organ that nourishes the developing baby during pregnancy. University of Florida Health (UFHealth), *Hysterectomy*, https://ufhealth.org/hysterectomy (last visited Feb. 8, 2022).
[2] Yang Q, Ciebiera M, Bariani M, Ali M, Elkafas H, Boyer T, and Al-Hendy A, Endocrine Society Oxford, Endocrine Reviews, 2022, Vol. XX, No. XX, 1–43 *Comprehensive Review of Uterine Fibroids: Developmental Origin, Pathogenesis, and Treatment*, (Nov. 2021) available at https://academic.oup.com/edrv/advance-article/doi/10.1210/endrev/bnab039/6422392 (last visited Jan. 27, 2022).
[3] National Center for Biotechnology Information (NCBI), *Uterine Leiomymomata*, https://www.ncbi.nlm.nih.gov/books/NBK546680/ (last visited Feb. 7, 2022).
[4] UFHealth, *Uterine Fibroids*, https://ufhealth.org/uterine-fibroids (last visited Feb. 7, 2022).
[5] *Id.*
[6] Florida Department of Health (DOH) Hernando County, Uterine Fibroids in Florida, 2021 Narrative Summary of the Data, https://hernando.floridahealth.gov/newsroom/2021/07/UterineFibroids2021Report.html (last visited Feb. 7, 2022).
[7] *Id*. Sunlight in moderation, supplements, and certain food sources can help improve Vitamin D levels.
[8] *Supra* note 4. Some fibroids are microscopic, while others fill the entire uterus and weigh several pounds.
[9] *Supra* note 4. Fibroids can grow in the muscle wall of the uterus (myometrial); just under the surface of the uterine lining (submucosal); just under the outside lining of the uterus (subserosal); or on a long stalk on the outside the uterus or inside the uterus (pedunculated).

urinary frequency and urgency, pelvic cramping or pain with periods, feeling fullness or pressure in the lower belly, and painful intercourse.[10]

Fibroids can also be diagnosed through a pelvic exam, which may show a change in the shape of a woman's uterus, or through the following tests:[11]

- Ultrasound, which uses sound waves to create a picture of the uterus.
- MRI, which uses powerful magnets and radio waves to create a picture.
- Saline infusion sonogram, where saline is injected into the uterus to make it easier to see the uterus using ultrasound.
- Hysteroscopy, which uses a long, thin tube inserted through the vagina and into the uterus to examine the inside of the uterus.
- Endometrial biopsy, which removes a small piece of the lining of the uterus to check for cancer if a woman has unusual bleeding.

Treatment of Fibroids

Treatment of fibroids depends on a woman's age, general health, symptoms, type of fibroids, whether she is pregnant, and her desire to have children in the future. Treatment ranges from minimally invasive hormonal and medical treatments to major surgical interventions, such as hysterectomy.

Non-Surgical Treatment

There are various treatments for the symptoms of fibroids, such as intrauterine devices (IUDs) that release hormones to help reduce heavy bleeding and pain and tranexamic acid to reduce the amount of blood flow.[12] There are also medical or hormonal therapies to shrink fibroids,[13] including a type of IUD that releases a low dose of the hormone progestin into the uterus each day. [14] Medical procedures used to directly treat fibroids include:[15]

- Endometrial ablation, a procedure used to treat heavy bleeding associated with fibroids; and
- Uterine artery embolization, a procedure that stops the blood supply to the fibroid, causing it to shrink and die.

Surgical Treatments

Surgical procedures used to treat fibroids include:[16]

- Mysteroscopy, a procedure that removes fibroids growing inside the uterus;
- Myomectomy, a procedure that removes fibroids from the uterus, but does not prevent new fibroids from growing; and
- Hysterectomy

[10] *Supra* note 4.
[11] *Id*.
[12] Other examples include iron supplements to prevent or treat anemia due to heavy periods; and pain relievers, such as ibuprofen or naproxen, for cramps or pain.
[13] Other examples include birth control pills to help control heavy periods and hormone shots to help shrink fibroids by stopping ovulation.
[14] *Supra* note 4.
[15] *Id.*
[16] *Id.*

Hysterectomy is a major surgery to remove all or part of a woman's uterus. The fallopian tubes and ovaries may also be removed during the surgery.[17] Hysterectomy is the second most frequently performed surgical procedure, after cesarean section, for women of reproductive age in the United States. Approximately 600,000 hysterectomies are performed annually in the United States, and approximately 20 million U.S. women have had a hysterectomy.[18]

In addition to the general risks of surgery,[19] hysterectomy specific risks include:[20]

- Injury to the bladder or ureters;
- Pain during sexual intercourse;
- Early menopause if the ovaries are removed;
- Decreased interest in sex; and
- Increased risk of heart disease if the ovaries are removed before menopause.

Public Health Programs for Women's Health

The DOH, in conjunction with the Florida Agency for Health Care Administration (AHCA), has implemented the Family Planning Medicaid Waiver Program,[21] which provides education on the importance of women's health and well-woman care. The program also offers pregnancy testing and counseling, physical examinations, screening for hypertension, breast and cervical cancer, and sexually transmitted diseases, including HIV counseling and testing. Follow-up and referral services are based on an individual's history and need for medical or social services, including referrals for additional services for women diagnosed with having fibroids.[22]

A woman is eligible for the program if she:[23]

- Is between the ages of 14 and 55;
- Has lost full Medicaid services for any reason in the past 24 months;
- Wants to have family planning services;
- Is not pregnant;
- Has not had a hysterectomy or sterilization (tubes tied); and
- Has a household income less than or equal to 185% of the federal poverty level.[24]

Uterine Fibroid Reporting and Database

Currently, DOH does not provide women information on fibroids and does not have a centralized database to track information for women with fibroids. DOH does however, have a

[17] UFHealth, *Hysterectomy*, https://ufhealth.org/hysterectomy (last visited Feb. 8, 2022).
[18] Centers for Disease Control, *Hysterectomy Surveillance --- United States, 1994—1999*, https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5105a1.htm#:~:text=Problem%2FCondition%3A%20Hysterectomy%20is%20the,women%20have%20had%20a%20hysterectomy. (last visited Feb. 8, 2022).
[19] Risks include blood clots, which may cause death if they travel to the lungs, allergic reactions to medicines, breathing problems, bleeding, infection, and injury to nearby body areas.
[20] *Supra*, note 17.
[21] The program is also known as Family Planning Medicaid for Today's Woman.
[22] DOH, Women's Health, https://www.floridahealth.gov/%5C/programs-and-services/womens-health/index.html (last visited Feb. 9, 2022).
[23] *Id*.
[24] For 2021, 185% of the FPL for a family of four is $49,025 annually (or $4,085 per month). *See*, *Poverty Guideline, 48 Contiguous States (all states except AK and HI*), https://aspe.hhs.gov/sites/default/files/private/aspe-files/107166/2021-percentage-poverty-tool_0.pdf (last visited Feb. 9, 2022).

data-sharing agreement with AHCA related to hospitalizations for fibroids. If a woman has a hospitalization related to fibroids, this information is captured via the hospital discharge record.[25] AHCA receives this information and transmits it to DOH per the data-sharing agreement. Between 2016-2019, there were 16,842 hospitalizations related to fibroids among Florida women ages 15-54 years.[26]

Currently, health care providers who diagnose or treat woman with fibroids, such as allopathic and osteopathic physicians licensed under chapters 458 and 459, F.S., respectively, and autonomous advanced practice registered nurses (AAPRNs) registered under s. 464.0123, F.S., are not required to submit information relating to such diagnoses or treatments to DOH.

Effect of the Bill

PCS for HB 543 requires DOH to develop and maintain an electronic database of information related to uterine fibroids that includes, but is not limited to, the following information:

- Incidence and prevalence of women diagnosed with fibroids in Florida;
- Demographic attributes of women diagnosed with fibroids in Florida; and
- Treatments and procedures for fibroids used by medical doctors and osteopathic physicians licensed under chapters 458 or 459, F.S., and autonomous APRNs registered under s. 464.0123, F.S.

The bill requires allopathic and osteopathic physicians and AAPRNs who diagnose or treat a woman with fibroids, to submit such information relating to such diagnosis or treatment to DOH for inclusion in the database. The bill authorizes this information to be submitted with other information the provider must submit to DOH, likely increasing efficiencies in reporting required information.

The bill requires DOH to develop and include specified information about fibroids in certain women's health care educational materials, including alternative treatment options to hysterectomy.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 381.9312, F.S., relating to uterine fibroid research database; education and public awareness.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[25] R. 59E-7 F.A.C.
[26] DOH, Agency Bill Analysis for HB 543, p. 2 (Jan. 27, 2022).

2. Expenditures:[27]

   Year 1: DOH estimates a fiscal impact of $803,092, including $681,048 in nonrecurring funds and $122,044 in recurring funding to procure, develop, and implement the required database, as well as training health care providers on the bill's new reporting requirement.

   Year 2+: DOH estimates a fiscal impact of $392,044 in recurring funding for oversight of the database and database server maintenance and upgrades.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners may experience an increase in workload and costs associated with record keeping and the bill's reporting requirement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides DOH sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[27] DOH, Agency Bill Analysis for HB 543, p. 4 (Jan. 27, 2022).

A bill to be entitled

An act relating to uterine fibroid research and education; creating s. 381.9312, F.S.; providing definitions; requiring the Department of Health to develop and maintain an electronic database of information related to uterine fibroids; providing a specified purpose for such database; requiring that the database include specified information; requiring health care providers to submit certain information to the department for inclusion in the database; prohibiting the database from including any personal identifying information; providing that such information is confidential; authorizing certain persons to use such information for a specified purpose; requiring the department to develop and include information related to fibroids in certain literature currently made available to the public for a specified purpose; providing an effective date.

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

Section 1. Section 381.9312, Florida Statutes, is created to read:

381.9312 Uterine fibroid research database; education and public awareness.—

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

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

(a) "Department" means the Department of Health.

(b) "Health care provider" means a physician licensed under chapter 458 or chapter 459 or an autonomous advanced practice registered nurse registered under s. 464.0123.

(c) "Uterine fibroid" means a noncancerous growth of the uterus that often appears during a woman's childbearing years.

(2) UTERINE FIBROID RESEARCH DATABASE.—

(a) The department shall develop and maintain an electronic database consisting of information related to uterine fibroids. The purpose of the database is to encourage research relating to the diagnosis and treatment of uterine fibroids and to ensure that women are provided with the relevant information and health care necessary to prevent and treat uterine fibroids. The database must include, but need not be limited to, all of the following information:

1. Incidence and prevalence of women diagnosed with uterine fibroids in this state.

2. Demographic attributes of women diagnosed with uterine fibroids in this state.

3. Treatments and procedures for uterine fibroids used by health care providers in this state.

(b) A health care provider who diagnoses or treats a woman with uterine fibroids shall submit information relating to such diagnosis or treatment to the department in a form and manner

prescribed by department rule for inclusion in the database. Such information may be submitted along with any reports or other information that the health care provider is required to submit to the department pursuant to state law.

(3) UTERINE FIBROID EDUCATION OUTREACH AND PUBLIC AWARENESS.—The department shall develop and include information related to uterine fibroids in its women's health care educational materials currently made available to the public. The information must include, but need not be limited to, the following:

(a) Possible risk factors for developing uterine fibroids.

(b) Range of available treatment options that are considered alternatives to hysterectomy.

Section 2. This act shall take effect July 1, 2022.

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

PCS for HB 687

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 687 Free Speech of Health Care Practitioners
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		Rahming	McElroy

SUMMARY ANALYSIS

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. Under current law, government regulation based on the content of speech is presumptively invalid and is upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.

The Division of Medical Quality Assurance, within the Department of Health (DOH), has general regulatory authority over health care practitioners. Current law authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner's license for a number of offenses, including failing to adhere to the applicable standard of care and making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. DOH and the boards do not have the authority to regulate free speech and thus have not taken any adverse actions against a health care practitioner's licensed based solely on free speech.

Under current law, the DOH must "promptly" provide a copy of only legally sufficient complaints that result in the initiation of a disciplinary investigation of a health care practitioner to the practitioner or the practitioner's attorney. "Promptly" is not defined in statute or rule.

The DOH does not license healthcare practitioners by specialty or subspecialty based upon national board certification; however, current law prohibits osteopathic physicians from holding themselves out as board-certified specialists unless they have obtained that specialty from an approved recognizing agency. Rule 64B15-14.001, F.A.C., relating to advertising, authorizes the Board of Osteopathic Medicine to approve recognizing agencies for purposes of certifying Florida-licensed osteopathic physicians as specialists in certain aspects of the practice of osteopathic medicine. This rule establishes requirements for advertising by osteopathic physicians and does not confer upon the state any authority over the recognizing agencies.

PCS for HB 687 prohibits a board within the jurisdiction of the DOH, or the DOH if there is no board, and recognizing agencies from reprimanding, sanctioning, revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for exercising their constitutional right of free speech, including through the use of a social media platform. The bill provides an exception to this prohibition if the DOH, board, or recognizing agency proves beyond a reasonable doubt that a health care practitioner's use of free speech has led to the direct physical harm of a person with whom the health care practitioner had a practitioner-patient relationship within the 3 years immediately preceding the physical harm.

The bill also requires the DOH, board, or recognizing agency to provide the health care practitioner with all complaints, rather than only legally sufficient complaints, that may result in licensure revocation within seven days after receiving such complaint.

The bill will have a significant, negative fiscal impact on the DOH and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Licensure and Regulation of Physicians

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.[1] 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.[2] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. MQA is statutorily responsible for the following boards and professions established within the division:[3]

- 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.

Recognizing Agencies

[1] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.
[2] Florida Department of Health (DOH), Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2020-2021*, p. 6, https://mqawebteam.com/annualreports/2021/8/ (last visited Feb. 9, 2022).
[3] S. 456.001(4), F.S; *Id*.

The DOH does not license healthcare practitioners by specialty or subspecialty based upon national board certification; however, ch. 459, F.S., prohibits osteopathic physicians from holding themselves out as board-certified specialists unless they have obtained that specialty from an approved recognizing agency.[4] Rule 64B15-14.001, F.A.C., relating to advertising, authorizes the Board of Osteopathic Medicine to approve recognizing agencies for purposes of certifying Florida-licensed osteopathic physicians as specialists in certain aspects of the practice of osteopathic medicine. The Board has approved the following 501(c) private, national organizations, as recognizing agencies:

- American Board of Medical Specialties
- American Osteopathic Association
- American Association of Physician Specialists, Inc.
- American Board of Interventional Pain Physicians

This rule establishes requirements for advertising by osteopathic physicians and does not confer upon the state any authority over the recognizing agencies.

Discipline of Health Care Practitioners

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; or
- Failing to identify through writing or orally to a patient the type of license under which the practitioner is practicing.

If the board or DOH finds that a licensee committed a violation, the board or DOH may:[5]

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

Investigations

The DOH, on behalf of the professional boards, investigates any complaint that is filed against a health care practitioner if the complaint is in writing, signed by the complainant, and legally sufficient.[6] A complaint is legally sufficient if it contains allegations of ultimate facts that, if true, show that a regulated practitioner has violated ch. 456, F.S., their practice act, or a rule of their board or the DOH.[7]

[4] S. 459.015, F.S. Similar provisions are contained within ch. 458 (allopathic physicians), ch. 464 (nurses) and ch. 466 (dentists).
[5] S. 456.073(1), F.S.
[6] S. 456.073(1), F.S.
[7] *Id*.

The Consumer Services Unit within MQA receives the complaints and refers them to the closest Investigative Services Unit (ISU) office.[8] The ISU investigates complaints against health care practitioners.[9] Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as timely as possible. When the complaint is assigned to an investigator, the complainant is contacted and given the opportunity to provide additional information. A thorough investigation is then conducted. The steps taken in the investigation are determined by the specifics of the allegations, but generally include the following:[10]

- Obtaining medical records, documents, and evidence;
- Locating and interviewing the complainant, the patient, the practitioner, and any witnesses; and
- Drafting and serving subpoenas for necessary information.

The ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders for the DOH.[11]

The PSU is responsible for providing legal services to the DOH in the regulation of all health care boards and councils.[12] The PSU will review the investigative file and report from ISU and recommend a course of action to the State Surgeon General (when an immediate threat to the health, safety, and welfare of the people of Florida exists), the appropriate board's probable cause panel, or the DOH, if there is no board, which may include:[13]

- Having the file reviewed by an expert;
- Issuing a closing order;
- Filing an administrative complaint; or
- Issuing an emergency order (emergency restriction order or emergency suspension order).

If the ISU investigative file received by PSU does not pose an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU attorneys review the file and determine, first, whether expert review is required and, then, whether to recommend to the board's probable cause panel a closing order, an administrative complaint, or a letter of guidance.[14]

Final DOH action, including all of the above, as well as cases where the practitioner has failed to respond to an administrative complaint, are presented before the applicable board, or DOH if there is no board. The practitioner may be required to appear. The complainant is notified of the date and location of the hearing and may attend. If the practitioner is entitled to, and does, appeal the final decision, PSU defends the final order before the appropriate appellate court.[15]

Health Care Practitioner Notification of Complaint

Current law does not require the DOH to provide a health care practitioner with a copy of any complaint it has received that may result in revocation of licensure, certification, or registration, within a specified time period. Rather, current law requires the DOH to "promptly" provide a copy of any complaint or

[8] DOH, *Consumer Services*, http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html (last visited Feb. 10, 2022).
[9] DOH, *Investigative Services,* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html (last visited Feb. 10, 2022).
[10] *Id*.
[11] *Id*.
[12] DOH, *Prosecution Services,* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html (last visited Feb. 10, 2022).
[13] *Id*.
[14] S. 456.073(2), F.S. The DOH may recommend a letter of guidance in lieu of finding probable cause if the subject has not previously been issued a letter of guidance for a related offense.
[15] *Supra* note 12.

document that resulted in the initiation[16] of a disciplinary investigation of a health care practitioner to the practitioner or the practitioner's attorney.[17] This means that the DOH is not required to provide copies of legally insufficient complaints.

Additionally, a complaint and all information obtained pursuant to the investigation by the DOH are confidential and exempt from public disclosure until 10 days after the probable cause panel or DOH makes a probable cause determination, or until the regulated professional or subject of the investigation waives confidentiality, whichever occurs first.[18]

Currently, health care practitioners must provide a mailing address and a telephone number when applying for licensure or licensure renewal. Health care practitioners are also required to notify the DOH of address changes for communication purposes. The DOH does not have the authority to require applicants to provide e-mail addresses for the purpose of receiving correspondence from the department. Thus, correspondence is generally provided to licensees through the mail.[19] Based on the most current Service Standards Maps provided by the United States Postal Service, the average time for delivery in Florida is four days.[20]

During FY 2020-2021, the DOH prosecuted 356 health care license revocations. The average number of all DOH complaints received in the last three fiscal years was 41,209.[21]

Due Process Under Chapter 120, F.S.

Chapter 120, F.S., known as the Administrative Procedure Act, (APA), provides uniform procedures for the exercise of specified authority. Section 120.60, F.S., pertains to licensing and provides for due process for persons seeking government-issued licensure or who have been granted such licensure. Under the APA, no revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the governmental agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a hearing under ss. 120.569 and 120.57, F.S.[22]

When personal service cannot be made and the certified mail notice is returned undelivered, the agency must cause a short, plain notice to the licensee to be published once each week for four consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency, or, if no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county.[23]

The APA provides a process for cases in which a governmental agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.[24] In such cases, the agency may take such action by any procedure that is fair under the circumstances if:[25]

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the U.S. Constitution;
- The agency takes only that action necessary to protect the public interest under the emergency procedure; and

[16] The initiation of the investigation occurs upon establishment of legal sufficiency. DOH, Agency Bill Analysis of 2022 HB 687, p. 3. (Feb. 4, 2022).
[17] S. 456.073(1), F.S.
[18] S. 456.073(10), F.S.
[19] First-class mail is the standard for sending letters by the DOH, unless certified return receipt is required. According to the United States Post Office, the cost to mail a letter by first class mail is 58 cents, and takes one to five days to deliver.
[20] USPS, *Service Standard Maps*, https://postalpro.usps.com/ppro-tools/service-standards-maps (last visited Feb. 11, 2022).
[21] DOH, Agency Bill Analysis of 2022 HB 687, p. 4. (Feb. 4, 2022).
[22] S. 120.60(5), F.S.
[23] *Id*.
[24] S. 120.60(6), F.S.
[25] *Id*.

- The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted upon.

The DOH prosecutes administrative cases based upon the standard of "clear and convincing evidence."[26]

Burden and Standard of Proofs in Litigation Cases

Burden of Proof

The burden of proof is an obligation to prove a material fact in issue.[27] Generally, the party who asserts the material fact in issue has the burden of proof.[28] Thus, in a criminal proceeding, the burden is on the state to prove that the defendant committed the crime with which he or she was charged, while in a civil proceeding, the burden of proof is on the plaintiff to prove the allegations contained in their complaint. A defendant in either a criminal or a civil proceeding has the burden to prove any affirmative defenses[29] he or she may raise in response to the charges or allegations. However, there are certain statutory and common law presumptions[30] that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.[31] These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.[32]

Standard of Proof

A standard of proof is the level or degree of proof necessary to meet the burden of proof for a particular issue.[33] In criminal actions, the standard of proof necessary for a conviction[34] is beyond a reasonable doubt, meaning that the fact finder must be virtually certain of the defendant's guilt in order to render a guilty verdict. Beyond a reasonable doubt is the highest standard of proof that may be imposed upon a party at trial and, under current law, is only used in criminal cases.

In most civil actions the standard of proof is by the preponderance of the evidence, meaning the burden of proof is met when the party with the burden convinces the factfinder that there is a greater than 50 percent chance that the claim is true.[35]

However, certain civil actions[36] are practitioner to a heightened standard of proof, requiring the plaintiff to prove the allegations by clear and convincing evidence. This standard requires the evidence to be highly and substantially more likely to be true than untrue.[37] The clear and convincing evidence standard is an intermediate-level standard. It is more rigorous than the "preponderance" standard but less rigorous than the "beyond a reasonable doubt" standard.

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[26] DOH, Agency Bill Analysis of 2022 HB 687, p. 4. (Feb. 4, 2022).
[27] 5 *Florida Practice Series* s. 16:1.
[28] *Id.*; *see Berg v. Bridle Path Homeowners Ass'n, Inc.*, 809 So. 2d 32 (Fla. 4th DCA 2002).
[29] An affirmative defense is a defense which, if proven, negates criminal or civil liability even if it is proven that the defendant committed the acts alleged. Examples include self-defense, entrapment, insanity, necessity, and *respondeat superior*. Legal Information Institute, *Affirmative Defense*, https://www.law.cornell.edu/wex/affirmative_defense (last visited Feb. 10, 2022).
[30] These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.
[31] 5 *Florida Practice Series* s. 16:1.
[32] *Id.*
[33] *Id.*
[34] The standard of proof for proving affirmative defenses raised in a criminal trial may vary.
[35] *See*, S. 120.57(1)(j), F.S., and 5 *Florida Practice Series* s. 16:1.
[36] These actions typically include actions to impose a civil penalty, civil actions based on conduct amounting to a criminal law violation, and actions in which the effect of a civil ruling might be deprive a party of a protected interest. 5 *Florida Practice Series* s. 16:1.
[37] 5 *Florida Practice Series* s. 16:1; *see Colorado v. New Mexico*, 467 U.S. 310 (1984).

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.[38] "The First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."[39]

It is well established that a government regulation based on the content of speech is presumptively invalid and is upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.[40] The government bears the burden of demonstrating the constitutionality of any such content-based regulation.[41] "Falsity alone may not suffice to bring the speech outside the First Amendment; the statement must be a knowing and reckless falsehood."[42]

Online Speech

The United States Supreme Court has clarified, "[o]nline speech is equally protected under the First Amendment as there is 'no basis for qualifying the level of First Amendment scrutiny that should be applied' to online speech."[43] This means that speech made on social media platforms is protected under the First Amendment, subject to any constitutional government regulations.

Under Florida law, "social media platform" means any information service, system, Internet search engine, or access software provider that:[44]

- Provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site;
- Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity;
- Does business in the state; and
- Satisfies at least one of the following thresholds:
    - Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.
    - Has at least 100 million monthly individual platform participants globally.

Professional Speech

In 2018, the U.S. Supreme Court clarified that professional speech of individuals who perform personalized services that require a professional license from the state is not a separate category of speech exempt from the rule that content-based regulations of speech are practitioner to strict scrutiny.[45] Justice Thomas delivered the opinion of the court, stating "[t]he dangers associated with content-based regulations of speech are also present in the context of professional speech. As with other kinds of speech, regulating the content of professionals' speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information."[46] Further, "[w]hen the government polices the content of professional speech, it can fail to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail."[47]

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[38] *See De Jonge v. Oregon*, 299 U.S. 353, 364–65(1937) (incorporating right of assembly); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (incorporating right of freedom of speech).
[39] Douglas v. City of Jeannette (Pennsylvania), 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).
[40] Ashcroft v. Am. Civil Liberties Union, 542 U.S. 656, 665-66 (2004).
[41] *Id.* at 660.
[42] *See* U.S. v. Alvarez, 617 F. 3d 1198 (2012) and *New York Times v. Sullivan*, 376 U.S. 254 (1964).
[43] Reno v. Am. Civil Liberties Union, 521 U.S. 844, 870 (1997).
[44] S. 501.2041(1)(g), F.S. The term does not include any information service, system, Internet search engine, or access software provider operated by a company that owns and operates a theme park or entertainment complex as defined in s. 509.013.
[45] Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2365 (2018).
[46] *Id.* at 2374.
[47] *Id.* at 2366.

Currently, there are no disciplinary penalties established within any board, council, or DOH rule that specifically addresses a health care practitioner's "constitutional right to free speech." As such, there is no mechanism for establishing legal sufficiency to initiate an investigation, nor prosecuting a case for such an allegation.[48]

However, a health care practitioner may be disciplined for conduct that could be considered an exercise of free speech if such conduct is in violation of ch. 456, F.S., their practice act, or a rule of their board or the DOH, including, but not limited to, through the use of a social media platform, or prosecuted for violation of standard of care in a case in which the health care practitioner causes direct physical or psychological harm to a patient.

Free Speech Regulation – Department of Health

Current law authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner's license for a number of offenses, including failing to adhere to the applicable standard of care and making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.[49] DOH and the boards however, do not have the authority to regulate free speech. Per the DOH:[50]

> "There are no existing disciplinary penalties established within any board, council, or department rule that addresses a health care practitioner's "constitutional right to free speech." As such, there is no mechanism for establishing legal sufficiency to initiate an investigation, nor prosecuting a case for this allegation. Only in a case in which direct physical or psychological harm of a patient by a health care practitioner resulted could be prosecuted as a violation of standard of care."

Thus, DOH and the boards have not taken any adverse actions against a health care practitioner's licensed based solely on free speech.

Free Speech Regulation – Recognizing Agencies

Recognizing agencies are independent from the state and develop their own standards by which they certify and discipline health care practitioners. The state, including DOH and its regulatory boards, has no authority over the external credentialing of these private, national accrediting entities or their disciplinary practices.[51]

Effect of the Bill

Free Speech of Health Care Practitioners

PCS for HB 687 prohibits a board within the jurisdiction of the DOH, or the DOH if there is no board, and certain recognizing agencies from reprimanding, sanctioning, revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for exercising their constitutional right of free speech, including, but not limited to, through the use of a social media platform. The bill provides an exception to this prohibition if the DOH, board, or recognizing agency proves beyond a reasonable doubt that a health care practitioner's use of free speech has led to the direct physical harm of a person with whom the health care practitioner had a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm.

Free Speech Regulation by DOH

[48] DOH, Agency Bill Analysis of 2022 HB 687, p. 4. (Feb. 4, 2022).
[49] S. 456.72, F.S.
[50] DOH, Agency Bill Analysis of 2022 HB 687, p. 4. (Feb. 4, 2022).
[51] DOH, Agency Bill Analysis of 2022 HB 687, p. 4. (Feb. 4, 2022).

The bill may conflict with DOH and the board's authority to discipline health care practitioners. Current law authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner's license for a number of offenses, including failing to adhere to the applicable standard of care and making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. The bill's provisions appear to conflict with this authority. For example, a health care practitioner could allege that any deceptive, fraudulent or misleading statement was free speech and protected under the bill's provisions. This would serve as a bar to any prosecution by DOH unless DOH proved beyond a reasonable doubt, the standard applicable in criminal cases, that a physical harm occurred to a person who had been a patient of the health care practitioner within the 3 preceding years. Additionally, by raising the evidentiary standard from clear and convincing to beyond a reasonable doubt, the bill may increase prosecution costs for DOH or discourage prosecution of certain offenses.

Free Speech Regulation by Recognizing Agencies

The bill applies to recognizing agencies approved by the Board of Osteopathic Medicine in Rule 64B15-14.001 for purposes of certifying Florida-licensed osteopathic physicians as specialists in certain aspects of the practice of osteopathic medicine. The Board has approved the following 501(c) private, national organizations, as recognizing agencies:

- American Board of Medical Specialties
- American Osteopathic Association
- American Association of Physician Specialists, Inc.
- American Board of Interventional Pain Physicians

These 501(c) recognizing agencies are national in scope. They choose to develop their own standards by which they certify health care practitioners as specialists. While the state of Florida may prohibit persons from holding themselves out to be certified specialists in aspects of the practice of osteopathic medicine, the state does not have the ability to prohibit these recognizing agencies from taking adverse actions against the certification of persons who fail to meet the recognizing agency's standards. The state of Florida has no control over the certification and disciplinary processes created by these independent organizations and might not be able to enforce the provisions of the bill.

Health Care Practitioner Notification of Complaint

The bill requires the DOH, board, or recognizing agency to provide the health care practitioner with all complaints, rather than only legally sufficient complaints, that may result in licensure revocation within seven days after receiving such complaint.

Although email delivery would be the most efficient way to timely provide a complaint to a health care practitioner, the DOH does not have the authority to require that health care practitioners provide or maintain an e-mail address with the department for notification purposes.[52] This means that the DOH's only recourse for ensuring delivery would be to send notifications and complaint documentation by first class mail to the address the licensee is required to provide to the DOH and maintain. Complaints received on a Saturday or Sunday would further limit the time for transmission to the health care practitioner within seven calendar days, increasing the likelihood that the DOH will involuntarily fail to satisfy this statutory requirement.

Additionally, the state of Florida has no control over the certification and disciplinary processes created by national, independent recognizing agencies and might not be able to enforce this provision of the bill.

The bill provides an effective date of July 1, 2022.

[52] DOH, Agency Bill Analysis of 2022 HB 687, p. 3. (Feb. 4, 2022).

B. SECTION DIRECTORY:

Section 1: Creates s. 456.61, F.S., relating to use of free speech by a health care practitioner.
Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:[53]

Implementation of the bill will have a significant, negative fiscal impact resulting from a recurring increase in workload associated with processing complaints in a manner where all notifications are completed in within seven days from the time of the receipt of the complaint, and increased litigation for the DOH and its boards.

The DOH estimates that 12 full-time equivalent (FTE) positions will be required to implement the provisions of this bill, with salary being computed at a position's base plus 43% for benefits. Based on the LBR standards, the total FTE cost is $805,062 ($654,137/Salary $147,264/Expense $3,661/HR).

The seven-day complaint notification requirement would mandate the DOH to provide the complaint to the practitioner by first class mail. Based on the average complaints received over the most recent three years (41,209), the anticipated recurring cost to notify health care practitioners could be as much as $23,901.22 (41,209 x .58) in postage costs and $7,417.62 (41,209 x .18) in contracted services.

Since bill does not specify what, if any, administrative fines the DOH would face for failure to comply with the seven-day complaint notification requirement, the fiscal impact is indeterminate at this time.

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:

[53] DOH, Agency Bill Analysis of 2022 HB 687, p. 6. (Feb. 4, 2022).

Not applicable. The bill does not appear to affect county of 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

A bill to be entitled

An act relating to free speech of health care practitioners; creating s. 456.61, F.S.; prohibiting certain entities from reprimanding, sanctioning, or revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for specified use of his or her right of free speech without specified proof; requiring certain entities to provide to a health care practitioner any complaints within a specified timeframe; providing an effective date.

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

Section 1. Section 456.61, Florida Statutes, is created to read:

456.61 Use of free speech by a health care practitioner; prohibition.— A board within the jurisdiction of the department, the department if there is no board, or a recognizing agency approved by the board under rule 64B15-14.001, Florida Administrative Code:

(1) May not reprimand, sanction, revoke, or threaten to revoke a license, certificate, or registration of a health care practitioner for exercising his or her constitutional right of free speech, including, but not limited to, speech through the

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

use of a social media platform as defined in s. 501.2041, unless such entities prove beyond a reasonable doubt that the speech used by the health care practitioner led to the direct physical harm of a person with whom the health care practitioner had a practitioner-patient relationship within the 3 years immediately preceding the physical harm.

(2) Must provide a health care practitioner with any complaints received for which revocation actions may be in order within 7 days after receipt of such complaint.

Section 2. This act shall take effect July 1, 2022.