

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 35 Social Worker Identification

SPONSOR(S): Richardson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Healthcare Council</u>	<u>17 Y, 0 N</u>	<u>Owen</u>	<u>Gormley</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 35 amends the Clinical, Counseling and Psychotherapy Services Act (chapter 491, Florida Statutes) to create the definition of “social worker” to mean a person who has a bachelor’s, master’s or doctoral degree in social work. The bill provides title protection for social workers and provides that it is a misdemeanor of the first degree for persons to hold themselves out to the public, for or without compensation, as a social worker.

The bill exempts persons who have used the title “social worker” in their employment, prior to July 1, 2008, from provisions of the bill. Employees who provide social work services under administrative supervision at long-term care facilities licensed by the Agency for Health Care Administration are also exempt from provisions of the bill.

The bill appears to create an unconstitutional restriction on commercial speech (see Constitutional Issues).

The bill appears to have an insignificant impact to the Medical Quality Assurance Trust Fund (see Fiscal Analysis).

The bill provides for an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 491, Florida Statutes, governs the practice of clinical social work in Florida. Clinical social workers are licensed by the Department of Health (“department”) and regulated by the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling. While many persons may engage in social work services in Florida, currently, the department only issues licenses to clinical social workers under section 491.005, F.S. In addition to the payment of an application fee, requirements for licensure as a clinical social worker include:

- Master’s or doctoral degree in social work from a school accredited by the Council on Social Work Education, or an equivalent foreign institution whose equivalency is determined by the Council on Social Work Education;
- Completion of statutorily-specified courses in clinically-oriented services;
- Two years of post-master’s supervised experience under the supervision of a licensed clinical social worker or the equivalent who is qualified as determined by the Board; and
- Passage of the national clinical level examination developed by the Association of Social Work Boards.

Chapter 491, F.S., also contains provisions for the licensure by endorsement of out-of-state clinical social workers.

Florida law contains a very detailed definition of the “practice of clinical social work”. The practice of clinical social work means the utilization of methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse.

Licensed clinical social workers may treat individuals, families, couples and groups by providing counseling, psychotherapy and other psychological treatments for the purposes of prevention and treatment of undesired behavior and enhancement of mental health.¹ Licensed clinical social workers may diagnose and treat persons seeking their services under limited conditions. Section 491.003(7)(c), F.S., prohibits licensed clinical social workers from admitting persons to hospitals for the foregoing conditions, prescribing medications, or authorizing clinical laboratory procedures, among other functions.

Although Florida only recognizes the practice of clinical social work by those who have completed a master’s or doctorate in social work, thirty-five other states recognize the practice of social work by persons who have completed a bachelor’s degree.² The practice of social work consists of the

¹ Section 491.003(7), F.S.

² Association of Social Work Boards, Levels of Practice Regulated Table, <http://72.167.43.81/cgi-bin/LawWebRpts2DLL.dll/EXEC/1/0hwlomh0fwste1grjyvxv1n82mci> (last visited January 28, 2008).

professional application of social work values, principles, and techniques to help people, groups and communities obtain or improve tangible social and health services, including counseling for individuals, families, and groups. The practice of social work requires knowledge of human development and behavior; of social and economic, and cultural institutions; and of the interaction of all these factors.³

Chapter 491 also provides title protection for licensed clinical social workers to include: “Licensed clinical social worker”; “Clinical social worker”; “Licensed social worker”; “Psychiatric social worker”; and “Psychological worker”. It is a misdemeanor of the first degree to unlawfully use these titles or to practice clinical social work for compensation without a license.⁴

The Florida Chapter of the National Association of Social Workers estimates that there are between 15,000 and 18,000 social workers in the state of Florida.⁵

There are currently 5,708, active, licensed clinical social workers in Florida.⁶

Effect of Proposed Changes

The bill amends s. 491.003, F.S., to create the definition of “social worker” in the Clinical, Counseling and Psychotherapy Services Act. The bill defines “social worker” to mean a person who has a bachelor’s, master’s or doctoral degree in social work.

The bill prohibits a social worker from conducting clinical social work unless he or she is licensed or certified pursuant to Chapter 491, F.S.

The bill provides title protection for persons who meet specified criteria as a social worker. The bill requires a social worker to have a bachelor’s or master’s degree from an institution accredited by the Council on Social Work Education or an equivalent foreign institution whose equivalency is determined by the Council on Social Work Education. The bill provides that it is a misdemeanor of the first degree for persons to hold themselves out to the public, for or without compensation, as a social worker.

The bill exempts persons who have used the title “social worker” in their employment, prior to July 1, 2007, from provisions of the bill. Employees who provide social work services under administrative supervision at long-term care facilities licensed by the Agency for Health Care Administration are also exempt from provisions of the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., to provide a definition.

Section 2. Amends s. 491.003, F.S., to provide a definition.

Section 3. Creates s. 491.016, F.S., relating to use of the title “social worker”.

Section 4. Provides for an effective date of July 1, 2008.

³ National Association of Social Workers, Practice Information. <http://www.socialworkers.org/practice/default.asp> (last viewed on January 28, 2008).

⁴ Section 491.012(3), F.S.

⁵ National Association of Social Work – Florida Chapter, Sunrise Information for Professional Social Work Identification. (Provided, March 21, 2007).

⁶ Florida Department of Health, Medical Quality Assurance Annual Report 2006-2007, <http://www.doh.state.fl.us/mqa/Publications/06-07mqa-ar.pdf> (visited January 28, 2008).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There may be minimal collection of fines that go to the General Revenue Fund.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is the potential for minimal revenue collection by the Clerk of the Court from the fines associated with a first degree misdemeanor.

2. Expenditures:

There is the potential for minimal cost associated with investigations by local law enforcement and confinement in county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities that currently employ social workers will incur costs associated with reclassifying existing staff and hiring new staff who meet the educational requirements of this bill.

D. FISCAL COMMENTS:

There will likely be an insignificant fiscal impact to the Medial Quality Assurance Trust Fund in the Department of Health for enforcement and rule promulgation, which can be handled with existing resources. Agencies that current employ social workers will incur costs associated with reclassifying existing staff and hiring new staff who meet the educational requirements of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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 (1) have a substantial governmental interest that is directly advanced by the restriction, and (2) 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.⁷ Furthermore, the Supreme Court has noted that a state may not absolutely prohibit potentially misleading information if it may be presented in a way that is not deceptive.⁸ Case law also describes various legally recognized 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.⁹

A federal appellate court has directly addressed the whether a state may regulate a professional title without concomitantly regulating the activity of that profession. In *Abramson v. Gonzalez*, 949 F.2d 1567 (11th Cir.), Florida law prohibited anyone not licensed under Chapter 490 or Chapter 491 from holding himself or herself out by any title or description using words that included psychologist, psychology, psychological, psychodiagnostic, and school psychologist. Importantly, Florida law at the time did not prevent anyone from practicing the professions described in Chapter 490 or Chapter 491. The court found that “the law in essence requires a license to engage in activity quite possibly protected by the first amendment.” Consequently, the license is “not a license to practice as it is a license to speak and advertise.” The court stated that “as long as Florida has not restricted the practice of psychology, the state may not prevent the plaintiffs from calling themselves psychologists in their commercial speech.” Moreover, the speech was not misleading, as the plaintiffs were not holding themselves out as *licensed* psychologists. As a result, because the speech is only potentially misleading, “the state must craft some narrow restriction on the speech—short of the current outright ban—which will directly advance its interest in protecting the public while encouraging a free flow of commercial information.” The court held that Florida law placed an unconstitutional burden on commercial speech.

B. RULE-MAKING AUTHORITY:

The bill provides rule-making authority for the department to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁷ See *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2243, 65 L.Ed.2d 341 (1980).

⁸ *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990).

⁹ See *Abramson v. Gonzalez* 949 F.2d 1567 (11th Cir. 1992).