

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2432

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Silver

SUBJECT: Regulation of Professions

DATE: April 22, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 2432 makes numerous revisions to the regulation of health care professionals under the Department of Health. The bill amends part II of chapter 455, F.S., relating to the general regulatory provisions for health care professions, as well as the practice acts of various health care professions.

This bill amends: ss. 232.435, 400.462, 455.501, 455.507, 455.567, 455.587, 455.601, 455.607, 455.624, 455.664, 455.687, 458.313, 458.315, 458.3165, 459.0075, 460.402, 460.4165, 464.008, 464.016, 464.022, 465.003, 465.014, 465.015, 465.016, 465.017, 465.0196, 466.021, 468.1155, 468.1215, 468.352, 468.353, 468.354, 468.355, 468.357, 468.709, 468.721, 468.805, 468.806, 468.812, 478.42, 483.809, 483.812, 483.813, 483.821, 483.824, 483.825, 484.007, 484.0512, 484.053, 486.041, 486.081, 486.103, 486.107, 490.003, 490.006, 490.0085, 490.0148, 491.0045, 491.0046, 491.005, 491.006, 491.0085, 499.003, and 626.883, Florida Statutes (F.S.); ss. 20.43, 381.026, 381.0261, 400.211, 400.506, 455.521, 455.557, 455.564, 455.565, 455.5651, 455.574, 455.604, 455.651, 455.667, 455.694, 457.102, 458.307, 458.309, 458.311, 458.3115, 458.317, 458.319, 458.3124, 458.331, 458.347, 459.005, 459.008, 459.015, 460.403, 460.406, 460.407, 460.413, 460.4166, 461.003, 461.006, 461.007, 461.013, 468.307, 468.364, 468.365, 468.506, 468.701, 468.703, 468.705, 468.707, 468.711, 468.719, 483.807, 483.901, 484.056, 490.005, 491.014, 499.012, 641.316, F.S., 1998 Supplement; amends s. 301 of chapter 98-166, L.O. F.; creates ss. 455.712, 461.0135, 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828, F.S.; and creates five sections that are given no designation in the *Florida Statutes*.

II. Present Situation:

General Regulatory Provisions for Health Care Professionals

Part II, chapter 455, Florida Statutes, provides the general regulatory provisions for the health care professions within the Division of Medical Quality Assurance within the Department of Health. The part provides definitions and defines “health care practitioner” to include:

acupuncturists; medical physicians; osteopathic physicians; physician assistants; chiropractic physicians; podiatric physicians; naturopathic physicians; optometrists; nurses; pharmacists; dentists; dental hygienists; speech-language pathologists and audiologists; occupational therapists; respiratory therapists; dietitian/nutritionists; massage therapists; opticians; hearing aid specialists; physical therapists; psychologists and school psychologists; and clinical social workers, marriage and family therapists, and mental health counselors. The part provides exemptions for members of the armed forces on active duty or their spouses who are a licensed health care professionals so their licensure status may be kept in good standing pursuant to rules adopt by the boards regulating their profession. The department has jurisdiction to adopt rules for the professions under its regulatory jurisdiction if there is no board. Section 455.557, F.S., provides requirements for standardized credentialing of specified health care professionals. Section 455.564, F.S., authorizes the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine to require licensees to meet specified continuing education requirements as a condition of licensure renewal every 2 years. Section 455.564, F.S., specifies physical requirements for any license issued by the department to health care professionals.

Section 455.565, Florida Statutes, requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, will be compiled into practitioner profiles to be made available to the public. The information includes: graduate medical education; hospitals at which the physician has privileges; specialty certification; year the physician began practice; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000; professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 455.565, F.S., requires medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit fingerprints for a national criminal history check as part of initial licensure. The section also requires already licensed medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit, on a one-time-basis, a set of fingerprints for the initial renewal of their licenses after January 1, 2000, to the Department of Health. The Department of Health must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after January 1, 2000. For any subsequent renewal of the applicant's license, the Department of Health must submit the required information for a statewide criminal history check of the applicant.

Section 455.5651, F.S., requires the Department of Health to indicate if the criminal history information reported by a medical physician, osteopathic physician, chiropractic physician, or podiatric physician is not corroborated by a criminal history check. The Department of Health or

the board having regulatory authority over the practitioner must investigate any information it receives when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice. Each practitioner's profile must include the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

Medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians applying for licensure renewal must submit the information required for the practitioner profiles, however, an applicant who has submitted fingerprints to the Department of Health for a national criminal history check upon initial licensure and is renewing his or her license for the first time, only needs to submit the information and fee required for a statewide criminal history check.

Section 455.5653, F.S., requires the Department of Health to develop by the year 2000, a schedule and procedures for other licensed health care practitioners to submit relevant information for inclusion in practitioner profiles.

Section 455.567, F.S., requires the Department of Health and each board within the department to refuse to admit a candidate to any licensure examination and to refuse to issue a license to any candidate who has had any license to practice any profession revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States. The licensure disqualification also applies to any person who has committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct. The licensure disqualification is restricted to examination candidates or license applicants whose license has not been reinstated by the licensing authority of the jurisdiction that revoked the license based on a violation of sexual misconduct. The section provides that a licensing authority's acceptance of a candidate's relinquishment of a license that is offered in response to or in anticipation of the filing of administrative charges against the candidate's license constitutes the surrender of the candidate's license. There is considerable variation in the practice acts and rules for health care professions with regard to the definition of sexual misconduct and the penalties for violations relating to sexual misconduct.

Section 455.574(2), F.S., requires the Department of Health to provide procedures for applicants who fail an examination developed by the department or a contract vendor to review their examination questions, answers, papers, grades, and grading key. The applicants must bear the actual cost for the department to provide the examination review pursuant to the s 455.574(2), F.S. An applicant may waive in writing the confidentiality of the applicant's grades. Section 455.574(4), F.S., provides an exemption to the Public Meetings laws for meetings of any member of the department or any board held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions. Any public records, such as tape recordings, minutes, or notes, generated during or as result of such proceedings are confidential and exempt from requirements of the Public Records Law. However, these exemptions shall not affect the right of any person to review an examination as provided in s. 455.574(2), F.S.

Section 455.667, F.S., provides that except upon a patient's written authorization, and a few exceptions listed by statute, both medical records and the medical condition of a patient may not

be discussed with any person other than the patient, the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient. Pursuant to s. 455.667(7), F.S., patient records and insurance information obtained by the Department of Health in the investigation of a complaint alleging inadequate medical care are confidential and exempt from the requirements of the Public Records Law. The department may access these records pursuant to a subpoena without written authorization of the patient if the department and the probable cause panel of the appropriate board find reasonable cause to believe that the practitioner has excessively prescribed controlled substances or has practiced below that level of care and skill as defined by the health care practitioner's practice act. Section 455.674(8), F.S., provides that all patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt under the requirements of the Public Records Law and must be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. Such records may not be made available to the public by the department as part of the record of investigation for and prosecution in disciplinary proceedings which are made available to the public.

Florida Patient's Bill of Rights and Responsibilities

Section 381.026, F.S., provides for the Florida Patient's Bill of Rights and Responsibilities. Section 381.0261, F.S., requires health care providers or health care facilities to provide, upon request by a patient, a summary of their rights as specified in the section. The Agency for Health Care Administration may impose an administrative fine against a facility for of up to \$5,000 for nonwillful violations, and up to \$25,000 for intentional and willful violations. Each intentional and willful violation constitutes a separate violation and is subject to a separate fine.

Medical Physicians

Chapter 458, F.S., provides for the regulation of the practice of medicine. The chapter provides licensing requirements for physicians to practice in Florida. The Board of Medicine may impose disciplinary sanctions and administrative fines not to exceed \$5,000 for violations of the medical practice act. Physician assistants are regulated under s. 458.347, F.S., and applicants may obtain a temporary license pending the receipt of their examination scores.

Licensed medical physicians may perform surgery in their medical offices, ambulatory surgical centers, or hospitals. Ambulatory surgical centers and hospitals must be licensed under chapter 395, F.S. Chapter 395, F.S., imposes requirements on ambulatory surgical centers and hospitals which include inspection and accreditation, and reporting of adverse incidents that result in serious patient injury. Ambulatory surgical centers and hospitals, under s. 395.0197(8), F.S., must report the following incidents within 15 calendar days after they occur to the Agency for Health Care Administration: death of a patient; brain or spinal damage to a patient; performance of a surgical procedure on the wrong patient; performance of a wrong-site surgical procedure; performance of a wrong surgical procedure; performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition; surgical repair of damage resulting to the patient from a planned surgical procedure where damage is not a recognized specific risk, as disclosed to the patient and documented through the informed consent process; or performance of procedures to remove unplanned foreign objects remaining in a patient following surgery.

Pursuant to s. 395.0197(8), F.S., the incident reports filed with the Agency for Health Care Administration may not be made available to the public pursuant to s. 119.07(1), F.S., or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Health or the appropriate regulatory board. The incident reports may not be made available to the public as part of the records of investigation for and prosecution in disciplinary proceedings that are made available to the public. The Department of Health or the appropriate regulatory board must make available, upon written request by a health care professional against whom probable cause has been found, any such records which form the basis of the determination of probable cause. The Department of Health must review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action under the provisions of s. 455.621, F.S.

Chapter 458, F.S., authorizes the Board of Medicine to regulate the practice of medicine. Section 458.309, F.S., authorizes the board to adopt rules pursuant to provisions within the Administrative Procedure Act to implement the provisions of the chapter conferring duties upon it. Chapter 458, F.S., provides grounds for which a physician may be subject to disciplinary action by the board. Section 458.331(1)(t), F.S., requires physicians to practice with a minimum standard of care. Physicians may not accept or perform professional responsibilities that they are not competent to perform or delegate professional responsibilities to any person that the physician has reason to know is not qualified by training, experience, or licensure to perform. Section 458.331(1)(v), F.S., prohibits a medical physician from practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.

The Board of Medicine initially adopted an administrative rule providing standards of care for office surgery in 1994. The board's rule defines surgery to mean any manual or operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering, to include, but not be limited to: incision or curettage of tissue or an organ; suture or other repair of tissue or an organ; extraction of tissue including premature extraction of the products of conception from the uterus; or an endoscopic examination with use of local or general anesthetic. The board rule defines office surgery to mean surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the Department of Health and Rehabilitative Services, the Department of Business and Professional Regulation, the Agency for Health Care Administration, or a successor agency. The board rule defines Level I office surgery to mean minor procedures such as the excision of moles, warts, cysts, lipomas, and repair of simple lacerations performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient. The board rule defines Level II office surgery to mean surgery in which peri-operative medication and sedation are required intravenously, intramuscularly, or rectally, that makes post-operative monitoring necessary and includes: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, and colonoscopy. The board rule defines Level III office surgery to mean surgery which requires, or reasonably should require the use of a general anesthetic or major conduction anesthetic and pre-operative sedation.

Section 458.331(1)(v), F.S., was amended by the Legislature in 1998 to authorize the board to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.

The board's Surgical Care Committee has held four workshops during 1998 in its development of recommended changes to applicable rules for surgical care provided by medical physicians in their offices. The board's Surgical Care Committee recommendations included, but are not limited to: a restriction on surgery in doctor's offices to surgeries that are expected to take no more than eight hours to perform; and a restriction on the amount of fat (4,000 cc) that may be removed by liposuction. The Surgical Care Committee's recommendations were presented to the board at its December 3, 1998, meeting and the board unanimously moved to discuss the rule during a January conference call. At a telephone conference call held on January 6, 1998, the Board of Medicine voted to approve a draft rule which closely tracks the committee's recommendations except the draft rule:

- Restricts surgery in doctor's offices to four hours rather than eight hours;
- Significantly restricts the amount of fat (2000 cc rather than 4000 cc) that may be removed by liposuction in doctor's offices; and
- Requires the presence of a licensed medical physician or osteopathic physician who is an anesthesiologist, other than the surgeon, to provide direct supervision over any anesthesia provider who is not an anesthesiologist for certain surgical procedures.

The definition of surgery is revised under the proposed rule to include any elective procedure for anesthetic or cosmetic purposes and the insertion of natural or artificial implants. The proposed rule requires surgeons in offices where surgery is performed to obtain accreditation of the office setting by specified accrediting agencies or to submit to annual inspections by the Department of Health. The proposed rule requires surgeons in offices where surgery is performed to pay for all expenses related to accreditation or inspection. The proposed rule revises the definition of office surgery to mean surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the Department of Health, the Agency for Health Care Administration, or a successor agency. The proposed rule was noticed in the Florida Administrative Weekly on January 22, 1999. The staff of the Joint Committee on Administrative Procedures has raised questions regarding the board's specific rulemaking authority for the provisions within the proposed rule that: authorize the board and the Department of Health to inspect premises where office surgery is performed; require accreditation of the office setting and the optional annual inspection of the office setting; require all expenses related to accreditation or inspection be paid by the surgeon.

The board had a hearing on the proposed rule on April 11, 1999. The board reaffirmed the proposed rule changes approved by the board on January 6, 1999, with the following three major changes: 1) duration- the maximum planned duration of procedure must not exceed 6 hours, the patient must be discharged the same working day as the patient presented to the office for the procedure and is not permitted to stay overnight in the office; 2) volume of liposuction- the maximum of 5000cc total volume aspirant may be removed by liposuction in the office setting

under levels 2 and 3 surgery, tumescent fat liposuction involving the removal of less than 2000cc total volume aspirant is permitted under level 1 surgery; 3) supervision of anesthesia provider under level 3 surgery - the anesthesia provider cannot function in any other capacity during the procedure. If the anesthesia provider is not an anesthesiologist, and the surgical case is classified under the American Society of Anesthesiologists Risk Classification criteria as other than Class I or II there must be a licensed medical physician or osteopathic physician, anesthesiologist, other than the surgeon, to provide direct supervision of the administration and maintenance of the anesthesia. However if the anesthesia provider is not an anesthesiologist and the surgical case is classified under the American Society of Anesthesiologists Risk Classification criteria as other than Class I or II, direct supervision may be provided by the surgeon instead of a medical physician or osteopathic physician, anesthesiologist, if the surgeon has the background, training, or experience to adequately handle an anesthesia emergency. The surgeon must secure written informed consent from the patient reflecting the patient's consent to the type of anesthesia provider.

Osteopathic Physicians

Chapter 459, F.S., authorizes the Board of Osteopathic Medicine to regulate the practice of osteopathic medicine. Section 459.005, F.S., authorizes the Board of Osteopathic Medicine to adopt rules pursuant to provisions within the Administrative Procedure Act to implement the provisions of the chapter conferring duties upon it. The chapter provides grounds for which an osteopathic physician may be subject to disciplinary action by the Board of Osteopathic Medicine. Section 459.015(1)(z), F.S., was amended by the Legislature in 1998 to authorize the Board of Osteopathic Medicine to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals. The board may impose an administrative fine not to exceed \$5,000 for violations of chapter.

Chiropractic

Chapter 460, F.S., provides for the regulation of chiropractic medicine by the Board of Chiropractic Medicine. The chapter provides licensing requirements for persons wishing to practice chiropractic medicine. The chapter provides requirements for licensure of chiropractic physicians and provides requirements for chiropractic physicians to delegate specified duties to registered chiropractic assistants. The chapter also authorizes certified chiropractic physician assistants who are graduates of a 2-year approved program to perform chiropractic services under the supervision of a chiropractic physician or group of physicians certified by the board to supervise the assistant. The chapter defines supervision to mean responsible supervision and control, with the licensed chiropractic physician assuming legal liability for the services rendered by the chiropractic physician assistant.

Podiatric Medicine

Chapter 461, F.S., establishes the regulation of podiatric physicians by the Board of Podiatric Medicine. The board may impose discipline including an administrative fine up to \$1,000 on podiatric physicians for violations of the practice act.

Nursing

Chapter 464, F.S., provides for the regulation of nursing by the Board of Nursing. The chapter provides definitions, licensure requirements, and licensure exemptions.

Pharmacy

Chapter 465, Florida Statutes, provides for the regulation of the practice of pharmacy by the Board of Pharmacy within the Department of Health. Section 465.003, F.S., provides definitions for the practice of pharmacy. Section 465.016, F.S., provides grounds for which a pharmacist or dispensing practitioner may be subject to discipline for violating regulations governing the practice of pharmacy.

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act, to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the Federal Food, Drug, and Cosmetic Act and the applicable portions of the Federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. Section 499.003, F.S., provides definitions for use by the department in its enforcement of the Florida Drug and Cosmetic Act.

Dentistry

The Board of Dentistry within the Department of Health, pursuant to chapter 466, Florida Statutes, has regulatory jurisdiction over the practice of dentistry. Section 466.021, F.S., requires every licensed dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, partial denture, bridge splint, or orthodontic or prosthetic appliance to furnish the unlicensed person with a written work order on a form approved by the Department of Health. This form must be supplied to the dentist by the Department of Health at a cost that does not exceed the cost of printing and handling the form. The work order blanks must be assigned to individual dentists and are not transferable. The form must be dated and signed by the dentist and must include the patient's name or number with sufficient descriptive information to clearly identify the case for each separate and individual piece of work. The work order must be made in duplicate form and the duplicate copy must be retained by the dentist for 2 years, and the original must be maintained for 2 years by the unlicensed person who does dental laboratory work. The work orders must be open to inspection at any reasonable time by the Department of Health. Any dentist who fails to maintain the permanent records of the work orders is subject to suspension or revocation of her or his license. Any unlicensed person who fails to possess the required work order for dental laboratory work as required by s. 466.021, F.S., is liable for the violation of a second degree misdemeanor punishable by imprisonment of up to 60 days and a fine up to \$500.

Athletic Trainers

Chapter 468, Part XIII, Florida Statutes, regulates the practice of athletic training. The Department of Health regulates athletic trainers with advice from a seven member council that is appointed by the Secretary of the Department of Health. The council advises and assists the department in the development of rules relating to licensure requirements, the licensure

examination, continuing education requirements, fees, records and reports to be filed by licensed athletic trainers, and any other requirements necessary to regulate the practice of athletic training. The Department of Health is authorized to adopt administrative rules that are not inconsistent with law to carry out the duties and authority conferred on the department to enforce athletic training regulations and which are necessary to protect the health, safety, and welfare of the public. Such rules must include, but not be limited to, the *allowable scope of practice* regarding the use of equipment, procedures, and medication.

Clinical Laboratory Personnel

Sections 483.800 through 483.828, F.S., provide for the regulation of clinical laboratory personnel. A number of the provisions for applications and renewal fees for laboratory training need clarification. According to the Department of Health, the Board of Clinical Laboratory Personnel needs rule-making authority to designate approved certification examinations. The annual registration of clinical laboratory trainees is onerous and unnecessary according to the department. The current requirements for public health laboratory scientists restrict the number of applicants who may qualify for licensure as laboratory scientists in public health. Florida's requirements for licensure of laboratory directors do not conform to federal standards according to the department. In addition, the board lacks the authority to discipline clinical laboratory personnel for criminal convictions under the same provisions as other boards in Division of Medical Quality Assurance.

Psychology

To become licensed as a psychologist in Florida, an applicant must meet various requirements specified in ch. 490, F.S., which include graduation from a school with a psychology program accredited by an agency recognized and approved by the United States Department of Education. An alternate licensure path allows an applicant to submit to the board prior to July 1, 2001, that the applicant was enrolled and graduated from a school, not accredited, but with a standard of education and training comparable to programs accredited by an agency recognized by the United States Department of Education. The comparability was to be determined by the board. A psychologist licensed in another state may become licensed in Florida by endorsement if the requirements in the other state were substantially equivalent to those of Florida, or the psychologist is a diplomate in good standing with the American Board of Professional Psychology, Inc.

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

Chapter 491, F.S., regulates the practice of psychotherapy by clinical social workers, marriage and family therapists, and mental health counselors. The chapter provides that beginning January 1, 1998, any individual who intends to practice in Florida to satisfy postgraduate or post-master's level experience requirements, must register with the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counselors as an intern in the profession for which they are seeking licensure prior to beginning such experience. Such individuals must be certified by the board that they have met certain other requirements. Section 491.0045, F.S., provides certain educational requirements for clinical social workers, mental health counselors, and marriage and family therapists. Section 491.0046, F.S., provides that any individual who has satisfied the clinical experience requirements and is applying for licensure by examination or endorsement intending to provide clinical social work, marriage and family therapy, or mental

health counseling services in Florida must have a provisional license while satisfying the examination requirements. The provisional license must be obtained prior to beginning practice.

Subsection 491.005(4), F.S., 1998 Supp., changes the educational requirements for licensure as a mental health counselor beginning January 1, 2001. The board needs rule promulgation authority for administering the new requirements for licensure of mental health counselors. Under s. 491.0085, F.S., the board must give laws and rules examinations four times a year. The section does not currently allow the providers of laws and rules courses to test licensees upon completion of the courses. The exemptions to the licensure requirements contained in s. 491.014, F.S., provide that a nonlicensed person may perform services authorized in this chapter no more than 5 days in any month, and no more than 15 days in any calendar year.

Certified Nursing Assistants

Pursuant to requirements of federal law under Chapter 42 *Code of Federal Regulations* 483, states have established registries and programs for nursing assistant training and competency evaluation. For a nursing assistant training and competency evaluation program to be approved by a state, it must at a minimum consist of: no less than 75 clock hours of training; a specified curriculum of subject areas; no less than 16 hours of supervised practical training in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse; training that ensures that students do not perform any services for which they have not been trained and been found proficient by the instructor; and competency evaluation procedures that allow an aide to choose between a written and an oral examination. The required curriculum of the nursing assistant training program must provide training in the following areas before a nursing assistant can have any direct contact with a nursing home resident: communication and interpersonal skills; infection control; safety/emergency procedures; promoting residents' independence and respecting resident's rights; basic nursing skills; taking and recording vital signs; measuring and recording height and weight; caring for the residents' environment; recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; caring for residents when death is imminent; personal care skills; mental health and social service needs of residents, such as how to respond to resident behavior; care of and communicating with cognitively impaired residents; and basic restorative skills, such as training the resident in self care according to the resident's abilities, and care and use of prosthetic and orthotic devices. A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the nursing assistant begins a nursing assistant training and competency evaluation program may not be charged for any portion of the program.

Section 400.211, F.S., provides that a person must be certified as a nursing assistant to serve as a nursing assistant in any nursing home, except a registered nurse or practical nurse licensed in Florida. The Department of Health has responsibility for the certification of nursing assistants. The Department of Health must issue a certificate to any person who has met one of the following: successful completion of a nursing assistant program in a state-approved school and a minimum score of 75 percent on the written portion of the Florida Nursing Assistant Certification Test approved by the department and administered by state-approved test site personnel; achievement of a minimum of 75 percent on the written and performance portions of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel; or receipt of current certification in another state, being on that state's registry of

certified nursing assistants, having no findings of abuse, and having a minimum score of 75 percent on the written portion of the Florida Nursing Certification Test approved by the department and administered by state-approved test site personnel. An oral examination may be administered upon request.

The Department of Health may deny, suspend, or revoke the certification of any person to serve as a nursing assistant, based upon written notification from a court of competent jurisdiction, law enforcement agency, or administrative agency of any finding of guilt of, regardless of adjudication, or a plea of nolo contendere or guilty to, any offense set forth in the level 1 screening standards of ch. 435, F.S., or any confirmed report of abuse of a vulnerable adult.

Certification requirements must be met within 4 months of a person's initial employment as a nursing assistant in a licensed facility. Persons who are not certified as nursing assistants in Florida may be employed by a nursing facility for up to 4 months, if they are enrolled in a state-approved nursing assistant program or if they have been positively verified by a state-approved test site as certified and on the registry in another state with no findings of abuse, but who have not completed the required written examination. Any person certified as a nursing assistant on or after September 30, 1990, who has not worked for pay as a nursing assistant in a nursing-related occupation for a consecutive 24-month period must be recertified to be eligible to work in a nursing facility.

Pursuant to s. 400.215, F.S., the Agency for Health Care Administration must establish and maintain a database of screened nursing home employees. The database is to maintain background screening information obtained through level 1 and level 2 screening and abuse registry screening based on the Agency for Health Care Administration's electronic access to the Central Abuse Registry and Tracking System in the Department of Children and Family Services. Nursing homes may reimburse job applicants and employees for their screening costs. The Agency for Health Care Administration is required, as allowable, to reimburse nursing facilities for the cost of the background screening; the reimbursements are excluded from the Medicaid reimbursement rate ceilings and payment targets.

Certified nursing assistants (CNAs) working in nursing homes are required to undergo background screening. Certified nursing assistants are subject to criminal history screening and abuse and neglect screening in accordance with s. 400.215, F.S. A CNA who is disqualified from employment because of screening results may request a hearing from the Department of Health to determine whether he or she may be exempted, as provided in s. 435.07, F.S. If an exemption is granted, the CNA may be employed by a nursing home. Professionals licensed by the Department of Health, Division of Medical Quality Assurance are exempt from nursing home-based employment screening.

Chapter 435, F.S., relating to employment screening, provides for two levels of review of an individual's past. Level 1 screening requires criminal history screening through FDLE's database and screening for a history of abuse, neglect, or exploitation through the Department of Children and Family Services. Level 2 screening, which is more comprehensive in that it is a national search involving use of a fingerprint card, includes search of delinquency records, and requires FBI screening. Level 1 screening costs \$21 (\$6 for abuse screening and \$15 for FDLE statewide

criminal background screening) and Level 2 screening costs \$45 (\$21 for Level 1 screening and \$24 for FBI screening).

III. Effect of Proposed Changes:

Section 1. Amends s. 232.435, F.S., relating to extracurricular athletic activities, to correct a statutory reference to the regulation of athletic training.

Section 2. Amends s. 381.026, F.S., 1998 Supp., relating to the Patient's Bill of Rights, to define "department" as the Department of Health, to conform to the bill's requirements to authorize the Department of Health to enforce any willful or nonwillful violations of the Patient's Bill of Rights.

Section 3. Amends s. 381.0261, F.S., 1998 Supp., to authorize the Department of Health, or the appropriate regulatory board having jurisdiction over the health care professional, to impose an administrative fine when the health care provider fails to make available to patients a summary of their rights. Initial nonwillful violation shall be subject to corrective action and shall not be subject to an administrative fine. The appropriate regulatory board or the Department of Health may impose up to \$100 for nonwillful violations after the initial violation and up to \$500 for willful violations.

Section 4. Amends s. 455.501, F.S., to revise the definition of "health care practitioner" in pt. II of ch. 455, F.S., relating to the general regulatory provisions for health care professions under the Department of Health, to include certified nursing assistants, midwives, nursing home administrators, athletic trainers, orthotists, prosthetists, pedorthists, electrologists, clinical laboratory personnel, and medical physicists.

Section 5. Amends s. 455.507, F.S., relating to exemptions for members of the armed forces or their spouses, to authorize the department when there is no board to allow members of the Armed Forces of the United States on active duty who at the time of becoming such a member, and who were entitled to practice or engage in his or her profession, to be kept in good standing. The Department of Health when there is no board must adopt rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions when due to their spouses' duties with the Armed Forces. A statutory reference to the boards within the Department of Health is corrected.

Section 6. Amends s. 455.521, F.S., 1998 Supp., relating to the powers and duties of the Department of Health, to limit the department's powers and duties to the professions under its jurisdiction.

Section 7. Amends s. 455.557, F.S., 1998 Supp., relating to requirements for the standardized credentialing of health care practitioners, to revise the definition of "health care practitioner" to include any person applying for licensure under the medical practice act, osteopathic practice act, chiropractic practice act, or podiatric practice act and to expressly exclude a person registered or applying for registration as a resident physician under the medical practice act or osteopathic practice act.

Section 8. Amends s. 455.564, F.S., 1998 Supp., relating to the Department of Health's general licensing provisions, to provide that any incomplete licensure application must expire 1 year after it is initially filed with the department. The department is required to issue a license that consists of a wallet-size identification card a wall card measuring 6 ½ inches by 5 inches. In addition to the two-part license, the department at the time of initial licensure, must issue an 8 ½ inches by 14 inches wall certificate. Licensees must surrender to the department the wallet-size identification card, the wall card, and the wall certificate, if one has been issued by the department, if the license is revoked. The Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine are authorized to require by rule that up to 1 hour of the 40 or more hours of continuing education be in the area of risk management or cost containment for licensure renewal. The bill provides that this rulemaking authority may not be interpreted to limit the number of hours that a licensee may obtain in risk management or cost containment which may be used to satisfy the continuing education requirements or be construed to require the boards to impose any requirement on licensees except for the completion of at least 40 hours of continuing education every 2 years. Other boards within the Division of Medical Quality Assurance, or the department if there is no board, may adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term. The bill authorizes the Department of Health to adopt rules for the professions under its jurisdiction: to provide for the use of approved videocassette courses and the criteria for and content of such courses; and to establish criteria for continuing education courses.

Section 9. Amends s. 455.565, F.S., 1998 Supp., relating to practitioner profiling requirements, to exempt resident physicians who must register with the Department of Health and to require each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician to submit information on the year the applicant began practicing medicine in any jurisdiction outside Florida. The bill limits the requirement for a medical physician, osteopathic physician, chiropractic physician, or podiatric physician to submit, on a one-time-basis, his or her fingerprints for a national criminal history check as part of licensure renewal to any renewal applicant who received an initial license to practice his or her profession after January 1, 1992. The bill revises license renewal requirements for any medical physician, osteopathic physician, chiropractic physician, or podiatric physician who is renewing his or her license after January 1, 2000, and who received an initial license in Florida to practice on or before January 1, 1992, so that the applicant must only submit the information required for a statewide criminal history check.

Section 10. Amends section 455.5651, F.S., 1998 Supp., relating to practitioner profiling requirements, to prohibit the Department of Health from including in any practitioner's profile, disciplinary action taken by a licensed hospital or an ambulatory surgical center in the practitioner profile.

Section 11. Amends s. 455.567, F.S., relating to sexual misconduct, to define sexual misconduct in the practice of a health care profession to mean violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member of the patient or client in, or induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of

the professional practice of such health care profession. The bill prohibits sexual misconduct in the practice of a health care profession and makes other technical changes to the section to clarify the applicability of a licensee's surrender of a license.

Section 12. Amends s. 455.574, F.S., 1998 Supp., to limit the Department of Health's requirements to provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key to only the applicant's examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, to only the parts of the examination the applicant failed. This limitation creates an exemption to the requirements of the Public Records Law.

Section 13. Amends s. 455.587, F.S., relating to fees and their disposition, to authorize the Department of Health to charge a fee of up to \$25 for the issuance of wall certificates authorized in 1998 to licensees licensed prior to July 1, 1998, or for issuance of a duplicate wall certificate. The bill authorizes the Department of Health, if there is no board, to determine by rule, the amount of license fees for the professions it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws regulating the profession.

Section 14. Amends s. 455.604, F.S., 1998 Supp., to require each person licensed under the Dietetics and Nutrition Practice Act to complete a continuing education course on HIV and AIDS approved by the Board of Medicine as a part of biennial relicensure or recertification.

Section 15. Amends s. 455.607, F.S., relating to requirements for continuing education on HIV and AIDS as part of biennial relicensure or recertification requirements for specified professions, to correct a reference to the provisions regulating athletic trainers.

Section 16. Amends s. 455.624, F.S., relating to grounds for which health care professionals are subject to discipline, to make: failing to comply with requirements to provide patients with information about their patient rights and how to file a patient complaint; engaging or attempting to engage a patient or client in verbal or physical sexual activity; failing to comply with profiling and credentialing requirements; failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction; using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents, or using information published in a newspaper or other news publication or broadcast that has used such reports, for the purposes of commercial or any other solicitation of people involved in such accidents. The section is amended to increase from \$5,000 to \$10,000 the amount that the department may impose on health care professionals as an administrative fine for disciplinary violations. The section authorizes the department or appropriate board to consider sanctions necessary to protect the public or to compensate the patient. The department or boards may consider and include requirements to rehabilitate the practitioner only after those sanctions have been imposed. Any costs associated with compliance with disciplinary orders are the obligation of the practitioner. The bill authorizes the department and the boards to assess attorney's fees in addition to costs for prosecution and investigation of disciplinary cases. If the ground for disciplinary action is the first-time failure of the licensee to satisfy continuing education

requirements, the disciplinary sanction is limited to a citation for minor violations and assessment of a fine, as determined by the board or department rule. For each hour of continuing education not completed or completed late, the board or department may require the licensee to take an additional hour of continuing education.

Section 17. Amends s. 455.651, F.S., 1998 Supp., relating to requirements for the disclosure of confidential information maintained by the Department of Health, to grant any person injured as a result of a violation of this law to have a civil cause of action for treble damages, reasonable attorney fees, and costs. The section currently prohibits an officer, employee, or person under contract with the department, or any board, or any subject of an investigation from conveying knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which is exempt from disclosure under the requirements of the Public Records and Meetings Laws.

Section 18. Amends s. 455.664, F.S., relating to advertisement by a health care practitioner of free or discounted services and required disclosures, to extend the required disclosures by health care providers for free or discounted health services to pharmacists, midwives, electrologists, medical physicists, clinical laboratory personnel, opticians, hearing aid specialists, psychologists, school psychologists, clinical social workers, mental health counselors, and marriage and family therapists.

Section 19. Amends s. 455.667, F.S., 1998 Supp., relating to ownership and control of patient records, to revise the Department of Health's authority to obtain patient records and insurance information based on the investigation of a disciplinary complaint alleging inadequate medical care based on termination of insurance. The department may obtain patient records pursuant to a subpoena without written authorization from the patient, if the department and the appropriate probable cause panel of the appropriate board has reasonable cause and also finds that appropriate, reasonable attempts were made to obtain a patient release. The department is authorized to obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to subpoena without written authorization from the patient, if the department and probable cause panel of the appropriate board find reasonable cause to believe that a health care practitioner has submitted fraudulent insurance claims, used information from a written automobile report to solicit or obtain patients personally or through an agent regardless of whether the information is from another person, solicited patients fraudulently, received a kickback, violated the patient brokering laws, or presented a false or fraudulent insurance claim, and also find that patient authorization cannot be obtained. The bill deletes the exemption to the Public Records Law making confidential patient records and insurance information obtained by the Department of Health for the purpose of disciplinary proceedings. Requirements for a health care practitioner or records owner furnishing copies of reports or records of a patient examination are revised to include the making of such reports or records available for digital scanning.

Section 20. Amends s. 455.687, F.S., relating to the Department of Health's authority to immediately suspend the license of a health care practitioner for specified violations, to allow the department to suspend or restrict the license of any health care practitioner who tests positive for any drug on any government or private-sector preemployment or employer ordered confirmed drug test when the practitioner does not have a lawful prescription and legitimate medical reason

for using such drug. The practitioner must be given 48 hours, after being notified of the confirmed drug test result, to produce a lawful prescription for the drug before an emergency order is issued.

Section 21. Amends s. 455.694, F.S., 1998 Supp., relating to financial responsibility requirements for specified licensed health care professionals, to require midwives to maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the Department of Health by rule.

Section 22. Creates s. 455.712, F.S., to require any business establishments regulated by the Division of Medical Quality Assurance to obtain an active status license before providing regulated services and makes the business establishment subject to the disciplinary violations that may imposed on licensed health care professionals. Procedures for renewal of business establishment licenses are specified. The requirements apply to any business establishment registered, permitted, or licensed by the Department of Health to do business.

Section 23. Amends s. 457.102, F.S., 1998 Supp., relating to definitions under the acupuncture practice act, to define “prescriptive rights” to mean the prescription, administration, and use of needles and devices, restricted devices, and prescription devices that are used in the practice of acupuncture and oriental medicine.

Section 24. Amends s. 458.307, F.S., 1998 Supp., relating to the Board of Medicine, to correct a statutory reference to licensed health care risk managers.

Section 25. Amends s. 458.309, F.S., 1998 Supp., relating to the Board of Medicine’s authority to adopt rules, to require all physicians who perform level 2 procedures lasting more than 5 minutes and all level 3 surgical procedures in an office setting to register the office with the Department of Health unless that office is licensed as a hospital or ambulatory surgical center. The department shall inspect the physician’s office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the board. The actual costs for registration and inspection or accreditation must be paid by the person seeking to register and operate the office setting in which office surgery is performed.

Section 26. Amends s. 458.311, F.S., 1998 Supp., relating to medical licensing examination requirements, to revise the requirements to eliminate payment of an examination fee no greater than \$300 plus the actual per applicant cost to the Department of Health for the purchase of the national medical licensing examination from the Federation of State Medical Boards or a similar national organization, to conform to the Department of Health’s objective to no longer administer the examination; the Federation of State Medical Boards will administer the examination for qualified applicants seeking licensure in Florida. The bill revises the medical licensure by examination requirements to limit acceptance of an applicant’s passing score on a combination of the examination of the Federation of State Medical Boards of the United States, the United States Medical Licensing Examination (USMLE), the examination of the National Board of Medical Examiners to the period up to the year 2000. After the year 2000, only the United States Medical Licensing Examination (USMLE) will be accepted for licensure by Florida as administered by the Federation of State Medical Boards. Prior to this date, a combination of the various approved medical examinations has been acceptable. An individual who was licensed in another state or a province in Canada and who has practiced for at least 10 years may become licensed in Florida by

obtaining a passing score on the Special Purpose Examination (SPEX) as established by the Board of Medicine. The bill deletes alternate medical licensing provisions established for foreign-trained physicians.

Section 27. Amends s. 458.3115, F.S., 1998 Supp., relating to alternate medical licensing requirements for foreign-trained physicians, to correct references to the Department of Health and delete references to the Agency for Health Care Administration. The regulation of the practice of medicine was transferred from the Agency for Health Care Administration to the department on July 1, 1997.

Section 28. Amends s. 458.313, F.S., relating to medical licensure by endorsement, to revise the postgraduate training requirements for medical licensure by endorsement applicants. Endorsement applicants are provided an option to complete a board approved postgraduate training program within 2 years of filing an application, if they have not actively practiced medicine in another jurisdiction for 2 of the immediate 4 years preceding their application. Changes are made to conform to the bill's requirements for the acceptance of scores on national medical licensing examinations. The bill limits the Board of Medicine's acceptance of an applicant's passing score on a combination of the examination of the Federation of State Medical Boards of the United States, the United States Medical Licensing Examination (USMLE), the examination of the National Board of Medical Examiners to the period up to the year 2000. After the year 2000, only the United States Medical Licensing Examination (USMLE) will be accepted for licensure by Florida as administered by the Federation of State Medical Boards. Prior to this date, a combination of the various approved medical examinations has been acceptable. The bill eliminates a provision that allowed endorsement applicants who failed to pass the licensing examination after five attempts to complete additional remedial education or training. A provision allowing certain physicians whose licenses had become void to apply by October 1, 1998 to reactivate the license is eliminated.

Section 29. Amends s. 458.315, F.S., relating to a temporary certificate to practice in areas of critical need, to authorize a physician who holds a temporary certificate to practice in all approved areas of critical need rather than seek approval for each area. The recipient of a temporary certificate must notify the board within 30 days after accepting employment, of all such employment and of any places where practice privileges were denied.

Section 30. Amends s. 458.3165, F.S., relating to a public psychiatry certificate, to authorize a physician who holds a public psychiatry certificate to work at any public mental health facility or program that receives state funding.

Section 31. Amends s. 458.317, F.S., 1998 Supp., relating to limited licenses to practice medicine, to authorize any physician holding an active Florida medical license to convert that license to a limited license for the purpose of providing uncompensated care for low-income Floridians. Applicants must submit a statement from the employing agency or institution stating that he or she will not receive compensation for any service involving the practice of medicine. All fees and assessments are waived for the conversion of an active license to a limited license to practice medicine.

Section 32. Amends s. 458.319, F.S., 1998 Supp., to revise the medical licensing renewal requirements so that any medical physician who is renewing his or her license after January 1, 2000, and who received an initial license in Florida to practice on or before January 1, 1992, must only submit the information required for a statewide criminal history check. The Department of Health is prohibited from delaying the license renewal of any medical physician due to the processing of either a statewide criminal history check or a national criminal history background check. Any applicant who has received an initial license to practice in Florida after January 1, 1992, and who has already submitted fingerprints to the department for a national criminal history check and who is renewing his or her license, need only submit the information and fee required for a statewide criminal history check.

Section 33. Amends s. 458.331, F.S., 1998 Supp., relating to disciplinary provisions for medical physicians, to increase the administrative fines from \$5,000 to \$10,000 that the Board of Medicine may impose on physicians and authorizes the board to fine a physician who violates the Patient's Bill of Rights by not providing patients with information about their rights and how to file a patient complaint.

Section 34. Amends s. 458.347, F.S., 1998 Supp., relating to physician assistants, to provide that temporary licenses expire 30 days after receiving test scores and delete references to a practical component of the examination for foreign-trained physicians who are applying under alternate licensure requirements to become physician assistants. An applicant who has graduated from an approved program and who expects to take the first national licensure examination to become a physician assistant may be granted a temporary license that expires 30 days after receipt of scores from that examination.

Section 35. Amends s. 459.005, F.S., 1998 Supp., relating to the Board of Osteopathic Medicine's rulemaking authority, to require all physicians who perform level 2 procedures lasting more than 5 minutes and all level 3 surgical procedures in an office setting to register the office with the Department of Health unless that office is licensed as a hospital or ambulatory surgical center. The department shall inspect the physician's office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the board. The actual costs for registration and inspection or accreditation must be paid by the person seeking to register and operate the office setting in which office surgery is performed.

Section 36. Amends s. 459.0075, F.S., relating to limited licenses to practice osteopathic medicine, to authorize any osteopathic physician holding an active Florida medical license to convert that license to a limited license for the purpose of providing uncompensated care for low-income Floridians. Applicants must submit a statement from the employing agency or institution stating that he or she will not receive compensation for any service involving the practice of medicine. All fees and assessments are waived for the conversion of an active license to a limited license to practice medicine.

Section 37. Amends s. 459.008, F.S., 1998 Supp., to revise the osteopathic licensing renewal requirements so that any osteopathic physician who is renewing his or her license after January 1, 2000, and who received an initial license in Florida to practice on or before January 1, 1992, must only submit the information required for a statewide criminal history check.

The Department of Health is prohibited from delaying the license renewal of any osteopathic physician due to the processing of either a statewide criminal history check or a national criminal history background check. Any applicant who has received an initial license to practice in Florida after January 1, 1992, and who has already submitted fingerprints to the department for a national criminal history check and who is renewing his or her license, need only submit the information and fee required for a statewide criminal history check.

Section 38. Amends s. 459.015, F.S., 1998 Supp., relating to disciplinary provisions for osteopathic physicians, to increase the administrative fines from \$5,000 to \$10,000 that the Board of Osteopathic Medicine may impose on physicians and authorizes the board to fine a physician who violates the Patient's Bill of Rights by not providing patients with information about their rights and how to file a patient complaint.

Section 39. Amends s. 460.402, F.S., relating to exemptions to chiropractic licensure, to exempt chiropractic students enrolled in a accredited chiropractic college and participating in a community-based internship under the direct supervision of the faculty of that college.

Section 40. Amends s. 460.403, F.S., 1998 Supp., relating to chiropractic, to define a "community-based internship" to mean a program in which a student enrolled in the last year of an accredited chiropractic college is approved to obtain required pregraduation clinical experience in a chiropractic clinic or practice under the direct supervision of the faculty of that college. The definition of "direct supervision" is revised to conform to the bill's recognition of a "community-based internship" "Registered chiropractic assistant" is revised to include certified chiropractic physician's assistants.

Section 41. Amends s. 460.406, F.S., 1998 Supp., relating to chiropractic licensure by examination provisions, to delete the requirement for a post-graduate chiropractic internship program.

Section 42. Amends s. 460.407, F.S., 1998 Supp., to revise the chiropractic licensing renewal requirements so that any chiropractic physician who is renewing his or her license after January 1, 2000, and who received an initial license in Florida to practice on or before January 1, 1992, must only submit the information required for a statewide criminal history check. The Department of Health is prohibited from delaying the license renewal of any chiropractic physician due to the processing of either a statewide criminal history check or a national criminal history background check. Any applicant who has received an initial license to practice in Florida after January 1, 1992, and who has already submitted fingerprints to the department for a national criminal history check and who is renewing his or her license, need only submit the information and fee required for a statewide criminal history check.

Section 43. Amends s. 460.413, F.S., 1998 Supp., relating to disciplinary provisions for chiropractic physicians, to increase the administrative fines from \$2,000 to \$10,000 that the Board of Chiropractic may impose on chiropractic physicians.

Section 44. Amends s. 460.4165, F.S., relating to chiropractic physician assistants, to authorize chiropractic physician's assistants to perform services under the indirect supervision of a chiropractic physician as defined by rule of the Board of Chiropractic and on calls outside of the

office of the chiropractic physician to whom she or he is assigned. The bill provides that the chiropractic practice act does not prevent third-party payors from reimbursing employers of chiropractic physician's assistants for covered services rendered by certified chiropractic physician's assistants. The bill revises the basic program curriculum for certified chiropractic physician's assistants to require at least 200 didactic classroom hours. The bill provides requirements for the licensure of certified chiropractic physician's assistants. Applicants for licensure as a chiropractic physician's assistant must complete an application and pay a fee and: be at least 18 years of age; graduate from an approved program or its equivalent; complete a chiropractic physician's assistant training program; and submit a sworn statement of any prior felony convictions or any previous revocation or denial of licensure or certification in any state or jurisdiction. Requirements for chiropractic physicians to apply to the Department of Health to supervise certified chiropractic physician's assistants pursuant board rule are repealed. A certified chiropractic physician's assistant is authorized to directly supervise a registered chiropractic assistant and other unlicensed persons who are employed or supervised by a chiropractic physician to whom the certified chiropractic physician's assistant is assigned. Renewal procedures for certified chiropractic physician's assistants are established which include completion of 24 hours of continuing education sponsored by an accredited chiropractic college and approved by the board.

Section 45. Creates an undesignated section to provide that persons holding certificates as certified chiropractic physicians' assistants on the effective date of this act need not reapply for certification, but must comply with biennial renewal requirements. The requirement for the completion of the continuing education requirements for biennial renewal of the certificate shall not take effect until the beginning of the next biennial renewal period following the effective date of this act.

Section 46. Amends s. 460.4166, F.S., 1998 Supplement, to revise provisions relating to "registered chiropractic assistant" to conform to changes recognizing the licensure and expanded duties of certified chiropractic physician's assistants to supervise registered chiropractic assistants.

Section 47. Amends s. 461.003, F.S., 1998 Supp., relating to podiatry, to define a "certified podiatric X-ray assistant" to mean a person employed under the direct supervision of a licensed podiatric physician to perform specific radiologic functions.

Section 48. Amends s. 461.006, F.S., 1998 Supp., to revise the podiatric licensure by examination requirements, to require applicants who have not completed a residency in 4 or more years from the filing of their application and who have not practiced for ten continuous years to meet specified requirements which include: the active licensed practice of podiatric medicine in another jurisdiction for at least 2 of the immediately preceding 4 years, or successful completion of a board-approved postgraduate program or board-approved course within the year preceding the filing of the application. For purposes of this licensing requirement, "active licensed practice" is defined to mean the licensed practice of podiatric medicine by podiatric physicians, including employment by any governmental entity, active teaching on the faculty of an accredited school of podiatric medicine, or practicing administrative podiatric medicine.

Section 49. Amends s. 461.007, F.S., 1998 Supp., relating to podiatric license renewal, to revise the podiatric licensing renewal requirements so that any podiatric physician who is renewing his or

her license after January 1, 2000, and who received an initial license in Florida to practice on or before January 1, 1992, must only submit the information required for a statewide criminal history check. The Department of Health is prohibited from delaying the license renewal of any podiatric physician due to the processing of either a statewide criminal history check or a national criminal history background check. Any applicant who has received an initial license to practice in Florida after January 1, 1992, and who has already submitted fingerprints to the department for a national criminal history check and who is renewing his or her license, need only submit the information and fee required for a statewide criminal history check. Applicants are required to show evidence of the active practice of podiatric medicine that includes the active practice of not less than 2 of the immediately preceding 4 years before applying for licensure renewal. If the applicant does not meet the definition, the Board of Podiatric Medicine must require completion of a board-approved course prior to renewal of the license.

Section 50. Amends s. 461.013, F.S., 1998 Supp., relating to disciplinary provisions for podiatric physicians, to increase the administrative fines from \$5,000 to \$10,000 that the Board of Podiatric Medicine may impose on physicians and authorizes the board to fine a podiatric physician who violates the Patient's Bill of Rights by not providing patients with information about their rights and how to file a patient complaint.

Section 51. Creates s. 461.0135, F.S., to provide for the operation of X-ray machines by certified podiatric X-ray assistants. Such podiatric X-ray assistants are exempt from the regulatory provisions for radiologic technicians. The Board of Podiatric Medicine must adopt rules to issue a certificate to any person who successfully completes a board-approved course and passes the examination to be administered by the training authority upon completion of such course.

Section 52. Amends s. 464.008, F.S., relating to nursing licensure examination, to limit the number of times an applicant is permitted to take the examination to 3 consecutive times and requires remedial training approved by the Board of Nursing before any subsequent examination.

Section 53. Amends s. 464.022, F.S., to revise the exceptions to nursing licensure to include individuals enrolled in a Board of Nursing-approved remedial course.

Section 54. Amends s. 465.003, F.S., for purposes of the regulation of the practice of pharmacy, to define "data communication device" to mean an electronic device that receives electronic information from one source and transmits or routes it to another.

Section 55. Amends s. 465.016, F.S., relating to pharmacy, to revise a ground for which a pharmacist is subject to discipline, for placing in the stock of any pharmacy any part of any prescription compounded or dispensed which is returned by a patient, to exclude prescription drugs returned for reuse in a correctional facility in which unit-dose medication is dispensed to inpatients. A pharmacist is subject to disciplinary action for the use or release of a patient's records except as authorized by the pharmacy practice act or ch. 455, F.S. The section increases the administrative fines from \$1,000 to \$5,000 that the Board of Pharmacy may impose on pharmacists.

Section 56. Amends s. 465.014, F.S., relating to pharmacy technicians, to revise a statutory cross-reference.

Section 57. Amends s. 465.015, F.S., relating to violations and penalties of the pharmacy practice act, to revise a statutory cross-reference.

Section 58. Amends s. 465.0196, F.S., relating to special pharmacy permits, to revise a statutory cross-reference.

Section 59. Amends s. 468.812, F.S., relating to the practice of orthotics and prosthetics, to revise a statutory cross-reference.

Section 60. Amends s. 499.003, relating to definitions under the Florida Drug and Cosmetic Act, to revise a statutory cross-reference.

Section 61. Creates a 10-member Task Force for the Study of Collaborative Drug Therapy Management within the Department of Health to determine the States in which collaborative drug therapy management has been enacted, receive testimony of interested parties, and determine the efficacy of collaborative drug therapy management in improving health care outcomes of patients. The task force must hold its first meeting no later than August 1, 1999, and submit its report to the Legislature no later than December 31, 1999. The department must provide staff support for the task force and the members of the task force may not receive compensation, per diem, or reimbursement for travel for any service on the task force.

Section 62. Amends s. 466.021, F.S., relating to employment of unlicensed persons by a dentist, to authorize the Board of Dentistry to prescribe by rule the form of written work orders dentists are required to use when they use the services of any unlicensed person for certain services. The requirement that the work order forms be provided to dentists, at cost, by the Department of Health is deleted.

Section 63. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology, to allow the Department of Health to grant a provisional license to practice speech-language pathology and audiology to applicants who hold either a master's or a doctoral degree with a major emphasis in the appropriate field.

Section 64. Amends s. 468.1215, F.S., relating to speech-language pathology and audiology, to require a bachelor's degree from an accredited college or university with at least 24 semester hours of coursework approved by the Board of Speech-Language Pathology and Audiology for licensure as a speech-language pathology assistant.

Section 65. Amends s. 468.307, F.S., 1998 Supp., relating to radiologic technology, to authorize the Department of Health to establish by rule a subcategory of a certificate limiting the holder to a specific procedure or specified type of equipment.

Section 66. Amends s. 468.506, F.S., 1998 Supp., relating to dietetics and nutrition practice, to delete references to the Agency for Health Care Administration. The regulation of the practice of dietetic and nutrition was transferred from the Agency for Health Care Administration to the department on July 1, 1997.

Section 67. Amends s. 468.701, F.S., 1998 Supp., to revise the definitions, to conform to the creation of the Board of Athletic Training in lieu of the existing Council of Athletic Training and deletes a definition for the Secretary of Health.

Section 68. Amends s. 468.703, F.S., 1998 Supp., relating to the Council of Athletic Training, to create the Board of Athletic Training which consists of nine members appointed by the Governor and confirmed by the Senate. Five board members must be licensed athletic trainers. Two members of the board must be consumers who are Florida residents. The consumer members of the board must have never worked as an athletic trainer, have no financial interest in the practice of athletic training, and have never been a licensed health care practitioner. The remaining members of the board must include a licensed medical physician or licensed osteopathic physician, and a licensed chiropractic physician. The terms of appointment for the initial members of the board are staggered. All parts of part II of chapter 455, F.S., relating to activities of the board shall apply and the board must maintain its official headquarters in Tallahassee.

Section 69. Amends s. 468.705, F.S., 1998 Supp., to grant rulemaking authority to the newly created Board of Athletic Training and to give the newly-created Board of Athletic Training specific rulemaking authority to adopt rules relating to licensure requirements, licensure examination, continuing education requirements, fees, records and reports to be filed by licensees, protocols, and any other requirements necessary to regulate the practice of athletic training.

Section 70. Amends s. 468.707, F.S., 1998 Supp., relating to athletic training licensure by examination, to make changes to conform to the newly created Board of Athletic Training.

Section 71. Amends s. 468.709, F.S., relating to fees for athletic training, to make changes to conform to the newly created Board of Athletic Training.

Section 72. Amends s. 468.711, F.S., 1998 Supp., relating to athletic training licensure renewal, to make changes to conform to the newly created Board of Athletic Training.

Section 73. Amends s. 468.719, F.S., 1998 Supp., relating to disciplinary actions, to make changes to conform to the newly created Board of Athletic Training.

Section 74. Amends s. 468.721, F.S., relating to saving clauses, to provide that the Department of Health rules remain in effect pending adoption of rules by the newly created Board of Athletic Training and to make other minor technical changes.

Section 75. Amends s. 20.43, F.S., 1998 Supp., relating to the organization of the Department of Health, to include the Board of Athletic Training created under part XIII of ch. 468.

Section 76. Creates an undesignated section to provide that the Council of Athletic Training and the terms of its members are terminated on July 1, 1999. The termination of the council does not preclude the Governor from considering any former council member for appointment to the Board of Athletic Training.

Section 77. Amends s. 468.805, F.S., relating to licensing requirements to practice of orthotics and prosthetics, to provide that any applicant who successfully completed prior to March 1, 1998,

at least one-half of the examination required for national certification and successfully completed the remaining portion of the examination and became certified before July 1, 1998, for purposes of the licensure requirements shall be considered as nationally certified by March 1, 1998.

Section 78. Amends s. 468.806, F.S., relating to the practice of orthotics and prosthetics, to authorize the Board of Orthotists and Prosthetists to approve continuing education providers and to set a fee for the approval process of the providers.

Section 79. Amends s. 478.42, F.S., to revise the definition of “electrolysis or electrology” to mean the permanent removal of hair by destroying the hair-producing cells using equipment and devices approved by the Board of Medicine and cleared by and registered with the United States Food and Drug Administration.

Section 80. Amends s. 483.807, F.S., 1998 Supp., relating to clinical laboratory personnel, to authorize the Department of Health to assess an initial application fee for approval of laboratory training programs.

Section 81. Amends s. 483.809, F.S., relating to clinical laboratory personnel, to authorize the Board of Clinical Laboratory Personnel to by rule designate a national certification examination that may be accepted in lieu of the state examination for clinical laboratory personnel or public health scientists. The registration requirements for trainees is revised to authorize the Department of Health to provide for the registration of clinical laboratory personnel trainees who are enrolled in an approved-training program.

Section 82. Amends s. 483.812, F.S., relating to public health laboratory scientists, to authorize the Department of Health to license applicants at the director level in the category of public health to qualify for clinical laboratory director licensure. Applicants at the supervisor level in the category of public health who are certified by the National Registry in Clinical Chemistry or the American Society for Microbiology, licensed as a technologist, and have 5 years of pertinent clinical laboratory experience may qualify by passing the state-administered supervision and administration examination. Licensure requirements for technician in the category of public health are revised so that, in lieu of a one-time, 3-year conditional public health technician license, applicants may obtain a 2-year license which may be renewed once.

Section 83. Amends s. 483.813, F.S., relating to clinical laboratory personnel licensure, to eliminate the Department of Health’s authority to grant a 3-year conditional license.

Section 84. Amends s. 483.821, F.S., relating to clinical laboratory personnel, to authorize the Board of Clinical Laboratory Personnel to adopt rules to provide for continuing education or retraining requirements for candidates failing an examination two or more times.

Section 85. Amends s. 483.824, F.S., relating to clinical laboratory personnel, to revise the requirements for licensure of a clinical laboratory director to require, in addition to meeting other requirements, that the director be nationally certified if she or he holds an earned doctoral degree in a chemical, physical or biological science from an accredited institution.

Section 86. Amends s. 483.825, F.S., relating to clinical laboratory personnel, to add a ground for which a licensee is subject to discipline if he or she has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, to a crime in any jurisdiction which directly relates to the activities of clinical laboratory personnel or involves moral turpitude or fraudulent or dishonest dealing. Failure to report a conviction or disciplinary action taken by another jurisdiction within 30 days may subject a licensee to discipline. The record of a conviction certified or authenticated as admissible evidence under the laws of Florida shall be admissible as prima facie evidence of such guilt. The bill provides additional disciplinary violations for clinical laboratory personnel which include: violating a previous order of the Board of Clinical Laboratory Personnel; failing to report violations under the regulations; making or filing a false report; paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split fee arrangement with a physician, organization, agency, or person, for patients referred to providers of health care goods and services; exercising influence on a patient or client for exploitation of the patient or client or for financial gain; practicing or offering to practice beyond the scope permitted by law or rule, or accepting or performing professional services or responsibilities which the licensee knows that he or she is not competent to perform; improperly interfering with an investigation or any disciplinary proceeding; engaging or attempting to engage in sexual misconduct, causing undue embarrassment or using disparaging language of a sexual nature towards a patient, exploiting superior/subordinate, professional/patient, instructor/student relationships for personal gain, sexual gratification, or advantage.

Section 87. Amends s. 483.901, F.S., 1998 Supp., relating to medical physicists, to eliminate the Department of Health's authority to issue a temporary license to applicants pending completion of the application process for board certification and to make a correction to a reference to the Medical Quality Assurance Trust Fund.

Section 88. Amends s. 484.007, F.S., relating to opticianry, to revise the requirements for the supervision of an apprentice, to require the optician who supervises an apprentice to be a Florida-licensed optician who has been licensed for at least one year.

Section 89. Amends s. 484.0512, F.S., to require hearing aid specialist to provide a refund to consumers within 30 days of the return or attempted return of the hearing aid.

Section 90. Amends s. 484.053, F.S., relating to hearing aid specialists, to increase the penalty for the unlicensed practice of the profession from a second-degree misdemeanor punishable by jail time up to 60 days and a \$500 fine to a third-degree felony punishable by up to 5 years in prison and a fine of \$5,000.

Section 91. Amends s. 484.056, F.S., 1998 Supp., relating to hearing aid specialists, to revise a statutory reference.

Section 92. Amends s. 486.041, F.S., relating to physical therapy, to eliminate the Department of Health's authority to issue a temporary permit to practice physical therapy for licensure applicants pending the results of their licensure examination.

Section 93. Amends s. 486.081, F.S., relating to physical therapy licensure by endorsement, to eliminate the Department of Health's authority to issue a temporary permit to practice physical therapy for licensure applicants pending the results of their licensure examination.

Section 94. Amends s. 486.103, F.S., relating to physical therapy assistants, to eliminate the Department of Health's authority to issue a temporary permit to practice physical therapy for licensure applicants pending the results of their licensure examination.

Section 95. Amends s. 486.107, F.S., relating to physical therapy assistant licensure by endorsement, to eliminate the Department of Health's authority to issue a temporary permit to practice physical therapy for licensure applicants pending the results of their licensure examination.

Section 96. Amends s. 490.005, F.S., 1998 Supp., relating to psychology licensure by examination requirements, to revise an alternate path to become a licensed psychologist for persons who have received and submitted to the Board of Psychology, before July 1, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the U.S. Department of Education. The alternate path is limited to persons who were enrolled in a program that the board determined was comparable to standards of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the U.S. Department of Education before October 1, 1995. Under the revision, the time that the applicant must submit the certification of the doctoral-level training to the board has been extended from July 1, 2001 to August 31, 2001. In addition, the applicant must meet training requirements that are certified as comparable by the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the U.S. Department of Education rather than have the comparability of the training be determined by the Board of Psychological Examiners before 1995.

Section 97. Amends s. 490.006, F.S., relating to psychology licensure by endorsement, to require the Department of Health to license a psychologist who otherwise meets licensure requirements and holds a doctoral degree in psychology and who has a least 20 years of experience as a licensee in any jurisdiction of the United States within 25 years preceding the date of application.

Section 98. Amends s. 490.0085, F.S., relating to psychology, to correct references to the Medical Quality Trust Fund.

Section 99. Amends s. 490.0148, F.S., relating to psychology and school psychology, to provide that a patient's psychological report may be released to an employer or carrier, or an attorney pursuant to claims for worker's compensation under s. 440.13, F.S.

Section 100. Amends s. 491.0045, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling, to specify that applicants who register as interns on or before December 31, 2001, and who otherwise meet the education requirements in effect on December 31, 2000, are deemed to have met the educational requirements for licensure for the profession for which he or she has applied. The extension will allow the new educational

requirements for these mental health professionals that are currently in effect under s. 491.005, F.S., to remain in effect concurrently with new regulations for licensure examination which becomes effective January 1, 2001.

Section 101. Amends s. 491.0046, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling, to allow applicants applying for licensure by examination or endorsement who have met minimum education requirements by holding an earned graduate degree in social work, marriage and family therapy, mental health counseling, or a closely related field to practice with a provisional license while satisfying additional coursework or examination requirements for licensure. The minimum educational requirements include: for clinical social work, a minimum of 15 semester hours or 22 quarter hours; for marriage and family therapy, ten of the courses required for licensure as determined by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, and at least 6 semester hours or 9 quarter hours of course credits in the area of marriage and family systems, theories, or techniques; for mental health counseling, a minimum of seven courses required for licensure.

Section 102. Amends s. 491.005, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling licensure by examination requirements, to revise the educational requirements for clinical social work to require 32 quarter hours of coursework instead of 37 quarter hours but no more than one course in research. For the purposes of dual licensure, the Department of Health must license as a marriage and family therapist any person who holds a valid license as a psychologist, clinical social worker, mental health counselor, or advanced registered nurse practitioner who otherwise meets the requirements of s. 491.0057, F.S. The Department of Health is granted authority to collect a fee that may not exceed those stated in this subsection for issuance of a dual license. An individual who is registered as an intern and has satisfied all of the educational requirements for the profession for which the applicant is seeking licensure must be certified as having met the educational requirements for licensure. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is granted authority to adopt rules necessary to implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 103. Effective January 1, 2001, amends s. 491.005, F.S., as amended by s. 13 of ch. 97-198, Laws of Florida, and s. 205 of ch. 97-264, L.O.F., relating to clinical social work, marriage and family therapy, and mental health counseling licensure by examination requirements, to provide that the additional educational requirements will change graduate coursework hours for mental health counseling requirements from 36 semester hours to 33 semester hours and from 48 quarter hours to 44 quarter hours. Coursework requirements are clarified to require applicants to take two courses, one in human sexuality and another course in substance abuse. The required content areas of coursework is revised from a total of 12 content areas to 11 content areas. For applicants who have completed the internship practicum or field experience, the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is allowed to approve equivalency of the 1,000 hour university-sponsored supervised clinical practicum, internship, or field experience.

Section 104. Amends s. 491.006, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling, to allow applicants to take the required licensure

examination in Florida and also qualify for licensure by endorsement in the profession for which the applicant seeks licensure.

Section 105. Amends s. 491.0085, F.S., relating to approval of continuing education for clinical social work, marriage and family therapy, and mental health counseling, to require that laws and rules courses for licensure and continuing education, and their providers must be approved by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, to conform to the department's objective to allow such providers to test the applicants for the courses offered.

Section 106. Amends s. 491.014, F.S., 1998 Supp., relating to clinical social work, marriage and family therapy, and mental health counseling, to revise the exemption from licensure for nonresidents who offer services in Florida that are comparable to those provided by licensees, to allow such services to be performed for no more than 15 days in any calendar year.

Section 107. Amends s. 499.012, F.S., 1998 Supp., to revise the definition of "wholesale distribution" of prescription drugs for purposes of ch. 499, F.S., the Florida Drug and Cosmetic Act, to exempt the sale, purchase, trade, or other transfer of a prescription drug from or for a federal, state, or local government agency or any entity eligible to purchase prescription drugs at public health services prices under the Veteran's Health Care Act, to a contract provider or its subcontractor for eligible patients of the entity under specified conditions. The agency or entity must obtain written authorization for the sale, purchase, trade, or other transfer of a prescription drug from the Secretary of the Department of Health. The contract provider or subcontractor must be authorized by law to administer or dispense prescription drugs. The contract provider and subcontractor must maintain separate drug inventories and maintain and provide immediate inspection of all records of transfer of all prescription drugs belonging to the entity. The contract provider must either administer or dispense the prescription drugs only to eligible patients of the agency or entity or must return the prescription drugs for or to the agency or entity. Any prescription drugs transferred by the contract provider or subcontractor may not be billed to Medicaid. All records relating to prescription drugs of a manufacturer under this exception to the definition of "wholesale distribution" must be subject to audit by the manufacturer of those drugs, without identifying individual patient information. The entity must conduct its distribution activities in accordance with s. 499.014(5), F.S., which authorizes the Department of Health to issue permits to restricted prescription drug distributors and to adopt rules for the distribution of prescription drugs by hospitals, health care entities, charitable organizations, or other persons not involved in wholesale distribution. Other minor and technical changes are made to the language in s. 499.012, F.S., providing exceptions to the definition of "wholesale distribution."

Section 108. Amends s. 626.883, F.S., to provide that all fiscal intermediaries are required to include a detailed explanation of benefits for payments to a health care provider.

Section 109. Amends s. 641.316, F.S., 1998 Supp., to provide that all fiscal intermediaries are required to include a detailed explanation of benefits for payments to a health care provider.

Section 110. Creates an undesignated section to create the Task Force on Telehealth to be appointed by the Secretary of the Department of Health. The task force must address: identification of electronic communications or telecommunication technologies used to provide

health care information; identification of laws, regulations, and reimbursement practices that serve as barriers to implementation of electronic communications; recommendation of the appropriate level of regulation of health care professionals necessary to protect the health and safety of patients in Florida, including an analysis of Florida's requirements for licensing, financial responsibility, and malpractice insurance; potential constitutional issues involving preemption of state regulation under the Commerce Clause of the United States Constitution; potential antitrust concerns; the effect of regulations by other states or jurisdictions on health care professionals in Florida who provide consultative services through telehealth to entities and patients outside Florida; research on other public and private data and initiatives related to telehealth; and other issues affecting the health, safety, and welfare of patients through telehealth identified by the task force. The task force must submit a report of its findings and recommendations to the Governor, and the Legislature by January 1, 2000.

Section 111. Section 468.352, F.S., relating to respiratory care, to revise the definition of "board" to mean the Board of Respiratory Care.

Section 112. Section 468.353, F.S., relating to respiratory care, to delete references to the Advisory Council on Respiratory Care. The newly created Board of Respiratory Care is granted rulemaking authority to administer the regulation over respiratory care practitioners and specific authority is granted to adopt rules governing the investigation, inspection, and review of schools and colleges that offer courses in respiratory care in order to ascertain their compliance with standards established by the board or appropriate accrediting agencies.

Section 113. Section 468.354, F.S., relating to respiratory care, to create the seven-member Board of Respiratory Care appointed by the Governor and confirmed by the Senate. The board must include a registered respiratory therapist, a certified respiratory therapist, a respiratory care professional from specified practice areas and two consumers who are residents of Florida and have never been licensed as health care practitioners. Each member of the board must have been actively engaged in the delivery of respiratory care services in Florida for at least 4 years before appointment. A staggering of the terms of the board members is provided. All provisions of part II of ch. 455, F.S., relating to boards applies to the board's activities.

Section 114. Section 468.355, F.S., relating to respiratory care, to revise the licensing requirements for respiratory care practitioners to eliminate a grandfather clause for applicants who were employed as a respiratory care practitioner or respiratory therapist on October 1, 1984.

Section 115. Section 468.357, F.S., relating to respiratory care, authorizes the newly created board to adopt rules for licensure by examination applicants. Examination requirements are revised to conform to the Department of Health's objective to have the provider of the examination administer the licensure examination. A grandfather clause for persons employed in Florida as respiratory therapy technician or respiratory therapist on or before September 30, 1983 is deleted.

Section 116. Section 468.364, F.S., 1998 Supp., relating to respiratory care, deletes the examination fee to conform to the Department of Health's objective to have the provider of the examination administer the licensure examination.

Section 117. Section 468.365, F.S., 1998 Supp., relating to respiratory care, deletes a reference to the Advisory Council on Respiratory Care, to conform to the bill's creation of the Board of Respiratory Care.

Section 118. Section 400.462, F.S., relating to home health agencies, to provide a definition for "home health aide" to mean a person who has accomplished training required by the Agency for Health Care Administration and is authorized to provide hands-on-care, including assisting the patient in the activities of daily living, such as dressing, grooming, bathing, eating, and personal hygiene, and assisting with physical transfers. Nurse registries are authorized to refer home health aides for in-home care. The section is amended to repeal a requirement for nurse registries to register as a provider of domestic maid services, sitter services, companion services, or homemaker services.

Section 119. Section 400.506, F.S., 1998 Supp., relating to regulation of nurse registries, to authorize nurse registries to refer home health aides for in-home care. The section is amended to repeal a requirement for nurse registries to register as a provider of domestic maid services, sitter services, companion services, or homemaker services in order to refer for contracted services in a private residence a certified nursing assistant or the provider of domestic maid services, sitter services, companion services, or homemaker services as required under s. 400.509 (1), F.S.

Section 120. Amends s. 464.016, F.S., relating to nursing, to prohibit the use of the name or title "nurse" or any other name or title which implies that a person was licensed or certified as a "licensed practical nurse," "registered nurse," or "advanced registered nurse practitioner." A violation of the section constitutes a first-degree misdemeanor punishable by up to 1 year in jail and a fine up to \$1,000.

Section 121. Amends s. 458.3115, F.S., 1998 Supp., relating to an alternate licensing path for foreign-licensed physicians to become licensed to practice in Florida, to revise the period of time that the applicants may sit for and pass the required combination of medical licensure examinations from the year 2000 to 2002. The requirements are revised to allow the applicants to document no less than 2 years of the active practice of medicine in any jurisdiction rather than another jurisdiction.

Section 122. Amends s. 458.3124, F.S., 1998 Supp., relating to an alternate licensing path for foreign-licensed physicians, to extend the application period from December 31, 1998, to December 31, 2000.

Section 123. Amends s. 301 of ch. 98-166, L.O.F., to revise the fee that the Department of Health may charge examinees under an alternate licensure path for foreign-licensed physicians from the actual cost of the examination to a fee that does not exceed 25 percent of the cost of the actual costs of the first examination administered pursuant to s. 458.3115, F.S., 1998 Supp., and a fee not to exceed 75 percent of the actual costs for any subsequent examination administered pursuant to that section.

Section 124. Amends s. 455.601, F.S., relating to hepatitis B or HIV carriers, to provide a presumption that any person licensed by the Department of Health and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption

that the illness was contracted in the course and scope of his or her employment when the person reports one or more specific significant exposures to the infection as defined in s. 381.004, F.S. The employer may rebut the presumption by the preponderance of evidence. Except as expressly provided in this subsection, there shall be no presumption that such infection is a job-related illness.

Sections 125-126. Create ss. 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828, F.S., part XV, chapter 468, Florida Statutes, to require the Department of Health to regulate the practice of certified nursing assistants in Florida. The bill provides requirements for certification. Additionally, the department is authorized to deny, suspend, or revoke certification of certified nursing assistants and to impose administrative penalties for the commission of prohibited acts specified in the newly created part. The sections: authorize the department to issue a letter of exemption from disqualification of certification; require the department to maintain a registry of certified nursing assistants; provide for a first-degree misdemeanor penalty for a certified nursing assistant or applicant for certification who makes any false statement or fails to disclose information with respect to any voluntary or paid employment or licensure as a certified nursing assistant; give the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration and the child abuse screening system maintained by the Department of Children and Families; require each employer of certified nursing assistants to submit to the Department of Health a list of names and social security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months; exempt an employer who terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination or denial; provide that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall remain open and available to the public; authorize the department to adopt rules for the implementation of part XV, chapter 468, F.S.; and require employers of certified nursing assistants to submit the names and social security numbers of certified nursing assistants for a registry.

Section 127. Amends s. 400.211, F.S., 1998 Supp., relating to certified nursing assistants, to delete certification requirements for CNAs which are replaced by those specified in the newly created pt. XV of ch. 468, F.S., sections 125-126 of the bill, and make other conforming changes to include references to pt. XV of ch. 468, F.S.

Section 128. Amends s. 490.003, F.S., relating to psychology, to revise the definition of “psychologist” which means a person licensed under ch. 490, F.S., to “psychologist or psychological physician.”

Section 129. Amends s. 465.017, F.S., relating to pharmacy, to expand the parties to which, and circumstances under which, a pharmacist may release a patient’s prescription records without the patient’s written authorization. Under the section as amended, a pharmacist may release patient prescription records to health care practitioners and pharmacists consulting with or dispensing to

the patient and to insurance carriers or other payors authorized by the patient to receive the records. For purposes of s. 465.017, F.S., the section as amended, provides that records held in a pharmacy shall be considered owned by the owner of the pharmacy. The pharmacy owner is authorized to use such records internally in the aggregate without patient identification data, regardless of where such records are held, for purposes reasonably related to the business and practice of only that pharmacy. Legislative intent is provided that the use and sharing of patient prescription records is to improve patient care and may not be construed to authorize or expand solicitation or marketing to patients or potential patients in any manner not specifically authorized by law. Legislative intent is provided to allow the use and sharing of such records to improve patient care, if the pharmacist acts in the best interest of his or her patient.

Section 130. Provides an effective date of July 1, 1999, unless otherwise provided herein.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill limits the Department of Health's requirements to provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key to only the applicant's examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, to only the parts of the examination the applicant failed. This limitation creates an exemption to the requirements of the Public Records Law which may only pass in a bill that relates to the public records exemptions pursuant to Article I, Subsections 24(a) and (b) of the Florida Constitution.

The bill deletes the exemption to the Public Records Law making confidential patient records and insurance information obtained by the Department of Health for the purpose of disciplinary proceedings in s. 455.667(7), F.S., 1998, Supp. Section 455.667(8), F.S., 1998 Supp., exempts all patient records obtained by the department and any other documents maintained by the department which identify the patient by name from the public records law and requires that such records may be used solely for the purpose of the department and the appropriate board in its investigation, prosecution, and appeal of disciplinary proceedings. Under the bill, the department is authorized to obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to subpoena without written authorization from the patient, if the department and probable cause panel of the appropriate board find reasonable cause to believe that a health care practitioner has submitted fraudulent insurance claims, used information from a written automobile report to solicit or obtain patients personally or through an agent regardless of whether the information is from another person, solicited patients fraudulently, received a kickback, violated the patient brokering laws, or presented a false or fraudulent insurance claim, and also find that

patient authorization cannot be obtained. It is unclear whether this will require additional resources by the department to redact patient names and identifiers.

The bill prohibits the Department of Health from including in any practitioner's profile, disciplinary action taken by a licensed hospital or an ambulatory surgical center in the practitioner profile. It is unclear whether this limitation on access to disciplinary records maintained by the Department of Health creates an exemption to the public records laws. Such records are public to the extent the records are filed with the department by a practitioner and are not currently subject to a specific public records exemption.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill amends s. 464.016, F.S., relating to nursing, to prohibit the use of the name or title "nurse" or any other name or title which implies that a person was licensed or certified as a "licensed practical nurse," "registered nurse," or "advanced registered nurse practitioner." A violation of the section constitutes a first-degree misdemeanor punishable by up to 1 year in jail and a fine up to \$1,000. To the extent persons are legally authorized to provide services comparable to the definition of the practice of nursing, the provisions prohibiting the use of the title, "nurse" raise potential constitutional issues. Applicable case law has held that, as long as commercial speech describes lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protections of the First Amendment of the United States Constitution. To regulate or ban commercial speech, the government must have substantial governmental interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends. In enacting or enforcing a restriction on commercial speech, the government need not select the least restrictive means, but rather must tailor its restriction to meet the desired objective. Applicable caselaw describes various regulatory safeguards which the state may impose in place of the total ban on commercial speech, such as requiring a disclaimer to ensure that the consumer is not misled. See *Abramson v. Gonzalez* 949 F.2d 1567 (11th Cir. 1992).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians who are renewing their licenses after January 1, 2000, and who received their initial license to their profession in Florida on or before January 1, 1992, will no longer incur the costs

associated with a national criminal history check as part of the profiling requirements. The Department of Health estimates 33,605 renewal applicants (27, 852 medical physicians; 2,331 osteopathic physicians; 2,590 chiropractic physicians; and 832 podiatric physicians) will no longer be subject to a \$24 fee per applicant for the national criminal history check. The Department of Health estimates it will no longer collect a total of \$860,520 to implement the national criminal history check.

Under the bill, 16, 408 physician licensure renewal applicants who were initially licensed after January 1, 1992, must undergo and pay the costs for a federal criminal history check once after the effective date of the bill and must undergo and pay the costs for a statewide criminal history check for every license renewal. Cost for a statewide criminal history check is estimated at \$15; the cost for a federal criminal history check is estimated at \$24; and a 7 percent general revenue fee of \$3 is assessed, for a total processing cost of \$42. The department will collect \$689,136 to process the criminal history checks for 16,408 physicians initially licensed after January 1, 1992.

C. Government Sector Impact:

The Department of Health estimates that the costs of per diem and travel associated with two additional board members for the newly created Board of Athletic Training will be \$7,852 for 1999-2000 and \$6,560 for 2000-2001. The Department's estimate is based on per diem at \$50 per day (13 days for 1999-2000 and 11 days for 2000-2001) and an average of \$546 per trip (board members attend an average of five meetings per year).

The Department of Health estimates that the costs of per diem and travel associated with two additional board members for the newly created Board of Respiratory Care will be \$7,852 for 1999-2000 and \$6,560 for 2000-2001. The Department's estimate is based on per diem at \$50 per day (13 days for 1999-2000 and 11 days for 2000-2001) and an average of \$546 per trip (board members attend an average of five meetings per year).

The Department of Health will incur costs to implement the newly created regulation of certified nursing assistants. As of June 30, 1998, certified nursing assistants incurred a deficit of \$436,615 in the trust fund used by the Department of Health to implement their registration. To implement the bill's requirements to regulate CNA's, the department estimates it will need 6 positions and \$1,635,707 (\$181,122 recurring) in fiscal year 1999-2000 and \$373,407 in fiscal year 2000-2001. To implement the provisions of the bill that involve the operation of the electronic database for the registry, the department indicated it needs 2 positions and non-recurring expenses equal to \$1,272,164 and recurring expenses equal to \$142,101.

VI. Technical Deficiencies:

Section 20.43, F.S., relating to the Department of Health's organization and requirements on boards therein, needs to be amended to include the newly created Board of Respiratory Care. The bill does not provide a savings clause to keep existing rules applicable to the regulation of respiratory care practitioners.

VII. Related Issues:

For purposes of s. 465.017, F.S., the bill provides that records held in a pharmacy shall be considered owned by the owner of the pharmacy. This requirement appears to conflict with s. 455.667, F.S., which provides that pharmacists and pharmacies are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of that section to maintain those documents required by the part or chapter under which they are licensed or regulated. Chapter 465, F.S., does not mention or recognize the “pharmacy owner,” although the chapter does specify requirements for a pharmacy to be permitted by the Department of Health under ss. 465.018 and 465.019, F.S. To be consistent, the bill should provide that the pharmacy permitholder shall be considered the custodian of records maintained in a pharmacy for purposes of s. 465.017, F.S.

Experts have raised concerns regarding recent prescription drug marketing practices and their impact on medical privacy. Several large drug store chains and thousands of independent pharmacies have been providing confidential patient information to a direct mail advertising firm that profiles and targets patients who do not refill prescriptions. The collection and sharing of patient prescription records may be intrusive to the extent many inferences may be drawn regarding the medical condition and treatment of the patient from prescription records. “The Washington Post reports that direct marketing is part of a far-reaching move by drug manufacturers and pharmacies across the country to make greater use of medical information, new technology and sophisticated marketing techniques to sell more drugs.” (*American Healthline* 2/17/98) Recent articles in the *American Healthline* 3/26/98 have reported that patients who received direct mail advertising about their prescriptions filed a class-action lawsuit in federal district court against three firms, CVS Corp. (a pharmacy), Glaxo Wellcome Inc. (a pharmaceutical manufacturer) and Elensys Care Services, Inc. (a direct-mail house that conducted the mailing) alleging that the use of their names was a breach of fiduciary duty and requested that the court halt the practice. The *Wall Street Journal* reported that CVS sent to certain pharmacy customers, letters inviting them to try an antismoking patch developed by Glaxo Wellcome, Inc., if they had failed to quit smoking using other means. For the promotion, the names were provided by CVS from its prescription files and processed by Elensys. According to *American Healthline* 2/17/98, “Elensys receives prescription information on millions of individuals from 15,000 pharmacies each week, using ‘some of the most sophisticated computer equipment available’ to profile patients and send them ‘educational materials’ about drugs available for their conditions. CVS Corp. and Giant Food Inc. are two pharmacy chains in the Washington, DC, area that send information to the firm.”

The bill increases the penalty for the unlicensed practice of hearing aid specialists from a second-degree misdemeanor punishable by jail time up to 60 days and a \$500 fine to a third-degree felony. Violations of the provision subject the person to imprisonment for up to 5 years and a fine up to \$5,000. Section 921.001, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for the unlicensed practice of hearing aid specialist, it may have a fiscal impact based on its impact on the overall prison

population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
