

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1319 Temporary Certificates and Licenses for Certain Health Care Practitioners

SPONSOR(S): Health & Human Services Quality Subcommittee; Harrell and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	11 Y, 0 N, As CS	Holt	Calamas
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Currently, the Department of Health (DOH) does not issue temporary licenses to health care practitioners who are spouses of active duty members of the Armed Forces. The bill provides the DOH the authority to issue a temporary license to a healthcare practitioner whose spouse is stationed in Florida on active duty with the Armed Forces if the applicant meets the eligibility requirements for a full license and is qualified to take the licensure examination. The temporary license is valid for six months from the date of issuance and is not renewable. The healthcare practitioner is required to:

- Submit a completed application;
- Submit a fee;
- Provide proof of marriage to an active duty member of the Armed Forces of the United States assigned to a duty station in Florida;
- Provide proof of a valid license in another state, the District of Columbia, a possession or territory of the United States, and is not the subject of any disciplinary proceeding;
- Provide proof that they have actively practiced the profession for at least 3 years; and
- Complete state and national criminal history checks as required by the applicable practice act.

The bill requires the applicable board or DOH if there is no board, to deny applications under certain circumstances. The bill requires the applicant for a temporary license to pay the cost for the fingerprint processing, and an application fee.

The bill names the temporary certificate for practice in areas of critical need the "Rear Admiral Leroy Collins, Jr., Temporary Certificate for Practice in Areas of Critical Need."

The fiscal impact to the Medical Quality Assurance Trust Fund within the Department of Health is likely to be insignificant, but is indeterminate at this time. There is no fiscal impact to local governments. (See Fiscal Comments.)

The bill provides for an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Health Care Practitioner Licensure

The Department of Health (DOH), Division of Medical Quality Assurance (MQA) regulates more than 40 health care professions and 37 types of facilities/establishments.¹ MQA evaluates the credentials of all applicants for licensure, issues licenses, analyzes and investigates complaints, inspects facilities, assists in prosecuting practice act violations, combats unlicensed activity, and provides credentials and discipline history about licensees to the public. In Fiscal Year 2009-2010, MQA issued a total of 1,002,920 licensees.²

Currently, the DOH does not issue temporary licenses to health care practitioners who are spouses of active duty members of the Armed Forces. All health care practitioners are required to comply with the licensing provisions specified for the health care profession and corresponding practice act³ that they are seeking to be licensed under. The board (or DOH if there is no board), determines whether DOH should issue a license to practice in Florida.

In Fiscal Year 2009-2010, the average number of days to issue a license was 56.5 days. This is calculated from the date an application is received by the Department to the date the license is issued. However, the 56.5 days includes steps in the process that are outside of the DOH's control:⁴

- Most professions have national licensure exams. For those professions where candidates who are permitted to apply for licensure prior to passing the exam, the length of time it takes to pass the exam impacts the number of days to issue a license.
- Length of time it takes for an applicant to successfully pass a practical licensure exam. Florida currently administers some state practical licensure exams. Those exams are administered a limited number of times per year. The dental exam is administered 3 times per year; the dental hygiene exam is administered 2 times per year; the opticianry exam is administered twice per year; optometry is administered one time per year.
- Some professions are required to have taken certain educational courses, therefore those applicants are required to successfully pass college courses while the application is pending; (See s. 491.005, F.S.).
- For professions which require a criminal background check, delays are often experienced while the applicant obtains and sends in information from law enforcement or the judicial system detailing the disposition of an arrest or conviction.
- Pre-licensure facility inspections.

Criminal Background Screening

In 1995, the Florida Legislature created standard procedures for the screening of prospective employees where the Legislature had determined it necessary to conduct criminal history background checks to protect vulnerable persons. Currently, there are two different levels of criminal background screenings: statewide (Level 1), national (Level II). Chapter 435, F.S., outlines the screening standards for Level 1 employment screening and Level 2 employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

¹ Florida Department of Health, Division of Medical Quality Assurance, Reports and Publications, 2009-2010 Annual Report, available at: <http://www.doh.state.fl.us/mqa/reports.htm> (last viewed March 17, 2011).

² *Id.*

³ "Practice Acts" are in statute for each profession and establish the scope and standards of practice of the profession, and provide grounds for disciplinary action.

⁴ Per email correspondence with DOH, Medical Quality Assurance staff, March 17, 2011, on file with Health & Human Services Quality Subcommittee staff.

The provisions of chapter 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.

Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a Level 1 screening must not have been found guilty of any of many offenses delineated by law.⁵

A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses for Level 1 or the many offenses delineated by law.⁶

Currently, DOH conducts different levels of background screening for health professions as required by each practice act.⁷

Regulated Provider Type/Licensee Initial Licensure	Current Level of Screening	Cost of screening and who pays the cost (See note)	Rescreening Requirements
Advanced Registered Nurse Practitioner	Statewide/National	\$43.25/Licensee	Renewal - Statewide
Certified Nursing Assistant by Examination in FL > 5 years	Level II	\$43.25/Licensee	None
Certified Nursing Assistant by Examination in FL < 5 years	Level II	\$43.25/Licensee	None
Certified Nursing Assistant by Reciprocity	Level II	\$43.25/Licensee	None
Licensed Practical Nurse by Examination	Statewide	\$24/Licensee	None
Licensed Practical Nurse by Endorsement	Statewide/National	\$43.25/Licensee	None
Registered Nurse by Examination	Statewide	\$24/Licensee	None
Registered Nurse by Endorsement	Statewide/National	\$43.25/Licensee	None
Chiropractic Physician	Statewide/National	\$43.25/Licensee	Renewal - Statewide
Medical Doctor	Statewide/National	\$43.25/Licensee	Renewal - Statewide
Osteopathic Physician	Statewide/National	\$43.25/Licensee	Renewal - Statewide
Orthotists, Prosthetists, Pedorthists, Orthotic Fitters, Orthotic Fitter Assistants, O&P Resident	Statewide/National	\$43.25/Licensee	Renewal - Statewide
Drug Wholesalers/Certified Designated Representative	Statewide/National	\$43.25/Licensee	None
Pharmacy Owner	Statewide/National	\$43.25/Licensee	None
Prescription Department Manager	Statewide/National	\$43.25/Licensee	None
Podiatric Physician	Statewide/National	\$43.25/Licensee	Renewal - Statewide

Source: Department of Health, Division of Medical Quality Assurance⁸

Note : DOH charges \$4.75 administrative processing fee

Many health professions do not require a criminal background screening at the time of initial licensure or licensure renewal. Currently, the following health professions are not subject to a criminal background screening:⁹

- Acupuncture

⁵ See ss. 393.135, 394.4593, 415.111, 782.04, 782.07, 782.071, 782.09, 784.011, 784.021, 784.03, 784.045, 787.01, 787.02, 794.011, 794.041, 798.02, 806.01, 817.563, 825.102, 825.1025, 825.103, 826.04, 827.03, 827.04, 827.05, 827.071, 916.1075 and chapters 796, 800, 812, 847, and 893, F.S.

⁶ See ss. 787.04(2), 787.04(3), 790.115(1), 790.115(2)(b), 843.01, 843.025, 843.12, 843.13, 874.05(1), 944.35(3), 944.46, 944.47, 985.701, and 985.711, F.S.

⁷ Florida Department of Health, Division of Medical Quality Assurance, Background Screening, Background Screening Matrix, available at: <http://www.doh.state.fl.us/mqa/background.html> (last viewed March 17, 2011).

⁸ *Id.*

⁹ Per email correspondence with DOH, Medical Quality Assurance staff, March 17, 2011, on file with Health & Human Services Quality Subcommittee staff.

- Anesthesiologist Assistant
- Athletic Training
- Clinical Laboratory Personnel
- Clinical Nurse Specialist
- Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling
- Dentistry/Dental Laboratory
- Dietetics/Nutrition
- Electrolysis/Electrolysis Facility
- Emergency Medical Technician
- Hearing Aid Specialist
- Massage Therapy/Massage Establishment
- Medical Physicist
- Midwifery
- Naturopath
- Nursing Home Administrator
- Office Surgery Registration

According to DOH, the results of a state or national background screening are reviewed by the applicant's respective health profession board and the results are used to decide whether to grant a license. However, this screening process does not meet the definition of a Level II screening as provided in chapter 435, F.S.¹⁰

Temporary Certificate for Practice in Areas of Critical Need

A physician is eligible to receive a temporary certificate to practice in an area of critical (certificate) need if:¹¹

- They hold a valid license to practice in any jurisdiction in the United States; or
- They have served as a physician in the United States Armed Forces for at least 10 years and received an honorable discharge from the military; and
- Pays an application fee of \$300.

The State Surgeon General is tasked with determining the areas of critical need.¹² Such areas may include a health professional shortage area designated by the United States Department of Health and Human Services.¹³ The certificate is valid for as long as the State Surgeon General determines that the reason for which it was issued remains a critical need to the state. The Board of Medicine is required to review each certificate holder annually to ensure compliance with the Medical Practice Act.¹⁴

¹⁰ Florida Department of Health, Division of Medical Quality Assurance, Background Screening, Criminal Background Screening & Exemption, available at: <http://www.doh.state.fl.us/mqa/background.html> (last viewed March 17, 2011).

¹¹ s. 458.315(1) and 459.0076, F.S.

¹² s. 458.315 (3) and 459.0076(3), F.S.

¹³ Health Professional Shortage Areas (HPSAs) are defined in §332 of the Public Health Service Act, 42 U.S.C. 254e to include: (1) urban and rural geographic areas, (2) population groups, and (3) facilities with shortages of health professionals. The federal designation as a HPSA documents a shortage of health care providers (primary care, dental or mental health) as well as the existence of barriers to accessing care including lack of public transportation, travel time and distance to the next source of undesignated care and high poverty. To be eligible for designation, a geographic area or a population group (a low income or migrant population) must have a population-to-physician ratio greater than 3,000 to one. See Florida Department of Health, Division of Health Access and Tobacco, Office of Health Professional Recruitment, available at: <http://www.doh.state.fl.us/workforce/recruit1/shortdesig.html> (last viewed March 24, 2011).

¹⁴ s. 458.315 (3) and 459.0076(3), F.S.

Rear Admiral LeRoy Collins, Jr.

Rear Admiral LeRoy Collins, Jr., died July 29, 2010, in Tampa, Florida, at the age of 75. He was a native of Tallahassee and the son of former Florida Governor LeRoy Collins. He graduated from the U.S. Naval Academy in 1956, embarking upon a 34-year military career and retiring as a two-star Rear Admiral in 1990.¹⁵ In 2007, Governor Charlie Crist appointed Admiral Collins the executive director of the Florida Department of Veterans' Affairs. Admiral Collins founded the Florida Veterans Foundation, Inc.¹⁶

Admiral Collins was also instrumental in the growth of electronic payment systems in the United States, starting with the introduction of credit cards in Florida and the Southeast. As the founder and president of the Armed Forces Financial Network, Admiral Collins pioneered the deployment of ATMs and point-of-sale devices in U.S. military installations worldwide, including major U.S. aircraft carriers. He also held several other positions, including founding president of Financial Transaction Systems, Inc. and a senior executive of Telecredit Service Center, Inc.¹⁷

The Effects of the Bill

The bill provides the Department of Health (DOH) the authority to issue a temporary license to a healthcare practitioner whose spouse is stationed in Florida on active duty with the Armed Forces. The temporary license is valid for six months from the date of issuance and is not renewable. The healthcare practitioner is required to:

- Submit a completed application;
- Submit a fee;
- Provide proof of marriage to an active duty member of the Armed Forces of the United States assigned to a duty station in Florida;
- Provide proof of a valid license in another state, the District of Columbia, a possession or territory of the United States and is not the subject of any disciplinary proceeding;
- Provide proof that they have actively practiced the profession for at least 3 years;
- Provide proof that they would be entitled to full licensure and eligible to take the licensure examination;
- Complete state and national criminal history checks as required by the applicable practice act.

The bill provides that a temporary license is denied if:

- The applicant is the subject of any disciplinary action in any jurisdiction,
- The applicant is ineligible for full licensure;
- The applicant is ineligible to take the applicable licensure examination;
- The applicant is convicted of or pled nolo contendere to any felony or misdemeanor related to the practice of a health care profession;
- The applicant had a health care license revoked or suspended in another jurisdiction
- The applicant has been reported to the National Practitioner Databank; or
- The applicant failed a Florida-administered dental examination.

The bill requires the board or the DOH if there is no board, to review the results of any criminal background check and approve or deny the application consistent with the requirements of the applicable practice act. The bill gives DOH or the board authority to request the personal appearance of an applicant and deny the application for those who refuse, and deny an applicant who is under investigation or prosecution that would constitute a violation of the applicable practice act. The bill requires the applicant for a temporary license to pay the cost for the fingerprint processing, and an application fee.

¹⁵ Collins Center for Public Policy, LeRoy Collins, Jr., Obituary, *available at*: http://www.collinscenter.org/?page=LCJr_ObituaryPage (last viewed March 25, 2011).

¹⁶ Collins Center for Public Policy, LeRoy Collins, Jr., Trustee Biography, *available at*: <http://www.collinscenter.org/?page=TrusteeBioCollinsJr> (last viewed March 25, 2011).

¹⁷ *Supra*, note 15.

The bill names the temporary certificate for practice in areas of critical need the "Rear Admiral Leroy Collins, Jr., Temporary Certificate for Practice in Areas of Critical Need."

B. SECTION DIRECTORY:

- Section 1.** Amends s. 456.024, F.S., relating to members and spouses of Armed Forces in good standing with administrative boards or the department.
- Section 2.** Amends s. 458.315, F.S., relating to the temporary certificate for practice in areas of critical need.
- Section 3.** Amends s. 459.0076, F.S., relating to the temporary certificate for practice in areas of critical need.
- Section 4.** Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
See Fiscal Comments.
- 2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill authorizes the DOH to set the application fee for the temporary license and the applicant is required to pay the cost for fingerprint processing. Section 216.0236, F.S., provides that the all costs of providing a regulatory service or regulating a profession or business be borne solely by those who are regulated and the program be self-sufficient.

According to the DOH, there are 14 military bases in Florida, yet the number of out of state military personnel stationed in Florida, the number out of state military personnel with spouses, and the number of spouses that are health care practitioners licensed in other states is unknown. Therefore, the fiscal impact is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:
Not Applicable. This bill does not appear to affect county or municipal governments.
- 2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department does not need additional rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Health and Human Services Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes provision allowing a licensee from a foreign jurisdiction from being eligible for a temporary license.
- Requires applicants to have actively practiced for at least 3 years
- Adds provisions denying a temporary license if:
 - The applicant is the subject of any disciplinary action in any jurisdiction,
 - The applicant is ineligible for full licensure;
 - The applicant is ineligible to take the applicable licensure examination;
 - The applicant is convicted of or pled nolo contendere to any felony or misdemeanor related to the practice of a health care profession;
 - The applicant had a health care license revoked or suspended in another jurisdiction
 - The applicant has been reported to the National Practitioner Databank; or
 - The applicant failed a Florida-administered dental examination.
- Requires applicants to meet the criminal background screening requirements of their applicable practice act, and requires DOH or the board to review of results of and deny or approve the application consistent with requirements of the applicable practice act.
- Gives DOH or the board authority to request the personal appearance of an applicant and deny the application for those who refuse, and deny an applicant who is under investigation or prosecution that would constitute a violation of the applicable practice act.
- Names the temporary certificate for practice in areas of critical need the "Rear Admiral Leroy Collins, Jr., Temporary Certificate for Practice in Areas of Critical Need."

This analysis is drafted to the committee substitute.