

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 507 Health Care/Disclosure of Credentials
SPONSOR(S): Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2066 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)	7 Y, 0 N	Mitchell	Collins
2) Health Care			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 507 imposes requirements on all licensed health care practitioners to advise patients and the public of their licensure, specialty recognition and postgraduate training. It imposes limitations on the Board of Medicine and medical physicians licensed by the board in using the term "board certified."

The bill requires specific licensure information to be included in all advertisements and patient interactions by health care practitioners outside of hospitals and nursing homes. It provides grounds for discipline of a health care practitioner for failure to fully disclose medical licensure, postgraduate education and scope of practice to patients in advertisements and on informed consent forms.

The bill also limits which physicians can advertise as board certified specialists. It requires medical physicians licensed under ch. 458, F.S., who hold themselves out as board-certified specialists to have successfully completed residency programs approved by the American Board of Medical Specialties. The bill limits Board of Medicine rulemaking authority to interpret board certification.

The Department of Health licenses over 700,000 health care practitioners and entities. Each practitioner is subject to the grounds for discipline listed in individual practice acts as well as Chapter 456, F.S. Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising. Many of the regulatory boards already have rules regarding what constitutes misleading advertising. The Board of Medicine Rule, 64B8-11, F.A.C., imposes requirements and limitations on licensees using the term "board certified" in their advertising.

The bill provides an effective date of July 1, 2003.

The Department of Health has identified concerns with provisions of the bill that are not clearly defined and which may conflict with existing provisions of statute. See Section IV. of the bill analysis for additional comments.

On April 10, 2003, the Health Standards Subcommittee adopted five amendments and reported the bill favorably to the Committee on Health Care. See Section IV. AMMENDMENTS/COMMITTEE SUBSTITUTE CHANGES for details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0507a.hc.doc
DATE: April 11, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill increases requirements on physicians and other health care providers to disclose additional information about their credentials in their forms and advertisements and increases the enforcement responsibility of the Department of Health.

B. EFFECT OF PROPOSED CHANGES:

HB 507 concerns advertising by health care practitioners. The bill requires certain licensure information be included in all advertisements and patient interactions outside of hospitals and nursing homes. The bill also places limitations on which physicians may advertise as board certified specialists and places limitations on the rulemaking authority of the Board of Medicine to interpret board certification.

The bill imposes requirements on all licensees to advise patients and the public of their licensure, specialty recognition and postgraduate training. It imposes limitations on the Board of Medicine and medical physicians licensed by the board in using the term “board certified.”

The bill requires specific licensure information to be included in all advertisements and patient interactions by health care practitioners outside of hospitals and nursing homes. It provides or revises the grounds for discipline of a health care practitioner for failure to fully disclose medical licensure, postgraduate education and scope of practice to patients, in advertisements and on informed consent forms.

The bill also limits which physicians can advertise as board certified specialists. It requires medical physicians licensed under ch. 458, F.S., who hold themselves out as board-certified specialists to have successfully completed residency programs approved by the American Board of Medical Specialties . The bill limits Board of Medicine rulemaking authority to interpret board certification.

PRESENT SITUATION:

The Department of Health licenses over 700,000 health care practitioners and entities. Each practitioner is subject to the grounds for discipline listed in individual practice acts as well as Chapter 456, F.S.

Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee’s profession. In addition, the grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising.

Many of the regulatory boards have rules regarding what constitutes misleading advertising.

The Board of Medicine Rule, 64B8-11, F.A.C., imposes requirements and limitations on licensees using the term “board certified” in their advertising.

EFFECTS OF THE BILL:

HB 507 provides findings that there is a compelling state interest that patients are informed of the credentials of the health care practitioners who treat them and that the public is protected from misleading health care advertising. The findings include that the American Council on Graduate Medical Education and the American Board of Medical Specialties are the recognized medical certification organizations.

Discipline all practitioners who fail to disclose licensure:

The bill amends s. 456.072, F.S to create two additional grounds for discipline for all practitioners while practicing outside of a licensed facility. The licensed facilities exempted in the bill are those licensed under ch. 395, F.S., (hospitals or and ambulatory surgical care centers) and those licensed under ch. 400, F.S., (nursing homes). The two grounds for discipline added by the bill are: failing to provide to a patient or in an advertisement the type of license under which that health care practitioner is operating; and providing a professional opinion without informing of the patient the type of license under which that health care practitioner is operating and the scope of the health care practitioner's practice.

The purpose of the bill to provide patients with additional information to enable them to make informed decisions when choosing a health care provider will help empower citizens to choose safe and qualified practitioners.

According to the Department of Health, however, the terms "advertisement," "professional opinion," and "scope of the health care practitioner's practice," are not defined and may cause confusion to providers and patients. The department can not determine whether these additional grounds for discipline will result in an increased number of complaints and disciplinary action against practitioners.

The department has identified the concern that the proposal does not define how the practitioner must communicate the provisions to patients. The bill does not provide for emergency situations, patients who do not speak English or patients who are not able to communicate. The department is concerned that no rulemaking authority is granted to implement these provisions.

The bill exempts practitioners in hospitals and nursing homes, but does not exempt practitioners in other facilities such as mental health or other facilities where such communication may be difficult.

Reenact grounds for disciplinary actions of each practice act:

The bill reenacts the grounds for disciplinary provisions of each health care practice act for acupuncture, medical practice, osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathy, optometry, nursing, pharmacy, dentistry, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthics, electrolysis, massage practice, clinical laboratory personnel, medical physicists, dispensing of optical devices and hearing aids, physical therapy practice, psychological services, and clinical, counseling, and psychotherapy services, in ss. 457.109, 458.3135, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 467.203, 468.1295, 468.1755, 468.217, 468.365, 468.518, 468.719, 468.811, 478.52, 480.046, 483.825, 483.901, 484.014, 484.056 486.125, 490.009, and 491.009, F.S.

Limit board certification of physicians:

The bill also amends sections of ch. 458, F.S., relating to medical physicians licensed by the Board of Medicine, to establish a clear standard for using the term "board certified" in an advertisement.

The bill amends s. 458.309, F.S., to limit certification authority to the American Board of Medical Specialties. The standard for board certification is successful completion of a residency program in that specialty accredited by the American Council on Graduate Medical Education.

According to the department of health the effect of the bill will be to change the way the term "board certified" is determined for medical doctors by limiting the authority of the Board of Medicine to make that determination to the specified parameters of education and training provided in the bill.

The department is concerned that the bill does not make clear whether the changes to board certification recognition are prospective or retroactive. According to the department the bill will affect practitioners and specialty boards that grant certification if a practitioner or specialty board currently meets the requirements for board certification recognition, but do not meet the requirements of the proposed bill.

The bill amends s. 458.331, F.S., to require all medical doctors to affirmatively state whether or not they are board certified in any advertisement or informed consent form and limiting such certification authority to only the American Board of Medical Specialties. Only completed programs approved by the American Council on Graduate Medical Education (ACGME) may be listed as postgraduate education.

According to the department these provisions of the bill will require medical physicians who are not board certified by the American Board of Medical Specialties (ABMS) to state "I am not board certified." According to the department, based on current interpretations of what constitutes physician advertising, this will have the effect of requiring that physicians affirmatively state "I am not board certified" in all advertisements, including letterheads, telephone book listings and signs.

The bill also amends s. 458.3312, F.S., to specifically prohibit medical physicians licensed by the Board of Medicine from holding themselves out as a board-certified specialist unless they have successfully completed a residency program in that specialty accredited by the American Council on Graduate Medical Education.

Effective date:

The bill provides that it shall take effect July 1, 2003.

According to the department this effective date may not provide adequate time for medical doctors to change advertisements, letterheads, forms and signs to meet the requirements of the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 456.072, F.S., relating to health professions and occupations, to provide that failure of a health care practitioner to disclose medical licensure in advertisements and to patients, and failure to disclose scope of practice when providing a professional opinion, are grounds for discipline.

Sections 2-29. Reenact the grounds for disciplinary provisions of each health care practice act in ss. 457.109, 458.3135, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 467.203, 468.1295, 468.1755, 468.217, 468.365, 468.518, 468.719, 468.811, 478.52, 480.046, 483.825, 483.901, 484.014, 484.056 486.125, 490.009, and 491.009, F.S.

Section 30. Amends s. 458.309, F.S. relating to medical practice, providing requirements for approval of boards granting medical specialty certification.

Section 31. Amends s. 458.331, F.S., relating to medical practice, expanding the disciplinary ground of false, deceptive, misleading advertising applicable to physicians to include failure to disclose information relating to medical specialty and postgraduate education in advertisements and informed consent forms.

Section 32. Amends s. 458.3312, F.S., relating to medical practice, requiring physicians who hold themselves out as board-certified specialists to have successfully completed a specified residency program.

Section 33. Provides that the bill shall take effect July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The requirement that all physicians who are not board certified must change every sign, listing, letterhead and business card to affirmatively state that they are not board certified will have a direct fiscal impact. By requiring certain practitioners to affirmatively state that they are not board certified, the bill will provide a market advantage to those physicians with certain board certification.

D. FISCAL COMMENTS:

According to the Department of Health, the fiscal impact of the bill is undetermined. It is unknown whether the changes in the advertising rule will generate a workload issue for the department due to possible increased handling complaints and prosecution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

According to the Department of Health, there may be freedom of speech issues due to the requirements on advertising.

B. RULE-MAKING AUTHORITY:

The department has expressed concern that there is no rule making authority provided for the provisions of section 1 of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Health , the bill will have positive and negative effects on health care. The positive effect is in providing patients a clear understanding of what type of license a health care provider has so the patient can make an informed choice when selecting a health care provider.

According to the department there are two negative effects on medical physicians. First, the bill requires physicians who are not board certified by the American Board of Medical Specialties (ABMS) to affirmatively state in all advertisements, including letterheads, telephone book listings and signs, "I am not board certified."

This requirement is inconsistent with other provisions of the bill and the current Board of Medicine rule that recognizes other specialty certification boards.

Second, according to the department, the educational and residency requirements for board certification are more narrowly defined than the current Board of Medicine rule. This narrow interpretation will prevent providers, currently considered "board certified." but who have not completed an approved residency in their practice area, from advertising themselves as "board certified." There are strong arguments from the proponents and opponents on this issue.

According to the department, the bill proposal imposes on all practitioners the burden of informing the patients of the type of license, and in the case of providing a professional opinion, the scope of practice. These new and undefined requirements may offer additional sources of complaints and litigation, which could increase the workload of the department's complaint and prosecution functions.

The department has also expressed concerned that the effective date may not provide adequate time for medical doctors to change advertisements, letterheads, forms and signs to meet the requirements of the proposal and recommends a change of the effective date to January 1, 2004.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 10, 2003, the Health Standards Subcommittee adopted five amendments and reported the bill favorably to the Committee on Health Care.

Amendment 1 made three changes to the bill to:

- Allow the Board of Medicine to approve secondary subspecialty boards whose requirements include certification by specialty boards that meet the criteria of the bill;
- Remove the requirement that physicians can only claim completed postgraduate work in programs approved by the American Council on Graduate Medical Education; and
- Add the provision that certification in residency programs in related specialties may be claimed when no residency program approved by the Accreditation Council on Graduate Medical Education existed at the time the physician graduated from medical school.

Amendment 2 provides for initial dermatological diagnosis to be directly supervised by a medical or osteopathic physician.

Amendment 3 adds the American Osteopathic Association to the whereas provision recognizing preeminent medical certification organizations.

Amendment 4 provides for an exemption for clinics such as the Mayo Clinic.

Amendment 5 provides for an exemption for clinics such as the Mayo Clinic.