

STORAGE NAME: h1527s1.hcl

DATE: April 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: CS/HB 1527

RELATING TO: Regulation of Health Professions/Continuing Education

SPONSOR(S): Committee on Health Care Licensing & Regulation & Representative Boyd

COMPANION BILL(S): SB 2432 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1527 authorizes the Department of Health, if there is no regulatory board, to adopt rules to establish the criteria for continuing education courses required for renewal of a license. In addition, the bill provides that a licensee failing to satisfy continuing education requirements shall be subject to a citation and assessment of a fine and may be required to take additional hours of continuing education.

The bill also prohibits individuals from assuming the title of "nurse" unless they are licensed or certified to perform nursing services. The violation for such misrepresentation is a first degree misdemeanor.

Further, the bill provides that the definition of "health care practitioner" includes persons who are applying for a health care license or registering as a physician intern, resident, or fellow and exempts persons who are registered or applying for registration from the profiling and credentialing requirements needed for physician licensure.

According to the Department of Health, there is an undetermined fiscal impact upon state government and the private sector. There is no fiscal impact on local government.

The bill provides an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Licensure of Health Care Professionals

Chapter 455, Part II, Florida Statutes, is the administrative chapter to all medical health care practitioners contained in the Division of Medical Quality Assurance (MQA) within the Department of Health. Currently, there are 37 health care professions regulated by MQA with 19 regulatory boards, 7 councils, the Health Care Services Pool, and 6 additional professions under the jurisdiction of the department. However, in multiple sections of chapter 455, F.S., it is unclear as to the department's authority to act if a profession is not under the jurisdiction of a board.

Additionally, each regulatory board has the authority to establish the requisite continuing education requirements for license renewal and the disciplinary action for noncompliance. The councils under the department may recommend such standards, but the department has final rule-making authority. The current discretionary authority provides that each board may have different standards and boards may choose to issue citations, fines, and/or other disciplinary action against professionals that do not satisfy the continuing education requirements as prescribed. For instance, the Board of Nursing does not cite such individuals but may issue a reprimand for those nurses that fail to satisfy continuing education requirements. Such reprimands from the Board of Nursing are published and posted on the National Practitioner Database.

The Department of Health represents that over the past year, most boards have authorized by rule the use of citation for licensees who do not meet continuing education requirements in an effort to remove the workload from the regular prosecutorial process. In addition, most boards currently issue a citation and require the licensee to make-up those hours he or she was not able to document for the biennium. The existing authority to issue citations is contained in section 455.617, F.S. According to the Department of Health, making continuing education violations a cited offense has reduced the workload to not only the boards, but the prosecutorial staff as well.

The use of the title: "Nurse"

The term "nurse" is not listed as a protected title in section 464.015, Florida Statutes. However, the terms "Registered Nurse", "Licensed Practical Nurse", and "Advanced Registered Nurse Practitioner" are reserved to the properly licensed professionals. Section 464.003 (3)(a), F.S., identifies that the "practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to: (1) the observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others; (2) the administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments; and (3) the supervision and teaching of other personnel in the theory and performance of any of the above acts.

Currently, there are health professions that deliver some level of hands-on care other than those designated in the Nurse Practice Act. These include home health aides and certified nursing assistants. The general nature of such work is to assist the registered nurse and/or licensed practical nurse with patient care in: passive range-of-motion; bathing; and feeding regimes. The training required for a certified nursing assistant is 150 curriculum hours and a competency exam for licensure. The home health aide is required to complete 40-75 hours of training but is not required to participate in a competency-based examination.

The job market for these types of services is also growing at an exponential rate. According to the Department of Labor and Employment Security, Bureau of Labor Market and Performance Information, home health aides rank fifth in occupations gaining the most jobs in Florida. By 2006, there will be an anticipated 52,171 home health aides, representing a growth of nearly 80 percent. Most of these occupations are based in skilled nursing facilities or in a patient's home.

Since the term "nurse" may appear in the title, there may be some ambiguity with respect to how aides identify themselves to patients. If the aide does not completely outline that he or she is a

“nurse’s aide” or “nurse assistant”, the patient may believe he or she is being cared for by a duly trained and licensed nurse.

Registered Interns, Residents, and Fellows

Currently, the definition of “health care practitioner” does not include persons registering or registered as a physician intern, resident, or fellow. Additionally, these practitioners are subject to the registration requirements as well as the physician profiling and credentialing requirements contained in s. 455.565, F.S.

B. EFFECT OF PROPOSED CHANGES:

The Department of Health will establish the criteria for continuing education courses required for licensure renewal for those professions not under the jurisdiction of a specific board.

Also, the board or department will establish disciplinary action and specific penalties for the violation of continuing education requirements. If a licensee does not fulfill the requisite continuing education requirements, a citation will be issued and a fine determined by the board or department will be assessed as a condition for licensure renewal. The board or the department, as applicable, may require the licensee to take an additional hour of continuing education for each hour not completed or completed late.

Persons not trained or duly qualified as such cannot call themselves a nurse. The consequences of any misrepresentation may include a first degree misdemeanor.

A physician intern, resident, or fellow that is registered or applying for registration is exempt from the profiling and credentialing requirements needed for physician licensure. Additionally, the definition of “health care practitioner” is expanded to include persons applying for licensure or renewal.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. This bill provides that the Department of Health will have the authority to adopt rules regarding the continuing education requirements for certain professions it regulates.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

The bill provides that the department or regulatory board may impose a fine for licensees who fail to meet continuing education requirements. Only those licensees who do not complete the required training are subject to this fine.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 455.564, 455.624, 464.015, 464.016, 455.557, and 455.565, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 455.564, F.S., to provide that if there is no regulatory board, the Department of Health has the authority to adopt rules and establish the criteria for continuing education courses required for license renewal.

Section 2. Amends s. 455.624, F.S., to provide penalties for violation of continuing education requirements. Specifically, if the licensee fails to satisfy continuing education requirements established by the board or department, a citation will be issued and a fine determined by the board or department will be assessed. Additionally, the board or department may require a licensee to take an additional hour of continuing education for each hour not completed or completed late.

Section 3. Amends s. 464.015, F.S., to include the title of nurse as a protected title under this section. Any person identifying him or herself as a “nurse” must have the applicable certification or licensure. Provides that a violation is a first degree misdemeanor.

Section 4. Amends s. 464.016, Florida Statutes, to provide that it is a first degree misdemeanor if a person misrepresents him/herself as a nurse and is not duly qualified as such.

Section 5. Amends s. 455.557, F.S., to provide that the definition of a “health care practitioner” includes persons licensed or persons applying for licensure or registration.

Section 6. Amends s. 455.565, F.S. to exempt registered physician interns, residents, or fellows from the physician licensure profiling and credentialing requirements.

Section 7. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

2. Direct Private Sector Benefits:

Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

According to the Department of Health, it is difficult to forecast the fiscal impact of this bill.

The Agency for Health Care Administration advises its only fiscal impact would be in increased postage costs since citations are mailed by certified mail, restricted delivery.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1999, the Committee on Health Care Licensing and Regulation adopted HB 1527 as a Committee Substitute. The original bill included provisions for licensees who fail to meet continuing education requirements, but did not reference s. 455.617, F.S., which outlines the procedures for enforcing or disputing citations. Without acknowledging this provision, the licensee does not have the option to dispute a citation and seek administrative remedies. Also, the original bill set the fee limit to \$250 and did not provide the boards or the department discretionary authority to set fees for those licensees violating continuing education requirements.

Additionally, the amendment adopted differs from HB 1527 by:

- ▶ Identifying that the regulatory board or department may determine the fee for licensees that do not meet continuing education requirements.
- ▶ Referencing the existing authority to issue citations contained in s. 455.617, F.S.
- ▶ Providing that individuals that are not duly licensed and qualified cannot identify themselves as nurses.
- ▶ Expanding the definition of "health care practitioner" to include persons applying for licensure or registration.
- ▶ Exempting persons who are registered or applying for registration from the profiling and credentialing requirements upon applying for or renewing a license to practice medicine.

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VII. SIGNATURES:

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