

Tab 1	SB 590 by Rodriguez ; Public Records and Meetings					
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Tab 4	SB 516 by Rouson ; Procurement Activities of For-profit Eye Banks					
Tab 5	SB 632 by Bradley ; Occupational Therapy					
386692	A	S	RCS	HP, Bradley	Delete L.31 - 214:	12/02 10:21 AM
Tab 6	SB 544 by Boyd ; (Identical to H 00731) Drug-related Overdose Prevention					
Tab 7	SB 566 by Gruters ; (Identical to H 00343) Mental Health Professional Licensure					
604342	D	S	RCS	HP, Gruters	Delete everything after	12/02 10:21 AM
Tab 8	SB 414 by Powell (CO-INTRODUCERS) Book ; (Identical to H 00209) Family Caregiver Certified Nursing Assistant Program					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Diaz, Chair
Senator Brodeur, Vice Chair

MEETING DATE: Thursday, December 2, 2021

TIME: 9:00—11:30 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Diaz, Chair; Senator Brodeur, Vice Chair; Senators Albritton, Baxley, Bean, Book, Cruz, Garcia, Jones, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 590 Rodriguez (Linked CS/S 358)	Public Records and Meetings; Providing an exemption from public records requirements for certain information held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling pursuant to the Professional Counselors Licensure Compact; providing an exemption from public meetings requirements for certain meetings or portions of certain meetings of the Counseling Compact Commission or committees of the commission; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. HP 12/02/2021 Favorable GO RC	Favorable Yeas 7 Nays 0
2	SB 502 Rodriguez	Certificates of Public Convenience and Necessity; Requiring certain counties to issue a certificate of public convenience and necessity to applicants seeking licensure for basic or advanced life support services which meet specified criteria, etc. HP 12/02/2021 Temporarily Postponed CA RC	Temporarily Postponed
3	SB 534 Harrell	Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients; Authorizing the approval of drug products or certain medication prescribed for the treatment of schizophrenia or schizotypal or delusional disorders for Medicaid recipients who have not met the step-therapy prior authorization criteria, when the drug product or certain medication meets specified criteria, etc. HP 12/02/2021 Favorable AHS AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Thursday, December 2, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 516 Rouson	Procurement Activities of For-profit Eye Banks; Prohibiting for-profit eye banks from procuring certain human organs and tissue for specified purposes; providing exceptions, etc. HP 12/02/2021 Favorable CJ RC	Favorable Yeas 7 Nays 0
5	SB 632 Bradley	Occupational Therapy; Revising eligibility requirements for the occupational therapist licensure examination; authorizing licensed occupational therapists to use a specified title and the associated initials; prohibiting certain persons from using a specified title and the associated initials; providing criminal penalties, etc. HP 12/02/2021 Fav/CS AHS AP	Fav/CS Yeas 7 Nays 0
6	SB 544 Boyd (Identical H 731)	Drug-related Overdose Prevention; Requiring the Florida Public Health Institute, Inc., in consultation with the Department of Health, to educate the public regarding the use of emergency opioid antagonists; authorizing pharmacists to order certain emergency opioid antagonists; providing certain authorized persons immunity from civil or criminal liability for administering emergency opioid antagonists under certain circumstances; authorizing civilian personnel of law enforcement agencies to administer emergency opioid antagonists under certain circumstances, etc. HP 12/02/2021 Favorable AHS AP	Favorable Yeas 7 Nays 0
7	SB 566 Gruters (Identical H 343, Compare H 693, S 768)	Mental Health Professional Licensure; Revising educational requirements for marriage and family therapist and mental health counselor licenses, etc. HP 12/02/2021 Fav/CS CF RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Thursday, December 2, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 414 Powell (Identical H 209)	Family Caregiver Certified Nursing Assistant Program; Requiring the Board of Nursing, in consultation with the Agency for Health Care Administration, to develop a program to train and certify family caregivers as certified nursing assistants for a specified purpose; authorizing family caregivers who complete the program to take the nursing assistant competency examination; providing that such caregivers who pass the examination are eligible for certification as a nursing assistant, etc. HP 12/02/2021 Favorable AHS AP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

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 590

INTRODUCER: Senator Rodriguez

SUBJECT: Public Records and Meetings

DATE: December 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 590 exempts from public inspection and copying requirements the personal identifying information of a mental health counselor, other than the counselor's name, licensure status, or licensure number, obtained from the data system under the Professional Counselors Licensure Compact, as established in s. 491.017, F.S.,¹ and held by the Department of Health (DOH) or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board). This information is not exempt from public records requirements under the bill if the state originally reporting the information to the data system authorizes disclosure of such information by law.

The bill exempts from public meeting requirements a closed meeting or a closed portion of a meeting of the Compact Commission or the executive committee or other committees of the commission, established under the Professional Counselors Licensure Compact. The exemption applies when the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss specified issues listed in the compact, such as the noncompliance of a member state with its obligations. The bill provides that recordings, minutes, and records generated from those meetings are also exempt from requirements to disclose such public records.

The bill has no impact on state revenues or state expenditures.

The bill provides an effective date of the same date that SB 358 or similar legislation takes effect. SB 358, the substantive bill authorizing Florida's participation in the Professional Counselors Licensure Compact, has an effective date contingent upon the enactment of the compact into law by 10 states.

¹ Section 491.017, F.S., is created in SB 358 and establishes the state's participation in the Professional Counselors Licensure Compact and the coordinated information system.

The bill provides for the repeal of the exemption on October 2, 2027, unless reviewed and reenacted by the Legislature. It also provides statements of public necessity for the public records and public meetings exemptions as required by the State Constitution.

The bill creates a new public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.³

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s.11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.⁴ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁵ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁶

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or

² FLA. CONST. art. I, s. 24(a).

³ *Id.*

⁴ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁵ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁶ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁴ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁷ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁸ public records or open meetings exemptions, with specified exceptions.¹⁹ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²⁰

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²²
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²³ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁴

The Act also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁶ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

¹⁷ Section 119.15, F.S.

¹⁸ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁶ See generally s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁷

Professional Counselors Licensure Compact

The Professional Counselors Licensure Compact (compact) provides a pathway for a licensed professional counselor who is licensed in his or her primary state of residence (the licensee's "home state") the ability to apply and be granted a privilege to practice professional counseling (equivalent to a license to practice) in another member state, both in-person and through telehealth.

The compact will become effective after 10 states enact the legislation for the compact. The counseling compact has passed and been signed into law in two states. On May 10, 2021, Georgia Governor Brian Kemp signed HB 395 and subsequently on May 18, 2021, Maryland Gov. Larry Hogan signed SB 571/HB 736.²⁸ The compact has also been introduced this year in Tennessee (SB 1027 HB 0959), Nebraska (LB 554), Ohio (SB 204), and North Carolina (HB 791).²⁹

Data System

Article X of the compact creates a shared interstate database and reporting system (the data system) containing licensure, adverse action, and investigative information on all licensed professional counselors in member states.

Pursuant to Section 2 of Article X of the compact, and notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all licensees to whom the compact is applicable, as required by the rules of the commission, including all of the following:

- Identifying information.
- Licensure data.
- Adverse actions against a license or privilege to practice.
- Nonconfidential information related to alternative program participation.
- Any denial of application for licensure and the reason for such denial.
- Current significant investigative information.
- Other information that may facilitate the administration of the compact, as determined by the rules of the commission.

Investigative information pertaining to a licensee in any member state may be made available only to other member states. The commission must promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license.

Member states reporting information to the data system may designate information that may not be shared with the public without the express permission of the reporting state.

²⁷ Section 119.15(7), F.S.

²⁸ Counseling Compact, *News*, available at <https://counselingcompact.org/news/> (last visited Nov. 29, 2021).

²⁹ Counseling Compact, *Maps*, available at <https://counselingcompact.org/map/> (last visited Nov. 29, 2021).

Counseling Compact Commission

The Counseling Compact Commission (commission) is created in Article IX of the compact and serves as the administrative arm of the Compact and the member states. Each member state is entitled to one delegate appointed by each member state's licensing board who must be either a licensed professional counselor, a public member, or an administrator of the board. Each delegate has one vote on commission affairs.

The commission meets at least once per calendar year in a publicly noticed meeting. The compact gives the commission the authority to establish and elect an Executive Committee that may act on behalf of the commission, with the exception of rulemaking. The commission may also establish additional committees as necessary.

Under Section 3 of Article IX of the compact, the commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss any of the following:

- Noncompliance of a member state with its obligations under the compact.
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.
- Current, threatened, or reasonably anticipated litigation.
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.
- Accusing any person of a crime or formally censuring any person.
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure of investigative records compiled for law enforcement purposes.
- Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.
- Matters specifically exempted from disclosure by federal or member state law.

If a meeting, or portion of a meeting, is closed the commission's legal counsel or designee must certify that the meeting may be closed and must reference each relevant exempting provision.

The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 491.018, F.S., to make a mental health counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system under the Professional Counselors Licensure Compact, as established in s. 491.017, F.S., and held by the DOH or the Board. This information is not exempt from public records requirements under the bill if the state originally reporting the information to the data system authorizes disclosure of such information by law.

The bill also creates an exemption from s. 286.011, F.S., and s. 24(b), Art. I, of the State Constitution for a closed meeting or any closed portion of a meeting of the commission or the executive committee or other committees of the commission. The exemption applies when the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss any of the following:

- Noncompliance of a member state with its obligations under the compact.
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.
- Current, threatened, or reasonably anticipated litigation.
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.
- Accusing any person of a crime or formally censuring any person.
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure of investigative records compiled for law enforcement purposes.
- Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.
- Matters specifically exempted from disclosure by federal or member state law.

The bill provides that recordings, minutes, and records generated from those meetings are also exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

These exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides, as required by the State Constitution, a statement of public necessity which provides that protection of the specified information is required under the compact which the state must adopt in order to become a member state and a party to the compact. Without the public records exemption, the state would be unable to effectively and efficiently function as a member of the compact.

Additionally, the bill provides a statement of public necessity, as required by the Florida Constitution, for protecting any closed meeting or any closed portion of a meeting of the commission or the executive committee or other committees of the commission when the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss specified issues listed in the compact. These meetings or portions of meetings would be exempted from s. 286.011, F.S., and s. 24(b), Art. I. of the State Constitution. Without the public meeting exemption, the state will be prohibited from becoming a party to the Compact.

The bill includes a statement of public necessity by the Legislature that the recordings, minutes, and records generated during an exempt meeting of the commission are exempt pursuant to s. 464.0096, F.S., and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Release of such information would negate the public meeting exemption.

Section 3 of the bill provides an effective date of the same date that SB 358 or similar legislation takes effect. SB 358, the substantive bill authorizing Florida's participation in the Professional Counselors Licensure Compact, has an effective date contingent upon the enactment of the compact into law by 10 states.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a public records exemption and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 includes a public necessity statement that supports the exemptions.

Breadth of Exemption

Article I, section 24(c), of the State Constitution requires exemptions to the public records and public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. It is not clear if the public records exemption is broader than necessary to accomplish the purposes outlined in the public necessity statement. The exemption covers a mental health counselor's personal identifying information

(excluding a counselor's name, licensure status, and license number) that is otherwise exempt in the counselor's home state. In the context of the compact, it is not clear what information would be considered "personal identifying information" for purposes of this exemption. Personal identifying information is used throughout the Florida Statutes and is not defined. It is not clear if a state would consider a counselor's business address, certifications, or level of education to be personal identifying information. State laws are also subject to change, so it is not clear if this exemption is limited to state laws as currently enacted or in the future. Therefore, the breadth of the exemption is subject to change depending on when or how the DOH and the Board interpret the laws of the licensee's home state.

It is also unclear if the public meetings exemption is broader than necessary to accomplish the purposes outlined in the public necessity statement. The bill provides instances during which a public meeting may be closed. Some of those matters are already exempted under Florida's public meetings exemptions.³⁰ In addition, it is not clear exactly which meetings or portions of meetings will be closed. The bill provides the commission with authority to close a meeting or a portion of a meeting, when it must discuss certain matters and after consulting with the commission's legal counsel or designee. This could be considered an overly broad exemption.

Courts will look to the Legislature to balance these competing interests.³¹

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³⁰ Meetings with attorneys on pending litigation are exempt under s. 286.011(8), F.S. Competitive solicitations team meetings and some negotiations are exempt under s. 286.0113(2), F.S. Meetings to determine if there is probable cause to find that a practitioner is subject to discipline are closed until 10 days after probable cause has been found pursuant to s. 456.073(4), F.S. These exemptions are provided as examples and not an exhaustive list of relevant public meetings exemptions.

³¹ See *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 402-403 (Fla. 5th DCA 2002) ("Thus our function here has not been to weigh these two constitutional rights with respect to autopsy photographs and determine whether the right that helps ensure an open government freely accessible by every citizen is more significant or profound than the right that preserves individual liberty and privacy. Rather, our function has been to determine whether the Legislature has declared that the latter prevails over the former in a manner that is consistent with the constitutional provisions that bestow upon it the power to do so."); see also *Wallace v. Guzman*, 687 So. 2d 1351, 1354 (Fla. 3d DCA 1997) (noting "[t]he [L]egislature has balanced the private/public rights by creating the various exemptions from public disclosure contained in section 119.07, Florida Statutes (1995).").

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent imposed, associated with the DOH making redactions in response to a public records request.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 491.018 of the Florida Statutes.

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.

By Senator Rodriguez

39-00846-22

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A bill to be entitled

An act relating to public records and meetings; creating s. 491.018, F.S.; providing an exemption from public records requirements for certain information held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling pursuant to the Professional Counselors Licensure Compact; authorizing the disclosure of such information under certain circumstances; providing an exemption from public meetings requirements for certain meetings or portions of certain meetings of the Counseling Compact Commission or committees of the commission; providing an exemption from public records requirements for recordings, minutes, and records generated during the closed portions of such meetings; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Section 491.018, Florida Statutes, is created to read:

491.018 Professional Counselors Licensure Compact; public records and meetings exemptions.—

(1) A counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system, as described in article X

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of s. 491.017, and held by the department or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the data system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2) (a) A meeting or a portion of a meeting of the Counseling Compact Commission, established in article IX of s. 491.017, or the executive committee or other committees of the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss any of the following:

1. Noncompliance of a member state with its obligations under the compact.

2. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.

3. Current, threatened, or reasonably anticipated litigation.

4. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.

5. Accusing any person of a crime or formally censuring any person.

6. Disclosure of trade secrets or commercial or financial

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information that is privileged or confidential.

7. Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

8. Disclosure of investigative records compiled for law enforcement purposes.

9. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.

10. Matters specifically exempted from disclosure by federal or member state law.

(b) In keeping with the intent of the Professional Counselors Licensure Compact, recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that a counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system, as described in article X of s. 491.017, Florida Statutes, and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State

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Constitution. Protection of such information is required under the Professional Counselors Licensure Compact, which the state must adopt in order to become a member state of the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact.

(2) (a) The Legislature finds that it is a public necessity that any meeting of the Counseling Compact Commission or the executive committee or other committees of the commission held as provided in article IX of s. 491.017, Florida Statutes, in which matters specifically exempted from disclosure by federal or state law are discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution.

(b) The Professional Counselors Licensure Compact requires the closure of any meeting, or any portion of a meeting, of the Counseling Compact Commission or the executive committee or other committees of the commission if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss certain sensitive and confidential subject matters. In the absence of a public meeting exemption, this state would be prohibited from becoming a member state of the compact.

(3) The Legislature also finds that it is a public necessity that the recordings, minutes, and records generated during a meeting that is exempt pursuant to article IX of s. 491.017, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State

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117 Constitution. Release of such information would negate the
118 public meetings exemption. As such, the Legislature finds that
119 the public records exemption is a public necessity.
120 Section 3. This act shall take effect on the same date that
121 SB 358 or similar legislation takes effect, if such legislation
122 is adopted in the same legislative session or an extension
123 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: November 3, 2021

I respectfully request that **Senate Bill #590**, relating to Public Records and Meetings, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "AmR", is written over a horizontal line.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 502

INTRODUCER: Senator Rodriguez

SUBJECT: Certificates of Public Convenience and Necessity

DATE: December 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 502 requires a county that has a population exceeding one million to issue a certificate of public convenience and necessity to any applicant that has been operating in Florida for 10 years and has a certificate of public convenience and necessity from at least three other Florida counties. This requirement would not apply to a county operating under a home rule charter.

The bill has no fiscal impact on state revenues or state expenditures.

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

II. Present Situation:

Basic and Advanced Life Support Services

Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., provides for the regulation of emergency medical services by the Department of Health (DOH). The DOH website reflects that its Emergency Medical Services Section is responsible for the licensure and oversight of over 60,000 emergency medical technicians and paramedics, 270+ advanced and basic life support agencies, and over 4,500 EMS vehicles.¹ The DOH licenses three types of emergency medical services: air ambulance,² basic life support, and advanced life support services.

A basic life support service is an emergency medical service that uses *only* basic life support techniques.³ In contrast, an advanced life support service is an emergency medical transport or

¹ Florida Department of Health, Emergency Medical Services System, *available at* <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Nov. 24, 2021).

² Sections 401.23(3)-(4) and 401.251, F.S.

³ Section 401.23(8), F.S.

non-transport service that uses advanced life support techniques.⁴ Similarly, an emergency medical technician (EMT) is certified to perform basic life support,⁵ but a paramedic is certified to perform basic and advanced life support.⁶

“Basic life support” is the assessment or treatment through the use of techniques described in the EMT-Basic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation and approved by the DOH. The term includes the administration of oxygen and other techniques that have been approved by the DOH.⁷ When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each basic life support ambulance must be occupied by at least two persons:

- One patient attendant who is a certified EMT, certified paramedic, or licensed physician; and
- One ambulance driver who meets the requirements of s. 401.281, F.S.⁸

“Advanced life support” is the assessment or treatment through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards, pursuant to DOH rules.⁹ When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each advanced life support ambulance must be occupied by at least two persons:

- One certified paramedic or licensed physician; and
- One certified EMT, certified paramedic, or licensed physician who also meets the requirements of s. 401.281, F.S., for drivers.¹⁰

The person occupying the advanced life support ambulance with the highest medical certifications is in charge of patient care.¹¹

Section 401.25, F.S., provides requirements for licensure as basic and advanced life support services. Every licensee must possess a valid permit for each vehicle in use.¹²

Certificate of Public Convenience and Necessity Requirement

Section 401.25(2)(d), F.S., requires an applicant for licensure to obtain a certificate of public convenience and necessity from each county in which the applicant will operate. In issuing the certificate of public convenience and necessity, the governing body of each county must consider the recommendations of municipalities within its jurisdiction.

DOH Rule 64J-1.001, Florida Administrative Code, defines a “certificate of public convenience and necessity” as “a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized by a license

⁴ Section 401.23(2), F.S.

⁵ Section 401.23(11), F.S.

⁶ Section 401.23(17), F.S.

⁷ Section 401.23(7), F.S.

⁸ Section 401.25(7)(a), F.S.

⁹ Section 401.23(1), F.S.

¹⁰ Section 401.25(7)(b), F.S.

¹¹ *Id.*

¹² Section 401.26, F.S.

issued under ch. 401, part III, F.S., for the benefit of the population of that county or the benefit of the population of some geographic area of that county. No certificate of public need from one county may interfere with the prerogatives asserted by another county regarding certificate of public need.”

An applicant that is an active first responder agency is exempt from the certificate of public necessity requirement for licensure if it meets all of the following requirements:¹³

- Is a faith-based, not-for-profit charitable corporation registered under ch. 617, F.S., which has been responding to medical emergencies in this state for at least 10 consecutive years.
- Is not a parent, subsidiary, or affiliate of, or related to, any for-profit entity.
- Provides basic life support services or advanced life support services solely through at least 50 unpaid licensed emergency medical technician or paramedic volunteers.
- Is not operating for pecuniary profit or financial gain.
- Does not distribute to or inure to the benefit of its directors, members, or officers any part of its assets or income.
- Does not receive any government funding. However, the volunteer ambulance service may receive funding from specialty license plate proceeds.
- Has never had a license denied, revoked, or suspended.
- Provides services free of charge.
- As part of its application for licensure, provides to the DOH a management plan that includes a training program, dispatch protocols, a complaint management system, an accident or injury handling system, a quality assurance program, and proof of adequate insurance coverage to meet state or county insurance requirements, whichever requirements are greater.
- Provides a disclaimer on all written materials that the volunteer ambulance service is not associated with the state’s 911 system.

The exemption above may be granted to no more than four counties.¹⁴

Insurance Requirement

Section 401.25(2)(c), F.S., requires an applicant for licensure as a basic life support service or an advanced life support service to furnish evidence of adequate insurance coverage for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause that the owner of such service would be liable. In lieu of such insurance, the applicant may furnish a certificate of self-insurance evidencing that the applicant has established an adequate self-insurance plan to cover such risks and that the plan has been approved by the Office of Insurance Regulation of the Financial Services Commission.

DOH Rule 64J-1.002, Florida Administrative Code, requires each non-government-operated ground ambulance vehicle to be insured for the sum of at least \$100,000 for injuries to or death of any one person arising out of any one accident; the sum of at least \$300,000 for injuries to or death of more than one person in any one accident; and for the sum of at least \$50,000 for damage to property arising from any one accident. The rule requires government-operated

¹³ Section 401.25(2)(d), F.S

¹⁴ *Id.*

service vehicles to be insured for the sum of at least \$100,000 for any claim or judgment and the sum of \$200,000 total for all claims or judgments arising out of the same occurrence.

Some counties and municipal governments throughout the state have minimum insurance limits within their ordinances that exceed those required by the DOH rule.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 401.25, F.S., to require a county that has a population exceeding one million to issue a certificate of public convenience and necessity to any applicant that has been operating in Florida for 10 years and has a certificate of public convenience and necessity from at least three other Florida counties. This requirement would not apply to a county operating under a home rule charter adopted pursuant to s. 10, s. 11, or s. 24, Art. VIII of the State Constitution of 1885, as preserved by paragraph 6(e), Art. VIII of the State Constitution of 1968.

Section 2 of the bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 401.25 of the Florida Statutes.

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.

By Senator Rodriguez

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1 A bill to be entitled
 2 An act relating to certificates of public convenience
 3 and necessity; amending s. 401.25, F.S.; requiring
 4 certain counties to issue a certificate of public
 5 convenience and necessity to applicants seeking
 6 licensure for basic or advanced life support services
 7 which meet specified criteria; providing an exception;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (d) of subsection (2) of section
 13 401.25, Florida Statutes, is amended to read:
 14 401.25 Licensure as a basic life support or an advanced
 15 life support service.—
 16 (2) The department shall issue a license for operation to
 17 any applicant who complies with the following requirements:
 18 (d) The applicant has obtained a certificate of public
 19 convenience and necessity from each county in which the
 20 applicant will operate. In issuing the certificate of public
 21 convenience and necessity, the governing body of each county
 22 shall consider the recommendations of municipalities within its
 23 jurisdiction.
 24 1. An applicant that is an active first responder agency is
 25 exempt from this requirement if it:
 26 a.1- Is a faith-based, not-for-profit charitable
 27 corporation registered under chapter 617 which has been
 28 responding to medical emergencies in this state for at least 10
 29 consecutive years.

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

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30 b.2- Is not a parent, subsidiary, or affiliate of, or
 31 related to, any for-profit entity.
 32 c.3- Provides basic life support services or advanced life
 33 support services solely through at least 50 unpaid licensed
 34 emergency medical technician or paramedic volunteers.
 35 d.4- Is not operating for pecuniary profit or financial
 36 gain.
 37 e.5- Does not distribute to or inure to the benefit of its
 38 directors, members, or officers any part of its assets or
 39 income.
 40 f.6- Does not receive any government funding. However, the
 41 volunteer ambulance service may receive funding from specialty
 42 license plate proceeds.
 43 g.7- Has never had a license denied, revoked, or suspended.
 44 h.8- Provides services free of charge.
 45 i.9- As part of its application for licensure, provides to
 46 the department a management plan that includes a training
 47 program, dispatch protocols, a complaint management system, an
 48 accident or injury handling system, a quality assurance program,
 49 and proof of adequate insurance coverage to meet state or county
 50 insurance requirements, whichever requirements are greater.
 51 j.10- Provides a disclaimer on all written materials that
 52 the volunteer ambulance service is not associated with the
 53 state's 911 system.
 54
 55 The exemption under this ~~subparagraph~~ paragraph may be granted
 56 to no more than four counties. This exemption notwithstanding,
 57 an applicant is not exempted from and must comply with all other
 58 requirements for licensure. An applicant must also take all

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reasonable efforts to enter into a memorandum of understanding with the emergency medical services licensee within whose jurisdiction the applicant will provide services in order to facilitate communications and coordinate emergency services for situations beyond the scope of the applicant's capacity and for situations of advanced life support which ~~that~~ are deemed priority 1 or priority 2 emergencies.

2. A county that has a population exceeding 1 million must issue a certificate of public convenience and necessity to any applicant if the applicant has been operating in this state for 10 years and has a certificate of public convenience and necessity from at least three other counties in this state. This subparagraph does not apply to a county operating under a home rule charter adopted pursuant to s. 10, s. 11, or s. 24, Art. VIII of the State Constitution of 1885, as preserved by paragraph 6(e), Art. VIII of the State Constitution of 1968.

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



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: November 16, 2021

I respectfully request that **Senate Bill #502**, relating to Certificates of Public Convenience and Necessity, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez", is written over a horizontal line.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 534

INTRODUCER: Senator Harrell

SUBJECT: Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients

DATE: December 1, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Smith	Brown	HP	Favorable
2. _____	_____	AHS	_____
3. _____	_____	AP	_____

I. Summary:

SB 534 creates an exception from step-therapy prior authorization requirements within the Florida Medicaid program for a drug product that is prescribed for the treatment of schizophrenia or schizotypal or delusional disorders or a medication of a similar drug class if prior authorization was previously granted for the prescribed drug and the medication was dispensed to the patient during the previous 12 months.

The bill poses an indeterminate fiscal impact on the Florida Medicaid Program.

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

II. Present Situation:

Florida Medicaid Program

Florida Medicaid is the health care safety net for low-income Floridians. The national Medicaid program is a partnership of federal and state governments established to provide coverage for health services for eligible persons. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.¹

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

¹ Section 20.42, F.S.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.² The SMMC program has three components, the Managed Medical Assistance (MMA) program, the Long-term Care program, and dental plans. Florida's SMMC offers a health care package covering acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services.³ The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in 2014 and was re-procured for a period beginning December 2018 and ending in 2023.⁴

Coverage of Prescribed Drugs

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics Committee within the AHCA and tasks it with developing a Florida Medicaid Preferred Drug List (PDL). The Governor appoints the eleven committee members, including five pharmacists, five physicians, and one consumer representative.⁵ The committee must meet quarterly and must review all drug classes included in the PDL at least every 12 months.⁶ The committee may recommend additions to and deletions from the PDL, such that the PDL provides for medically appropriate drug therapies for Medicaid patients which achieve cost savings contained in the General Appropriations Act.⁷

The committee considers the amount of rebates drug manufacturers are offering if their drug is placed on the PDL.⁸ These state-negotiated supplemental rebates, along with federally negotiated rebates, can reduce the per-prescription cost of a brand name drug to below the cost of its generic equivalent.⁹ Florida currently collects over \$2 billion per year in federal and supplemental rebates for drugs dispensed to Medicaid recipients.¹⁰ These funds are used to offset the cost of Medicaid services.¹¹

² Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

³ *Id.*

⁴ Agency for Health Care Administration, *Statewide Medicaid Managed Care: Overview*, available at https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/SMMC_Overview_12042018.pdf (last visited Nov. 30, 2021).

⁵ Section 409.91195(1), F.S.

⁶ Section 409.91195(3), F.S.

⁷ Section 409.91195(4), F.S.

⁸ Section 409.91195(7), F.S.

⁹ *Supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

Medicaid managed care plans are required to provide all prescription drugs listed on the AHCA's PDL.¹² Because of this, the managed care plans have not implemented their own plan-specific formularies or PDLs. Medicaid managed care plans are required to provide a link to the AHCA's PDL on their websites.¹³ Florida Medicaid covers all Food and Drug Administration (FDA) approved prescription medications.¹⁴ Those not included on the PDL must be prior-approved by Medicaid or the health plans.¹⁵

The AHCA also manages the federally required Florida Medicaid Drug Utilization Review Board, which meets quarterly and develops and reviews clinical prior authorization criteria, including step-therapy protocols, for certain drugs that are not on the AHCA's Medicaid PDL.¹⁶

Medical Necessity

Federal law specifies that state Medicaid programs may not cover services that are not reasonable and (medically) necessary.¹⁷ Each state has adopted its own definition of "medical necessity."¹⁸ Section 409.913(1)(d), F.S., specifies that the AHCA is the final arbiter of medical necessity for purposes of medical reimbursement. Further, that paragraph requires determinations of medical necessity to be made by a licensed physician employed by or under contract with the AHCA (except for behavior analysis services, which may be determined by either a licensed physician or a doctoral-level board-certified behavior analyst), based upon information available at the time the goods or services are requested.

Pursuant to Rule 59G-1.010 of the Florida Administrative Code, care, goods, and services are medically necessary if they are:

- Necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
- Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
- Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
- Reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
- Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

¹² *Id.*

¹³ Section 409.967(2)(c)2, F.S.

¹⁴ *Supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 42 U.S.C. s. 1395y.

¹⁸ Dickey, Elizabeth, NOLO, Getting Approval for Medicaid Services: Medical Necessity available at <https://www.nolo.com/legal-encyclopedia/getting-approval-medicaid-services-medical-necessity.html> (last visited Nov. 30, 2021).

Prescribed Drug Prior Authorization Requirements, Step-Therapy Protocols

Prior authorization means a process by which a health care provider must qualify for payment coverage by obtaining advance approval from an insurer before a specific service is delivered to the patient.¹⁹ Within the Florida Medicaid program, only care, goods, and services that are medically necessary will obtain prior authorization. The AHCA must respond to prior authorization requests for prescribed drugs within 24 hours of receipt of the request.²⁰ Medicaid managed care plans are contractually required to respond to prior authorization requests for prescribed drugs within 24 hours of receipt of the request.

Section 409.912(5)(a)14., F.S. requires the AHCA to implement a step-therapy²¹ prior authorization process for prescribed drugs excluded from the PDL. The recipient must try the prescribed drug on the PDL within the 12 months before a non-PDL drug is approved. However, a non-PDL drug may be approved without meeting the step-therapy prior authorization criteria if the prescribing physician provides additional written medical documentation that the non-PDL product is medically necessary because:

- There is not a drug on the PDL to treat the disease or medical condition which is an acceptable clinical alternative;
- The alternative drugs have been ineffective in the treatment of the recipient's disease; or
- Based on historic evidence and known characteristics of the patient and the drug, the drug is likely to be ineffective, or the number of doses has been ineffective.

The AHCA must work with the physician to determine the best alternative for the recipient.²²

Regardless of whether a drug is listed on the PDL, a Medicaid managed care plan's prior authorization criteria and protocols related to prescribed drugs cannot be more restrictive than the criteria established by the AHCA for Fee-for-Service Delivery System prior authorizations.²³ Medicaid managed care plans must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers and must provide timely responses to providers.²⁴

Coverage of Prescription Drugs for Schizophrenia, Schizotypal, and Delusion Disorders

The PDL can be found on the AHCA's website.²⁵ The AHCA reports that the list includes numerous generic and brand name drugs for the treatment of schizophrenia, schizotypal or delusional disorders.²⁶ If the drug is not on the PDL, the prescriber must obtain prior authorization before dispensing the medication. Prior authorization requests are reviewed using

¹⁹ Riley, Hannah, Gistia Healthcare, *Making Sense of Prior Authorization, What is it?* (Apr. 21, 2020) available at <https://www.gistia.com/insights/what-is-prior-authorization> (last visited Nov. 30, 2021).

²⁰ Section 409.912(5)(a)1.a., F.S.

²¹ Step therapy means trying less expensive options before "stepping up" to drugs that cost more. Blue Cross Blue Shield Blue Care Network of Michigan, *How does step therapy work?*, available at <https://www.bcbsm.com/index/health-insurance-help/faqs/plan-types/pharmacy/what-is-step-therapy.html> (last visited Nov. 30, 2021).

²² Section 409.912(5)(a)14., F.S.

²³ *Supra* note 2.

²⁴ Section 409.967(2)(c)2, F.S.

²⁵ Agency for Health Care Administration, Florida Medicaid Preferred Drug List (PDL) available at https://ahca.myflorida.com/medicaid/prescribed_drug/pharm_thera/fmpdl.shtml (last visited Nov. 30, 2021).

²⁶ *Supra* note 2.

the guidelines established by the University of South Florida for mental health medications.²⁷ Prior authorization criteria and automated edits can be found on the AHCA's website.²⁸

Schizophrenia, Schizotypal, and Delusional Disorders

It was estimated that in 2017, approximately 184,607 adults residing in Florida had schizophrenia. Of that number, approximately 73,843 went untreated.²⁹

Schizophrenia is a serious mental disorder that causes people to interpret reality abnormally. Schizophrenia may result in some combination of hallucinations, delusions, and extremely disordered thinking and behavior that impairs daily functioning, and can be disabling.³⁰ People with schizophrenia require lifelong treatment. Treatments may include: biofeedback and stress management, electroconvulsive therapy, psychotherapy, psychopharmacology (the use of medications), and repetitive transcranial magnetic stimulation.³¹ Common medications include one, or a combination of, antidepressants, mood stabilizers, anti-psychotic drugs, anti-anxiety medicines, and stimulants.³² These treatments are also used for patients with schizotypal personality disorders and delusional disorders.

Schizotypal Personality Disorder can easily be confused with schizophrenia. While people with schizotypal personality disorder may experience brief psychotic episodes with delusions or hallucinations, the episodes are not as frequent, prolonged, or intense as in schizophrenia.³³ Furthermore, people with schizotypal personality disorder usually can be made aware of the difference between their distorted ideas and reality. Those with schizophrenia generally cannot be swayed from their delusions.³⁴

Similarly, Delusional Disorder is distinguished from schizophrenia by the presence of a delusion or delusions persisting for at least a month without any of the other symptoms of psychosis (for example, hallucinations, disorganized speech, or disorganized behavior).³⁵

²⁷ *Supra* note 2. The guidelines can be found at <https://floridabhcenter.org/> (last visited Nov. 30, 2021). These guidelines are included on the criteria for antipsychotic medications.

²⁸ Agency for Health Care Administration, Drug Criteria, *available at* https://ahca.myflorida.com/medicaid/prescribed_drug/drug_criteria.shtml (last visited Nov. 30, 2021).

²⁹ Treatment Advocacy Center, Florida, *available at* <https://www.treatmentadvocacycenter.org/browse-by-state/florida> (last visited Nov. 30, 2021).

³⁰ Mayo Clinic, Schizophrenia, *available at* <https://www.mayoclinic.org/diseases-conditions/schizophrenia/symptoms-causes/syc-20354443> (last visited Nov. 30, 2021).

³¹ University of Miami Health System, Schizophrenia, *available at* <https://umiamihealth.org/en/treatments-and-services/psychiatry/schizophrenia> (last visited Nov. 30, 2021).

³² *Id.*

³³ Mayo Clinic, Schizotypal Personality Disorder, *available at* <https://www.mayoclinic.org/diseases-conditions/schizotypal-personality-disorder/symptoms-causes/syc-20353919> (last visited Nov. 30, 2021).

³⁴ *Id.*

³⁵ Carol Tamminga, MD, Delusional Disorder, Merck Manual (May 2020), *available at* <https://www.merckmanuals.com/home/mental-health-disorders/schizophrenia-and-related-disorders/delusional-disorder> (last visited Nov. 30, 2021).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 409.912(5)(a)14., F.S., to create an exception from step-therapy prior authorization requirements within the Florida Medicaid program for a drug product that is prescribed for the treatment of schizophrenia or schizotypal or delusional disorders or a medication of a similar drug class if prior authorization was previously granted for the prescribed drug and the medication was dispensed to the patient during the previous 12 months.

In practice, the pharmacy benefit manager for the Florida Medicaid Fee-for-Service delivery system would review the exception request on behalf of the AHCA. Managed care plans would process their own exceptions. Providers may transmit written medical or clinical documentation by facsimile or submit their requests through the electronic prior authorization system (ePA).³⁶

Section 2 of the bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

³⁶ *Supra* note 2.

C. Government Sector Impact:

The AHCA reports that the bill poses an indeterminate fiscal impact on the Florida Medicaid Program. The PDL includes many generic medications with robust federal rebates and often additional supplemental rebates offered by drug manufacturers, resulting in a reduced cost to Medicaid. If numerous prescribing physicians prescribe higher cost, non-PDL drugs through the exception created in this bill, it may lead to a cost increase in therapeutic classes related to schizophrenia treatment.³⁷

However, if the bill results in more expeditious and effective pharmaceutical care provided to Medicaid patients with the targeted disorders, the program could experience savings due to reductions in the need for other types of expenses, such as, for example, expenses associated with inpatient hospital care. Such potential effect is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the section 409.912 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁷ *Supra* note 2.

By Senator Harrell

25-00651A-22

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A bill to be entitled

An act relating to prescription drugs used in the treatment of schizophrenia for Medicaid recipients; amending s. 409.912, F.S.; authorizing the approval of drug products or certain medication prescribed for the treatment of schizophrenia or schizotypal or delusional disorders for Medicaid recipients who have not met the step-therapy prior authorization criteria, when the drug product or certain medication meets specified criteria; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies,

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including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based

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on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(5)(a) The agency shall implement a Medicaid prescribed-drug spending-control program that includes the following components:

1. A Medicaid preferred drug list, which shall be a listing of cost-effective therapeutic options recommended by the Medicaid Pharmacy and Therapeutics Committee established pursuant to s. 409.91195 and adopted by the agency for each therapeutic class on the preferred drug list. At the discretion of the committee, and when feasible, the preferred drug list should include at least two products in a therapeutic class. The

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agency may post the preferred drug list and updates to the list on an Internet website without following the rulemaking procedures of chapter 120. Antiretroviral agents are excluded from the preferred drug list. The agency shall also limit the amount of a prescribed drug dispensed to no more than a 34-day supply unless the drug products' smallest marketed package is greater than a 34-day supply, or the drug is determined by the agency to be a maintenance drug in which case a 100-day maximum supply may be authorized. The agency may seek any federal waivers necessary to implement these cost-control programs and to continue participation in the federal Medicaid rebate program, or alternatively to negotiate state-only manufacturer rebates. The agency may adopt rules to administer this subparagraph. The agency shall continue to provide unlimited contraceptive drugs and items. The agency must establish procedures to ensure that:

a. There is a response to a request for prior authorization by telephone or other telecommunication device within 24 hours after receipt of a request for prior authorization; and

b. A 72-hour supply of the drug prescribed is provided in an emergency or when the agency does not provide a response within 24 hours as required by sub-subparagraph a.

2. A provider of prescribed drugs is reimbursed in an amount not to exceed the lesser of the actual acquisition cost based on the Centers for Medicare and Medicaid Services National Average Drug Acquisition Cost pricing files plus a professional dispensing fee, the wholesale acquisition cost plus a professional dispensing fee, the state maximum allowable cost plus a professional dispensing fee, or the usual and customary

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charge billed by the provider.

3. The agency shall develop and implement a process for managing the drug therapies of Medicaid recipients who are using significant numbers of prescribed drugs each month. The management process may include, but is not limited to, comprehensive, physician-directed medical-record reviews, claims analyses, and case evaluations to determine the medical necessity and appropriateness of a patient's treatment plan and drug therapies. The agency may contract with a private organization to provide drug-program-management services. The Medicaid drug benefit management program shall include initiatives to manage drug therapies for HIV/AIDS patients, patients using 20 or more unique prescriptions in a 180-day period, and the top 1,000 patients in annual spending. The agency shall enroll any Medicaid recipient in the drug benefit management program if he or she meets the specifications of this provision and is not enrolled in a Medicaid health maintenance organization.

4. The agency may limit the size of its pharmacy network based on need, competitive bidding, price negotiations, credentialing, or similar criteria. The agency shall give special consideration to rural areas in determining the size and location of pharmacies included in the Medicaid pharmacy network. A pharmacy credentialing process may include criteria such as a pharmacy's full-service status, location, size, patient educational programs, patient consultation, disease management services, and other characteristics. The agency may impose a moratorium on Medicaid pharmacy enrollment if it is determined that it has a sufficient number of Medicaid-

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participating providers. The agency must allow dispensing practitioners to participate as a part of the Medicaid pharmacy network regardless of the practitioner's proximity to any other entity that is dispensing prescription drugs under the Medicaid program. A dispensing practitioner must meet all credentialing requirements applicable to his or her practice, as determined by the agency.

5. The agency shall develop and implement a program that requires Medicaid practitioners who issue written prescriptions for medicinal drugs to use a counterfeit-proof prescription pad for Medicaid prescriptions. The agency shall require the use of standardized counterfeit-proof prescription pads by prescribers who issue written prescriptions for Medicaid recipients. The agency may implement the program in targeted geographic areas or statewide.

6. The agency may enter into arrangements that require manufacturers of generic drugs prescribed to Medicaid recipients to provide rebates of at least 15.1 percent of the average manufacturer price for the manufacturer's generic products. These arrangements shall require that if a generic-drug manufacturer pays federal rebates for Medicaid-reimbursed drugs at a level below 15.1 percent, the manufacturer must provide a supplemental rebate to the state in an amount necessary to achieve a 15.1-percent rebate level.

7. The agency may establish a preferred drug list as described in this subsection, and, pursuant to the establishment of such preferred drug list, negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the Social Security Act and at no less than 14 percent of

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the average manufacturer price as defined in 42 U.S.C. s. 1936 on the last day of a quarter unless the federal or supplemental rebate, or both, equals or exceeds 29 percent. There is no upper limit on the supplemental rebates the agency may negotiate. The agency may determine that specific products, brand-name or generic, are competitive at lower rebate percentages. Agreement to pay the minimum supplemental rebate percentage guarantees a manufacturer that the Medicaid Pharmaceutical and Therapeutics Committee will consider a product for inclusion on the preferred drug list. However, a pharmaceutical manufacturer is not guaranteed placement on the preferred drug list by simply paying the minimum supplemental rebate. Agency decisions will be made on the clinical efficacy of a drug and recommendations of the Medicaid Pharmaceutical and Therapeutics Committee, as well as the price of competing products minus federal and state rebates. The agency may contract with an outside agency or contractor to conduct negotiations for supplemental rebates. For the purposes of this section, the term "supplemental rebates" means cash rebates. Value-added programs as a substitution for supplemental rebates are prohibited. The agency may seek any federal waivers to implement this initiative.

8.a. The agency may implement a Medicaid behavioral drug management system. The agency may contract with a vendor that has experience in operating behavioral drug management systems to implement this program. The agency may seek federal waivers to implement this program.

b. The agency, in conjunction with the Department of Children and Families, may implement the Medicaid behavioral drug management system that is designed to improve the quality

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of care and behavioral health prescribing practices based on best practice guidelines, improve patient adherence to medication plans, reduce clinical risk, and lower prescribed drug costs and the rate of inappropriate spending on Medicaid behavioral drugs. The program may include the following elements:

(I) Provide for the development and adoption of best practice guidelines for behavioral health-related drugs such as antipsychotics, antidepressants, and medications for treating bipolar disorders and other behavioral conditions; translate them into practice; review behavioral health prescribers and compare their prescribing patterns to a number of indicators that are based on national standards; and determine deviations from best practice guidelines.

(II) Implement processes for providing feedback to and educating prescribers using best practice educational materials and peer-to-peer consultation.

(III) Assess Medicaid beneficiaries who are outliers in their use of behavioral health drugs with regard to the numbers and types of drugs taken, drug dosages, combination drug therapies, and other indicators of improper use of behavioral health drugs.

(IV) Alert prescribers to patients who fail to refill prescriptions in a timely fashion, are prescribed multiple same-class behavioral health drugs, and may have other potential medication problems.

(V) Track spending trends for behavioral health drugs and deviation from best practice guidelines.

(VI) Use educational and technological approaches to

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promote best practices, educate consumers, and train prescribers in the use of practice guidelines.

(VII) Disseminate electronic and published materials.

(VIII) Hold statewide and regional conferences.

(IX) Implement a disease management program with a model quality-based medication component for severely mentally ill individuals and emotionally disturbed children who are high users of care.

9. The agency shall implement a Medicaid prescription drug management system.

a. The agency may contract with a vendor that has experience in operating prescription drug management systems in order to implement this system. Any management system that is implemented in accordance with this subparagraph must rely on cooperation between physicians and pharmacists to determine appropriate practice patterns and clinical guidelines to improve the prescribing, dispensing, and use of drugs in the Medicaid program. The agency may seek federal waivers to implement this program.

b. The drug management system must be designed to improve the quality of care and prescribing practices based on best practice guidelines, improve patient adherence to medication plans, reduce clinical risk, and lower prescribed drug costs and the rate of inappropriate spending on Medicaid prescription drugs. The program must:

(I) Provide for the adoption of best practice guidelines for the prescribing and use of drugs in the Medicaid program, including translating best practice guidelines into practice; reviewing prescriber patterns and comparing them to indicators

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that are based on national standards and practice patterns of clinical peers in their community, statewide, and nationally; and determine deviations from best practice guidelines.

(II) Implement processes for providing feedback to and educating prescribers using best practice educational materials and peer-to-peer consultation.

(III) Assess Medicaid recipients who are outliers in their use of a single or multiple prescription drugs with regard to the numbers and types of drugs taken, drug dosages, combination drug therapies, and other indicators of improper use of prescription drugs.

(IV) Alert prescribers to recipients who fail to refill prescriptions in a timely fashion, are prescribed multiple drugs that may be redundant or contraindicated, or may have other potential medication problems.

10. The agency may contract for drug rebate administration, including, but not limited to, calculating rebate amounts, invoicing manufacturers, negotiating disputes with manufacturers, and maintaining a database of rebate collections.

11. The agency may specify the preferred daily dosing form or strength for the purpose of promoting best practices with regard to the prescribing of certain drugs as specified in the General Appropriations Act and ensuring cost-effective prescribing practices.

12. The agency may require prior authorization for Medicaid-covered prescribed drugs. The agency may prior-authorize the use of a product:

a. For an indication not approved in labeling;

b. To comply with certain clinical guidelines; or

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291 c. If the product has the potential for overuse, misuse, or
 292 abuse.

293
 294 The agency may require the prescribing professional to provide
 295 information about the rationale and supporting medical evidence
 296 for the use of a drug. The agency shall post prior
 297 authorization, step-edit criteria and protocol, and updates to
 298 the list of drugs that are subject to prior authorization on the
 299 agency's Internet website within 21 days after the prior
 300 authorization and step-edit criteria and protocol and updates
 301 are approved by the agency. For purposes of this subparagraph,
 302 the term "step-edit" means an automatic electronic review of
 303 certain medications subject to prior authorization.

304 13. The agency, in conjunction with the Pharmaceutical and
 305 Therapeutics Committee, may require age-related prior
 306 authorizations for certain prescribed drugs. The agency may
 307 preauthorize the use of a drug for a recipient who may not meet
 308 the age requirement or may exceed the length of therapy for use
 309 of this product as recommended by the manufacturer and approved
 310 by the Food and Drug Administration. Prior authorization may
 311 require the prescribing professional to provide information
 312 about the rationale and supporting medical evidence for the use
 313 of a drug.

314 14. The agency shall implement a step-therapy prior
 315 authorization approval process for medications excluded from the
 316 preferred drug list. Medications listed on the preferred drug
 317 list must be used within the previous 12 months before the
 318 alternative medications that are not listed. The step-therapy
 319 prior authorization may require the prescriber to use the

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320 medications of a similar drug class or for a similar medical
 321 indication unless contraindicated in the Food and Drug
 322 Administration labeling. The trial period between the specified
 323 steps may vary according to the medical indication. The step-
 324 therapy approval process shall be developed in accordance with
 325 the committee as stated in s. 409.91195(7) and (8). A drug
 326 product may be approved without meeting the step-therapy prior
 327 authorization criteria if the prescribing physician provides the
 328 agency with additional written medical or clinical documentation
 329 that the product is medically necessary because:

330 a. There is not a drug on the preferred drug list to treat
 331 the disease or medical condition which is an acceptable clinical
 332 alternative;

333 b. The alternatives have been ineffective in the treatment
 334 of the beneficiary's disease; ~~or~~

335 c. The drug product or medication of a similar drug class
 336 is prescribed for the treatment of schizophrenia or schizotypal
 337 or delusional disorders; prior authorization has been granted
 338 previously for the prescribed drug; and the medication was
 339 dispensed to the patient during the previous 12 months; or

340 d. Based on historic evidence and known characteristics of
 341 the patient and the drug, the drug is likely to be ineffective,
 342 or the number of doses have been ineffective.

343
 344 The agency shall work with the physician to determine the best
 345 alternative for the patient. The agency may adopt rules waiving
 346 the requirements for written clinical documentation for specific
 347 drugs in limited clinical situations.

348 15. The agency shall implement a return and reuse program

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349 for drugs dispensed by pharmacies to institutional recipients,
350 which includes payment of a \$5 restocking fee for the
351 implementation and operation of the program. The return and
352 reuse program shall be implemented electronically and in a
353 manner that promotes efficiency. The program must permit a
354 pharmacy to exclude drugs from the program if it is not
355 practical or cost-effective for the drug to be included and must
356 provide for the return to inventory of drugs that cannot be
357 credited or returned in a cost-effective manner. The agency
358 shall determine if the program has reduced the amount of
359 Medicaid prescription drugs which are destroyed on an annual
360 basis and if there are additional ways to ensure more
361 prescription drugs are not destroyed which could safely be
362 reused.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL

25th District

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax
Reapportionment

SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional
Reapportionment

November 16, 2021

Senator Manny Diaz
306 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Diaz,

I respectfully request that **SB 534 – Prescription Drugs used in the treatment of Schizophrenia for Medicaid** recipients be placed on the next available agenda for the Health Policy Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Allen Brown, Staff Director
Tori Denson, Committee Administrative Assistant

REPLY TO:

☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

12/2/2021

Meeting Date

Health Policy

Committee

534

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Paul Lowell

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850-728-0861

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33137

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

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☒

I am a registered lobbyist,
representing:

Sanovion

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)



2022 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Agency for Health Care Administration

BILL INFORMATION

BILL NUMBER:	SB 534
BILL TITLE:	Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients
BILL SPONSOR:	Senator Harrell
EFFECTIVE DATE:	7/1/2022

COMMITTEES OF REFERENCE

1) Health Policy
2) Appropriations Subcommittee on Health and Human Services
3) Appropriations
4)
5)

CURRENT COMMITTEE

Health Policy

SIMILAR BILLS

BILL NUMBER:

SPONSOR:

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:

SPONSOR:

Is this bill part of an agency package?

Y ___ N ___

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	11/22/2021
LEAD AGENCY ANALYST:	For any questions, please contact Patrick Steele at (850) 412-3615
ADDITIONAL ANALYST(S):	Susan Williams
LEGAL ANALYST:	
FISCAL ANALYST:	Ana Rivas

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends s. 409.912 (5)(a)14, F.S., by adding subsection “c” to the list of exceptions to the step therapy prior authorization criteria. If the prescribing physician submits written medical or clinical documentation that the product is medically necessary and the drug product or medication of a similar drug class prescribed to treat schizophrenia, schizotypal, or delusional disorder has been previously authorized and dispensed to the patient in the last 12 months, the drug does not have to meet the step-therapy prior authorization criteria.

Managed care plans are contractually required to follow the Medicaid Preferred Drug List (PDL) and to follow the step-therapy exceptions listed in s. 409.912(5)(a)14, F.S.

The bill will have a minimal operational effect on both the Medicaid fee-for-service (FFS) delivery system and Medicaid managed care plans. For the medications prescribed for schizophrenia, schizotypal or delusional disorders, reviewers would only look for the product in the patient’s history or a trial of one similar drug class trial rather than multiple drug trials of similar preferred medications.

The bill will have an indeterminant fiscal impact on Medicaid. The Medicaid preferred drug list includes many effective generic medications and brand medications with robust federal rebates and often additional supplemental rebates offered by drug manufacturers which result in reduced cost to Medicaid. If numerous prescribing physicians elect to prescribe drugs that are not on the preferred drug list, it may lead to a drug cost increase in therapeutic classes related to schizophrenia treatment.

This act will take effect July 1, 2022.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Agency for Health Care Administration (Agency) is the single state agency responsible for the administration of the Florida Medicaid program, authorized under Title XIX of the Social Security Act. This authority includes establishing and maintaining a Medicaid state plan approved by the Centers for Medicare and Medicaid Services (CMS) and maintaining any Medicaid waivers needed to operate the Florida Medicaid program as directed by the Florida Legislature. In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the Agency under the Statewide Medicaid Managed Care (SMMC) program. The SMMC program has three components: Managed Medical Assistance, Long-Term Care, and Dental. Florida’s SMMC program benefits are authorized through federal waivers and are specifically required by the Florida Legislature in sections 409.973 and 409.98, F.S. The SMMC benefits are a robust health care package covering acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services.

Medicaid Coverage of Prescribed Drugs

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics committee within the Agency for developing a Florida Medicaid Prescribed Drug List (PDL). The Governor appoints the committee members (five pharmacists, five physicians, and one consumer representative). The committee meets quarterly, reviews all drug classes included in the PDL at least every 12 months, and may recommend additions to and deletions from the Agency’s Medicaid PDL, such that the PDL provides for medically appropriate drug therapies for Florida Medicaid recipients and choices for prescribers within each therapeutic class. The committee also considers the amount of rebates drug manufacturers are offering if their drug is placed on the PDL. These state-negotiated supplemental rebates, along with federally negotiated rebates, can reduce the per prescription cost of a brand name drug to below the cost of its generic equivalent. Florida currently collects over \$2 billion per year in federal and supplemental rebates for drugs dispensed to Medicaid recipients. These funds are used to offset the cost of Medicaid services. Medicaid managed care plans are required to provide all prescription drugs listed on the Agency’s PDL. As such, the Medicaid managed care plans have not implemented their own plan-specific formularies or PDLs. Medicaid managed care plans are required to provide a link to the Agency’s Medicaid PDL on their website. Medicaid covers all Food and Drug Administration (FDA) approved prescription medications. Those not on the PDL must be prior approved by Medicaid or the health plans.

The Agency also manages the federally required Florida Medicaid Drug Utilization Review Board, which meets quarterly and develops and reviews clinical prior authorization criteria, including step-therapy protocols, for certain drugs that are not on the Agency's Medicaid PDL.

Prescribed Drug Prior Authorization Requirements/Step-Therapy Protocols

For prescribed drugs, Medicaid managed care plans are contractually required to respond to prior authorization requests for prescribed drugs within 24 hours of receipt of the request. As required by state law, the Agency deploys a step-therapy prior authorization process for prescribed drugs excluded from the Florida Medicaid PDL (refer to s. 409.912, F.S.). The step-therapy protocol requires that the recipient try the prescribed drug on the PDL within the previous 12 months before a non-PDL drug is approved. The exception to these criteria is if the prescribing physician provides additional written medical documentation that the non-PDL product is medically necessary because:

- a. There is not a drug on the PDL to treat the disease or medical condition which is an acceptable clinical alternative; or
- b. The alternative drugs have been ineffective in the treatment of the recipient's disease; or
- c. Based on historic evidence and known characteristics of the patient and the drug, the drug is likely to be ineffective, or the number of doses has been ineffective.

The Medicaid managed care plan's prior authorization criteria/protocols related to prescribed drugs (regardless of whether the drug is listed on the PDL or not) cannot be more restrictive than the criteria established by the Agency FFS prior authorizations. In accordance with s. 409.967(2)(c)2, F.S., Medicaid managed care plans must assure that the prior authorization process for prescribed drugs is readily accessible to health care providers, as well as provide timely responses to providers.

Coverage of Prescription Drugs for Schizophrenia, Schizotypal and Delusional Disorders

The Medicaid PDL includes numerous generic and brand name drugs for the treatment of schizophrenia, schizotypal or delusional disorders. The list of preferred medications can be found on the PDL located on the Agency's website at http://www.ahca.myflorida.com/medicaid/Prescribed_Drug/preferred_drug.shtml. If the drug is not on the PDL, the prescriber must obtain prior authorization before dispensing the medication. Prior authorization requests submitted to the Agency and managed care plans require a response within 24 hours of receipt. Prior authorization requests are reviewed using the guidelines established by the University of South Florida for mental health medications. The guidelines can be found at <https://floridabhcenter.org/>. These guidelines are included on the criteria for antipsychotic medications. Prior authorization criteria and automated edits can be found on the Agency's website at [Drug Criteria \(myflorida.com\)](http://www.ahca.myflorida.com/medicaid/Drug_Criteria).

2. EFFECT OF THE BILL:

Section 1 amends s. 409.912 (5)(a)14, F.S., which authorizes step-therapy prior authorization for drugs that are excluded from the preferred drug list and list exceptions to the step therapy process. The bill adds a new exception (subsection "c") for patients who have schizophrenia, schizotypal or delusional disorders. The bill states that a drug product may be approved without meeting the step-therapy prior authorization criteria if the prescribing physician provides the Agency with additional written medical or clinical documentation that the product is medically necessary because:

- The drug product or medication of a similar drug class is prescribed for the treatment of schizophrenia or schizotypal or delusional disorders; prior authorization has been granted previously for the prescribed drug; and
- The medication was dispensed to the patient during the previous 12 months.

The pharmacy benefit manager (PBM) for the Florida Medicaid FFS delivery system would review the exception request on behalf of the Agency. Providers can fax in the written medical or clinical documentation or submit the request through the electronic prior authorization (ePA) system. Health plans would process their own exceptions but cannot be more restrictive than the Agency's policy.

The bill will have minimal operational impact on both the Florida Medicaid FFS delivery system and Medicaid managed care plans. Medicaid managed care plans are contractually required to follow s. 490.912, F.S. The Florida Medicaid FFS PBM and managed care plans currently review prior authorization request exceptions. This bill would require that FFS and managed care reviewers evaluate the written medical and clinical

documentation from the prescriber related to medications for the treatment of schizophrenia, schizotypal and delusional disorders to determine if the drug requested has been tried in the previous 12 months or a similar drug has been attempted. If so, the requested drug would be approved. If a prescriber submits an exception request, an override will be entered by the reviewer for any edits related to schizophrenia, schizotypal or delusional disorders.

The bill will have an indeterminant fiscal impact on the Florida Medicaid program. The Medicaid PDL includes many effective generic medications and brand medications with robust federal rebates and often additional supplemental rebates offered by drug manufacturers which result in reduced cost to Medicaid. If numerous prescribing physicians elect to prescribe drugs that are not on the PDL, it may lead to a drug cost increase in therapeutic classes related to schizophrenia treatment.

The bill takes effect July 1, 2022.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ___ N _X_

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y ___ N ___
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ___ N _X_

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC.? REQUIRED BY THIS BILL? Y ___ N _X_

Board:	N/A
Board Purpose:	N/A
Who Appointments:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ___ N _X_

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y _X_ N ___

Revenues:	N/A
Expenditures:	SB 534 poses an indeterminate fiscal impact on the Florida Medicaid Program. The expenditures will be based on the drug selection by the prescriber. If the prescriber selects higher cost non-preferred medications, drug costs could increase.
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A THE FISCAL IMPACT TO THE PRIVATE SECTOR? Y ___ N _X_

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ___ N _X_

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ___ N _X_

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ___ N _X_

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

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LEGAL – GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments:	
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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 516

INTRODUCER: Senator Rouson

SUBJECT: Procurement Activities of For-profit Eye Banks

DATE: December 1, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Brown	HP	Favorable
2. _____	_____	CJ	_____
3. _____	_____	RC	_____

I. Summary:

SB 516 amends ss. 765.542 and 873.01, F.S., to prohibit a for-profit eye bank from directly or indirectly engaging in the procurement of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation.

The bill exempts hospitals, ambulatory surgical centers (ASC), and medical examiners from this prohibition.

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

II. Present Situation:

Regulations and Standards for Tissue Processing

Tissue processing in the United States is governed by mandatory requirements enforced by federal and state regulatory authorities. The authorization of donated tissues is governed by the Uniform Anatomical Gift Act. Tissue banks in the United States are governed by the National Organ Transplantation Act (NOTA), which provides that tissue cannot be bought or sold. The law does allow for reimbursement of costs associated with the recovery, processing, and storing of tissue and the development of tissue processing technologies. Such activities can include research, screening and testing, sterilization processes, and precision-tooled shaping of allografts for transplantation.¹

Regardless of their status, all tissue banks must meet the same regulatory requirements and have the same goal of assisting in the process of making tissue safely available for transplants. Human tissue processed and distributed for transplantation by the American Association of Tissue Banks

¹ American Association of Tissue Banks, Regulation and Standards, available at <https://www.aatb.org/regulatory> (last visited on Nov. 11, 2021).

(AATB)-accredited tissue banks is subject to federal Food and Drug Administration regulation and AATB's standards.²

Statutory Provisions Specific to Eye Banks in Florida

Part V of ch. 765, F.S., contains provisions specific to the donation and procurement of human organs and tissues. Under this part, "procurement" is defined in s. 765.511(18), F.S., as "any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education."

Section 765.542, F.S., provides requirements for the certification of procurement organizations in the state of Florida. Procurement organizations, as defined in s. 765.511(19), F.S., include organ procurement organizations, eye banks, and tissue banks. Per s. 765.511(11), F.S., an eye bank is "an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue."

In accordance with s. 765.542(3), F.S., a person may not engage in the practice of eye procurement in the state of Florida without being appropriately certified as an eye bank by the Agency for Health Care Administration (AHCA). Funeral directors or direct disposers who retrieve eye tissue for a certified eye bank are exempt from being certified as eye banks.

All procurement organizations, including eye banks, are required to file an annual report and an annual assessment fee to the AHCA based on reported revenues from procurement and processing activities, as provided in s. 765.544, F.S.

Chapter 873, F.S., governs the sale of anatomical matter by a person or a for-profit entity and includes provisions related to the purchase, sale, and transfer of human organs and tissues, including, but not limited to: the eye, cornea, kidney, liver, heart, lung, pancreas, bone, and skin.³

Section 873.01(2), F.S., prohibits for-profit entities, or any employee of a for-profit entity, from transferring human organs and tissues or arranging for the transfer of human organs and tissues for valuable consideration. "Valuable consideration" does not include the reasonable costs associated with the removal, storage, and transportation of a human organ or tissue. A violation of this section constitutes a second-degree felony.⁴

Currently there are nine for-profit eye banks and 14 not-for-profit eye banks operating in Florida.⁵

² *Id.*

³ Section 873.01(3)(a), F.S.

⁴ Section 873.01(4), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

⁵ Florida Health Finder (<https://www.floridahealthfinder.gov/>) report generated on Nov. 19, 2021, on file with Senate Health Policy Committee staff.

Corporate Trends in the Eye-Tissue Banking Industry

In recent years, the market for corneal tissue procurement, transport, and surgeon partnerships has experienced somewhat of a shift from local, community-based eye banks to larger companies. Some of these larger companies are represented by not-for-profit corporations affiliated with for-profit “daughter” companies, which, in partnership with each other, play defined roles in the process, with the non-profit organization recovering the tissue while the for-profit organization processes, evaluates, and distributes the tissues to cornea surgeons.⁶

The for-profit status of any participant in the process has drawn criticism. However, defenders of such partnerships respond by noting that such for-profit companies operate under the NOTA, which states that it is illegal to buy or sell organs and tissues while it *is* legal to obtain reasonable payment associated with the removal, transportation, processing, preservation, quality control, and storage of corneas and eye tissue. Similarly, local eye banks routinely obtain payment related to these actions. Some argue that the for-profit connection fundamentally alters the relationship between physicians, eye banks, and donors by rendering the gift of the tissue as a commodity. The resulting ethical debate may be crucial to the future of eye banks.⁷

III. Effect of Proposed Changes:

SB 516 amends ss. 765.542 and 873.01, F.S., to prohibit a for-profit eye bank from directly or indirectly engaging in the procurement of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation.

The bill exempts hospitals, ambulatory surgical centers (ASC), and medical examiners from this prohibition.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ Majid Moshirfar, Jackson L. Goldberg, et al., *A paradigm shift in eye banking: how new models are challenging the status quo*, U.S. National Library of Medicine, National Institutes of Health (Dec. 27, 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6311318/> (last visited Nov. 19, 2021).

⁷ *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may have an indeterminate negative fiscal impact on for-profit eye banks operating in Florida.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 765.542 and 873.01 of the Florida Statutes.

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.

By Senator Rouson

19-00809-22

2022516__

A bill to be entitled

An act relating to procurement activities of for-profit eye banks; amending ss. 765.542 and 873.01, F.S.; prohibiting for-profit eye banks from procuring certain human organs and tissue for specified purposes; providing exceptions; providing an effective date.

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

Section 1. Present subsection (4) of section 765.542, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(4) A for-profit eye bank may not directly or indirectly engage in the procurement of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 2. Present subsections (3) and (4) of section 873.01, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsections (1) and (2) of that section are amended, to read:

873.01 Purchase or sale of human organs and tissue prohibited.—

(1) A ~~No~~ person may not ~~shall~~ knowingly offer to purchase

Page 1 of 2

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

19-00809-22

2022516__

or sell, or purchase, sell, or otherwise transfer, any human organ or tissue for valuable consideration.

(2) A ~~No~~ for-profit corporation or any employee thereof may ~~not shall~~ transfer or arrange for the transfer of any human body part for valuable consideration.

(3) A for-profit eye bank, as defined in s. 765.511, may not directly or indirectly engage in the procurement, as defined in s. 765.511, of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 3. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: November 16, 2021

I respectfully request that **Senate Bill #516**, relating to Procurement Activities of For-profit Eye Banks, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in green ink that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

12/02/2021

Meeting Date

Health Policy

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 516

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Agustin G. Corbella**

Phone **850.222.6891**

Address **101 E. College Ave**

Email **corbella@gtlaw.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

CorneaGen

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something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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: CS/SB 632

INTRODUCER: Health Policy Committee and Senator Bradley

SUBJECT: Occupational Therapy

DATE: December 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Rossitto-Vanwinkle</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
2. _____	_____	<u>AHS</u>	_____
3. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 632 significantly expands the scope of practice of the occupational therapist and the occupational therapy assistant.

The bill replaces the current definition of “occupational therapy” with a new definition that introduces the concepts of the therapeutic use of occupations with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in the home, school, workplace, community, and other settings for clients who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction.

The bill creates new terms and definitions for occupational therapy.

The bill deletes a list of “occupational therapy services” from current law, makes reference to “the practice of occupational therapy” instead of “occupational therapy,” and adds the following services to the practice of occupational therapy:

- The assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or have been identified as being at risk for impairment due to issues related to, but not limited to, developmental deficiencies, the aging process,

learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities;

- Methods or approaches to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies; and
- Specific occupational therapy techniques used for treatment which include, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities.

The bill exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act and exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in ch. 491, F.S.

The bill also exempts any person fulfilling an occupational therapy doctoral capstone experience that involves clinical practice or projects, from the requirements of the Occupational Therapy Practice Act if he or she registers with the Department of Health (DOH) before commencing the capstone experience.

The bill authorizes a licensed occupational therapist to use the title “occupational therapist doctorate” or “O.T.D.” if the occupational therapist has earned a doctoral degree.

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

II. Present Situation:

The Department of Health

The Legislature created the DOH to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Occupational Therapy

Current law defines occupational therapy as “the use of purposeful activity or interventions to achieve functional outcomes.”⁴

¹ Section 20.43, F.S.

² Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43, F.S.

⁴ Section 468.203(4), F.S.

Occupational therapy is performed by licensed occupational therapists (OTs), licensed occupational therapy assistants (OTAs) who work under the responsible supervision and control⁵ of a licensed OT, and occupational therapy aides who are not licensed but assist in the practice of occupational therapy under the direct supervision of a licensed OT or licensed OTA.⁶ However, physicians, physician assistants, nurses, physical therapists, osteopathic physicians or surgeons, clinical psychologists, speech-language pathologists, and audiologists are permitted to use occupational therapy skills and techniques as part of their professions when they practice their profession under their own practice acts.⁷

Occupational therapy services include, but are not limited to:

- The assessment,⁸ treatment, and education of, or consultation with, the individual, family, or other persons;
- Interventions directed toward developing daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performance skills; and
- Providing for the development of: sensory-motor, perceptual, or neuromuscular functioning; range of motion; or emotional, motivational, cognitive, or psychosocial components of performance.⁹

These services may require an assessment to determine the need for the use of the following interventions:

- The design, development, adaptation, application, or training needed to use the assistive devices;
- The design, fabrication, or application of rehabilitative technology such as selected orthotic devices;
- Training in the use of assistive technology;
- Orthotic or prosthetic devices;
- The application of physical modalities as an adjunct to or in preparation for activity;
- The use of ergonomic principles;
- The adaptation of environments and processes to enhance functional performance; or
- The promotion of health and wellness.¹⁰

⁵ Section 468.203(8), F.S. Responsible supervision and control by the licensed OT includes providing both the initial direction in developing a plan of treatment and periodic inspection of the actual implementation of the plan. The plan of treatment must not be changed by the supervised individual without prior consultation and approval of the supervising OT. The supervising OT is not always required to be physically present or on the premises when the occupational therapy assistant is performing services; but, supervision requires the availability of the supervising occupational therapist for consultation with and direction of the supervised individual.

⁶ Section 468.203, F.S.

⁷ Section 468.225, F.S.

⁸ Section 468.203(4)a.2., F.S., defines “assessment” to mean the use of skilled observation or the administration and interpretation of standardized or non-standardized tests and measurements to identify areas for occupational therapy services.

⁹ Section 468.203(4), F.S.; Fla. Admin. Code R. 64B11-4.001 (2021).

¹⁰ *Id.*

Occupational Therapists and Occupational Therapy Assistants

Education

There are four levels of educational programs available to individuals desiring to enter the profession of occupational therapy in an institution accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), which is the certifying arm of the American Occupational Therapy Association (AOTA), as follows:

- The Doctoral-Degree-Level Occupational Therapist (Ph.D.);¹¹
- Master's-Degree-Level Occupational Therapist (OTR);
- Baccalaureate-Degree-Level Occupational Therapy Assistant (certified occupational therapy assistant or COTA); and
- Associate-Degree-Level Occupational Therapy Assistant (also a COTA).¹²

The ACOTE requirements for accreditation for occupational therapy curriculum vary by degree levels, but all levels must include theory, basic tenets of occupational therapy, and supervised educational fieldwork for accreditation. Examples of some required theory and basic tenets for occupational therapy accreditation include:

- Theory:
 - Preparation to Practice as a Generalist;
 - Preparation and Application of In-depth Knowledge;
 - Human Body, Development, and Behavior;
 - Sociocultural, Socioeconomic, Diversity Factors, and Lifestyle Choices; and
 - Social Determinants of Health.
- Basic Tenets:
 - Therapeutic Use of Self;
 - Clinical Reasoning;
 - Behavioral Health and Social Factors;
 - Remediation and Compensation;¹³
 - Orthoses and Prosthetic Devices;¹⁴
 - Functional Mobility;¹⁵

¹¹ National Board of Certification in Occupational Therapy (NBCOT), 2018 Accreditation Council for Occupational Therapy Education (ACOTE®) *Standards and Interpretive Guide (effective July 31, 2020) August 2020 Interpretive Guide Version*, at pp. 20 and 49, available at <https://acoteonline.org/wp-content/uploads/2020/10/2018-ACOTE-Standards.pdf> (last visited Nov. 15, 2021). The Ph.D. in occupational therapy requires a minimum of six years of full time academic education and a Doctoral Capstone which is an in-depth exposure to a concentrated area, which is an integral part of the program's curriculum design. This in-depth exposure may be in one or more of the following areas: clinical practice skills, research skills, scholarship, administration, leadership, program and policy development, advocacy, education, and theory development. The doctoral capstone consists of two parts: the capstone experience and the capstone project.

¹² *Id.* at p. 1.

¹³ *Supra* note 11, p. 29. *Remediation and Compensation* includes the design and implement intervention strategies to remediate and/or compensate for functional cognitive deficits, visual deficits, and psychosocial and behavioral health deficits that affect occupational performance.

¹⁴ *Supra* note 11, p. 30. *Orthoses and Prosthetic Devices* requires the assessment of the need for orthotics, and design, fabricate, apply, fit, and train in orthoses and devices used to enhance occupational performance and participation.

¹⁵ *Id.* *Functional Mobility*- provides recommendations and training in techniques to enhance functional mobility, including physical transfers, wheelchair management, and mobility devices.

- Community Mobility;¹⁶
- Technology in Practice;¹⁷
- Dysphagia¹⁸ and Feeding Disorders;
- Superficial Thermal, Deep Thermal, and Electrotherapeutic Agents and Mechanical Devices; and
- Effective Communication.

Fieldwork education required for ACOTE accreditation must include traditional and non-traditional subject matter, as well as emerging settings to strengthen the ties between didactic and fieldwork education, and at two levels:

- Level I Fieldwork: required for Ph.D., OTR, and COTA candidates, could be met through one or more of the following instructional methods:
 - Simulated environments;
 - Standardized patients;
 - Faculty practice;
 - Faculty-led site visits; and
 - Supervision by a fieldworker instructor.
- Level II Fieldwork:
 - Ph.D. and Masters Candidates - require a minimum of 24 weeks of full-time Level II fieldwork. Level II fieldwork can be completed in one setting if reflective of more than one practice area, or in a maximum of four different settings.
 - Bachelors and Associates Candidates - require a minimum of 16 weeks full-time Level II fieldwork. Level II fieldwork may be completed in one setting if reflective of more than one practice area, or in a maximum of three different settings.¹⁹

The ACOTE also requires for accreditation that schools maintain an average passage rate 80 percent or higher (regardless of the number of attempts) on the National Board for Certification in Occupational Therapy (NBCOT) examination, over the three most recent calendar years, for graduates attempting the national certification exam within 12 months of graduation from the program.²⁰

The Doctoral Capstone for a Ph.D. in Occupational Therapy

According to the ACOTE standards, the doctoral capstone is a required element of an occupational therapy Ph.D. curriculum. The goal of the doctoral capstone is to provide an in-depth exposure to one or more of the following: clinical practice skills, research skills, administration, leadership, program and policy development, advocacy, education, and theory development.

The doctoral capstone consists of two parts:

¹⁶ *Supra* note 11, p. 30. *Community Mobility* designs programs that enhance community mobility, and implement transportation transitions, including driver rehabilitation and community access.

¹⁷ *Supra* note 11, p. 31. *Technology in Practice* requires the demonstration of knowledge of the use of technology in practice, which must include: Electronic documentation systems; virtual environments; and telehealth technology.

¹⁸ Tabor's Cyclopedia Medical Dictionary, 17th Edition, pub. 1993, F.A. Davis and Co., *Dysphonia* is the inability to swallow or difficulty swallowing.

¹⁹ *Supra* note 11, p. 41.

²⁰ *Supra* note 11.

- **Capstone project** is completed by the Ph.D. candidate who demonstrates his or her ability to relate theory to practice and to synthesize in-depth knowledge in a practice area that relates to the capstone experience.
- **Capstone experience** is a 14-week, full-time, in-depth exposure in a concentrated area that may include on-site and off-site activities that meets developed goals and objectives of the doctoral capstone.

The candidate begins his or her capstone experience after the completion of all coursework and Level II fieldwork and after the preparation of a complete literature review, needs assessment, goals/objectives, and an evaluation plan aligning with the curriculum design and sequence of the doctoral capstone experience.

The Ph.D. candidate's capstone project must demonstrate the synthesis and application of the knowledge he or she has gained. The doctoral capstone experience must be a minimum of 14 weeks (560 hours). It may be completed on a part-time basis but must be consistent with the individualized specific objectives of the capstone project. No more than 20 percent of the 560 hours may be completed off site from the mentored practice setting(s), to ensure a concentrated experience in the designated area of interest. Time spent off-site may include independent study activities such as research and writing. Prior fieldwork or work experience may not be substituted for this doctoral capstone experience.

Every doctoral capstone project must have a valid written memorandum of understanding, signed by all parties to the doctoral capstone experience which, at a minimum, includes individualized specific objectives, plans for supervision or mentoring, and responsibilities of all parties. The capstone project must provide for verification that the student is mentored by an individual with expertise consistent with the student's area of focus prior to the onset of the doctoral capstone experience. The mentor does not have to be an occupational therapist.²¹

Licensure

To be licensed as an occupational therapist, or occupational therapy assistant, an individual must:

- Apply to the DOH and pay appropriate fees;²²
- Be of good moral character;
- Have graduated from an ACOTE/AOTA accredited occupational therapy program, or occupational therapy assistant program;
- Have completed a minimum of six months of supervised fieldwork experience for occupational therapists, and a minimum of two months for occupational therapy assistants, at a recognized educational institution or a training program approved by the education institution where you met the academic requirements; and
- Have passed an examination approved by the NBCOT²³ for occupational therapists.²⁴

²¹ See note 11, pp. 44-46.

²² Section 468.219, F.S.

²³ The examination is not offered by the Florida Board of Occupational Therapy Practice. Applicants must contact the NBCOT directly for the exam application and deadline information.

²⁴ Section 468.209(1), F.S.

An additional path to licensure as an occupational therapist is also available to applicants who have practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for four years and who, prior to January 24, 1988, have completed a minimum of six months of supervised occupational-therapist-level fieldwork experience. Such individuals may take the examination approved by the NBCOT to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists to have graduated from a program accredited by the ACOTE/AOTA.²⁵

Endorsement is yet another path to licensure for an occupational therapist, or occupational therapist assistant, in which the Board may waive the examination requirement and grant a license to any person who presents proof of:

- A current certification as an occupational therapist or occupational therapy assistant by a national certifying organization, if the Board determines the requirements for such certification to be equivalent to the requirements for Florida licensure; or
- A current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or any territory or jurisdiction of the United States or foreign national jurisdiction which requires standards for licensure determined by the Board to be equivalent to the requirements for Florida licensure.²⁶

A person may not use the title, “occupational therapist,” “licensed occupational therapist,” “occupational therapist registered,” “occupational therapy assistant,” “licensed occupational therapy assistant,” “certified occupational therapy assistant,” or the letters “O.T.,” “L.O.T.,” “O.T.R.,” “O.T.A.,” “L.O.T.A.,” or “C.O.T.A.,” or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant, unless the person holds a valid license. Any person who does so commits a second degree misdemeanor.²⁷

The MQA Annual Report and Long Range Plan for 2020-2021 indicates that there are 9,298 active licensed occupational therapists and 6,247 active licensed occupational therapy assistants currently in Florida.²⁸

III. Effect of Proposed Changes:

Scope of Practice of Occupational Therapy

CS/SB 632 expands the scope of practice of the occupational therapist and the occupational therapy assistant. The bill replaces the current-law definition of occupational therapy, which is “the use of purposeful activity or interventions to achieve functional outcomes,” with:

[T]he therapeutic use of occupations through habilitation, rehabilitation, and the promotion of health and wellness with individuals, groups, or populations, along with

²⁵ Section 468.209(2), F.S.

²⁶ Section 468.213, F.S.

²⁷ Sections 468.215 and 468.223, F.S.

²⁸ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan for 2020-2021*, p. 19, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/2020-2021-annual-report.pdf> (last visited Nov. 15, 2021).

their families or organizations, to support participation, performance, and function in the home, at school, in the workplace, in the community, and in other settings for clients who have, or are at risk of developing, an illness, an injury, a disease, a disorder, a condition, an impairment, a disability, an activity limitation, or a participation restriction.

The bill further expands the scope of practice for occupational therapy practitioners by defining the term “occupation” to include meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities which occur in contexts and over time, such as:

- Activities of daily living;
- Instrumental activities of daily living;
- Health management;
- Rest;
- Sleep;
- Education;
- Work;
- Play;
- Leisure; and
- Social participation.

The bill specifies that the term “activities of daily living” includes functions and tasks for self-care which are performed on a daily or routine basis, including, functional mobility, bathing, dressing, eating, swallowing, personal hygiene, grooming, toileting, and other similar tasks.

The bill defines “instrumental activities of daily living” as daily or routine activities a person must perform to live independently within the home and community.

The bill describes “health management” as including activities related to developing, managing, and maintaining health and wellness, including self-management, performed with the goal of improving or maintaining health to support participation in occupations.

Occupational Therapy Licensure

Section 468.209(2), F.S., provides that an occupational therapy license applicant who has practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for four years and who, prior to January 24, 1988, completed a minimum of six months of supervised occupational-therapist-level fieldwork experience, may take the licensure examination without meeting the education requirements set out in s. 468.209(1)(b), F.S.

CS/SB 632 reduces the minimum required weeks of supervised occupational-therapist-level fieldwork experience for applicants attempting to utilize this licensure path from six months (approximately 26 weeks) to 24 weeks.

Occupational Therapy Services

The bill replaces current law's list of services that may be included in occupational therapy with a provision specifying that the practice of occupational therapy includes, but is not limited to:

- Assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or have been identified as being at risk for impairment due to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities;
- Methods or approaches used to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies; and
- Specific occupational therapy techniques used for treatment which include, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual techniques; physical agent modalities; and occupational therapy services in mental health.

Occupational Therapist Titles

Under current law any person who is issued a license as an occupational therapist may use the titles "occupational therapist," "licensed occupational therapist," or "occupational therapist registered," or he or she may use the letters "O.T.," "L.O.T.," or "O.T.R.," in connection with his or her name or place of business to denote his or her registration.

There are four different educational levels for persons registered under Florida Law as occupational therapists: an associate degree, a bachelor degree, a master's degree, or a Ph.D. The bill would permit any licensed occupational therapist to use "occupational therapist doctorate" or "O.T.D." if the occupational therapist has earned a doctoral degree.

Licensure Exemptions

The bill exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act and exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in ch. 491, F.S.

The bill also exempts any person fulfilling an occupational therapy doctoral capstone experience that involves clinical practice or projects, from the application of the Occupational Therapy Practice Act if he or she registers with the DOH before commencing the capstone experience.

Other Provisions

The bill reenacts certain statutes relating to psychological services in ch. 490, F.S., and the Clinical, Counseling, and Psychotherapy Act in ch. 491, F.S., for the purpose of incorporating the bill's amendments.

The bill reenacts the Family Empowerment Scholarship Program and the Voluntary Prekindergarten Education Program for the purpose of incorporating the bill's amendments to s. 468.203, F.S., into those programs. Occupational therapy services are considered specialized services that may be provided under both programs.

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Because the bill provides that licensed occupational therapists may provide additional services, the bill might result in increased costs to private health insurers and health maintenance organizations that cover occupational therapy services.

C. Government Sector Impact:

The bill might result in increased costs for occupational therapy services under state group health insurance, Medicaid, the Family Empowerment Scholarship Program, and the Voluntary Prekindergarten Education Program to the extent that occupational therapy is covered and provided under those respective benefit packages and programs. The fiscal impact is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 632 expands the scope of practice of the occupational therapist and the occupational therapy assistant to include areas of practice that might be construed as overlapping with other licensed professions. This is not unusual, as many licensed health care practitioners have scopes of practice that often overlap, and many of the professions' practice acts have created exemptions to the application of their respective practice acts for other licensees whose scope of practice overlaps theirs.²⁹ The physical therapy practice act already exempts its application to occupational therapy,³⁰ and occupational therapy exempts physical therapy as well as medicine, nursing, osteopathy, clinical psychology, speech-language pathology, and audiology from the practice of occupational therapy.³¹

School speech and language providers³² and orthotics, prosthetics, and pedorthics³³ use similar practice skills, techniques, and dynamics as set out in the bill's expanded scope of practice for occupational therapists and occupational therapy assistants, and those practitioners could be found to be practicing occupational therapy without a license under the bill.

Similarly, the bill's expanded scope of practice for occupational therapists and occupational therapy assistants in providing occupation-based interventions and services into designing, fabricating, and application of orthotics or orthotic devices could expose occupational therapists to allegations of practicing orthotics, prosthetics, pedorthics,³⁴ without a license.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 468.203, 468.209, 468.215, 468.223, 468.225, 490.014, and 491.014.

The bill reenacts portions of the following sections of the Florida Statutes: 490.412, 1002.394 and 1002.66.

²⁹ See ss. 460.402, 461.402, 464.022, 465.027, 467.207, 486.161, 468.812, 468.1115, 480.035, 486.161, 490.014, and 491.014, F.S.

³⁰ Section 486.161, F.S.

³¹ Section 468.225, F.S.

³² See s. 1012.44, F.S.

³³ See ch. 468, Part. XIV, F.S.

³⁴ Section 468.812, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 2, 2021:

The CS:

- Clarifies that only occupational therapists with a doctorate degree can use the title “occupational therapy doctorate” or “O.T.D.”;
- Requires that, in order to qualify for an exemption from Florida’s occupational therapy regulation and licensure requirements, a person fulfilling an occupational therapy doctoral capstone experience involving clinical practice or projects must first register with DOH;
- Exempts clinical social workers, marriage and family therapists, and mental health counselors from the application of the Occupational Therapy Practice Act;
- Exempts occupational therapists and occupational therapy assistants from the application of the Psychological Services Act and the Clinical, Counseling, and Psychotherapy Act; and
- Makes technical changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/02/2021	.	
	.	
	.	
	.	

The Committee on Health Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 31 - 214

and insert:

settings for clients who have, or who have been identified as
being at risk of developing, an illness, an injury, a disease, a
disorder, a condition, an impairment, a disability, an activity
limitation, or a participation restriction ~~purposeful activity~~
~~or interventions to achieve functional outcomes.~~

(a) For the purposes of this subsection:



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11 1. "Activities of daily living" means functions and tasks
12 for self-care which are performed on a daily or routine basis,
13 including functional mobility, bathing, dressing, eating and
14 swallowing, personal hygiene and grooming, toileting, and other
15 similar tasks ~~"Achieving functional outcomes" means to maximize~~
16 ~~the independence and the maintenance of health of any individual~~
17 ~~who is limited by a physical injury or illness, a cognitive~~
18 ~~impairment, a psychosocial dysfunction, a mental illness, a~~
19 ~~developmental or a learning disability, or an adverse~~
20 ~~environmental condition.~~

21 2. "Assessment" means the use of skilled observation or the
22 administration and interpretation of standardized or
23 nonstandardized tests and measurements to identify areas for
24 occupational therapy services.

25 3. "Health management" means therapeutic services designed
26 to develop, manage, and maintain health and wellness routines,
27 including self-management, performed with the goal of improving
28 or maintaining health to support participation in occupations.

29 4. "Instrumental activities of daily living" means daily or
30 routine activities a person must perform to live independently
31 within the home and community.

32 5. "Occupational performance" means the ability to
33 perceive, desire, recall, plan, and carry out roles, routines,
34 tasks, and subtasks for the purpose of self-maintenance, self-
35 preservation, productivity, leisure, and rest, for oneself or
36 for others, in response to internal or external demands of
37 occupations and contexts.

38 6. "Occupational therapy services in mental health" means
39 occupation-based interventions and services for individuals,



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groups, populations, families, or communities to improve participation in daily occupations for individuals who are experiencing, are in recovery from, or are identified as being at risk of developing mental health conditions.

7. "Occupations" means meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities which occur in contexts and over time, such as activities of daily living, instrumental activities of daily living, health management, rest and sleep, education, work, play, leisure, and social participation. The term includes more specific occupations and the execution of multiple activities that are influenced by performance patterns, performance skills, and client factors, and that result in varied outcomes.

(b) The practice of occupational therapy includes ~~services~~ ~~include~~, but is are not limited to, the following services:

1. ~~The~~ Assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or have been identified as being at risk of impairment due to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities ~~the individual, family, or other persons.~~

2. Methods or approaches used to determine abilities and



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69 limitations related to performance of occupations, including,
70 but not limited to, the identification of physical, sensory,
71 cognitive, emotional, or social deficiencies ~~Interventions~~
72 ~~directed toward developing daily living skills, work readiness~~
73 ~~or work performance, play skills or leisure capacities, or~~
74 ~~enhancing educational performance skills.~~

75 3. Specific occupational therapy techniques used for
76 treatment which include, but are not limited to, training in
77 activities of daily living; environmental modification;
78 assessment of the need for the use of interventions such as the
79 design, fabrication, and application of orthotics or orthotic
80 devices; selecting, applying, and training in the use of
81 assistive technology and adaptive devices; sensory, motor, and
82 cognitive activities; therapeutic exercises; manual techniques;
83 physical agent modalities; and occupational therapy services in
84 mental health ~~Providing for the development of: sensory motor,~~
85 ~~perceptual, or neuromuscular functioning; range of motion; or~~
86 ~~emotional, motivational, cognitive, or psychosocial components~~
87 ~~of performance.~~

88
89 ~~These services may require assessment of the need for use of~~
90 ~~interventions such as the design, development, adaptation,~~
91 ~~application, or training in the use of assistive technology~~
92 ~~devices; the design, fabrication, or application of~~
93 ~~rehabilitative technology such as selected orthotic devices;~~
94 ~~training in the use of assistive technology; orthotic or~~
95 ~~prosthetic devices; the application of physical agent modalities~~
96 ~~as an adjunct to or in preparation for purposeful activity; the~~
97 ~~use of ergonomic principles; the adaptation of environments and~~



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~~processes to enhance functional performance; or the promotion of health and wellness.~~

(c) The use of devices subject to 21 C.F.R. s. 801.109 and identified by the board is expressly prohibited except by an occupational therapist or occupational therapy assistant who has received training as specified by the board. The board shall adopt rules to carry out the purpose of this provision.

Section 2. Subsection (2) of section 468.209, Florida Statutes, is amended to read:

468.209 Requirements for licensure.—

(2) An applicant who has practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for 4 years and who, before ~~prior to~~ January 24, 1988, completed a minimum of 24 weeks ~~6 months~~ of supervised occupational-therapist-level fieldwork experience may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under paragraph (1) (b).

Section 3. Subsection (2) of section 468.215, Florida Statutes, is amended to read:

468.215 Issuance of license.—

(2) (a) Any person who is issued a license as an occupational therapist under the terms of this act may use the words "occupational therapist," "licensed occupational therapist," or "occupational therapist registered," or ~~he or she~~ may use the letters "O.T.," "L.O.T.," or "O.T.R.," in connection with his or her name or place of business to denote his or her registration hereunder.

(b) Any person who is issued a license as an occupational



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therapist under the terms of this act and holds a doctorate degree in occupational therapy may also use the words "occupational therapist doctorate" and the letters "O.T.D." in connection with his or her name or place of business to denote his or her registration hereunder.

Section 4. Section 468.223, Florida Statutes, is amended to read:

468.223 Prohibitions; penalties.—

(1) A person may not:

(a) Practice occupational therapy unless such person is licensed pursuant to ss. 468.201-468.225;

(b) Use, in connection with his or her name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist doctorate," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant"; the letters "O.T.," "L.O.T.," "O.T.D.," "O.T.R.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant or, in any way, orally or in writing, in print or by sign, directly or by implication, to represent himself or herself as an occupational therapist or an occupational therapy assistant unless the person is a holder of a valid license issued pursuant to ss. 468.201-468.225;

(c) Present as his or her own the license of another;

(d) Knowingly give false or forged evidence to the board or a member thereof;



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(e) Use or attempt to use a license that ~~which~~ has been suspended, revoked, or placed on inactive or delinquent status;

(f) Employ unlicensed persons to engage in the practice of occupational therapy; or

(g) Conceal information relative to any violation of ss. 468.201-468.225.

(2) Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Subsection (2) of section 468.225, Florida Statutes, is amended, and paragraph (e) is added to subsection (1) of that section, to read:

468.225 Exemptions.—

(1) Nothing in this act shall be construed as preventing or restricting the practice, services, or activities of:

(e) Any person fulfilling an occupational therapy doctoral capstone experience that involves clinical practice or projects. To benefit from an exemption under this paragraph, a person must register with the department in a manner determined by department rule before commencing the capstone experience.

(2) No provision of this act shall be construed to prohibit physicians, physician assistants, nurses, physical therapists, osteopathic physicians or surgeons, clinical psychologists, clinical social workers, marriage and family therapists, mental health counselors, speech-language pathologists, or audiologists from using occupational therapy as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession.

Section 6. Paragraph (b) of subsection (1) of section



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490.014, Florida Statutes, is amended to read:

490.014 Exemptions.—

(1)

(b) No provision of this chapter shall be construed to limit the practice of nursing, clinical social work, marriage and family therapy, mental health counseling, occupational therapy, or other recognized businesses or professions, or to prevent qualified members of other professions from doing work of a nature consistent with their training, so long as they do not hold themselves out to the public as psychologists or use a title or description protected by this chapter. Nothing in this subsection shall be construed to exempt any person from the provisions of s. 490.012.

Section 7. Subsection (2) of section 491.014, Florida Statutes, is amended to read:

491.014 Exemptions.—

(2) No provision of this chapter shall be construed to limit the practice of nursing, school psychology, ~~or~~ psychology, or occupational therapy, or to prevent qualified members of other professions from doing work of a nature consistent with their training and licensure, so long as they do not hold themselves out to the public as possessing a license, provisional license, registration, or certificate issued pursuant to this chapter or use a title protected by this chapter.

Section 8. For the purpose of incorporating the amendment made by this act to section 490.014, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 490.012, Florida Statutes, is reenacted to read:



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490.012 Violations; penalties; injunction.-

(1)

(c) No person shall hold herself or himself out by any title or description incorporating the words, or permutations of them, "psychology," "psychological," or "psychodiagnostic," or describe any test or report as psychological, unless such person holds a valid, active license under this chapter or is exempt from the provisions of this chapter.

Section 9. Paragraph (b) of subsection (4) of section 1002.394, Florida Statutes, is amended to read:

1002.394 The Family Empowerment Scholarship Program.-

(4) AUTHORIZED USES OF PROGRAM FUNDS.-

(b) Program funds awarded to a student with a disability determined eligible pursuant to paragraph (3)(b) may be used for the following purposes:

1. Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices.

2. Curriculum as defined in subsection (2).

3. Specialized services by approved providers or by a hospital in this state which are selected by the parent. These specialized services may include, but are not limited to:

a. Applied behavior analysis services as provided in ss. 627.6686 and 641.31098.

b. Services provided by speech-language pathologists as defined in s. 468.1125(8).

c. Occupational therapy ~~services~~ as defined in s. 468.203.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 6 - 17

and insert:

amending s. 468.215, F.S.; authorizing certain
licensed occupational therapists to use a specified
title and the associated initials; amending s.
468.223, F.S.; prohibiting certain persons from using
a specified title and the associated initials;
providing criminal penalties; amending ss. 468.225,
490.014, and 491.014, F.S.; revising construction;
reenacting s. 490.012(1)(c), F.S., relating to
violations, penalties, and injunctions, to incorporate
the amendment made to s. 490.014, F.S., in a reference
thereto; amending s. 1002.394, F.S.; conforming a
provision to changes made by the act; reenacting s.
1002.66(2)(c), F.S., relating to specialized
instructional services for children with disabilities,
to incorporate the amendments made to s. 468.203,
F.S., in a reference thereto;

By Senator Bradley

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A bill to be entitled

An act relating to occupational therapy; amending s. 468.203, F.S.; defining and revising terms; amending s. 468.209, F.S.; revising eligibility requirements for the occupational therapist licensure examination; amending s. 468.215, F.S.; authorizing licensed occupational therapists to use a specified title and the associated initials; amending s. 468.223, F.S.; prohibiting certain persons from using a specified title and the associated initials; providing criminal penalties; amending s. 468.225, F.S.; providing construction; reenacting ss. 1002.394(4)(b) and 1002.66(2)(c), F.S., relating to the Family Empowerment Scholarship Program and specialized instructional services for children with disabilities, respectively, to incorporate the amendments made by the act to s. 468.203, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (4) of section 468.203, Florida Statutes, is amended to read:

468.203 Definitions.—As used in this act, the term:

(4) "Occupational therapy" means the therapeutic use of occupations through habilitation, rehabilitation, and the promotion of health and wellness with individuals, groups, or populations, along with their families or organizations, to support participation, performance, and function in the home, at

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

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school, in the workplace, in the community, and in other settings for clients who have or are at risk of developing an illness, an injury, a disease, a disorder, a condition, an impairment, a disability, an activity limitation, or a participation restriction ~~purposeful activity or interventions to achieve functional outcomes.~~

(a) For the purposes of this subsection:

1. "Activities of daily living" means functions and tasks for self-care which are performed on a daily or routine basis, including functional mobility, bathing, dressing, eating and swallowing, personal hygiene and grooming, toileting, and other similar tasks ~~"Achieving functional outcomes" means to maximize the independence and the maintenance of health of any individual who is limited by a physical injury or illness, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or a learning disability, or an adverse environmental condition.~~

2. "Assessment" means the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services.

3. "Health management" means activities related to developing, managing, and maintaining health and wellness, including self-management, performed with the goal of improving or maintaining health to support participation in occupations.

4. "Instrumental activities of daily living" means daily or routine activities a person must perform to live independently within the home and community.

5. "Occupational performance" means the ability to

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perceive, desire, recall, plan, and carry out roles, routines, tasks, and subtasks for the purpose of self-maintenance, self-preservation, productivity, leisure, and rest, for oneself or for others, in response to internal or external demands of occupations and contexts.

6. "Occupational therapy services in mental health" means individual, group, and population level occupation-based interventions and services provided to improve participation in daily occupations for individuals who are at risk of, experiencing, or are recovering from mental health conditions, along with their families and communities.

7. "Occupations" means meaningful and purposeful everyday activities performed and engaged in by individuals, groups, populations, families, or communities which occur in contexts and over time, such as activities of daily living, instrumental activities of daily living, health management, rest and sleep, education, work, play, leisure, and social participation. The term includes more specific occupations and the execution of multiple activities that are influenced by performance patterns, performance skills, and client factors, and that result in varied outcomes.

(b) The practice of occupational therapy includes services include, but is are not limited to:

1. The Assessment, treatment, and education of or consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, are impaired or at risk for impairment due

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to issues related to, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, or psychological and social disabilities ~~the individual, family, or other persons.~~

2. Methods or approaches used to determine abilities and limitations related to performance of occupations, including, but not limited to, the identification of physical, sensory, cognitive, emotional, or social deficiencies Interventions directed toward developing daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performance skills.

3. Specific occupational therapy techniques used for treatment which include, but are not limited to, training in activities of daily living; environmental modification; assessment of the need for the use of interventions such as the design, fabrication, and application of orthotics or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual techniques; physical agent modalities; and occupational therapy services in mental health Providing for the development of: sensory-motor, perceptual, or neuromuscular functioning; range of motion; or emotional, motivational, cognitive, or psychosocial components of performance.

~~These services may require assessment of the need for use of interventions such as the design, development, adaptation, application, or training in the use of assistive technology~~

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~~devices; the design, fabrication, or application of rehabilitative technology such as selected orthotic devices; training in the use of assistive technology; orthotic or prosthetic devices; the application of physical agent modalities as an adjunct to or in preparation for purposeful activity; the use of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness.~~

(c) The use of devices subject to 21 C.F.R. s. 801.109 and identified by the board is expressly prohibited except by an occupational therapist or occupational therapy assistant who has received training as specified by the board. The board shall adopt rules to implement ~~carry out the purpose of this paragraph~~ provision.

Section 2. Subsection (2) of section 468.209, Florida Statutes, is amended to read:

468.209 Requirements for licensure.—

(2) An applicant who has practiced as a state-licensed or American Occupational Therapy Association-certified occupational therapy assistant for 4 years and who, before ~~prior to~~ January 24, 1988, completed a minimum of 24 weeks ~~6 months~~ of supervised occupational-therapist-level fieldwork experience may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under paragraph (1)(b).

Section 3. Subsection (2) of section 468.215, Florida Statutes, is amended to read:

468.215 Issuance of license.—

(2) Any person who is issued a license as an occupational

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therapist under the terms of this act may use the words "occupational therapist," "licensed occupational therapist," "occupational therapist doctorate," or "occupational therapist registered," or ~~he or she~~ may use the letters "O.T.," "L.O.T.," "O.T.D.," or "O.T.R.," in connection with his or her name or place of business to denote his or her registration hereunder.

Section 4. Section 468.223, Florida Statutes, is amended to read:

468.223 Prohibitions; penalties.—

(1) A person may not:

(a) Practice occupational therapy unless such person is licensed pursuant to ss. 468.201-468.225;

(b) Use, in connection with his or her name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist doctorate," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant"; the letters "O.T.," "L.O.T.," "O.T.D.," "O.T.R.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant or, in any way, orally or in writing, in print or by sign, directly or by implication, to represent himself or herself as an occupational therapist or an occupational therapy assistant unless the person is a holder of a valid license issued pursuant to ss. 468.201-468.225;

(c) Present as his or her own the license of another;

(d) Knowingly give false or forged evidence to the board or

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175 a member thereof;

176 (e) Use or attempt to use a license that ~~which~~ has been
177 suspended, revoked, or placed on inactive or delinquent status;

178 (f) Employ unlicensed persons to engage in the practice of
179 occupational therapy; or

180 (g) Conceal information relative to any violation of ss.
181 468.201-468.225.

182 (2) Any person who violates ~~any provision of~~ this section
183 commits a misdemeanor of the second degree, punishable as
184 provided in s. 775.082 or s. 775.083.

185 Section 5. Paragraph (e) is added to subsection (1) of
186 section 468.225, Florida Statutes, to read:

187 468.225 Exemptions.—

188 (1) Nothing in this act shall be construed as preventing or
189 restricting the practice, services, or activities of:

190 (e) Any person fulfilling an occupational therapy doctoral
191 capstone experience that involves clinical practice or projects.

192 Section 6. For the purpose of incorporating the amendment
193 made by this act to section 468.203, Florida Statutes, in a
194 reference thereto, paragraph (b) of subsection (4) of section
195 1002.394, Florida Statutes, is reenacted to read:

196 1002.394 The Family Empowerment Scholarship Program.—

197 (4) AUTHORIZED USES OF PROGRAM FUNDS.—

198 (b) Program funds awarded to a student with a disability
199 determined eligible pursuant to paragraph (3)(b) may be used for
200 the following purposes:

201 1. Instructional materials, including digital devices,
202 digital periphery devices, and assistive technology devices that
203 allow a student to access instruction or instructional content

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204 and training on the use of and maintenance agreements for these
205 devices.

206 2. Curriculum as defined in subsection (2).

207 3. Specialized services by approved providers or by a
208 hospital in this state which are selected by the parent. These
209 specialized services may include, but are not limited to:

210 a. Applied behavior analysis services as provided in ss.
211 627.6686 and 641.31098.

212 b. Services provided by speech-language pathologists as
213 defined in s. 468.1125(8).

214 c. Occupational therapy services as defined in s. 468.203.

215 d. Services provided by physical therapists as defined in
216 s. 486.021(8).

217 e. Services provided by listening and spoken language
218 specialists and an appropriate acoustical environment for a
219 child who has a hearing impairment, including deafness, and who
220 has received an implant or assistive hearing device.

221 4. Tuition or fees associated with full-time or part-time
222 enrollment in a home education program, an eligible private
223 school, an eligible postsecondary educational institution or a
224 program offered by the postsecondary educational institution, a
225 private tutoring program authorized under s. 1002.43, a virtual
226 program offered by a department-approved private online provider
227 that meets the provider qualifications specified in s.
228 1002.45(2)(a), the Florida Virtual School as a private paying
229 student, or an approved online course offered pursuant to s.
230 1003.499 or s. 1004.0961.

231 5. Fees for nationally standardized, norm-referenced
232 achievement tests, Advanced Placement Examinations, industry

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233 certification examinations, assessments related to postsecondary
234 education, or other assessments.

235 6. Contributions to the Stanley G. Tate Florida Prepaid
236 College Program pursuant to s. 1009.98 or the Florida College
237 Savings Program pursuant to s. 1009.981 for the benefit of the
238 eligible student.

239 7. Contracted services provided by a public school or
240 school district, including classes. A student who receives
241 services under a contract under this paragraph is not considered
242 enrolled in a public school for eligibility purposes as
243 specified in subsection (6).

244 8. Tuition and fees for part-time tutoring services
245 provided by a person who holds a valid Florida educator's
246 certificate pursuant to s. 1012.56, a person who holds an
247 adjunct teaching certificate pursuant to s. 1012.57, a person
248 who has a bachelor's degree or a graduate degree in the subject
249 area in which instruction is given, a person who has
250 demonstrated a mastery of subject area knowledge pursuant to s.
251 1012.56(5), or a person certified by a nationally or
252 internationally recognized research-based training program as
253 approved by the department. As used in this paragraph, the term
254 "part-time tutoring services" does not qualify as regular school
255 attendance as defined in s. 1003.01(13)(e).

256 9. Fees for specialized summer education programs.

257 10. Fees for specialized after-school education programs.

258 11. Transition services provided by job coaches.

259 12. Fees for an annual evaluation of educational progress
260 by a state-certified teacher under s. 1002.41(1)(f), if this
261 option is chosen for a home education student.

5-00840-22 2022632__

262 13. Tuition and fees associated with programs offered by
263 Voluntary Prekindergarten Education Program providers approved
264 pursuant to s. 1002.55 and school readiness providers approved
265 pursuant to s. 1002.88.

266 14. Fees for services provided at a center that is a member
267 of the Professional Association of Therapeutic Horsemanship
268 International.

269 15. Fees for services provided by a therapist who is
270 certified by the Certification Board for Music Therapists or
271 credentialed by the Art Therapy Credentials Board, Inc.

272 Section 7. For the purpose of incorporating the amendment
273 made by this act to section 468.203, Florida Statutes, in a
274 reference thereto, paragraph (c) of subsection (2) of section
275 1002.66, Florida Statutes, is reenacted to read:

276 1002.66 Specialized instructional services for children
277 with disabilities.—

278 (2) The parent of a child who is eligible for the
279 prekindergarten program for children with disabilities may
280 select one or more specialized instructional services that are
281 consistent with the child's individual educational plan. These
282 specialized instructional services may include, but are not
283 limited to:

284 (c) Occupational therapy as defined in s. 468.203.

285 Section 8. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY

5th District

COMMITTEES:

Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

November 4, 2021

Senator Manny Diaz, Jr., Chairman
Senate Committee on Health Policy
306 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz:

I respectfully request that Senate Bill 632 be placed on the committee's agenda at your earliest convenience. This bill relates to occupational therapy.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Allen Brown, Staff Director
Tori Denson, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

12/02/21
Meeting Date

Health Policy
Committee

1032
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Oliveira Phone 850-273-1000

Address 3788 Overlook Drive Email ds004@my.fsu.edu
Street

Tallahassee FL 32311
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 544

INTRODUCER: Senator Boyd

SUBJECT: Drug-related Overdose Prevention

DATE: December 1, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Brown	HP	Favorable
2. _____	_____	AHS	_____
3. _____	_____	AP	_____

I. Summary:

SB 544 amends s. 381.887, F.S., to expand access to emergency opioid antagonists by:

- Requiring the Florida Public Health Institute, Inc., to, in consultation with the Department of Health (DOH), educate the public regarding the use of emergency opioid antagonists as part of its statutory duty under s. 381.981, F.S., to educate the public regarding substance abuse;
- Allowing pharmacists to order, as well as dispense, emergency opioid antagonists with an autoinjection delivery system or intranasal delivery system;
- Providing that specified persons who are authorized to possess, store, and administer emergency opioid antagonists are immune from any civil or criminal liability resulting from the administration of such emergency opioid antagonists; and
- Adding specified civilian personnel of a law enforcement agency to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists.

The bill also amends ss. 395.1041 and 401.253, F.S., to require hospital emergency departments, urgent care centers, and basic (BLS) and advanced life support (ALS) providers to report the treatment of actual or suspected overdose victims under certain circumstances.

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

II. Present Situation:

History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:¹

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates” and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.²

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.³ “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”⁴

As reported at the time by the Florida Attorney General’s Opioid Working Group:

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).⁵

¹ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Nov. 29, 2021).

² Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, The New York Times (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited Nov. 29, 2021).

³ See Chapters 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁴ Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (Mar. 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf) (last visited Nov. 29, 2021).

⁵ *Id.*

Early in 2017, the federal Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic.⁶ Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.⁷

House Bill 21 (2018)

In 2018, the Florida Legislature passed CS/CS/HB 21 (Chapter 2018-13, Laws of Florida) to combat the opioid crisis. CS/CS/HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the duration of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

Status of the Opioid Crisis after HB 21

There is some evidence that the passage of HB 21 reduced opioid use in Florida. For example, one study that reviewed pharmacy prescriptions claims for a health plan serving more than 45,000 Floridians found that on average the number of enrollees per month that began opioid use between April of 2019 and August of 2019 dropped from 5.5 per 1000 patients to 4.6 per 1000 patients.⁸

Unfortunately, with the onset of the COVID-19 pandemic, the incidence of opioid use disorder and resulting overdose deaths has once again risen. A report from Project Opioid details provisional data from the Florida DOH showing that deaths from drug overdoses have increased by 43 percent between 2019 and 2020, from 56 deaths per 100,000 in 2019 to 94 deaths per 100,000 in 2020. Additionally, fentanyl, an extremely potent opioid drug, is the leading cause of overdose deaths in Florida, and the incidence of fentanyl overdose deaths increased by 38 percent, from 2,348 in 2019 to 3,244 in 2020.⁹

Opioid Antagonists

Opioid receptor antagonists block one or more of the opioid receptors in the central or peripheral nervous system. The two most commonly used, centrally-acting opioid receptor antagonists are naloxone and naltrexone. Naloxone comes in intravenous, intramuscular, and intranasal formulations and is FDA-approved for the use in an opioid overdose and the reversal of respiratory depression associated with opioid use. Naltrexone is available in both oral and long-

⁶ See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>. (last visited Mar. 12, 2021).

⁷ *Id.*

⁸ Juan M. Hincapie-Castillo, et al., Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions, JAMA Netw Open. 2020 Feb; 3(2): e200234, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7049083/>. (last visited Nov. 29, 2021).

⁹ Project Opioid, A Pandemic Fueling an Epidemic in Florida in 2020, available at https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final_New-Section.pdf (last visited Nov. 29, 2021).

acting injectable formulations and is FDA-approved for the treatment of opioid and/or alcohol maintenance treatment. The most commonly used peripheral opioid receptor antagonist is methylnaltrexone, which is a potent competitive antagonist acting at the digestive tract and is also FDA-approved for the treatment of opioid-induced constipation.¹⁰

The Florida Public Health Institute, Inc.

The Florida Public Health Institute (Institute) is a not-for-profit corporation established by s. 381.98, F.S., with the purpose of advancing the knowledge and practice of public health, including promoting health awareness in Florida. The Institute is tasked with procuring funds to complement, supplement, and enhance the missions of the various organizations, entities, and departments that provide public health initiatives by serving as the lead corporation in the state for promoting public health awareness. The Institute is required to enter into partnerships with providers of continuing education for health care practitioners, including, but not limited to, hospitals and state and local medical organizations, to ensure that practitioners are aware of the most recent and complete diagnostic and treatment tools.

Additionally, s. 381.981, F.S., requires the Institute to, in consultation with the DOH, coordinate monthly health awareness campaigns with national, state, and local health care organizations and government entities, targeting a wide range of the public, including: parents; teachers and other school employees; students in 4th through 12th grades, colleges, and universities; state agency employees; county and local government employees; patients of county health departments; Medicaid recipients; health care professionals and providers; and the public in general. The health campaigns must include the following diseases in at least one monthly campaign every 24 months:

- Cancer, including breast, prostate, cervical, ovarian, colorectal, and skin cancer and leukemia.
- Heart disease.
- Stroke.
- Lung disease, including asthma and smoking-relating disease.
- Neurological disorders and disease, including Alzheimer's disease, Parkinson's disease, and epilepsy.
- Gastrointestinal disease.
- Kidney disease.
- Diabetes.
- Liver disease.
- Autoimmune disorders.
- Birth defects and prenatal care.
- Obesity and malnutrition.
- Sexually transmissible disease.
- Hepatitis A, hepatitis B, and hepatitis C.
- Arthritis.

¹⁰ *Opioid Antagonists*, Theriot, Jonathan, et. al., (last updated July 23, 2021), available at <https://www.ncbi.nlm.nih.gov/books/NBK537079/#:~:text=3%5D%5B4%5D-,The%20two%20most%20commonly%20used%20centrally%20acting%20opioid%20receptor%20antagonists,depression%20associated%20with%20opioid%20use>. (last visited Nov. 29, 2021).

- Vaccine-preventable diseases.
- Infectious diseases, including HIV/AIDS.
- Substance abuse.
- Mental illness.
- Lupus.
- Osteoporosis.

III. Effect of Proposed Changes:

SB 544 amends s. 381.887, F.S., to:

- Include the ordering and dispensing of emergency opioid antagonists within the scope of the section;
- Require the Florida Public Health Institute, Inc., in consultation with the DOH, to educate the public regarding the use of emergency opioid antagonists;
- Authorize a pharmacist to order, and dispense pursuant to that order, an emergency opioid antagonist with an autoinjection delivery system or intranasal delivery system to a patient or caregiver;¹¹ and
- Add civilian personnel of a law enforcement agency to the list of persons authorized to possess, store, and administer emergency opioid antagonists under the section. The bill specifies that such personnel includes, but is not limited to, employees of a sheriff's office authorized to provide child protective investigative services under s. 39.3065, F.S., and correctional probation officers who, while acting within the scope or course of employment, come into contact with controlled substances or persons at risk of experiencing an opioid overdose.
- Provide immunity from civil and criminal liability to the listed persons authorized to possess, store, and administer emergency opioid antagonists under the section for the administering of emergency opioid antagonists.¹²

The bill also amends ss. 391.1041 and 401.253, F.S., to require a hospital emergency department or urgent care center to report the treatment of a person in response to an actual or suspected overdose to the DOH if the patient was not transported to the hospital by a BLS or ALS provider and to require a BLS or ALS provider to report when it treats and releases or transports to a medical facility a person in response to an emergency call for a suspected or actual overdose of a controlled substance. The provider must use an appropriate reporting method with secure access, including, but not limited to the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program or other program identified by DOH rule and must use its best effort to report such incident within 120 hours of discovering the incident. Current law in s. 401.253, F.S., authorizes, but does not require, a BLS or ALS provider to report when it treats and releases or transports to a medical facility a person in response to an emergency call for a suspected or actual overdose of a controlled substance.

¹¹ Section 381.887, F.S., defines "patient" as a person who is at risk of experiencing an opioid overdose, and defines "caregiver" as a family member, friend, or person in a position to have recurring contact with a person at risk of experiencing an opioid overdose.

¹² These persons include emergency responders as well as crime laboratory personnel for the statewide criminal analysis laboratory system and their supervisors.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 544 may have an indeterminate negative fiscal impact on BLS providers, ALS providers, hospital emergency departments, and urgent care centers that are required to report specified incidents of treatment of patients suffering from suspected or actual overdoses of controlled substances.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 381.887, 395.1041, and 401.253 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Boyd

21-00566A-22

2022544__

A bill to be entitled

An act relating to drug-related overdose prevention; amending s. 381.887, F.S.; revising the purpose of specified provisions relating to the prescribing, ordering, and dispensing of emergency opioid antagonists to certain persons by authorized health care practitioners; requiring the Florida Public Health Institute, Inc., in consultation with the Department of Health, to educate the public regarding the use of emergency opioid antagonists; authorizing pharmacists to order certain emergency opioid antagonists; providing certain authorized persons immunity from civil or criminal liability for administering emergency opioid antagonists under certain circumstances; authorizing civilian personnel of law enforcement agencies to administer emergency opioid antagonists under certain circumstances; amending s. 395.1041, F.S.; requiring hospital emergency departments and urgent care centers to report incidents involving a suspected or actual overdose to the department under certain circumstances; providing requirements for the report; requiring hospital emergency departments and urgent care centers to use best efforts to report such incidents to the department within a specified timeframe; amending s. 401.253, F.S.; requiring, rather than authorizing, basic life support services and advanced life support services to report incidents involving a suspected or actual overdose of a

Page 1 of 5

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

21-00566A-22

2022544__

controlled substance within a specified timeframe; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 381.887, Florida Statutes, are amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(2) (a) The purpose of this section is to provide for the prescribing, ordering, and dispensing ~~prescription~~ of emergency opioid antagonists ~~an emergency opioid antagonist~~ to patients and caregivers and to encourage the prescribing, ordering, and dispensing ~~prescription~~ of emergency opioid antagonists by authorized health care practitioners.

(b) The Florida Public Health Institute, Inc., in consultation with the Department of Health, shall educate the public regarding the use of emergency opioid antagonists in accordance with s. 381.981(2)(r).

(3) (a) An authorized health care practitioner may prescribe and dispense an emergency opioid antagonist to, and a pharmacist may order an emergency opioid antagonist with an autoinjection delivery system or intranasal application delivery system for, a patient or caregiver for use in accordance with this section.r
~~and~~

(b) A ~~pharmacist~~ pharmacists may dispense an emergency opioid antagonist pursuant to a prescription by an authorized health care practitioner. A pharmacist may dispense an emergency opioid antagonist with ~~such a prescription or pursuant to a non-~~ patient-specific standing order ~~for~~ an autoinjection delivery

Page 2 of 5

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21-00566A-22

2022544

system or intranasal application delivery system, which must be appropriately labeled with instructions for use, pursuant to a pharmacist's order or pursuant to a nonpatient-specific standing order.

(c) ~~A such~~ patient or caregiver is authorized to store and possess approved emergency opioid antagonists and, in an emergency situation when a physician is not immediately available, administer the emergency opioid antagonist to a person believed in good faith to be experiencing an opioid overdose, regardless of whether that person has a prescription for an emergency opioid antagonist.

(4) The following persons are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated and are immune from any civil liability or criminal liability as a result of administering an emergency opioid antagonist:

(a) Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians.

(b) Crime laboratory personnel for the statewide criminal analysis laboratory system as described in s. 943.32, including, but not limited to, analysts, evidence intake personnel, and their supervisors.

(c) Civilian personnel of a law enforcement agency, including, but not limited to, employees of a sheriff's office authorized to provide child protective investigative services under s. 39.3065 and correctional probation officers who, while acting within the scope or course of employment, come into contact with controlled substances or persons at risk of

21-00566A-22

2022544

experiencing an opioid overdose.

Section 2. Subsection (8) is added to section 395.1041, Florida Statutes, to read:

395.1041 Access to emergency services and care.—

(8) REPORTING OF CONTROLLED SUBSTANCE OVERDOSES.—A hospital emergency department or urgent care center that treats and releases a person in response to a suspected or actual overdose of a controlled substance must report such incident to the department if the patient was not transported by a basic life support service or an advanced life support service as those terms are defined in s. 401.23. Such reports must be made using an appropriate method with secure access, including, but not limited to, the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program or other program identified by department rule. Hospital emergency departments and urgent care centers shall use best efforts to make the report to the department within 120 hours after discovering an incident.

Section 3. Paragraph (a) of subsection (1) of section 401.253, Florida Statutes, is amended to read:

401.253 Reporting of controlled substance overdoses.—

(1) (a) A basic life support service or an advanced life support service ~~that which~~ treats and releases, or transports to a medical facility, a person in response to an emergency call for a suspected or actual overdose of a controlled substance ~~must may~~ report such incidents to the department. Such reports must be made using the Emergency Medical Service Tracking and Reporting System or other appropriate method with secure access, including, but not limited to, the Washington/Baltimore High

21-00566A-22

2022544__

117 Intensity Drug Trafficking Overdose Detection Mapping
118 Application Program or other program identified by the
119 department in rule. ~~If a~~ Basic life support services and service
120 ~~or advanced life support services service reports such~~
121 ~~incidents, it shall use make its~~ best efforts to make the report
122 to the department within 120 hours after responding ~~it responds~~
123 to an ~~the~~ incident.

124 Section 4. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JIM BOYD

21st District

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

November 3, 2021

Senator Manny Diaz, Jr.
404 South Monroe Street
530 Knott Building
Tallahassee, FL 32399

Dear Chairman Diaz:

I respectfully request Senate Bill 544: Drug-related Overdose Prevention, be scheduled for a hearing in the Committee on Health Policy at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Allen Brown
Tori Denson

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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12/2/21

Meeting Date

544

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Phillip Suderman

Phone _____

Address _____
Street

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Americans for
Prosperity

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

544

12/2/21

Meeting Date

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Health Policy

Committee

Amendment Barcode (if applicable)

Name

Candice Ericks

Phone

954-648-1204

Address

205 S. Adams

Email

Candice@ericks
consultants.
com

Street

Tallahassee FL 32302

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Seminole
Sheriff Office

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

December 2, 2021

APPEARANCE RECORD

SB544

Meeting Date

Health Policy

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Michael Jackson

Phone (850) 222-2400

Address 610 North Adams Street
Street

Email mjackson@pharmview.com

Tallahassee
City

Florida
State

32301
Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Pharmacy Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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: CS/SB 566

INTRODUCER: Health Policy Committee and Senator Gruters

SUBJECT: Mental Health Professional Licensure

DATE: December 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/ CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 566 amends the minimum education requirements for licensure as a clinical social worker, marriage and family therapist, or a mental health counselor in s. 491.005, F.S.

The bill allows marriage and family therapy applicants who graduated from a program not accredited by the Commission on Accreditation for Marriage and Family Therapy Education (CAMFTE), or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), on July 1, 2020, when the current s. 491.005, F.S., took effect, to now apply for licensure. Under the bill, marriage and family therapy graduates would have until September 1, 2027, to meet the minimum education requirements for licensure by earning a master's degree from any institutionally-accredited college or university, not just the CACREP.

The bill updates the education requirements for marriage and family therapists' in reference to accreditation by the Commission on Recognition of Postsecondary Accreditation (CORPA), which was dissolved in 1997. CORPA is replaced it with its successor, the Council for Higher Education Accreditation (CHEA), or its successors;

The bill also amends the minimum education requirements for licensure as a mental health counselor to include a master's degree from a program accredited by the Masters in Psychology

and Counseling Accreditation Council (MPCAC), or an equivalent accrediting body, as a degree that qualifies an applicant for licensure.

The bill deletes obsolete provisions regarding the Department of Health (DOH) purchasing examinations for clinical social workers and Marriage and Family Therapists; and revises the nomenclature for the accrediting authorities for marriage and family therapists and mental health counselors from a “regional” accrediting body, to an “institutional” accrediting body, to align with the U.S. Department of Education’s current vernacular and eliminate any perceived differences between regional and national accrediting bodies.

The bill takes effect upon becoming a law.

II. Present Situation:

The Department of Health

The Legislature created the DOH to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Mental Health Professionals Licensure

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 of 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.⁴

An individual who has not satisfied the postgraduate or post-master’s level of experience requirements under 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, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.⁵

¹ Section 20.43, F.S.

² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MA.

³ Section 20.43, F.S.

⁴ Section 491.0046, F.S.

⁵ Section 491.0045, F.S.

Clinical Social Workers

Section 491.005(1), F.S., relates to licensure by examination for clinical social workers. The DOH must issue a license to an applicant as a clinical social worker if the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has earned a doctoral degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the U.S. Department of Education, or a master's degree in social work from a graduate school of social work which:
 - Was accredited by the Council on Social Work Education (CSWE);
 - Was accredited by the Canadian Association of Schools of Social Work (CASSW); or
 - Has been determined to be an equivalent program to programs approved by the CSWE by the Foreign Equivalency Determination Service of the CSWE;
 - Completed all of the following coursework:
 - A supervised field placement during which the applicant provided clinical services directly to clients; and
 - Twenty-four semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, with a minimum of one course in psychopathology and no more than one course in research;
- Has completed at least two post graduate years of clinical social work experience under the supervision of a licensed clinical social worker or the equivalent supervisor as determined by the Board;⁶
- Has passed a theory and practice examination; and
- Demonstrates, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapists

Section 491.005(3), F.S., relates to licensure by examination for marriage and family therapists.

The DOH must issue a license to an applicant as a marriage and family therapist if the Board certifies that the applicant has:

- Submitted an application and appropriate fee;
- A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a:
 - Program accredited by the CAMFTE; or
 - Florida university program accredited by the CACREP;
- Documentation of the completion of graduate courses approved by the Board;⁷

⁶ Section 491.005(1)(c), F.S. An individual who intends to practice in Florida to satisfy clinical experience requirements must register with the DOH pursuant to s. 491.0045, F.S., before commencing practice.

⁷ Section 491.005(3)(b), F.S. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant must provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

- Completed at least two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services:
 - At the post-master's level; and
 - Under the supervision of a licensed marriage and family therapist with at least five years of experience, or the equivalent; and whom the Board determines is a qualified supervisor;
- Passed a theory and practice examination provided by the DOH;⁸
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.⁹

The required master's degree must have been earned at an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by:

- The Commission on Recognition of Postsecondary Accreditation (CRPA);
- A member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant attended and graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CRPA.¹⁰

The applicant has the burden of establishing that all above requirements for licensure are met.

An applicant who has a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in an institution fully accredited by the CAMFTE, and recognized by the U.S. Department of Education.

To satisfy the clinical experience requirements, an individual who intends to practice in Florida must register with the DOH before he or she may commence practice.

If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by the Board, the post-master's level clinical experience may not commence until the applicant has completed a minimum of ten of the courses required, as determined, by the Board. At least six semester hours, or nine quarter hours, must have been completed in the area of marriage and family systems, theories, or techniques.

During the two years of required clinical experience, the applicant must provide direct individual, group, or family therapy and counseling, including cases involving:

⁸ See s. 491.004(5), F.S., and Fla. Admin. Code R. 64B4-3.003(2)(c) and 3, (2021). The DOH no longer provides the theory and practice examination for Marriage and Family Therapists. The examination used is the one developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB). The minimum passing score is established by that provider as well.

⁹ See Fla. Admin. Code R. 64B4-3.0035, (2021).

¹⁰ *Id.* Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists.

- Unmarried dyads;
- Married couples;
- Separating and divorcing couples; and
- Family groups that include children.

A doctoral internship may be applied toward the clinical experience requirements.

A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

The DOH must issue a dual license to persons licensed as psychologists, clinical social workers, mental health counselors, and psychiatric advanced practice registered nurses, if the candidate has:

- A valid, active license for at least three years; and
- Passed the examination provided by the DOH for marriage and family therapy.

Mental Health Counselors

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by:

- A regional accrediting body recognized by the Council for Higher Education Accreditation (CHEA) or its successor;
- A publicly recognized member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, was officially recognized by the government of the country in which it is located as an institution or program, to train students to practice as mental health counselors that maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CHEA or its successor.

The DOH must issue a license to an applicant as a mental health counselor if the Board certifies that the applicant has:

- Submitted an application and appropriate fees;
- Earned a minimum of a master's degree from:
 - A mental health counseling program accredited by the CACREP¹¹ which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
 - A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:

¹¹ Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited Nov. 20, 2021).

- Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours, of graduate-level coursework in 11 specified content areas;¹² or
- A minimum of one graduate level course emphasizing the diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. the common core curricular experience; or
- An equivalent program to the two previously described options, as determined by the Board, including at least 700 hours of university-sponsored supervised clinical practicum, internship, or field work, that includes at least 280 hours of direct client services, as required by CACREP accrediting standards for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement;
- Had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a Board qualified supervisor;¹³
- Passed a theory and practice examination provided by the DOH;¹⁴ and
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.¹⁵

Beginning July 1, 2025, an applicant for mental health counseling licensure must have a master's degree from a program that is accredited by the CACREP which consists of at least 60 semester hours or 80 quarter hours.

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting. Section 491.005, F. S., contains the same provision for registered clinical social worker interns.

¹² See s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

¹³ Section 491.005(4), F.S., An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045, F.S., before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the Board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement.

¹⁴ See s. 491.004(5), F.S., and Fla. Admin Code R. 64B4-3.003(2)(b) and 3, (2021). The DOH no longer provides the theory and practice examination for mental health counselors. The examination used is the National Clinical Mental Health Counseling Examination (NCMHCE), clinical simulation examination developed by the National Board for Certified Counselors (NBCC). Applicants for licensure by endorsement may use the National Counselor Examination for Licensure and Certification (NCE) if the exam was taken prior to the year 2000. The minimum passing score is established by the test provider.

¹⁵ Fla. Admin. Code R. 64B4-3.0035, (2021).

Recent Legislative History of Section 491.005, F.S.

The current program accreditation and licensure requirements in s. 491.005, F.S., for social workers, marriage and family therapists and mental health counselors were enacted during the 2020 legislative session.

As of July 1, 2020 an applicant seeking licensure under current s. 491.005(4), F.S., as a mental health counselor was required to have a master's degree from an a program accredited by the CACREP beginning July 1, 2025. Until July 1, 2025, mental health counseling students in programs related to the practice of mental health counseling that were not accredited by the CACREP could still obtain a license as a mental health counselor by satisfying the additional statutory requirements in s. 491.005(4), F.S., which required coursework and practicum, internship, or fieldwork consisting of at least 60 semester hours or 80 quarter hours and meeting other specific requirements. This window of time also gave those non-CACREP accredited programs time to apply for and obtain CACREP accreditation.

However, for marriage and family therapy licensure candidates, the current s. 491.005(3), F.S., contains no similar window of time for students to obtain licensure, or programs to obtain CAMFTE or CACREP accreditation. On July 1, 2020, students who had satisfied the previous requirements of s. 491.005(3), F.S., for licensure in programs not accredited by the CAMFTE, or who were in a Florida program not accredited by the CACREP, became immediately unable to obtain a license to practice marriage and family therapy without seeking a variance from the Board.

III. Effect of Proposed Changes:**Clinical Social Workers**

CS/SB 566 removes from s. 491.005(1), F.S., obsolete language for clinical social workers relating to the recovery by the DOH of the costs of purchasing examinations. The DOH no longer purchases examinations. The bill also makes minor technical changes to s. 491.005(1), F.S.

Marriage and Family Therapist Licensure

CS/SB 566 amends s. 491.005(3), F.S., to create three pathways to licensure by requiring applicants for a marriage and family therapy license to meet the minimum educational requirements by one of the following methods:

- A minimum of a master's degree in marriage and family therapy from a college or university that is accredited by the CAMFTE;
- A minimum of a master's degree with an emphasis in marriage and family therapy from a college or university that is accredited by the CACREP and graduate courses approved by the Board; or
- A minimum of a master's degree with an emphasis in marriage and family therapy or a closely related field, with a degree conferred date before September 1, 2027, from an institutionally accredited college or university.

The bill allows the DOH to license marriage and family therapy students or graduates who have graduated from a program not accredited by CAMFTE or CACREP until September 1, 2027, and gives unaccredited programs time to obtain accreditation if desired.

The bill updates the education requirements for marriage and family therapists, including current law's obsolete reference to accreditation by the Commission on Recognition of Postsecondary Accreditation (CORPA), which was dissolved in 1997. The bill replaces the CORPA with the Council for Higher Education Accreditation (CHEA) or its successors.

Mental Health Counselor Licensure

CS/SB 566 amends s. 491.005(4), F.S., to create three pathways to licensure by requiring applicants for a mental health counseling license to meet the minimum educational requirements by attaining a minimum of a master's degree from a mental health counseling program:

- Accredited by the CACREP which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse; or
- Related to the practice of mental health counseling while not accredited by the CACREP which includes coursework and practicum, internship or fieldwork, must consist of at least 60 semester hours, or 80 quarter hours, and meet multiple additional requirements, including:
 - Thirty-three semester hours or 44 quarter hours of graduate coursework in 11 different content areas;¹⁶
 - A thesis or dissertation;
 - Practicums, internships, or fieldwork that may not be applied toward the required courses in 11 different content areas;
 - Graduate level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders; or
- Equivalent to the previous two options, as determined by the Board, including at least 700 hours of university-sponsored, supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the CACREP for mental health counseling programs. This experience may not be used to satisfy any post-master's clinical experience requirement.

Beginning July 1, 2025, an applicant must have a master's degree from a program accredited by:

- The CACREP;
- The MPCAC; or
- An equivalent accrediting body which consists of at least 60 semester hours or 80 quarter hours to apply for licensure.

The bill allows the DOH to license mental health counseling students or graduates, who after July 1, 2025, would have been unable to obtain a Florida license, if they had graduated from a program not accredited by the CACREP. The bill adds the MPCAC as an approved accrediting agency as well as other programs accredited by equivalent accrediting bodies, for the purposes of

¹⁶ *Supra* note 11.

meeting the minimum educational qualifications for licensure as a mental health counselor prospectively as of the bill's effective date.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH indicates that it will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, and Board website to change to the licensing requirements for marriage and family therapists and mental health counselors. Current resources and budget authority are adequate to absorb these costs.¹⁷

¹⁷ Department of Health, 2022 Agency Legislative Bill Analysis (Oct. 25, 2021), p. 4 (on file with the Senate Health Policy Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sections 491.005(3) and 491.005(4), F.S., require master's degrees to be earned from programs accredited by "regional" accrediting bodies. On February 26, 2020, the U.S. Department of Education issued a letter of guidance, specifying that final regulations published in that year omit references to "regional" and "national" accreditation. The letter specifies that "[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. s. 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.¹⁸ The U.S. Department of Education now defines agencies that accredit institutions of higher education as "institutional" accrediting agencies.¹⁹ The bill modifies the language in s. 491.005, F.S., to reflect this change.

VIII. Statutes Affected:

This bill substantially amends section 491.005 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 2, 2021:

The CS:

- Amends the bill title to include clinical social workers;
- Updates language to reflect the terminology change by the U.S. Department of Education to define agencies that accredit institutions of higher education as "institutional" accrediting agencies, rather than "regional" accrediting agencies;
- Updates the education requirements for marriage and family therapists in reference to accreditation by the Commission on Recognition of Postsecondary Accreditation (CORPA), which was dissolved in 1997; and replaces it with the Council for Higher Education Accreditation (CHEA) or its successors;
- Removes obsolete language for clinical social workers and marriage and family therapists relating to the recovery by the DOH of the costs to purchasing examinations, because the DOH no longer purchases examinations; and
- Makes other minor technical changes.

B. Amendments:

None.

¹⁸ U.S. Department of Education, Office of the Under Secretary, *Re: Final Accreditation and State Authorization Regulations* (Feb. 26, 2021) available at <https://sacscoc.org/app/uploads/2020/03/State-Authorization-Letter-w-Diane-Signature-2.26.19.pdf> (last visited Nov. 20, 2021).

¹⁹ See 34 C.F.R. s. 602.3, (2021).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/02/2021	.	
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The Committee on Health Policy (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1), (3), and (4) of section
491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of
documentation and payment of a fee not to exceed \$200, as set by
board rule, ~~plus the actual per applicant cost to the department~~



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~~for purchase of the examination from the American Association of~~
~~State Social Worker's Boards or a similar national organization,~~
the department shall issue a license as a clinical social worker
to an applicant whom ~~who~~ the board certifies has met all of the
following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate
fee.

(b)1. ~~Has~~ Received a doctoral degree in social work from a
graduate school of social work which at the time the applicant
graduated was accredited by an accrediting agency recognized by
the United States Department of Education or ~~has~~ received a
master's degree in social work from a graduate school of social
work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association of Schools of
Social Work; or

c. Has been determined to have been a program equivalent to
programs approved by the Council on Social Work Education by the
Foreign Equivalency Determination Service of the Council on
Social Work Education. An applicant who graduated from a program
at a university or college outside of the United States or
Canada must present documentation of the equivalency
determination from the council in order to qualify.

2. The applicant's graduate program ~~must have~~ emphasized
direct clinical patient or client health care services,
including, but not limited to, coursework in clinical social
work, psychiatric social work, medical social work, social
casework, psychotherapy, or group therapy. The applicant's
graduate program must have included all of the following



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coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided ~~shall be required to provide~~ additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) Completed ~~Has had~~ at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15



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semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule ~~of the board~~, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, ~~plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization,~~ the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Attained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education.

b. A minimum of a master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council on Accreditation of Counseling and Related Educational Programs and graduate courses



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approved by the board.

c. ~~Has~~ A minimum of a master's degree with an major emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university ~~from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs~~ and graduate courses approved by the board ~~of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.~~

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided ~~shall provide~~ additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~ or was ~~publicly recognized as a~~ member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a~~



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~~regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Completed ~~Has had~~ at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If



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a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of



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documentation and payment of a fee not to exceed \$200, as set by board rule, ~~plus the actual per applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization,~~ the department shall issue a license as a mental health counselor to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. Attained ~~Has~~ a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social



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and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. ~~Has~~ Provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an



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institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or was ~~publicly recognized as~~ a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs, the Masters in Psychology and Counseling Accreditation Council, or an equivalent accrediting body which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Completed ~~Has had~~ at least 2 years of clinical



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experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-paragraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-paragraphs (b)1.a. and b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 2. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause



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and insert:

A bill to be entitled

An act relating to mental health professional
licensure; amending s. 491.005, F.S.; revising
licensure requirements for clinical social workers,
marriage and family therapists, and mental health
counselors; providing an effective date.

By Senator Gruters

23-00244-22

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A bill to be entitled

An act relating to mental health professional licensure; amending s. 491.005, F.S.; revising educational requirements for marriage and family therapist and mental health counselor licenses; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Attained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education.

b. A minimum of a master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council on Accreditation of

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Counseling and Related Educational Programs and graduate courses approved by the board.

~~c. Has~~ A minimum of a master's degree with an ~~major~~ emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university from a program acereditd by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program acereditd by the Council for Accreditation of Counseling and Related Educational Programs and graduate courses approved by the board ~~of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.~~

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant must ~~shall~~ provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the

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Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Completed ~~Has had~~ at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did

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not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination provided by the department.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost of purchase of

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the examination from the National Board for Certified Counselors or its successor organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. Attained ~~Has~~ a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental

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health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. ~~Has~~ Provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or publicly

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175 recognized as a member in good standing with the Association of
 176 Universities and Colleges of Canada, or an institution of higher
 177 education located outside the United States and Canada which, at
 178 the time the applicant was enrolled and at the time the
 179 applicant graduated, maintained a standard of training
 180 substantially equivalent to the standards of training of those
 181 institutions in the United States which are accredited by a
 182 regional accrediting body recognized by the Council for Higher
 183 Education Accreditation or its successor organization. Such
 184 foreign education and training must have been received in an
 185 institution or program of higher education officially recognized
 186 by the government of the country in which it is located as an
 187 institution or program to train students to practice as mental
 188 health counselors. The applicant has the burden of establishing
 189 that the requirements of this provision have been met, and the
 190 board shall require documentation, such as an evaluation by a
 191 foreign equivalency determination service, as evidence that the
 192 applicant's graduate degree program and education were
 193 equivalent to an accredited program in this country. Beginning
 194 July 1, 2025, an applicant must have a master's degree from a
 195 program that is accredited by the Council for Accreditation of
 196 Counseling and Related Educational Programs, the Masters in
 197 Psychology and Counseling Accreditation Council, or an
 198 equivalent accrediting body which consists of at least 60
 199 semester hours or 80 quarter hours to apply for licensure under
 200 this paragraph.

201 (c) Completed ~~Has had~~ at least 2 years of clinical
 202 experience in mental health counseling, which must be at the
 203 post-master's level under the supervision of a licensed mental

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204 health counselor or the equivalent who is a qualified supervisor
 205 as determined by the board. An individual who intends to
 206 practice in Florida to satisfy the clinical experience
 207 requirements must register pursuant to s. 491.0045 before
 208 commencing practice. If a graduate has a master's degree with a
 209 major related to the practice of mental health counseling which
 210 did not include all the coursework required under sub-
 211 subparagraphs (b)1.a. and b., credit for the post-master's level
 212 clinical experience may not commence until the applicant has
 213 completed a minimum of seven of the courses required under sub-
 214 subparagraphs (b)1.a. and b., as determined by the board, one of
 215 which must be a course in psychopathology or abnormal
 216 psychology. A doctoral internship may be applied toward the
 217 clinical experience requirement. A licensed mental health
 218 professional must be on the premises when clinical services are
 219 provided by a registered intern in a private practice setting.

220 (d) ~~Has~~ Passed a theory and practice examination provided
 221 by the department for this purpose.

222 (e) ~~Has~~ Demonstrated, in a manner designated by board rule,
 223 knowledge of the laws and rules governing the practice of
 224 clinical social work, marriage and family therapy, and mental
 225 health counseling.

226 Section 2. This act shall take effect upon becoming a law.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

February 26, 2020

Re: FINAL ACCREDITATION AND STATE AUTHORIZATION REGULATIONS

Dear State Leaders:

This letter is to inform you that the U.S. Department of Education (Department) has published final regulations relating to the accreditation of institutions of higher education, as well as State authorization requirements for distance education, which may have an impact on your State.

The final regulations published this year were developed by a diverse negotiated rulemaking panel, which reached consensus in April 2019.¹ The Department published a Notice of Proposed Rule Making based on the consensus language, and received approximately 200 comments from the public regarding the proposed regulations. The Department responded to those comments, as appropriate, in the final regulation. With the exception of a few provisions relating to the recognition of accrediting agencies, which will take effect on January 1, 2021 and July 1, 2021, the accreditation and State authorization regulations will take effect on July 1, 2020.²

Below we highlight several key provisions of the final regulation that could have an impact on States. We are providing this notification to help you plan appropriately.

Regional versus National Accreditation

The Department is aware that some States have enacted laws and policies that treat institutions and the students who attend them differently based solely on whether the institution is accredited by a “national” accrediting agency or a “regional” accrediting agency. For example, some States limit opportunities to sit for occupational licensing exams to students who have completed a program at a regionally accredited institution. In other instances, transfer of credit determinations at public institutions, and other benefits provided by States, are limited to students who attended regionally accredited institutions.

Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded. Moreover, we have determined that most regional accreditors operate well outside of their historic geographic borders, primarily through the accreditation of branch campuses and additional locations. As a result, our new regulations have removed geography from an accrediting agency’s scope.³ Instead of distinguishing between regional and national accrediting agencies, the Department will distinguish only between institutional and programmatic accrediting agencies. The Department will no longer use the terms “regional” or “national” to refer to an accrediting agency.

¹ 84 FR 58834

² The new regulations delay implementation of changes to the Department staff’s review of accrediting agency applications for initial or renewal of recognition under 34 C.F.R. § 602.32(d) until January 1, 2021. See 84 FR 58927. The new regulations also delay implementation of changes to the Department staff’s process for responding to accrediting agency applications and allowing agency responses within 180 days under 34 C.F.R. § 602.32(h) until July 1, 2021. See 84 FR 58928.

³ See 84 FR 58917-58918 (amending 34 C.F.R. §§ 602.3, 602.11).

Because the Department will no longer distinguish between “regional” and “national” accrediting agencies, we wanted to provide States with advanced notice of this change so that State leaders will have sufficient opportunity to adjust State laws, regulations, or policies accordingly.

State Authorization

The Department’s revised Accreditation and State Authorization regulations also make changes to State authorization requirements.⁴ For example, in order for a distance education provider to serve students in a State other than the one in which the institution has a physical presence, either the State in which the institution is located or the State in which the student is located must have a process in place to receive and review student complaints.⁵ We encourage all States to implement the appropriate policies and processes to accept, investigate, and respond to student complaints.

In addition, because it is important for all students – and not just those who enroll in distance education – to understand whether the program in which they are enrolled will qualify them to work in certain occupations in a given State, the revised regulations require both ground-based and online programs to notify students whether the program will or will not meet licensure requirements in a particular State, or in the event that the institution has not made that determination, where a student may obtain that information.⁶

The revised regulations continue to recognize State reciprocity agreements, such that an institution participating in a State reciprocity agreement will have satisfied the Department’s State authorization requirements in any State that also participates in the reciprocity agreement.⁷ In response to public comments, the Department provided further clarity that, while States participating in a State authorization reciprocity agreement may still enforce their own general-purpose State laws and regulations outside of the State authorization of distance education, States participating in a reciprocity agreement may not impose additional distance education regulations or requirements upon institutions that participate in such agreements.⁸

The Department of Education has developed informational webinars to help States, institutions of higher education, and accreditors understand what is required of them under our new regulations. The webinars are located on the Department’s website at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html>.

Should you have any questions, please feel free to contact the Accreditation Group at the Department of Education at aslrecordsmanager@ed.gov or 202-453-7615.

Sincerely,



Diane Auer Jones
Principal Deputy Under Secretary
Delegated the Duties of Under Secretary

⁴ See generally 84 FR 58914-58915 (amending 34 C.F.R. § 600.2); 84 FR 58915-58916 (amending 34 C.F.R. § 600.9).

⁵ See 84 FR 58915 (amending 34 C.F.R. § 600.9(c)). See 84 FR 58845-58846 (comments and discussion).

⁶ See 84 FR 58932 (amending 34 C.F.R. § 668.43(a)(5)).

⁷ See 34 C.F.R. § 600.9(c)(1)(ii).

⁸ See 84 FR 58841-58842, 58914-58915 (amending 34 C.F.R. § 600.2).

From: [Brill, Victoria](#)
To: [Denson, Tori](#)
Subject: Bill Presentation
Date: Wednesday, December 1, 2021 10:47:51 AM

Hi Tori,

Sen. Brodeur will be presenting Sen. Gruters' bill, SB 566 tomorrow during Health Policy.

Please let me know if you need anything else.

Thanks,
Vickie

Vickie Brill, MBA
Chief Legislative Aide
Sen. Joe Gruters, District 23
(941) 378-6309
(850) 487-5023



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: November 16, 2021

I respectfully request that **Senate Bill #566**, relating to Mental Health Professionals Licensures, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Allen Brown, Staff Director
Lisa Johnson, Deputy Staff Director
Tori Denson, Committee Administrative Assistant

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

12/2/21
Meeting Date
Health Policy
Committee

SB 566
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Cantens Phone 305-609-3171

Address 11200 SW 8 Street Email ccantens@fiu.edu
Street
Miami FL 33199
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FIU

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001* (08/10/2021)

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 414

INTRODUCER: Senator Powell

SUBJECT: Family Caregiver Certified Nursing Assistant Program

DATE: December 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto - Van Winkle	Brown	HP	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 414 requires the Board of Nursing (BON), in consultation with the Agency for Health Care Administration (AHCA), to develop the Family Caregiver Certified Nursing Assistant Program (Program) to train a family member to provide, or who intends to provide, significant personal care and assistance to a relative.

Under the bill, a person who completes the Program's training is authorized to take the certified nursing assistant (CNA) examination and, upon passing, becomes eligible for certification as a CNA on the condition that he or she must serve as a designated CNA for his or her relative under contract with a licensed nurse registry for a period of at least two years. After two years, such a CNA may practice in any setting authorized by law and is no longer required to contract with a licensed nurse registry.

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

II. Present Situation:

The Agency for Health Care Administration

The Legislature created the AHCA as the chief health policy and planning entity for the state, and its Division of Health Quality Assurance (HQA) is responsible for, among other things, protecting Floridians through oversight of licensed health care facilities and organizations. The HQA is funded with more than \$49 million in state and federal funds. The HQA licenses and/or certifies and regulates 40 different types of health care providers, including hospitals, nursing

homes, assisted living facilities, and home health agencies. In total, the HQA licenses, certifies, regulates or provides exemptions for more than 48,000 providers.¹

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.² The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards³ and professions within the DOH.⁴

Certified Nursing Assistants (CNAs)

Florida's statutory governance for CNAs is found in Part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA 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;
- Documentation of nursing-assistant services; and
- Other tasks that a CNA may perform after training.⁵

The Legislature has granted the BON rulemaking authority to establish the testing procedures for use in certifying CNAs, regulating the practice of CNAs, and specifying the scope of practice and the level of supervision required for the practice of CNAs.⁶

¹ Agency for Health Care Administration, Division of Health Quality Assurance, available at <https://ahca.myflorida.com/mchq/index.shtml> (last visited Nov. 22, 2021).

² Section 20.43, F.S.

³ Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

⁴ Section 20.43, F.S.

⁵ Section 464.201, F.S.

⁶ Section 464.202, F.S.

The BON regulates 208 approved nursing assistant training programs as of July, 2021. Standards for CNA programs and standardized curriculum are regulated by Florida Administrative Code rules 64B9-15.005 and 64B9-15.006.⁷

The standardized training program curriculum for an approved CNA training program follows the framework established by the Department of Education. The curriculum requires a minimum of 80 hours of classroom and 40 hours clinical instruction. The clinical instruction must include at least 20 hours of long-term care clinical instruction in a licensed nursing home. Prior to any direct contact with a patient, a student must receive a minimum of 16 hours of classroom instruction in communication and interpersonal skills; infection control; safety/emergency procedures, including the Heimlich maneuver; promoting residents' independence; and respecting residents' rights. Clinical experience is provided under the direct supervision of the program instructor who is, at a minimum, a registered nurse.⁸

A training program must maintain a passage rate on the CNA examination for its graduates of not less than ten percent below the state average as reported annually. A program is considered abandoned if it has no test takers for one calendar year and is subject to program approval recension. Each program must renew every two years by completing a CNA training renewal application.⁹

Section 464.203, F.S., authorizes the BON to issue certificates to practice as a CNA to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates one of the following:

- Successful completion of an approved training program and no less than a minimum score on the nursing assistant competency examination, consisting of a written portion and skills-demonstration portion, approved by the BON;
- Achieving at least the minimum score on the nursing assistant competency examination and is at least 18 years old or has earned a high school diploma or its equivalent;
- Is currently certified in another state or the District of Columbia and has not been found to have committed abuse, neglect, or exploitation in that jurisdiction; or
- Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved at least the minimum score.¹⁰

If an applicant fails to pass the nursing assistant competency examination in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program. An oral examination must be administered as a substitute for the written portion of the examination upon request.

The BON may approve applications for licensure by endorsement only from currently licensed CNAs in another state and the District of Columbia. A CNA from a U.S. territory who wishes to be licensed in Florida, must apply for licensure by examination instead of endorsement.¹¹

⁷ Department of Health, *Senate Bill 414, 2022 Agency Legislative Bill Analysis* (Oct. 28, 2021)(on file with the Senate Committee on Health Policy).

⁸ Fla. Admin. Code R. 64B9-15.005(2),(2021).

⁹ *Supra*, note 7.

¹⁰ Section 464.203, F.S.

¹¹ *Id.*

A CNA may not work independently without the supervision of a registered nurse or a licensed practical nurse.¹²

The DOH must renew a CNA certificate, biennially, upon receipt of the renewal application and appropriate fee. A CNA must also complete 24 hours of in-service training during each biennium and maintain documentation demonstrating compliance. A CNA may continue to renew biennially until such time as he or she fails to perform any nursing-related services for monetary compensation for a period of 24 consecutive months, and, if the latter occurs, the nursing assistant must complete a new training and competency evaluation program or a new competency evaluation program in order to be recertified.

The BON maintains a list of all CNAs, referred to as the “registry.” The registry must consist of the name of each CNA in this state; other identifying information defined by BON rule; certification status; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided under ch. 435, F.S.; and any disciplinary action taken against the CNA. The registry must be accessible to the public, the certificate holder, employers, and other state agencies.¹³

Nurse Registries

Section 400.462 (21), F.S., defines a “nurse registry” as any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chs. 395, 400, and 429 F.S.

Nurse registries are governed by Part II of ch. 408, F.S.;¹⁴ the associated rules in Florida Administrative Code Rule 59A-35; and the nurse registry rules in Florida Administrative Code Rule 59A-19. A nurse registry must be licensed by the AHCA, pursuant to Part III of ch. 400, F.S., to lawfully offer contracts in Florida.¹⁵

The health care providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity.¹⁶ This is a key defining feature of a nurse registry: It cannot have any employees except for the administrator, alternate administrator, and office staff. All individuals referred by a nurse registry who enter the home of patients to provide direct care must be independent contractors.

Under current law, a CNA is not required to enter into a contract with a licensed nurse registry to obtain certification or to practice as a CNA.

¹² Fla. Admin. Code R. 64B9-15.006(2), (2021).

¹³ Sections 464.201(6) and 464.202, F.S.

¹⁴ Section 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

¹⁵ Section 400.506(1), F.S.

¹⁶ Section 400.462(21), F.S.

III. Effect of Proposed Changes:

SB 414 creates the Family Caregiver Certified Nursing Assistant Program. The bill amends s. 464.201, F.S., and provides the following definitions:

- A “family caregiver” is a person who provides or intends to provide significant personal care and assistance to a relative who has an underlying physical or cognitive condition that prevents him or her from safely living independently; and
- A “relative” is a parent, spouse, child, sibling, grandparent, great-grandparent, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by whole or half blood, by marriage, or by adoption.

The bill creates s. 464.2031, F.S., and requires the BON, in consultation with the AHCA, to develop the Program in accordance with 42 C.F.R. ss. 483.151-483.154 to train and certify family caregivers as CNAs to increase the health care workforce in Florida and authorize persons to provide trained nursing services to their relatives. A person who is a caregiver to a relative, and wants to serve as the relative’s designated CNA, may participate in the Program.

The Program must consist of at least 84 hours of training, and must include all of the following:

- A minimum of 40 hours of theoretical instruction in nursing that must be offered in various formats, and any interactive instruction must be provided during various times of the day, including, but not limited to, instruction in:
 - Person-centered care;
 - The aging process;
 - Communication and interpersonal skills;
 - Infection control;
 - Safety and emergency procedures;
 - Assistance with activities of daily living;
 - Dementia care;
 - End-of-life care;
 - Mental health and social service needs;
 - Care of cognitively impaired individuals;
 - Basic restorative care and rehabilitation;
 - Patient rights and confidentiality of personal information and medical records; and
 - Relevant legal and ethical issues.
- A minimum of 28 hours of skills training on basic nursing skills, including, but not limited to:
 - Hygiene, grooming, and toileting;
 - Infection control;
 - Skin care and pressure sore prevention;
 - Nutrition and hydration;
 - Measuring vital signs, height, and weight;
 - Safe lifting, positioning, and moving of patients;
 - Wound care;
 - Portable oxygen use and safety and other respiratory procedures;
 - Peripheral intravenous assistive activities and alternative feeding methods; and
 - Urinary catheterization and ostomy care.

A minimum of 16 hours of clinical training under direct supervision of a licensed registered nurse, to be completed in at least two separate shifts and in a BON-approved health care facility.

The bill authorizes a trainee who completes the Program to take the nursing assistant competency examination and, upon passing, the trainee is eligible for certification to practice as a CNA under the condition that he or she must serve as a designated CNA for his or her relative under contract with a licensed nurse registry for at least two years. After two years of such practice, the bill provides that the CNA may practice in any lawful setting and is no longer required to contract with a licensed nurse registry.

The bill authorizes the BON, in consultation with the AHCA, to adopt rules to implement the Program.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH indicates it will experience an increase in revenues under the bill. The number of applicants is indeterminate; therefore, the fiscal impact cannot be calculated. One full-time equivalent (FTE) position will be required to implement the bill, according to the DOH. Salary is calculated at base of the position plus 58 percent for fringe benefits.

The DOH indicates it will also experience an increase in workload and expenses as follows:

- A recurring increase in workload associated with processing applications and issuing initial and renewal licenses. The impact is indeterminate, but it is anticipated that a minimum of one FTE will be required to implement the bill. One Regulatory Specialist III (PG 19), no travel. Based on the LBR standards, the total FTE cost is \$64,747 (\$44,314/Salary \$20,103/Expense \$330/HR);
- A non-recurring increase in workload and cost related to the development of a CNA training program for family caregivers, which current resources are adequate to absorb;
- An increase in workload associated with the additional complaints and investigations due to the Family Caregiver CNA Program. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time;
- A nonrecurring costs for rulemaking, which current budget authority is adequate to absorb; and
- A nonrecurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, License Verification Search Site, and board website to support the new pathway for Family Caregivers to obtain CNA Certification. Current resources and budget authority are adequate to absorb.

The total estimated cost for the first year is \$64,747 in the following categories:

- Salary- \$44,314/Recurring;
- Expense- \$15,674/Recurring \$4,429/Non-Recurring; and
- Human Resources - \$330/Recurring.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The program's training requirements in theoretical and clinical instruction under the bill are significantly lower than those of current DOH-accredited CNA training programs. Under the bill, a CNA trainee is required to have only 40 hours of theoretical instruction, versus the current 80-hour theoretical instruction requirement for DOH-accredited CNA training programs. Similarly, the clinical instruction hours under the bill for a CNA are also greatly reduced, from 40 hours of

¹⁷ *Supra*, note 7.

direct supervision to only 28 clinical instruction hours, of which only 16 hours are required to be under the supervision of a licensed registered nurse.

The bill does not address the issues of what will happen to the certification of a person who becomes a CNA under the Program if any of the following occurs during the bill's required two-year contract period with a nurse registry:

- The designated relative no longer needs CNA care;
- The relative moves or dies;
- The CNA refuses to care for the designated relative; or
- Either the CNA or the nurse registry breaches the contract.

The bill also does not provide what, if any, disciplinary actions may be taken by the BON against a CNA who violates the provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.201 and 464.203.

This bill creates section 464.2031 of the Florida Statutes.

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.

By Senator Powell

30-00303A-22

2022414__

A bill to be entitled

An act relating to the family caregiver certified nursing assistant program; amending s. 464.201, F.S.; defining the terms "family caregiver" and "relative"; creating s. 464.2031, F.S.; requiring the Board of Nursing, in consultation with the Agency for Health Care Administration, to develop a program to train and certify family caregivers as certified nursing assistants for a specified purpose; specifying requirements for the program; authorizing family caregivers who complete the program to take the nursing assistant competency examination; providing that such caregivers who pass the examination are eligible for certification as a nursing assistant; providing conditions on certification for family caregivers who obtain certification as nursing assistants; providing for the lifting of conditions after a specified period; authorizing the board, in consultation with the agency, to adopt rules; amending s. 464.203, F.S.; revising certification requirements for certified nursing assistants to conform to changes made by the act; providing an effective date.

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

Section 1. Present subsections (5) and (6) of section 464.201, Florida Statutes, are redesignated as subsections (6) and (7), respectively, and a new subsection (5) and subsection (8) are added to that section, to read:

Page 1 of 5

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

30-00303A-22

2022414__

464.201 Definitions.—As used in this part, the term:

(5) "Family caregiver" means a person who provides or intends to provide significant personal care and assistance to a relative who has an underlying physical or cognitive condition that prevents him or her from safely living independently.

(8) "Relative" means a parent, spouse, child, sibling, grandparent, great-grandparent, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by whole or half blood, by marriage, or by adoption.

Section 2. Section 464.2031, Florida Statutes, is created to read:

464.2031 Family caregiver certified nursing assistant program.—

(1) The board, in consultation with the Agency for Health Care Administration, shall develop a program in accordance with 42 C.F.R. ss. 483.151-483.154 to train and certify family caregivers as certified nursing assistants to increase the health care workforce in this state and authorize persons to provide trained nursing services to their relatives. A person who is a caregiver to a relative and wants to serve as the relative's designated certified nursing assistant may participate in the program.

(2) The program must consist of at least 84 hours of training, including all of the following:

(a) A minimum of 40 hours of theoretical instruction in nursing, including, but not limited to, instruction on:

1. Person-centered care.

2. The aging process.

3. Communication and interpersonal skills.

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2022414__

59 4. Infection control.
 60 5. Safety and emergency procedures.
 61 6. Assistance with activities of daily living.
 62 7. Dementia care.
 63 8. End-of-life care.
 64 9. Mental health and social service needs.
 65 10. Care of cognitively impaired individuals.
 66 11. Basic restorative care and rehabilitation.
 67 12. Patient rights and confidentiality of personal
 68 information and medical records.
 69 13. Relevant legal and ethical issues.
 70
 71 Such instruction must be offered in various formats, and any
 72 interactive instruction must be provided during various times of
 73 the day.
 74 (b) A minimum of 28 hours of skills training on basic
 75 nursing skills, including, but not limited to:
 76 1. Hygiene, grooming, and toileting.
 77 2. Infection control.
 78 3. Skin care and pressure sore prevention.
 79 4. Nutrition and hydration.
 80 5. Measuring vital signs, height, and weight.
 81 6. Safe lifting, positioning, and moving of patients.
 82 7. Wound care.
 83 8. Portable oxygen use and safety and other respiratory
 84 procedures.
 85 9. Peripheral intravenous assistive activities and
 86 alternative feeding methods.
 87 10. Urinary catheterization and ostomy care.

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30-00303A-22

2022414__

88 (c) At least 16 hours of clinical training under direct
 89 supervision of a licensed registered nurse, to be completed in
 90 at least two separate shifts and in a board-approved health care
 91 facility.
 92 (3) A family caregiver who completes the program may take
 93 the nursing assistant competency examination and is eligible for
 94 certification to practice as a certified nursing assistant under
 95 s. 464.203(1)(e) upon passing the examination.
 96 (4) A family caregiver who obtains certification under s.
 97 464.203(1)(e) after completing the program, as a condition of
 98 certification, must serve as a designated certified nursing
 99 assistant for his or her relative under contract with a licensed
 100 nurse registry for at least 2 years. After 2 years of such
 101 practice, a certified nursing assistant may practice in any
 102 setting authorized by law and is not required to contract with a
 103 licensed nurse registry.
 104 (5) The board, in consultation with the Agency for Health
 105 Care Administration, may adopt rules to implement this section.
 106 Section 3. Paragraph (e) is added to subsection (1) of
 107 section 464.203, Florida Statutes, to read:
 108 464.203 Certified nursing assistants; certification
 109 requirement.—
 110 (1) The board shall issue a certificate to practice as a
 111 certified nursing assistant to any person who demonstrates a
 112 minimum competency to read and write and successfully passes the
 113 required background screening pursuant to s. 400.215. If the
 114 person has successfully passed the required background screening
 115 pursuant to s. 400.215 or s. 408.809 within 90 days before
 116 applying for a certificate to practice and the person's

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2022414__

background screening results are not retained in the clearinghouse created under s. 435.12, the board shall waive the requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215. The person must also meet one of the following requirements:

(e) Has completed the program developed by the board under s. 464.2031 and achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the board and administered at a site and by personnel approved by the department.

Section 4. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: October 15, 2021

I respectfully request that **Senate Bill #414**, relating to Family Caregiver Certified Nursing Assistant Program, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in blue ink, appearing to read "Bobby Powell", is written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 30



2022 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

<u>BILL INFORMATION</u>	
BILL NUMBER:	414
BILL TITLE:	Family Caregiver Certified Nursing Assistant Program
BILL SPONSOR:	Powell
EFFECTIVE DATE:	July 1, 2022

<u>COMMITTEES OF REFERENCE</u>
1) Health Policy
2) Appropriations. Subcommittee on Health & Human Services
3) Appropriations
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	209
SPONSOR:	Silvers

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	October 28, 2021
LEAD AGENCY ANALYST:	Joe Baker
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Louise St. Laurent

FISCAL ANALYST:	Jonathan Sackett
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POLICY ANALYSIS

1. **EXECUTIVE SUMMARY**

This bill requires the Board of Nursing (BON), in consultation with the Agency for Health Care Administration (AHCA), to develop a nursing assistant training program for family caregivers. Those who complete the training program would be authorized to take the certification examination and upon passing, would be eligible for certification as a nursing assistant (CNA) with the following imposed condition: The CNA would be required to practice under a licensed nurse registry for a period of at least two years. After two years, the CNA may practice in any setting authorized by law and is not required to contract with a licensed nurse registry.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Board regulates 208 approved nursing assistant training programs as of July 2021. Standards for certified nursing assistant programs and standardized curriculum are regulated by Rules 64B9-15.005 and 15.0006, Florida Administrative Code. Training programs must maintain a passing rate on the CNA examination for its graduates of not less than 10 percent below the state average as reported annually. Programs are considered abandoned if the program has no testers for one calendar year and are subject to program approval recension. Each program must renew every two years by completing a CNA training renewal application.

There are two methods to obtain certification as a nursing assistant. The person must meet one of the following requirements:

- (a) Successfully complete an approved training program and achieve a minimum score, established by rule of the board, on the nursing assistant competency examination. The standardized curriculum requires a minimum of 80 hours of classroom to include 16 hours of classroom instruction in communication and interpersonal skills; infection control; safety/emergency procedures, including the Heimlich maneuver; promoting residents' independence; and respecting residents' rights and 40 hours clinical instruction; 20 of which must be completed in a long term care facility. Training programs may incorporate online curriculum; or
- (b) Applicants who are at least 18 years of age or have a high school diploma or its equivalent and achieve a minimum score, established by rule of the board, on the nursing assistant competency examination. An applicant may challenge the exam up to three times without participating in a training program. After three failed attempts the applicant is not eligible for reexamination unless the applicant completes an approved training program. This is known as the challenger option which is available to anyone who desires to become a CNA.

CNAs are not required to enter a contract with a licensed nurse registry.

2. EFFECT OF THE BILL:

This bill revises Section 464.201, Florida Statutes (F.S.), and provides definitions for family caregiver and relative. This bill creates Section 464. 2031, F.S., which requires the Board of Nursing to develop a certified nurse assistant training program in consultation with AHCA, to train and certify family caregivers as nursing assistants to provide trained nursing services to their relatives.

The requirements of a training program would be reduced from 80 hours to 40 hours of theoretical instruction and from 40 hours to 28 hours of clinical instruction and 16 hours of clinical work under the supervision of a licensed registered nurses. Instruction must be offered in various formats during various times of the day.

The program must consist of at least 84 hours of training, including all of the following:

(a) A minimum of 40 hours of theoretical instruction in nursing, including, but not limited to, instruction on:

1. Person-centered care.
2. The aging process.
3. Communication and interpersonal skills.
4. Infection control.
5. Safety and emergency procedures.
6. Assistance with activities of daily living.
7. Dementia care.
8. End of life care.
9. Mental health and social service needs.
10. Care of cognitively impaired individuals.
11. Basic restorative care and rehabilitation.
12. Patient rights and confidentiality of personal information and medical records.
13. Relevant legal and ethical issues.

Such instruction must be offered in various formats and any interactive instruction must be provided during various times of the day.

(b) A minimum of 28 hours of skills training on basic nursing skills, including, but not limited to:

1. Hygiene, grooming, and toileting.
2. Infection control.
3. Skin care and pressure sore prevention.
4. Nutrition and hydration.
5. Measuring vital signs, height, and weight.
6. Safe lifting, positioning, and moving of patients.
7. Wound care.
8. Portable oxygen use and safety and other respiratory procedures.
9. Peripheral intravenous assistive activities and alternative feeding methods.
10. Urinary catheterization and ostomy care.

(c) At least 16 hours of clinical training under direct supervision of a licensed registered nurse, to be completed in at least two separate shifts and in a board-approved health care facility.

This bill would require the caregiver to serve as a certified nursing assistant to his or her family member under contract of a licensed nurse registry for at least two years and will be able to continue thereafter to practice outside of a contract with a licensed nurse registry.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	The board may adopt rules in consultation with the Agency for Health Care Administration to implement training program standards and condition of certification.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	DOH/MQA will experience an increase in revenues due to the provisions of this bill. The number of applicants is indeterminate; therefore, the fiscal impact cannot be calculated.
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Expenditures:	<p>1 full-time equivalent (FTE) position will be required to implement the provisions of this bill. Salary is calculated at base of the position plus 58% for fringe benefits.</p> <p>DOH/MQA will experience a recurring increase in workload associated with processing applications and issuing initial and renewal licenses. The impact is indeterminate; yet it is anticipated that a minimum of 1 FTE will be required to implement the provisions of this legislation. 1 Regulatory Specialist III (PG 19), no travel, is requested. Based on the LBR standards, the total FTE cost is \$64,747 (\$44,314/Salary \$20,103/Expense \$330/HR).</p> <p>DOH/MQA will experience a non-recurring increase in workload and cost related to the development of a nursing assistant training program for family caregivers, which current resources are adequate to absorb.</p> <p>DOH/MQA may experience a recurring increase in workload associated with the additional complaints and investigations due to the Family Caregiver CNA Program. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time.</p> <p>DOH/MQA will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.</p> <p>DOH/MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, License Verification Search Site, and board website to support the new pathway for Family Caregivers to obtain Certified Nurse Assistant Certification. Current resources and budget authority are adequate to absorb.</p> <p>The total estimated cost for the first year is \$64,747 in the following categories:</p> <p>Salary- \$44,314/Recurring</p> <p>Expense- \$15,674/Recurring \$4,429/Non-Recurring Human Resources - \$330/Recurring</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A

Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	DOH/MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, License Verification Search Site, and board website to support the new pathway for Family Caregivers to obtain Certified Nurse Assistant Certification.
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FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

None.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No legal issues, concerns or comments identified at this time.
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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Finance and Tax
Health Policy
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR SHEVRIN D. "SHEV" JONES

35th District

December 1, 2021

The Honorable, Manny Diaz, Jr.

Chair, Committee on Health Policy

306 Senate Building

404 South Monroe Street

Tallahassee, FL 32399-1100

Dear Chair Diaz,

I respectfully request an excused absence from the Committee on Health Policy meeting scheduled for tomorrow, Thursday, December 2, 2021, as I will be out of state.

Thank you in advance for your consideration of this request. If I may be of assistance to answer questions, comments, or concerns, please do not hesitate to contact me or my office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shev Jones", is written over a light blue horizontal line.

Shevrin Jones

Senator, District 35

REPLY TO:

- ☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 493-6022
- ☐ 1965 South State Road 7, West Park, Florida 33023 (954) 893-5003
- ☐ 214 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JANET CRUZ
18th District

COMMITTEES:
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Health Policy
Military and Veterans Affairs, Space,
and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee

November 29, 2021

The Honorable Manny Diaz, Chair
Committee on Health Policy
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz,

I respectfully request an excused absence from the Health Policy committee meeting scheduled for Thursday, December 2.

Please let me know if I may be of any further assistance with this request.


Senator Janet Cruz
District 18

REPLY TO:

- ☐ 210A S. MacDill Avenue, Tampa, Florida 33609 (813) 348-1017 FAX: (888) 263-3681
- ☐ 216 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Commerce and Tourism
Criminal Justice
Health Policy
Rules

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight,
Alternating Chair

SENATOR BOBBY POWELL

Democratic Leader Pro Tempore
30th District

November 30, 2021

The Honorable Manny Diaz, Jr.
Committee on Health Policy
306 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Health Policy Committee Absence, Thursday, December 2, 2021
Senator Bobby Powell Jr.

Dear Chair Diaz,

I write to respectfully request an excused absence from the Health Policy Committee meeting scheduled for Thursday, December 2, 2021, due to my attendance of the Annual Legislative Conference of National Black Caucus of State Legislators (NBCSL).

Senator Book will be presenting **SB 414: Family Caregiver Certified Nursing Assistant Program** in my absence.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bobby Powell Jr.", is written over a horizontal line.

Bobby Powell, Jr.
State Senator, District 30

REPLY TO:

- 2715 North Australian Avenue, Suite 105, West Palm Beach, Florida 33407 (561) 650-6880
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412
Caption: Senate Health Policy

Case No.: -
Judge:

Type:

Started: 12/2/2021 9:01:08 AM

Ends: 12/2/2021 9:39:30 AM

Length: 00:38:23

9:01:07 AM Meeting called to order by Chair Diaz
9:01:08 AM Attendance roll call
9:01:12 AM Quorum present
9:01:23 AM Comments by Chair Diaz regarding excused members
9:01:41 AM SB 502 Temporarily Postponed
9:02:04 AM Senator Rodriguez presents SB 590
9:02:24 AM No questions on the bill
9:02:54 AM No public testimony or debate
9:02:55 AM Senator Rodriguez waives close
9:03:06 AM Vote on SB 590
9:03:29 AM Senator Brodeur presents SB 566 for Senator Gruters
9:03:56 AM Take up amendment barcode #604342
9:04:27 AM Senator Brodeur explains amendment
9:04:27 AM No questions on amendment
9:04:45 AM No debate or public appearance on the amendment
9:04:52 AM Amendment adopted
9:05:02 AM Back on amended bill
9:05:20 AM Public testimony, Chris Cantens waives in support of bill
9:05:28 AM Senator Brodeur waives close
9:05:41 AM Vote on SB 566
9:05:48 AM SB 566 is reported favorably as Committee Substitute
9:05:58 AM Senator Book presents SB 414 for Senator Powell
9:06:22 AM Senator Garcia with comments
9:07:09 AM No further questions
9:07:27 AM No debate
9:07:35 AM Senator Book closes on the bill
9:07:53 AM Vote on SB 414
9:08:01 AM SB 414 reported favorably
9:08:17 AM Senator Bradley presents SB 632
9:09:04 AM Take up amendment barcode #386692, Senator Bradley explains amendment
9:10:03 AM No public testimony or questions
9:10:14 AM No debate
9:10:20 AM Amendment adopted
9:10:21 AM No questions
9:10:33 AM No debate
9:11:17 AM Public testimony, Debora Oliveira speaks in support of the bill
9:11:20 AM Senator Bradley waives close
9:11:28 AM Vote on SB 632
9:11:52 AM Senator Boyd presents SB 544
9:14:37 AM No questions or debate
9:15:36 AM Public testimony
9:15:46 AM Michael Jackson waives in support, Candice Ericks waives in support, Phillip Suderman waives in support
9:16:09 AM No debate
9:16:15 AM Senator Boyd closes on SB 544
9:16:31 AM Vote on SB 544
9:16:42 AM SB 544 reported favorably
9:16:54 AM Chair Diaz calls for informal recess
9:17:22 AM Recording paused
9:19:41 AM Recording resumed
9:19:47 AM Quorum present
9:20:05 AM Senator Harrell presents SB 534
9:22:01 AM No questions on the bill

9:23:00 AM	Public testimony
9:23:06 AM	Paul Lowell waives in support
9:23:15 AM	No debate
9:23:18 AM	Senator Harrell closes on the bill
9:23:29 AM	Vote on SB 534
9:23:40 AM	SB 534 reported favorably
9:23:57 AM	Senator Rouson presents SB 516
9:24:40 AM	Senator Garcia with questions on the bill
9:25:45 AM	Senator Garcia requests a follow-up discussion with Senator Rouson at a later time
9:26:16 AM	Public testimony
9:26:25 AM	Augustin Corbella speaking against
9:27:18 AM	Senator Brodeur with questions
9:28:20 AM	Response from Mr. Corbella
9:28:51 AM	No further questions
9:29:11 AM	Debate
9:29:18 AM	Senator Baxley in debate
9:34:35 AM	Senator Brodeur in debate
9:35:35 AM	Chair Diaz in debate
9:36:33 AM	Senator Rouson closes on bill
9:37:10 AM	Vote on SB 516
9:37:57 AM	SB 516 reported favorably
9:38:12 AM	Chair Diaz recognizes Senator Book for comments
9:38:43 AM	Chair Diaz recognizes Sergeant's office staff member Wetchley Pompilus for his service to the Florida Senate
9:39:13 AM	Senator Brodeur moves to adjourn
9:39:24 AM	Meeting adjourned