The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	SB 1486
INTRODUCER:	Senator Grimsley
SUBJECT:	Department of Health
DATE:	January 29, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Pre-meeting**
2.			AP	
3.			RC	

I. Summary:

SB 1486 updates numerous provisions relating to healthcare practitioners and facilities regulated by the Department of Health (DOH), Division of Medical Quality Assurance. More specifically, the bill:

- Authorizes the DOH to make rules to establish additional criteria for the selection of physician applicants for sponsorship under the Conrad 30 Waiver Program (Conrad 30 Program) to address the shortage of physicians in medically underserved areas;
- Eliminates obsolete language, and requires the application to the DOH for licensure for all professions to include the applicant's date of birth;
- Allows expedited licensure for the dentist-spouse of a person serving on military active duty; removes outdated language for grading dental and dental hygienist licensure examinations; removes the supervision requirement for dentists practicing on a temporary license; and creates procedures for dentists to report adverse incidents occurring in a dental office;
- Creates statutory requirements for licensure of, and grants rulemaking authority to, the Board of Medicine and Board of Osteopathic Medicine for office surgery centers (OSCs);
- Deregulates registered chiropractic assistants;
- Clarifies the timing for submission of an application and examination for licensure as an optometrist and creates a pathway for licensure by endorsement;
- Grants rulemaking authority to the Board of Nursing (BON) to define standards of care and revises eligibility for licensure as a certified nursing assistant (CNA);
- Creates statutory requirements for the issuance of sterile compounding pharmacy permits to in-state patient specific or outsourcing facilities; requires an institutional, nuclear, special or internet pharmacy to pass a DOH on-site inspection before a license may be issued;
- Amends licensure and renewal requirements for Athletic Trainers; and modifies the definition of an athletic trainer;

- Authorizes residency registration for the practice of orthotics and prosthetics as a dual residency;
- Eliminates the massage therapy apprenticeship program, except for the study of colonic irrigation; clarifies that the massage therapist licensure examination is a national examination approved by the board; and expands circumstances for revocation, or denial of initial licensure, of a massage establishment license;
- Aligns the requirements for clinical laboratory directors with the requirements of the Federal Clinical Laboratory Improvement Act (CLIA);
- Eliminates outdated language and clarifies education accreditation requirements for applicants for psychology licensure; and
- Clarifies the number of clinical hours of supervision required for a marriage and family therapist; streamlines and corrects inconsistencies in provisions regulating the licensure of marriage and family therapy, mental health counseling, and clinical social work; eliminates specific education requirements for mental health counselors applying for licensure by endorsement; and corrects a reference to psychologists.

II. Present Situation:

The Conrad 30 Program

The Conrad 30 Program, authorized by the United States Department of State (USDOS), and the United States Immigration and Customs Enforcement (USCIS), addresses the shortage of qualified doctors in medically underserved areas. The program allows medical doctors holding a J-1 Visa to apply for a waiver of the two-year residence requirement upon completion of the J-1 Visa exchange visitor program under s. 214(l), Immigration Nationality Act (INA).

State public health agencies are authorized to sponsor up to 30 physicians annually to serve a designated U.S. Department of Health and Human Services (HHS) Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP). The program requires all medical doctors holding J-1 Visas who wish to participate in a Conrad 30 Program to:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by the HHS, as a HPSA, MUA, or MUP;
- Obtain a contract from the health care facility located in an area designated by HHS, as an HPSA, MUA, or MUP;
- Obtain a "no objection" letter from his or her home country if the home government funded his or her exchange program; and
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The DOH has administered the Conrad 30 Waiver Program since 1994. In recent years, the number of applicants has exceeded the maximum number of 30 slots allowed by the program. The DOH does not have rule-making authority to establish additional criteria for selecting

Conrad 30 applicants for sponsorship, thereby limiting the DOH's ability to place qualified physicians in areas of highest need.[1]

The DOH General Licensing Authority

The DOH's general licensing provisions, set out in s. 456.013, F.S., require every applicant for licensure to apply to the DOH before sitting for a licensure examination. This requirement was initially imposed when the DOH developed and administered its own examinations. A strict statutory interpretation of this section requires an applicant, even those who have already passed the licensure examination before applying for a license, to take the examination after applying to the DOH for licensure.

Section 456.017, F.S., was amended in 2005, to provide that neither the board nor the DOH could administer a state-developed written examination if a national examination has been certified by the DOH. All Florida developed examinations have ceased. National examinations have been certified, and thus, the requirement for applying to the DOH to take the examination has become obsolete.[2]

Section 456.031, F.S., also requires all applications for licensure to be submitted to DOH on a form that may be submitted electronically. The provision requires the applicant's social security number (SSN). There is no current statutory requirement that an applicant provide a date of birth, although a birth date is a requirement to fulfill other statutory licensure requirements under ss. 456.039 and 456.0135, F.S, for fingerprinting, and fingerprint retention by the Agency for Health Care Administration (AHCA) and Provider Background Screening Clearinghouse.

According to the DOH, the Joint Administrative Procedures Committee (JAPC) has objected to applications for licensure that contained a data field for the applicant's date of birth, alleging that the DOH has no statutory authority to ask for a date of birth. To ensure accurate matches through the Florida Department of Law Enforcement (FDLE), the Federal Bureau of Investigation (FBI) and the Sex Offender Registry (SOR), the DOH must have available three identifiers: the name, social security number, and date of birth.[3]

United States Members of the Armed Forces, Spouses, and Florida Licensure

Section 456.024, F.S., relate to members of the United State (U.S.) Armed Forces, their spouses, and licensure in the DOH regulated professions. Among other things, s. 456.024, F.S., grants licensure to the spouse of a person serving on active duty in the U.S. Armed Forces who is a health care practitioner in another state, District of Columbia, U.S. territory, or possession, excluding dentistry, for which licensure in the other state or jurisdiction is not required, if he or she submits to the DOH evidence of training or experience substantially equivalent to the requirements for licensure in Florida, and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization, if required for

[1] Department of Health, *House Bill 1047 Analysis*, (December 19, 2017) (on file with the Senate Committee on Health Policy).
[2] *Id.*
[3] *Id.*

licensure in Florida. Since this section was amended, the DOH has issued 254 expedited licenses to military spouses.[4]

Section 456.024, F.S., also grants the DOH authority to issue a temporary professional license to the spouse of an active duty U.S. Armed Forces member who submits a completed application with proof of the following:

- The applicant is married to an active duty U.S. Armed Forces member, on active duty Florida;
- The applicant is not the subject of disciplinary action;
- A valid license issued by another state, the District of Columbia, a U.S. possession or territory;
- The applicant would otherwise be entitled to full licensure under the appropriate practice act;
- The applicant is eligible to take the appropriate license examination; and
- Fingerprints for a criminal background check.[5]

A temporary license expires 12 months after the date of issuance and is not renewable. The DOH has issued 99 temporary licenses since 2011.[6]

In the case of dentists only, the application for a temporary license requires a dentist to meet all requirements for full licensure,[7] and the individual must practice under the indirect supervision of a Florida licensed dentist.

According to the DOH, the Board of Dentistry office has determined that to-date, only three temporary dentist licenses have been issued under this section; and many dentists opt to apply for full licensure rather than apply for a temporary license, and meet all of the requirements for full licensure.[8]

Office Surgery Centers

The DOH currently regulates Office Surgery Centers (OSC) under its general rulemaking authority for the Board of Medicine and Board of Osteopathic Medicine.[9] According to the DOH there are 556 registered OSCs in Florida.[10] An OSC licensed as a facility under ch. 395, F.S., accredited by the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF), Accreditation Association for Ambulatory Health Care (AAAHC), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or by another nationally recognized accrediting agency recognized by the boards, is not required to register with the DOH.[11] There are approximately 190 accredited OSCs in Florida that are not required to register.[12]

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[4] *Id.*
[5] Section 456,024(3)(a), F.S.
[6] *See supra* note 1.
[7] *See* ch. 466, F.S.
[8] *See supra* note 1.
[9] *See* ss. 458.309 and 459.005, F.S., and Rules 64B8-9.009 and 64B15-14007, F.A.C.
[10] *See supra*, note 1.
[11] *See* ss. 458.309 and 459.005, F.S.
[12] *See supra* note 11.

The allopathic medical practice act and osteopathic practice act require registration and inspection for an OSC, if the OSC:

- Performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed;
- Performs level 2 procedures lasting more than 5 minutes; and
- Performs any level 3 surgical procedures.[13]

The rules for allopathic medicine and osteopathic medicine specifically provide that a physician is not required to register, or obtain any other form of authorization from the DOH, to perform office surgery in an office that has been registered in accordance with the rule. The rule does not require disclosure of the ownership of the facility; and neither statutes nor rule provide for emergency action against a facility when the DOH learns of gross or repeated examples of rule violations. If no discipline is taken against an OSC, the public may be unaware that repeated violations of the law have occurred at a particular facility.

Physicians working in an OSC are required to meet specific training and credentialing requirements depending on the level of surgery being performed. For Level I office surgery the surgeon is required to have continuing medical education in proper dosages; and management of toxicity or hypersensitivity to regional anesthetic drugs.

For Level II office surgery, or higher, the surgeon must have:

- A transfer agreement in place with a licensed hospital within reasonable proximity[14] if the physician performing the procedure does not have staff privileges to perform the same procedure in the out-patient setting at a licensed hospital within reasonable proximity;
- Staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office setting; or
- Documentation of satisfactory completion of training such as board certification or board eligibility by a board approved of by the American Board of Medical Specialties or any other board approved by the respective boards; or
- Comparable background, training, and experience to be qualified to perform any procedure the physician performs in the office surgery setting; and
- Hold, or have one assistant with, a current certification in an American Heart Association, American Safety and Health Institute, or Pacific Medical Training approved Advanced Cardiac Life Support course with didactic and skills components.[15]

There is no statute or rule that requires a physician working in an OSC to report to the DOH, or his or her board, the relationship he or she has with the OSC; and no statute or rule that enables the DOH, or the board, to confirm the requirements are met.[16]

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[13] *See supra* note 10.
[14] *Reasonable proximity* is defined as not to exceed thirty (30) minutes transport time to the hospital. *See* Rules 64B8-9.009 and 64B15-14.007, F.A.C.
[15] *See* Rules 64B8-9.009 and 64B15-14.007, F.A.C.
[16] *Supra* note 1.

The medicine and osteopathic rules define the levels of surgery for which registration with the DOH is required. The levels of surgery are further defined in Rule 64B8-9.009, F.A.C. The inspection requirements for an OSC are found in Rules 64B89.0091 and 64B15-14.007, F.A.C., and mirror the requirements for operating an OSC.

According to the DOH, the majority of Level I and Level II OSC inspection deficiencies are relatively minor, such as missing or insufficient patient data before, during, and after a procedure. However, most of the deficiencies found in Level III OSCs, such as missing or malfunctioning equipment, missing or outdated crash cart drugs, and failure to verify staff credentials such as hospital staff privileges or BLS/ACLS certification, have the potential to cause serious patient injury. The facility, by law, is allowed to provide a corrective action plan to overcome the deficiencies.[17]

If an inspection reveals deficiencies such as unlicensed activity, not having policies and procedures for running the facility, not having quality assessment and improvement systems for cleaning, sterilization and infection control, no standard emergency procedures, or hiring physicians who do not meet the requirements of rule, the rules provide that "the physician" must be notified and given a written statement of the noncompliance. The DOH does not have the statutory authority to act against a facility registration or facility owner for any instance of non-compliance unless that facility is owned by the surgeon(s) working in the facility. "The physician" is identified to the DOH when the facility is registered.[18]

Without the authority to hold an owner or a designated physician accountable, it is difficult for the DOH to ensure general patient safety by merely providing notice to "the physician" of deficiencies. Often "the physician" is not the owner or the manager of a facility and has no authority over staff hiring, creation and maintenance of office policies and procedure manuals for duties and responsibilities of personnel, improvement of systems for cleaning, sterilization and infection control, and maintenance of emergency equipment. If an OSC has a history of repeatedly disregarding the laws regulating the facility, including failure to have lifesaving equipment, discipline against only "the physician" does not solve the problems with a facility that jeopardized the safety of patients in the care of other physicians in the facility.[19]

Physicians are required to report to the DOH all *adverse incidents* that occur in any office maintained by a physician that is not licensed under ch. 395, F.S. An *adverse incident* is defined as an event over which the physician or licensee could exercise control and which is associated in whole or in part with a medical intervention, rather than the condition for which such intervention occurred, and which results in the following patient injuries:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a wrong-site surgical procedure;
- The performance of a wrong surgical procedure; or

[17] *Id.*
[18] *Id*.
[19] *Id*.

- The surgical repair of damage to a patient resulting from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process if it results in:
  - Death;
  - Brain or spinal damage;
  - Permanent disfigurement not to include the incision scar;
  - Fracture or dislocation of bones or joints;
  - A limitation of neurological, physical, or sensory function; or
  - Any condition that required the transfer of the patient.
- A procedure to remove unplanned foreign objects remaining from a surgical procedure;
- Any condition that required the transfer of a patient to a hospital from an ambulatory surgical center licensed under ch. 395, F.S., or any facility or any office maintained by a physician for the practice of medicine which is not licensed under ch. 395, F.S.[20]

The DOH looked back on ten years of office surgery adverse incident reports, and found 653 adverse incidents, counting only those that were office surgery related. The results showed:
- 90.2 percent required a transfer to a hospital and 9.8 percent of those resulted in a patient death;
- 64 total procedures resulted in deaths; and
- 134 adverse incidents were reported for cosmetic and plastic surgery.[21]

Registered Chiropractic Assistants

Registered Chiropractic Assistants (RCAs) perform duties not directly related to chiropractic patient care under the direct supervision of a chiropractic physician or chiropractic physician's assistant. There are no regulatory provisions associated with the work of an RCA. The registration is voluntary and not required for an individual to assist with patient care management activities, execute administrative and clinical procedures, or perform managerial and supervisory functions in the office.[22] According to the DOH, in fiscal year 2016-2017, there were 3,800 active in-state RCAs.[23]

Licensure and Certification of Optometrists

The Practice of Optometry

The DOH is responsible for the regulation of optometrists in Florida for the preservation of the health, safety, and welfare of the public. The Board of Optometry was established to ensure that every person engaged in the practice of optometry meets minimum requirements for safe practice.[24]

[20] Sections 458.351 and 459.026, F.S.
[21] *See supra* note 20.
[22] Section 460.4166, F.S.
[23] *Supra* note 1.
[24] Section 463.001, F.S., and The Department of Health, *Florida Board of Optometry*, available at: http://floridasoptometry.gov/, (last visited Nov. 8, 2017).

Optometry is the diagnosis of conditions of the human eye and its appendages.[25] The practice of optometry includes the employment of any objective or subjective means or methods to assist in the diagnosis of conditions of the human eyes and its appendages, including:

- The administration of ocular pharmaceutical agents, for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and
- The prescribing and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including ocular pharmaceutical agents,[26] for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.[27]

Licensed optometrists who are not certified, may use only topical anesthetics for the sole purpose of glaucoma examinations, but are otherwise prohibited from administering or prescribing ocular pharmaceutical agents.[28] A licensed optometrist is required to post in his or her practice location a sign which states, "I am a Licensed Practitioner, not a Certified Optometrist, and I am not able to prescribe ocular pharmaceutical agents."[29]

All optometrists initially licensed after July 1, 1993,[30] are now required to be certified; and may administer and prescribe ocular pharmaceutical agents for the diagnosis and treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.[31]

Licensure and Certification

Pursuant to ch. 456, F.S., the general provisions applicable to all professions regulated by the DOH, the DOH must provide for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations, in consultation with the appropriate board. For each examination developed by the DOH or a contract vendor, the board must specify by rule:

- The general areas to be covered by each examination;
- The relative weight to be assigned in grading each area tested; and
- The score necessary to achieve a passing grade.[32]

However, neither the board, nor the DOH, may administer a state-developed written examination if a national examination has been certified by the DOH.[33] The board may administer a state-

[25] Section 463.002(10), F.S. "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus.
[26] "Ocular pharmaceutical agent" means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques. See s. 463.002(5), F.S.
[27] Section 463.002(7), F.S.
[28] See s. 463.0055(1)(a), F.S.
[29] Section 463.002(3), F.S.
[30] Section 463.002(3), F.S. During the 1986 Legislation, ch. 463, F.S., was amended to require that anyone applying for an optometrist license after July 1, 1993, become a Certified Optometrist. The amendment required all applicants after that date to meet additional education and examination requirements. *See also* the Department of Health, Board of Optometry, *Licensing and Registration*, available at http://floridasoptometry.gov/licensing/, (last visited Nov. 8, 2017).
[31] Sections 463.002(4) and 463.0055, F.S.
[32] Section 456.017(1)(a) and (b), F.S.
[33] Section 456.017(1)(c)2., F.S.

developed practical or clinical examination, if required by the applicable practice act, if all costs are paid by the candidate. If a national practical or clinical examination is available, and certified by the DOH, the board may administer the national examination.[34]

There is currently no statutory avenue for licensure by endorsement for optometrists licensed in another state who wish to practice optometry in Florida. Any person desiring to be a certified optometrist in Florida must apply to the DOH to take the licensure and certification examination(s).[35] The requirements for certification as an optometrist are:

- Submission of a completed application form;
- Submission of an application and examination fee;
- Be at least 18 years of age;
- Graduation from a school or college of optometry approved by the board;
- Provide proof of at least 110 hours of transcript quality course work and clinical training in general and ocular pharmacology;
- Have completed at least 1 year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience;
- Successfully pass all four parts of the Florida Licensure Examination, consisting of:
  - Part I – the Applied Basic Science (ABS) portion of the examination developed by the National Board of Examiners in Optometry (NBEO);
  - Part II – the Patient Assessment and Management (PAM) portion of the examination developed by the NBEO which includes an embedded Treatment and Management of Ocular Disease examination;
  - Part III – the Clinical Skills (CSE) portion of the examination developed by the NBEO; and
  - Part IV – a written examination on applicable Florida laws and rules governing the practice of optometry, and
- If the applicant is, or has ever been, licensed in another state, he or she must also submit a licensure verification from each state.[36]

An applicant who fails to achieve a passing score on Part I, Part II, Part III or Part IV of the licensure examination may retake any part. Reexamination is limited to an 18-month period from the date of the original failure. The board may grant an extension of one additional year to allow an additional retake based on a medical disability substantiated by documentation from the applicant's physician.[37]

Florida schools of optometry, and several out of state colleges, include the four-part examination in the school curriculum and spread the four parts over the course of four years of education and training required by the program.[38]

[34] Section 456.017, F.S.
[35] Section 463.006(1), F.S.
[36] The Department of Health, Board of Optometry, *Licensure Requirements*, available at: http://floridasoptometry.gov/licensing/certified-optometrist/, (last visited November 8, 2017).
[37] Rule 64B13-4.002, F.A.C.
[38] See Department of Health, *Senate Bill 520 Analysis* (Oct, 12, 2017) (on file with the Senate Committee on Health Policy).

Prior to April 14, 2017, the DOH, Board of Optometry, had by rule[39] accepted licensure applicants' passing scores on Part I, Part II, Part III and Part IV of the licensure examination that had been obtained within the seven year period immediately preceding licensure application. This practice was challenged in 2016[40] at the Division of Administrative Hearings (DOAH) and the Administrative Law Judge found that the petitioners had demonstrated that the rule's look-back period for test scores was an invalid exercise of delegated authority in violation of section 120.52(8)(b) and (c); ". . . and that should this result be onerous, the answer [was] a legislative change."[41] As a result of this decision graduating students applying for licensure in Florida were required to retake examinations they had previously taken and passed while in school or college; and all out-of-state applicants were required to retake the examination.[42]

Renewal of Licensure and Certification

A licensed optometrist must renew his or her license every two years. In order to do so the licensee must pay a renewal fee not to exceed $300, and demonstrate his or her professional competence by completing 30 hours of continuing education during the preceding two year period before license renewal. Certified optometrists must also complete 30-hour continuing education during the preceding two years, but their hours must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.[43]

Board of Nursing Rulemaking Authority to Establish Standards of Care

The legislature has granted the Board of Nursing rulemaking authority in a number of areas:

- To establish guidelines for remedial courses for those who fail the nursing examination three times;[44]
- To administer certification of clinical nurse specialists;[45]
- To administer the certification of advanced registered nurse practitioners, including the appropriate requirements for advanced registered nurse practitioners in the categories of certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners;[46]
- To establish a procedure for the biennial renewal of licenses and to prescribe continuing education requirements for renewal of licenses;[47]
- To provide application procedures for inactive status, for the biennial renewal of inactive licenses, and for the reactivation of licenses, including applicable fees;[48] and
- To establish disciplinary guidelines.[49]

[39] Rule 64B13-4.001, F.A.C.
[40] See Department of Administrative Hearings, *Final Order*, *Yontz & Johnson, v. DOH*, Case No. 16-6663RX (April 14, 2017), *available at* https://www.doah.state.fl.us/ROS/2016/16006663.pdf (last visited Dec. 5, 2017).
[41] Id. at page 42.
[42] *Supra* note 15.
[43] Section 463.007, F.S.
[44] Section 464.008, F.S.
[45] Section 464.0115, F.S.
[46] Section 464.012, F.S.
[47] Section 464.013, F.S.
[48] Section 464.014, F.S.
[49] Section 464.018(5), F.S.

The Legislature did not expressly grant rulemaking authority to the board to promulgate nursing standards of care.[50] The authority to define the scope of practice for nurses is noticeably absent from s. 464.018, F.S.; and s. 456.003(6), F.S., which expressly limits the ability of the DOH boards to modify or contravene the lawful scope of practice of a regulated profession.

From 2003 through 2012, the BON proposed various rules on nursing standards of practice for conscious sedation and unprofessional conduct, which were ultimately withdrawn after the Joint Administrative Procedures Committee (JAPC) asserted objections. In 2012, the BON proposed yet another rule establishing professional guidelines for the administration of conscious sedation and to update the instances of unprofessional conduct. This 2012 version was met with challenges from various associations and JAPC; and was ultimately challenged at DOAH in case number 121545RP. That decision found that BON lacked the statutory authority to define nursing "scope of practice" in the Nurse Practice Act. That decision was affirmed by the District Court of Appeal, First District, State of Florida in case numbers 1D12-5656, 1D12-5671, and 1D12-5739 (all related to DOAH 12-1545RP).

The Legislature has granted statutory authority to set standards of practice for professions that are authorized to practice independently, including:

- Allopathic and osteopathic physicians;[51]
- Podiatric physicians;[52]
- Pharmacists;[53]
- Psychotherapists;[54]
- Clinical social workers;[55]
- Dentists;[56]
- Optometrists;[57] and
- Opticians.[58]

Certified Nursing Assistants

Section 464.201(5), F.S., defines the practice of a certified nursing assistant as providing care and assisting persons with tasks relating to the activities of daily living activities of daily living include tasks associated with: personal care; maintaining mobility; nutrition and hydration; Toileting and elimination; assistive devices; safety and cleanliness; data gathering; reporting abnormal signs and symptoms; postmortem care; patient socialization and reality orientation; end-of-life care; cardiopulmonary resuscitation and emergency care; Patients' rights;

[50] *See Florida Medical Association, Inc.; Florida Osteopathic Medical Association; And Florida Podiatric Medical Association, vs. Department Of Health, Board Of Nursing*, DOAH Case No. 12-001545 RP, *Summary Final Order*, Nov. 2, 2012; *affirmed per curium, Department of Health, Board of Nursing, Florida Association of Nurse Anesthetists And Florida Nurses Association, v. Florida Medical Association, Inc., Florida Osteopathic Medical Association, Inc., And Florida Podiatric Medical Association*, Case Nos. 1D12-5656, 1D12-5671, 1D12-5739 (Fla. 1st DCA, Feb. 12, 2014).
[51] Sections 458.331(1)(v) and 459.015(1)(z), F.S.
[52] Section 461.003, F.S.
[53] Sections 465.003(13), and 465.0155, F.S.
[54] Section 490.003((4), F.S.
[55] Section 491.003, F.S.
[56] Section 466.003(3), F.S.
[57] Section 463.005(1)(a), F.S.
[58] Section 463.002(7), F.S.

documentation of nursing-assistant services; and other tasks that a CAN may perform after training.[59]

The BON issues certificates to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates:

- Successfully completed an approved training program and achieved a minimum score;
- Has achieved a minimum score, on the nursing assistant competency examination, and:
  - Has a high school diploma, or its equivalent; or
  - Is at least 18 years of age.
- Is currently certified in another state and has not been found to have committed abuse, neglect, or exploitation in that state; and
- Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score.[60]

Section 464.204, F.S., related to denial, suspension or revocation of a CNA certification, sets forth the grounds for the BON to discipline a CNA. Two acts constitute grounds for which the board may impose disciplinary sanctions: (a) Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board; and (b) intentionally violating any provision of ch. 464, F.S., ch. 456, F.S., or the rules adopted by the board. When pursuing discipline against a CNA, the DOH must be prepared to prove that the CNA "intentionally" violated the law or rule, which is a difficult bar to meet, especially in cases of proving intent or negligence.

The BON can only approve applications for licensure by endorsement from currently licensed CNAs in other states. If a CNA from a U.S. territory or the District of Columbia wishes to be licensed in Florida, he or she must apply for licensure by examination instead of endorsement.[61]

Pharmacy Permits

There are currently seven types of pharmacies eligible for various operating permits issued by the DOH:

- Community pharmacy;[62]
- Institutional pharmacy;[63]
- Nuclear pharmacy;[64]

[59] Section 464, F.S.
[60] Section 464.203, F.S.
[61] *Id.*
[62] The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.
[63] *See* ss. 465.003(11)(a)2. and 465.019, F.S.
[64] The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.

- Special pharmacy;[65]
- Internet pharmacy;[66]
- Non-resident sterile compounding pharmacy;[67] and
- Special sterile compounding pharmacy.[68]

There is currently no statutory language relating to in-state sterile compounding policies and procedures. The only regulation exists in the Board of Pharmacy (BOP) rules governing in-state and nonresident pharmacies and outsourcing facilities which manufacture sterile compounded drug products.[69]

The DOH has authority to inspect any community pharmacy,[70] hospital, clinic, wholesale establishment, manufacturer, physician's office, or any other place in the state in which drugs and medical supplies are compounded, manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale for the purpose of:

- Determining if any provision of ch. 465, F.S., or any rule is being violated;
- Securing samples or specimens of any drug or medical supply after paying or offering to pay for such sample or specimen; or
- Securing such other evidence as may be needed for prosecution under ch. 465, F.S.[71]

Currently, s. 465.018, F.S., requires a pharmacy permit applicant to pass an on-site inspection as a prerequisite for the issuance of any initial permit or change of location for a community pharmacy. Physical inspections are conducted and required for all pharmacies licensed by the BOP to ensure that these facilities are operating pursuant to statutory rules and guidelines and meet minimum requirements for safe practice. Other pharmacy facilities which require inspections are: institutional; nuclear; special; and internet. The BOP also has adopted a rule which provides that the passing of an on-site inspection is a prerequisite to the issuance of a new pharmacy permit for community, institutional, nuclear, special, or internet pharmacies, whether based on an initial application, change of ownership, or change of address.[72]

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[65] The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.

[66]The term "internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.

[67] The term "nonresident sterile compounding pharmacy" includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit *See* s. 465.0158, F.S.

[68] *See* Rules 64B16-2.100 and 64B16-28.802, F.A.C. An outsourcing facility is considered a pharmacy and needs to hold a special sterile compounding permit if it engages in sterile compounding.

[69] See Rules 64B16-27.700, 64B16-27.797,64B16-28.100(7), and 64B16-28.802, F.A.C., govern in-state sterile compounding pharmacies and outsourcing facilities; and Rules 64B16-32.007, 64B1632.009, 64B16-32.011,64B16-32.013, and 64B16-32.015, F.A.C., governing nonresident sterile compounding pharmacies and outsourcing facilities

[70] *See supra* note 64.

[71] Section 465.017, F.S.

[72] *See* Rule 64B16-28.100(1)(d), F.A.C.

Dentistry, Dental Hygiene and Dental Laboratories

Licensure Examinations for Dentists and Dental Hygienists

Section 466.004, F.S., establishes the Board of Dentistry (BOD) within the DOH to regulate the practice of dentistry and dental hygiene. The requirements for licensure by examination are found in Section 466.006, F.S. The Legislature authorized the BOD to use the American Dental Licensing Examination (ADLEX), developed by the American Board of Dental Examiners, Inc., in lieu of an independent state-developed practical or clinical examination. Section 466.007, F.S., also requires a dental hygiene applicant to pass the American Dental Hygiene Licensing Examination (ADHEX) developed by the American Board of Dental Examiners, Inc.

Sections 466.006(4)(b), and 466.007(4)(b), F.S., require that the ADEX examination for dentists, and the ADHEX examination for hygienists, be graded by Florida licensed dentists, and dentists and hygienists, respectively, and employed by the DOH for this purpose. This language refers to requirements that were necessary when the ADEX and ADHEX examinations were purchased and administered by the DOH. Since the BOD has now certified national examinations for both dentists and hygienists, this requirement is now obsolete.

According to the DOH, by limiting the grading to Florida-only licensed dentists and hygienists, it creates a shortage of dentists and hygienists available to grade the examinations; thus, jeopardizing the administration of the ADEX and the ADHEX.[73]

Adverse Incident Reporting in the Practice of Dentistry

Currently there is no statutory requirement for dentists or dental hygienists to report adverse incidents or occurrences in office practice settings. The BOM and BOOM have specific statutory authority to require licensees to report adverse incidents in office practice settings.[74]

The BOD, by rule, definitions an "adverse occurrence;" and specifies the requirements for reporting them. The rule specifies that an adverse occurrence in a dental office must be reported to the BOD within 48 hours, followed by a more specific written report within 30 days. These reports are forwarded to the Chair of the Probable Cause Panel to determine if further investigation is necessary. If further investigation is warranted, the report and recommendation are forwarded to the MQA Consumer Services Unit (CSU) for further investigation. All reported mortalities occurring in a dental office are forwarded to CSU for investigation. The rule does not provide a penalty for failure to report an adverse occurrence.[75] According to the DOH, this lack of penalty for failure to report an adverse occurrence may result in the under reporting of the incidents in the dental office practice setting.[76]

Dental Laboratories

Section 466.031, F.S., defines a *dental laboratory* to include any person, firm, or corporation who, for a fee or gratuitously, manufactures artificial substitutes for natural teeth, or who

[73] *Supra* note 1.
[74] Sections 458.351 and 459.026, F.S.
[75] Rule 64B5-14.006, F.A.C.,
[76] *See supra* note 78.

furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth, or who holds itself out as a dental laboratory. The definition specifically excludes a dental laboratory technician who constructs or repairs dental prosthetic appliances in the office of a licensed dentist, for that dentist only, and under her or his supervision and work order.

Section 466.032, F.S., also sets forth the registration and biennial registration renewal for a dental laboratory; and directs the DOH to issue a certificate upon payment of a fee which entitles the holder to operate a dental laboratory for a period of two years. Section 466.032, F.S., also sets forth the requirements for a periodic inspection of dental laboratories for required equipment and supplies; mandates 18 hours of continuing education, biennially, for the dental lab owner or at least one employee which must be programs of learning that contribute directly to the education of the dental technician; and establishes disciplinary guidelines for violations.

According to the DOH, there are 954 dental labs as of June 30, 2017.[77] Since 2012, there have been six administrative complaints filed in Florida against dental laboratories; of which four resulted in disciplinary cases. In one case the lab refused an inspection; and the other three were either unsanitary conditions, failure to take continuing education for renewal, or record keeping violations. In that same time period, just four citations were issued for minor violations.[78]

Athletic Trainers

Section 468.073, F.S., establishes the Board of Athletic Trainers within the DOH to regulate the practice of athletic trainers in Florida. Applicants for licensure as an athletic trainer are required to:

- Submit to a background screening;
- Have a baccalaureate or higher degree from a college or university in professional athletic training, accredited by the Commission on Accreditation of Athletic Training Education and to have passed the national examination to be certified by the Board of Certification (BOC)[79] for Athletic Trainers;
- Have a current certification from the BOC, if they graduated before 2004.[80]
- Have current certifications in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).

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[77] Department of Health, Division of Medical Quality Assurance, *Annual Report & Long Range Plan, Fiscal Year 2016-2017*,p.14, *available at:* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf (last visited Jan. 28, 2018).

[78] *See supra*, note 1.

[79] The Board of Certification, Inc. (BOC) was incorporated in 1989 as a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. The BOC establishes both the standards for the practice of athletic training and the continuing education requirements for BOC Certified Athletic Trainers (ATs). The BOC also works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues. The BOC also has the only accredited certification program for ATs in the United States and has mutual recognition agreements with Canada and Ireland. *See* Board of Certification for the Athletic Trainer, *Who is the BOC? available at* http://www.bocatc.org/about-us#what-is-the-boc (last visited Jan. 25, 2018).

[80] Prior to 2004, and the inception of athletic training programs, athletic trainers obtained training through a Board of Certification (BOC) internship program to obtain licensure in Florida. Current law does not allow athletic trainers who obtained training through the BOC internship program to become licensed in Florida.

An athletic trainer must practice under the direction of a physician licensed under chs. 458, 459, or 460, F.S., or otherwise authorized by Florida law to practice medicine. The physician must communicate his or her direction through oral or written prescriptions or protocols for the provision of services and care by the athletic trainer; and the athletic trainer must provide service or care as dictated by the physician.[81]

The Board of Athletic trainers is authorized to adopt rules to implement the provisions of part XIII, ch. 468, F.S. Such rules must include, but are not limited to:

- The allowable scope of practice regarding the use of:
  - Equipment;
  - Procedures; and
  - Medication;
- Mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;
- Licensure requirements;
- Licensure examination;
- Continuing education requirements;
- Fees;
- Records and reports to be filed by licensees;
- Protocols; and
- Any other requirements necessary to regulate the practice of athletic training.[82]

At renewal, licensed athletic trainers must demonstrate a current BOC certification; however, there is no requirement for that certification to be held without lapse and in good standing.[83]

Orthotics, Prosthetics, and Pedorthics

Section 468.801, F.S., establishes the Board of Orthotists and Prosthetists within the DOH to regulate and license the practice of Prosthetist-Orthotist, Prosthetist, Orthotist, Pedorthist, Orthotic Fitter and Orthotic Fitter Assistant in Florida. *Orthotics* means the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.[84] *Prosthetics* means the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a prosthesis.[85] *Pedorthics* means the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a pedorthic device.[86]

Applicants for licensure under part XIV, ch. 468, F.S., must:

[81] Section 468.713, F.S.
[82] Section 468.705, F.S.
[83] Section 468.711, F.S.
[84] Section 468.80(9), F.S.
[85] Section 468.80(15), F.S.
[86] Section 468.80(12), F.S.

- Submit an application and fee, not to exceed $500,
- Submit fingerprints for background screening;
- Submit the cost of the state and national criminal background checks;
- Be of good moral character;
- Be 18 years of age or older; and
- Have completed the appropriate educational preparation requirements.[87]

Licenses must be granted independently in orthotics, prosthetics, or pedorthics, but a person may be licensed in more than one discipline. A prosthetist-orthotist license may be granted to persons meeting the requirements for both a prosthetist and an orthotist license. Persons seeking to obtain the required orthotics or prosthetics experience in the state must be approved by the board and registered as a resident by the DOH. A registration may be held in both practice fields, but the board may not approve a second registration until at least one year after the issuance of the first registration.[88] Currently a dual registration in not authorized.

Massage Therapy

Section 480.035, F.S., establishes the Board of Message Therapy within the DOH to license and regulate the practice of message therapy in Florida. Individuals seeking an initial massage therapy license in Florida have two options for meeting the educational requirements:

- They may attend an approved program at a massage therapy school, completing 500 hours of classroom training; or
- They can apprentice under a licensed massage therapist for a period of one year. During that year, the sponsor of the massage apprentice is required to file quarterly reports and the apprentice must complete the following course of study:
  - 300 hours of Physiology;
  - 300 hours of Anatomy;
  - 20 hours of Theory and History of Massage;
  - 50 hours of Theory and Practice of Hydro-Therapy;
  - 5 hours of Hygiene;
  - 25 hours of Statutes and Rules of Massage Practice;
  - 50 hours of Introduction to Allied Modalities;
  - 700 hours of Practical Massage; and
  - 3 hours of Board-approved HIV/AIDS instruction.[89]

Any person may obtain a license to practice as a massage therapist if he or she:

- Submits an application and fee;
- Is at least 18 years of age;
- Has received a high school diploma or high school equivalency diploma;
- Submits to background screening;
- Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board;

[87] Section 468.803, F.S.
[88] *Id*.
[89] Rule 64B7-29.003, F.A.C.

- Has received a passing grade on an examination administered by the DOH.[90]

Rule 64B7-25.001(2), F.A.C., lists five national exams which are approved by the board. The exam currently taken by applicants is the National Examination for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork. The DOH does not offer or administer a specific state licensure exam.[91] According to the DOH, there are 172 licensed massage schools in Florida, which train 2,076 new licensees by examination licensed in the fiscal year 2016-2017. Of those, only 15 came through the Florida apprenticeship program.

In addition to massage therapists, the Board of Massage Therapy also licenses apprentices in colonic hydrotherapy.[92] These individuals are either attending a massage therapy school that does not offer colonics; or are licensed massage therapists who are seeking to add colonic hydrotherapy to their practice. Since there are few schools in the state that offer a colonic hydrotherapy program, apprenticeships are the primary method of training for this service.[93] According to the DOH, there are 87 currently licensed massage apprentices apprenticing for a colonic hydrotherapy upgrade to their license.[94]

The Board of Massage Therapy also licenses massage establishments and under s. 480.046(3), F.S. The board is authorized to revoke or suspend the license of an establishment upon proof that the license was obtained through fraud or misrepresentation, or upon proof of fraud, deceit, gross negligence, incompetency, or misconduct in the operation of the establishment. The board may deny the subsequent licensure of such an establishment if they reapply using the same business name. However, the board is not authorized to deny the same owner a license under a new name, or as a different business entity type, even if it is being opened at the same location with the same employees. Additionally, the board has no specific authority to act against a massage establishment's license even if the owner and employees, while onsite, have been convicted of prostitution and related acts.

Clinical Laboratory Personnel

Section 483.805, F.S., creates the Board of Clinical Laboratory Personnel within the DOH to license ad regulate clinical laboratory personnel. *Clinical laboratory personnel* includes:

- Clinical laboratory director;
- Clinical laboratory supervisor;
- Clinical laboratory technologist
- Clinical laboratory blood gas analyst; or
- Clinical laboratory technician who performs, or is responsible for, laboratory test procedures.

[90] Section 480.041, F.S.
[91] *Id.*
[92] *Colonic hydrotherapy* is a method of colon irrigation used to cleanse the colon with the aid of a mechanical device and water. See s. 480.033(6), F.S.
[93] Rule 64B7-29.007, F.A.C.
[94] *Supra*, Note 1.

Clinical Laboratory Director

Section 483.824, F.S., requires that a clinical laboratory director be licensed in each laboratory specialty and subspecialty of the work performed in the laboratories he or she oversees. According to the DOH, Florida is the only state that requires licensure in multiple specialties or sub-specialties to be licensed as a laboratory clinical director. DOH indicates that it is very rare for an individual to be licensed at the director level in all specialties and sub-specialties, which makes it difficult to recruit for laboratory director positions in Florida. Consequently, laboratories must hire multiple clinical laboratory directors to meet the license requirements.[95]

The DOH indicates that federal law requires only that clinical laboratory directors be licensed in at least one specialty. Furthermore, federal law permits the laboratory director to delegate responsibilities for the specialties and sub-specialties in which they are not licensed to other qualified personnel. Until 2012, the Florida Agency for Health Care Administration (AHCA) required the director to be licensed in all specialties and subspecialties performed in the laboratory they oversaw. In 2012, AHCA amended Rule 59A-7.035, F.A.C., and requires only that a director be qualified under part III, ch. 483, F.S.[96]

The Practice of Psychology

Section 490.004, F.S., creates the Board of Psychology within the DOH to license and regulate the practice of psychologists in Florida. The practice of psychology is defined as the observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological heath.[97]

Licensure as a psychologist under ch. 490, F.S., requires a doctoral degree in psychology from an educational institution, which at the time the applicant was enrolled and graduated, held institutional accreditation from an approved agency and programmatic accreditation from the American Psychological Association (APA).

Section 490.003(3)(a), F.S., refers to educational requirements in effect prior to July 1, 1999, and are no longer applicable. The outdated language could create confusion among applicants as to the current educational requirements, which are correctly defined in s. 490.003(3)(b), F.S. Section 490.003(3)(b), F.S., generically refers to programs approved and recognized by the U.S. Department of Education. The only accrediting agency recognized by the United States Department of Education to provide programmatic accreditation for doctoral psychology programs is the American Psychological Association (APA).

Section 490.005, F.S, also refers to requirements in effect prior to July 1, 1999, which are no longer applicable to augment a deficient education or show comparability to the current educational requirements. This section also includes an outdated reference to the American

[95] *Supra* note 1.
[96] *Id.*
[97] Section 490.003(4), F.S.

Psychological Association accrediting programs in Canada. Currently, a Canadian graduate cannot show comparability to an APA accredited program.

Section 490.005(2)(b)1., F.S., refers to school psychology applicants graduating from a college or university accredited and approved by the Commission on Recognition of Postsecondary Accreditation; however, the correct reference is to the Council for Higher Education Accreditation.

Section 490.006, F.S., related to licensure in Florida as a psychologist by endorsement, requires specific education, and a license in another jurisdiction, provided that when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in ch. 490, F.S., at that time; and, if no Florida law existed at that time, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in ch. 490, F.S., at the present time. Further, the applicant must have 20 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application. Obtaining licensure under the current endorsement standards may be difficult as it requires a law-to-law comparison and applicants who otherwise might qualify for licensure may be denied; or have licensure delayed until they select a different application method.

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

Section 491.004, F.S., creates the Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling within the DOH to ensure that every clinical social worker, marriage and family therapist, and mental health counselor practicing in this state meets minimum requirements for safe practice. The Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling is responsible for licensing, monitoring, disciplining and educating clinical social workers, marriage and family therapists, and mental health counselors to assure competency and safety to practice in Florida.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements s. 491.005, F.S. or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.[98]

An individual who has not satisfied the postgraduate or post-master's level experience requirements of s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the

[98] Section 491.046, F.S.

profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.[99]

Section 491.0045(6), F.S., specifies the length of time an intern registration for clinical social work, marriage and family therapy and mental health counseling is valid. A footnote to this section, points out that through multiple amendatory acts to s. 491.0045(6), F.S., during the same legislative session, two irreconcilable versions of the section were created, and the editors were thus required to publish both versions of the amended provision.

Section 491.0045(6), F.S., states: "An intern registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. A registration issued after March 31, 2017, expires 60 months after the date of issuance. No subsequent intern registration may be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d)." The footnote refers to an April 1 date.

Section 491.005(3)(b), F.S., related licensure by examination for marriage and family therapists, requires:

- A master's degree with major emphasis in marriage and family therapy, or a closely related field;
- Specific coursework in 12 content areas; and
- A practicum, internship or field experience of 180 hours providing direct client contact hours of marriage and family services under the supervision of a licensed marriage and family therapist with at least five years of experience.

According to the DOH, the specific course work requirement must be an exact match and may delay an applicant's licensure.[100]

Section 491.005(3)(c), F.S., contains an inconsistency as it requires both two years, and three years of clinical experience, for a marriage and family therapy licensure applicant. According to the DOH the three years of clinical experience was a technical error and is inconsistent with other statutory requirements. Only two years of clinical experience for a marriage and family therapy applicant is required.[101]

Section 491.005(4), F.S., related licensure by examination for mental health counselors, names the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors as the required examination for a mental health counselor. The correct name of the examination required for licensure as a mental health counselor is the National Clinical Mental Health Counseling Examination. The examination was developed, and is administered by, the National Board for Certified Counselors.

Section 491.005(4), F.S., also contains a 300-hour difference between the hours of practicum, internship or field experience required for graduates from a Council for Accreditation of Counseling & Related Educational Programs (CACREP) and non-CACREP graduates. A mental

[99] Section 491.0045, F.S.
[100] *Supra* note 1.
[101] *Id.*

health counselor applicant who graduated from a program not accredited by CACREP is currently required to complete 1,000 hours of practicum, internship, or field experience. An MHC applicant who graduated from a CACREP accredited program is required to meet the CACREP standards to complete 700 hours of practicum/internship.

Section 491.006, F.S., licensure or certification by endorsement, requires an applicant for licensure by endorsement in the practice of clinical social work, marriage and family therapy, or mental health counseling to demonstrate to the board that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active valid license to practice, and has actively practiced the profession for which licensure is applied in another state for three of the last five years immediately preceding licensure;
- Meets the education requirements of the ch. 491, F.S., for the profession for which licensure is applied;
- Has passed a substantially equivalent licensing examination in another state, or has passed the licensure examination in this state in the profession for which the applicant seeks licensure;
- Holds a license in good standing;
- Is not under investigation for an act that would constitute a violation of ch. 491, F.S.; and
- Has not been found to have committed any act that would constitute a violation of ch. 491, F.S.

For an applicant for licensure by endorsement under ch. 491, F.S., to satisfy the education requirements of s. 491.005, F.S., specific particular course work, rather than a degree from an accredited school or college, or proof of licensure in another state is required. The endorsement applicant must show proof they completed certain statutorily specified courses, which may not have been available at the time he or she graduated. The current law places barriers to licensure on endorsement applicants by requiring many of them to complete additional courses, often difficult to obtain when the application is a not full-time graduate student, to qualify for licensure in Florida.

Section 491.007(3), F.S., provides for the renewal of a license, registration, or certificate for clinical social workers, marriage and family therapists, and mental health counselors; and gives the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling rulemaking authority to prescribe the requirements for renewal of an intern registration. Section 491.0045(6), F.S., now addresses renewal of an intern registration, rulemaking authority is no longer necessary.

Section 491.009, F.S., sets out what acts by a clinical social work, marriage and family therapist, or mental health counselor constitute grounds for discipline, or denial of licensure. However, s. 491.009(2), F.S., incorrectly references psychologists, who are not licensed under ch. 491, F.S.; and does not include the DOH regulated certified master social worker profession.

III. Effect of Proposed Changes:

Section 1: The Conrad 30 Program

The bill amends s. 381.4018, F.S., to require the DOH to adopt rules, following the federal requirements, to implement the Conrad 30 Program to further encourage qualified physicians to relocate to Florida and practice in underserved areas. This rule making authority would allow DOH to establish criteria beyond the federal minimum requirements and prioritize applications, thereby placing physicians in areas of highest need. Criteria could include practicing in federally designated underserved areas with the greatest need, practicing primary care, practicing in specific areas of the state, such as rural locations, and serving a higher percent of Medicaid and sliding fee scale patients.

Section 2: The DOH General Licensing Provisions

The bill amends s. 456.013, F.S., to eliminate obsolete language regarding applying to the DOH to take an examination. It also adds the date of birth as a required element on the application, allowing the DOH better confirmation of a criminal background check.

Section 3: United States Members of the Armed Forces, Spouses and Florida Licensure

The bill amends s. 456.024, F.S., to allow a dentist to be eligible for expedited licensure as a health care practitioner in this state if he or she is a health care practitioner in another state, the District of Columbia, a possession or territory of the United States; and is the spouse of a person serving on active duty with the United States Armed Forces, meets the standards required in s. 456.024, F.S., and files an application. This is similar to other healthcare professions previously authorized by the Legislature. The bill also eliminates the requirement for a dentist holding a temporary license to practice under the indirect supervision of a dentist licensed under ch. 466, F.S.

Sections 4, 5, 6, and 7: Office Surgery Centers

The bill removes the rulemaking authority for the regulation of the office in which certain office surgery procedures are performed and establishes the requirements found in rules in the statutes. This bill creates two new statutory sections, with identical language, regarding Office Surgery Centers (OCS):

- Section 458.3266, F.S., addresses OSCs for allopathic physicians; and
- Section 459.0138, F.S., addresses OCSs osteopathic physicians.

The bill removes language from ss. 458.309 and 459.005, F.S., requiring that a physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, level 2 procedures lasting more than five minutes, and all level 3 surgical procedures in an office setting must register the OSC with the DOH unless that office is licensed as a facility under ch. 395, F.S. The language is added to the new sections created by this bill.

The new statutory sections in ch. 458 and 459, F.S.:

- Create definitions for a designated physician: and office surgery center (OCS).

- Require each location of an OCS to be register with the DOH unless:
  - Licensed as a hospital or ambulatory surgery center under ch. 395, F.S.; or
  - Affiliated with an accredited medical school training medical students, residents, or fellows.
- Require the OSC to designate a physician with a full, active, and unencumbered license under ch. 458 or 459, F.S., to be responsible for complying with all requirements related to registration and operation of the facility. The designated physician must practice at that location; and ten days after a designated physician is terminated, the OSC must notify the DOH of the identity of another designated physician for that office. Failure to have a licensed designated physician practicing at the location of the registered OSC may be the basis for a summary suspension of the office registration certificate.
- Require the DOH to inspect OSCs annually unless the OSC is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the board;
- Authorize the DOH to deny registration to an OCS if the office is:
  - Not fully owned by a physician licensed under chs. 458 or 459, F.S., or a group of physicians, each of whom is licensed under chs. 458 or 459, F.S.; except that this requirement does not apply to a health care clinic licensed under part X, ch. 400, F.S.
  - Owned by, or has a contractual or employment relationship with, a physician licensed under ch. 458 or 459, F.S.:
    - Who has had hospital privileges revoked in the last five years;
    - Who does not have a clear and active license with the DOH, or
    - Whose license has been disciplined by the DOH or another jurisdiction, in the last five years, for an offense related to the standard of care.
- Authorize the DOH to revoke the OSC registration certificate, and prohibit all physicians associated with that OSC from practicing at that OSC location, if the DOH finds on an annual inspection that the OSC does not meet the requirements in these sections. If the registration of an office is revoked or suspended:
  - Require the OSC's designated physician, the owner or lessor of the office property, the manager, and the proprietor to stop performing any surgical procedures in the OCS as of the effective date of the suspension or revocation;
  - Require that all signs and symbols that identify the location as an OSC be removed;
  - Require the OCS's designated physician to advise the DOH, on the effective date of the revocation or suspension, of the disposition of the medicinal drugs located on the premises. The disposition is subject to the supervision and approval of the DOH; and medicinal drugs that are purchased, or held by an OSC that is not registered, may be deemed adulterated pursuant to s. 499.006, F.S.;
- Authorize the DOH to prescribe the period of suspension of up to two years. If the registration of an OSC is revoked, any person named in the registration documents of the OSC, including persons owning or operating the office, may not apply to operate an OSC for five years after the date the registration is revoked;
- Require a new registration application when there is a change of OSC ownership;
- Impose specific responsibilities on each physician practicing in an OSC for ensuring compliance with certain health and safety criteria on the operation of a OSC.
- Provide rulemaking authority to the DOH and the boards;

- Impose administrative fines on an OSC of up to $5,000 per violation for violating the requirements of these sections or the rules of the DOH. The bill provides factors that the DOH may consider when determining whether a penalty is to be imposed and in fixing the amount of the fine.

This regulatory structure in modeled after the regulation of pain management clinics.

Section 8: Registered Chiropractic Assistants

The bill repeals s. 460.4166, F.S., and deregulates the Registered Chiropractic Assistants profession as the duties performed are not directly related to patient safety and the registration is voluntary.

Section 9, 10 and 42: Licensure and Certification of Optometrists, and Optometric Facility Certificates

The bill amends s. 463.006, F.S., to delete the requirement for an applicant for an optometrist license or certification to apply to the DOH, and for the DOH to approve the applicant, to take the required licensing examination. Instead, an applicant will be required to provide proof of having passed the national examination. This eliminates the conflict with the current practice by colleges of optometry to incorporate the part IV examination into the curriculum. The change should expedite licensing.

The bill creates s. 463.0061, F.S., to authorize the Board of Optometry to issue licenses through the endorsement process. To qualify for endorsement, the applicant must have:

- Graduated from an accredited school or college of optometry approved by the Commission on Recognition of Post-Secondary Accreditation or the U. S. Department of Education;
- Passed the licensure examination of the National Board of Examiners in Optometry;
- Submitted evidence of the active licensed practice of optometry in another jurisdiction, for at least five of the immediately preceding seven years, or evidence of successful completion of a board-approved clinical competency examination within the year preceding the filing of an application for licensure;
- Successfully completed the Clinical Skills portion of the examination developed by the National Board of Examiners in Optometry (NBEO) with an overall passing score and obtain a score of 75 percent or better each of the Biomicroscopy, Binocular Indirect Ophthalmoscopy, and Dilated Biomicroscopy and Non-Contact Fundus Lens Evaluation skills individually;
- Successfully completed a written examination on applicable Florida laws and rules governing the practice of optometry and obtain a passing score on either the Treatment or Management of Ocular Disease (TMOD) examination embedded in the Patient Assessment and Management portion of the examination developed by the NBEO or a passing score on the stand alone TMOD examination developed by the NBEO; and
- Completed at least 30 hours of board approved continuing education in the two years preceding application.

These requirements do not differ substantially from those set out for new graduates or those who do not have the years of clinical experience required for licensure by endorsement. Issuing a

license through endorsement eliminates the requirement to sit for the examination and expedites the licensing process for optometrist applicants.

The bill amends s. 463.0057(3), F.S., relating to optometric faculty certificates, to conform cross-references to other changes made in the bill.

Sections 11, 12, 13 and 14: BON Rule Making Authority and Certified Nursing Assistants

The bill amends ss. 464.006 and 464.202, F.S., related to rulemaking, duties and powers of the BON, and authorizes the BON to create rules detailing standards of care for its licensees, which include: ARNPs; clinical nurse specialists; RNs; LPNs; and CNAs.

The bill authorizes the BON to grant licenses by endorsement for CNA applicants residing in U.S. territories or Washington, D.C. This would eliminate the examination fee and expedite licensure for CNAs because the applicant would no longer have to apply for licensure by examination.

The bill amends s. 464.204(1)(b), F.S., to eliminate language requiring proof of intent to violate the laws or rules; and will align CNA prosecution with the law for disciplining registered nurses and licensed practical nurses.

Section 15, 16, 17, 18, and 19: Pharmacy Permits

The bill amends ss. 465.019, 465.0193, 465.0196, and 465.0197, F.S., to require institutional, nuclear, special, and internet pharmacies to pass an on-site inspection as a pre-requisite for an initial permit or change of location. This language conforms statutes pertaining to institutional, nuclear, special, and internet pharmacies to make them consistent with the current law pertaining to community pharmacies.

The bill creates s. 465.0195, F.S., to provide statutory requirements for the issuance of sterile compounding permits for in-state patient specific or outsourcing facilities. Currently permitting in-state sterile compounding pharmacies and outsourcing facilities is governed by rule. The new section creates a statutory framework for issuing in-state sterile compounding permits to pharmacies or outsourcing facilities which are similar to existing statutory language for nonresident pharmacies and outsourcing facilities under s. 465.0158, F.S.

Section 20, 21, and 22: Dentistry, Dental Hygiene and Dental Laboratories

The bill amends ss. 466.006(4)(b) and 466.007(4)(b), F.S., to eliminate obsolete requirements that the ADEX be graded by dentists, and the ADHEX examination for dental hygienists, be graded by dentists and dental hygienists licensed in Florida and employed by the DOH for such purpose.

The bill creates s. 466.017, F.S., to require dentists to report adverse incidents to the DOH, which is now only required by board rule. The mandatory reporting of adverse incidents is critical in the board's oversight of the safe use of sedation in the practice of dentistry. This new section requires the reporting of deaths, or any incident that results in the temporary or

permanent physical or mental injury that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a result of the use of anesthesia, and creates grounds for discipline for the failure to report an adverse incident.

Florida is only one of 13 states that regulate dental laboratories.[102] The bill repeals ss. 466.032, 466.033, 466.034, 466.035, 466.036, 466.037, 466.038, and 466.039, F.S., related to the regulation of dental laboratories. According to the DOH, deregulating this profession would have a minimal impact on the dentists using dental laboratories.[103]

Sections 24, 25, 26 and 27: Athletic Trainers

The bill amends s. 468.701, F.S., to include within the definition of Athletic Trainer that he or she must work within the scope of practice as established within rules established by the board.

This bill amends the licensure requirements for an athletic trainer to either:
- Possess a baccalaureate or higher degree from a college or university professional athletic training degree program accredited by the Commission on Accreditation of Athletic Training Education; or
- Possess a bachelor's degree and have completed the BOC internship requirements. This change creates a licensure pathway for those applicants who hold a bachelor's degree and completed the BOC internship program to become licensed in Florida.

This bill amends in s. 468.711, F.S., relating to license renewal requirements, to require an athletic trainer to maintain his or her BOC certification in good standing without lapse. Licensees will have to demonstrate continuous good standing BOC certification at the time of renewal. This bill gives the Board of Athletic Training rulemaking authority to further define the supervision between an athletic training student and a licensed athletic trainer, rather than relying on compliance with standards set by an external entity.

Section 28: Orthotics, Prosthetics, and Pedorthics

The bill amends ss. 468.803, F.S., to authorize the DOH to issue a joint registration in orthotics and prosthetics as a dual registration rather than requiring separate registrations; and to recognize the dual residency program and educational requirements for dual registration.

Section 29, 30, 31, and 32: Massage Therapy

This bill amends the definition of "apprentice" in s. 480.033(5), F.S., to eliminate the statutory authority for massage therapy apprenticeships, except for apprentices studying colonic hydrotherapy. The bill allows apprentices licensed before the effective date of the bill, July 1, 2018, to maintain their apprentice license until its expiration date, but no later than July 1, 2021, and to qualify for licensure based on that apprenticeship.

[102] *Supra* note 1.
[103] *Supra* note 1.

In addition, this bill amends s. 480.041, F.S., to specify that the licensure examination is a national examination designated by the Board of Massage Therapy, not an examination administered by the board. The bill repeals s. 480.042, F.S., relating to a massage therapy examination by the board which is obsolete.

The bill amends s. 480.046(3), F.S., to strengthen the grounds for disciplinary action by the board against a licensed massage establishment to include actions by an owner or a repeat offender. The bill adds:

- That an establishment license may also be suspended or revoked, or a subsequent license application denied, if the owner or therapists at the massage establishment have cumulatively committed three or more crimes in any jurisdiction related to prostitution, as defined in s. 796.07, F.S.;
- That an establishment disciplined under s. 480.046(3), F.S., cannot apply for re-licensure unless there is a change of ownership; and
- That the board may deny the license of an establishment if its owner has previously had a license revoked under s. 480.046(3), F.S.

Section 33: Clinical Laboratory Personnel

The bill amends s. 483.824, F.S., related to qualifications of a clinical laboratory director. The bill eliminates the need for clinical laboratories to hire laboratory directors with a license in each specialty and subspecialty performed in their facility. Elimination of this requirement will align Florida with national standards and will make it easier to recruit and hire clinical laboratory directors.

Section 34, 35, and 36: The Practice of Psychology

The bill amends s. 490.003, F.S., to eliminate outdated language in s. 490.003(3)(a), F.S., which specifies educational requirements for licensure as a psychologist in effect prior to July 1, 1999.

The bill amends, and renumbers, s. 490.003(3)(b), F.S., to delete the generic reference to programs accredited by an agency recognized and approved by the U.S. Department of Education, and inserts a specific reference to the American Psychological Association (APA), the only accrediting agency recognized by the U.S. Department of Education to provide programmatic accreditation for doctoral psychology programs. A specific reference to the APA clarifies current education requirements. It does not impose any new requirements.

The bill amends s. 490.005, F.S., relating to licensure by examination for psychologists. The bill eliminates the specific reference to Canada, which will allow applicants who obtained their education outside the U.S. to demonstrate they have an education comparable to an APA program.

The bill removes outdated language referencing an augmented or comparable doctoral education pathway. The ability of applicants who obtained their degree in the U.S., to augment an insufficient degree or show comparability to an APA accredited program, is no longer available.

The bill eliminates an outdated reference to the school psychology educational accrediting agency, Commission on Recognition of Postsecondary Accreditation; and updates the reference with the successor agency, Council for Higher Education Accreditation.

The bill amends s. 490.006, F.S., related to a psychologist licensure by endorsement, to eliminate the requirement that the licensing provisions of the other state must have been substantially equivalent to, or more stringent than, those of either the law in Florida at the time the out-of-state license was obtained, or the current Florida law. The bill reduces from 20 years of licensed psychology experience, to 10 years of experience, within the 25 years preceding the date of application. By amending these provisions, licensure of qualified applicants will be expedited, making more professionals available to patients sooner.

Sections 37, 38, 39, 40, 41 and 43: Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling

The bill amends s. 491.0045, F.S., to clarify conflicting language passed in the same legislative session, and to allow the board to make a one-time exception for an intern registration after March 31, 2022, for emergency or hardship cases, as defined by board rule, if the candidate has passed the theory and practice examination described in s. 491.055(1)(d), (3)(d) and (4)(d), F.S.

The bill amends s 491.005, F.S., related to licensure by examination for marriage and family therapists, to require:

- A master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education (CAMFTE), or
- A master's degree with major emphasis in marriage and family therapy from a Florida university program accredited by the CACREP, or
- The equivalent, as determined by board rule.

The bill eliminates the requirement for marriage and family therapists to complete 12 specific content areas, and 180 practicum hours. This change would simplify the education review process, eliminate the course requirement review, and expedite licensure.

The bill also amends s. 491.005(3)(c), F.S., to correct a technical discrepancy in the number of years of clinical experience required for a marriage and family therapist applicant, from three years to two years.

The bill amends s. 491.005(4), F.S., for mental health counseling applicants, to update the name of the examination to be taken by a mental health counselor applicant. The bill further amends s. 491.005(4)(b)1.c., F.S., to reduce the number of practicum, internship, or field experience hours for those applicants who graduated from a non-CACREP accredited program from 1,000 hours to 700 hours, bringing them in line with graduates from CACREP accredited programs. This promotes regulatory efficiency and makes licensure requirements more balanced between the two programs.

The bill amends s. 491.006, F.S., related to licensure or certification by endorsement for applicants for licensure in clinical social work, marriage and family therapy, or mental health

counseling, to remove the requirement for endorsement applicants to meet the same educational requirements required of new applicants, provided the applicant for endorsement meets the requirement to have an active, valid license and have actively practiced the profession in another state for three of the last five years. This change will increase licensure portability for applicants applying by endorsement for licensure as marriage and family therapists in Florida.

The bill amends s. 491.007, F.S., related to renewal of a license, registration, or certificate, to delete obsolete rulemaking authority regarding intern registration renewal.

The bill amends s. 491.009(2), F.S., related to discipline, to delete an inaccurate reference to psychologists, who are licensed under ch. 490, F.S.; and to add the profession of certified master social worker, who are licensed under ch. 491, F.S. The bill also corrects reference to whether it is the board or the DOH with authority to take disciplinary action for certain violations. By adding certified master social worker to this provision, it gives the DOH authority to enter an order denying licensure to a certified master social worker, or impose discipline against any certified master social worker who is found guilty of violating any provision in ch. 491, F.S.

The bill also makes technical amendments to ss. 491.0046, and 945.42, F.S., to conform cross-references.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The elimination of the requirement for a dentist holding a temporary license to practice under the indirect supervision of a Florida licensed dentist might increase the available dental services in underserved areas.

The changes made to streamline the licensing process will allow healthcare professionals to begin practicing quicker which will also benefit the healthcare market generally.

C. Government Sector Impact:

The deregulation of dental laboratories, elimination of temporary dental licenses and chiropractic assistants will free up DOH funds for other regulatory activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 1373 – 1381 of the bill provide restrictions on an athletic trainer within the definition of athletic trainer. Typically, restrictions such as this are more appropriately found under disciplinary sections of law.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.4018, 456.013, 456.024, 458.309, 459.005, 463.006, 464.006, 464.202, 464.203, 464.204, 465.019, 465.0193, 465.0196, 465.0197, 466.006, 466.007, 468.701, 468.707, 468.711, 468.723, 468.803, 480.033, 480.041, 480.046, 483.824, 490.003, 490.005, 490.006, 491.0045, 491.005, 491.006, 491.007, 491.009, 463.0057, 491.0046, 945.42.

This bill creates the following sections of the Florida Statutes: 458.3266, 459.0138, 463.0061, 465.0195, 466.017.

This bill repeals the following sections of the Florida Statutes: 460.4166, 466.032, 466.033, 466.034, 466.035, 466.036, 466.037, 466.038, 466.039, 480.042

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.