The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Transportation

BILL:	CS/CS/SB 1066
INTRODUCER:	Transportation Committee, Health Policy Committee and Senator Grimsley
SUBJECT:	Department of Health
DATE:	April 9, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.	Everette	Eichin	TR	**Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1066 makes a series of changes to the statutes governing the licensure of health care practitioners and the related operations of the Department of Health (DOH). Specifically, the bill:

- Authorizes fees to be waived for up to one biennial licensing period when the funds of a licensed profession exceed the amount required to administer its licensing program.
- Gives the DOH flexibility in determining the format of the license.
- Authorizes the DOH to access digital images from drivers' licenses for use in licensing and related investigations.
- Revises the method by which the Board of Medicine (BOM) determines continuing education requirements.
- Corrects an obsolete provision related to the authority of hospitals, ambulatory surgical centers, and mobile surgical facilities to release patient records to the DOH for health care practitioner complaint investigation and enforcement.
- Eliminates obsolete or underutilized licensing options related to dental laboratories, nursing home administrators, and massage therapists.
- Deletes references to certification entities for medical assistants.
- Eliminates the Council on Certified Nursing Assistants and revises the schedule for in-service hours required for certified nursing assistants.
- Revises the composition of the Board of Nursing Home Administrators.
- Expands the potential focus of Closing the Gap projects to include sickle cell disease.

- Allows a health care provider who provides free care to low income patients under the Access to Health Care Act, to retain sovereign immunity and provide care for up to 30 days after a patient is determined not to meet the financial eligibility standard while the patient finds a new provider.
- Creates definitions of "health care setting" and "nonhealth care setting" and establishes requirements for consent and notification for HIV testing applicable to each.
- Authorizes the Board of Physical Therapy to approve a curriculum of foreign education as equivalent to education required in the U.S. for purposes of licensure.

II. Present Situation:

Regulation of Health Care Professions

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.[1] General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the policy framework for regulation. Specifically, regulation is to occur when:[2]

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation.
- The public is not adequately protected by other means, including other statutes, federal law, or local ordinances.
- Less restrictive means of regulation are not available.

The Division of Medical Quality Assurance (MQA) within the DOH has responsibility for licensing health care practitioners, and certain facilities and businesses; enforcing health care practitioner standards; and providing licensure and disciplinary information to enable health care consumers to make more informed health care decisions.[3]

Practitioners regulated by the MQA include the following professions:

- Emergency Medical Technicians and Paramedics (part III of ch. 401, F.S.)
- Acupuncture (ch. 457, F.S).
- Allopathic Medicine (ch. 458, F.S.)
- Osteopathic Medicine (ch. 459, F.S.
- Chiropractic Medicine (ch. 460, F.S.)
- Podiatric Medicine (ch. 461, F.S.)
- Naturopathy (ch. 462, F.S.)
- Optometry (ch. 463, F.S.)
- Nursing, including Certified Nursing Assistants (ch. 464, F.S.)
- Pharmacy (ch. 465, F.S.)
- Dentistry (ch. 466, F.S.)
- Midwifery (ch. 467, F.S.)
- Speech-Language Pathology and Audiology (part I of ch. 468, F.S.)

[1] Section 20.43(1)(g), F.S.
[2] Section 456.003(2), F.S.
[3] Fla. Dept. of Health, *Resource Manual for the Florida Department of Health*, 252 (FY 2012–2013) (on file with the Senate Health Policy Committee).

- Nursing Home Administration (part II of ch. 468, F.S.)
- Occupational Therapy (part III of ch. 468, F.S.)
- Radiology (part IV of ch. 468, F.S.)
- Respiratory Therapy (part V of ch. 468, F.S.)
- Dietetics and Nutrition (part X of ch. 468, F.S.)
- Athletic Training (part XIII of ch. 468, F.S.)
- Orthotics, Prosthetics, and Pedorthics (part XIV of ch. 468, F.S.)
- Electrolysis (ch. 478, F.S.)
- Massage Therapy (ch. 480, F.S.)
- Clinical Laboratory Personnel (part III of ch. 483, F.S.)
- Medical Physicists (part IV of ch. 483, F.S.)
- Opticianry (part I of ch. 484, F.S.)
- Hearing Aid Specialists (part II of ch. 484, F.S.)
- Physical Therapy Practice (ch. 486, F.S.)
- Psychology (ch. 490, F.S.)
- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.)

The following facilities or programs are also regulated or inspected by the MQA:[4]

- Body Piercing Establishments (s. 381.0075, F.S.)
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.)
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.)
- Dental Laboratories (ch. 466, F.S.)
- Electrology Facilities (ch. 478, F.S.)
- Electrolysis Training Programs (ch. 478, F.S.)
- EMS Education Programs (ch. 401, F.S.)
- EMS Vehicle Permittees (ch. 401, F.S.)
- Environmental Testing Laboratories (s. 403.0625, F.S.)
- Massage Establishments (ch. 480, F.S.)
- Massage Schools (ch. 480, F.S.)
- Nursing Education Programs (ch. 464, F.S.)
- Office Surgery Sites (ch. 458 and ch. 459, F.S.)
- Optical Establishments (part I of ch. 484, F.S.)
- Pain Management Clinics (ch. 458 and ch. 459, F.S.)
- Pharmacies (ch. 465, F.S.)
- Trauma Centers (part II of ch. 395, F.S.)

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,[5] and

[4] Other facilities and programs regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

[5] The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. (*See* s. 456.073(1), F.S.)

legally sufficient,[6] and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.[7] The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.[8]

Responsibility for the regulation of health care practitioners once resided with the Department of Business and Professional Regulation. The 1996 Legislature directed the transfer of that function to the Agency for Health Care Administration (AHCA).[9] Then in 1997 the Legislature revised the transfer, moving responsibility for the regulation of health care practitioners instead to the DOH and creating the MQA. Health care practitioner complaint, investigative, and prosecutorial services, however, stayed with the AHCA, and were provided under contract to the MQA.[10] It was not until 2002 that these services were transferred to the MQA.[11]

The 1997 Legislature directed the AHCA to establish a toll-free telephone number for public reporting of complaints relating to medical treatment or services provided by health care professionals.[12] Responsibility for the toll-free consumer complaint hotline was not moved to the MQA when the enforcement services were transferred in 2002. Instead, the established toll-free telephone number remains with the AHCA and is used to take complaints regarding health care facilities regulated by the AHCA. Complaints regarding health care practitioners are forwarded by the AHCA to the MQA.[13]

Likewise, s. 395.3025, F.S., which sets forth when and how hospitals, ambulatory surgical centers, and mobile surgical centers can release patient records was not updated to reflect the transfer. In general, patient records are confidential and cannot be disclosed without consent of the patient or his or her legal guardian.[14] The statute authorizes release of the records without consent, however, to "the agency" for use in the investigation, prosecution, and appeal of disciplinary proceedings.[15] The DOH indicates that a number of hospitals have challenged the DOH's authority to subpoena records based on the current language.[16]

---

[6] A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. (*See* s. 456.073(1), F.S.)

[7] Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. (*See* s. 456.073(2), F.S.) If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. (*See* s. 456.073(4), F.S.)

[8] Section 456.066, F.S.

[9] Ch. 96-403, s. 11, Laws of Fla.

[10] Ch. 97-261, ss. 1 and 2, Laws of Fla.; ch. 97-273, s. 1, Laws of Fla.

[11] Ch. 2002-400, s. 44, Laws of Fla.

[12] Ch. 97-273, s. 24, Laws of Fla.

[13] Fla. Dept. of Health, *Senate Bill 1066 Bill Analysis* (undated) (on file with the Senate Health Policy Committee).

[14] Section 395.3025(4), F.S.

[15] Section 395.3025(4)(e), F.S.

[16] Fla. Dept. of Health, *supra* note 13.

Human Immunodeficiency Virus

Human immunodeficiency virus is an immune system virus that can lead to the fatal acquired immunodeficiency syndrome (AIDS). HIV affects specific cells of the immune system and over time the virus can destroy so many of these cells that the body cannot fight off infections and disease. There is no cure for HIV, yet with proper medical care, HIV can be controlled.[17]

Human immunodeficiency virus is typically spread by having unprotected sex with someone who has HIV, sharing needles, syringes, or other equipment used to prepare injection drugs with someone who has HIV. As of 2010, about 1.1 million people in the United States were living with HIV and approximately 50,000 people get infected with HIV each year.[18] In Florida, the estimated number of adults and children with an AIDS diagnosis was 117,612 through December 2008, making Florida the third highest state in cumulative reported AIDS cases.[19]

HIV Testing

Of the 1.1 million Americans living with AIDS, it is also estimated that one fifth of those are unaware of their infection.[20] The Centers for Disease Control and Prevention (CDC) in 2006, revised its recommendations for HIV testing after a comprehensive review of literature, a consensus of medical opinions, input of community organizations, and the opinion of persons living with HIV.[21]

Florida HIV Testing

Currently, in Florida, every person who is tested for HIV must first give their informed consent before a test is administered, except as specified in s. 381.004(2)(h), F.S. Exceptions to informed consent include the testing of inmates from the state prison system prior to release, testing defendants in sexual battery crimes at the request of the victims; and when mandated by court order.

Informed consent for HIV testing is defined under the Florida Administrative Code and requires:[22]

- An explanation that the information identifying the test subject and the results of the test are confidential and protected against further disclosure to the extent permitted by law;
- Notice that persons who test positive will be reported to the local CHD;
- Notice that anonymous testing is available and the locations of the anonymous sites;

[17] Centers for Disease Control and Prevention, *About HIV/AIDS*, http://www.cdc.gov/hiv/basics/whatishiv.html (last visited Mar. 26, 2014).
[18] Centers for Disease Control and Prevention, *Basic Statistics*, http://www.cdc.gov/hiv/basics/statistics.html (last visited Mar. 26, 2014).
[19] Centers for Disease Control and Prevention, *Florida 2010 Profile*, http://www.cdc.gov/nchhstp/stateprofiles/pdf/Florida_profile.pdf (last visited Mar. 26, 2014).
[20] Id.
[21] Centers for Disease Control and Prevention, *Revised CDC Recommendations: HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, Annotated Guide* (September 2006), http://www.cdc.gov/hiv/testing/HIVStandardCare/resources/brochures/MMWR-Annotated%20508C_Full.pdf (last visited Mar. 26, 2014).
[22] Rule 64D-2.004, F.A.C.

- Written informed consent only for the following:
  - From the potential donor or donor's legal representative prior to first donation of blood, blood components, organs, skin, semen, or other human tissue or body part;
  - For insurance purposes; and,
  - For contracts purposes in a health maintenance organization, pursuant to s. 641.3007, F.S.

Minors meeting certain requirements, such as being married, pregnant, or able to demonstrate maturity to make an informed judgment, can be tested for HIV, without parental consent if the minor provides informed consent.[23]

The other exception to informed consent for HIV testing in Florida relates to pregnancy. Prior to testing, a health care practitioner must inform a pregnant woman that the HIV test will be conducted and of her right to refuse the test. If declined, the refusal will be noted in the medical record.[24]

The Department of Health (DOH) has developed a comprehensive program for preventing the spread of HIV/AIDS with many testing options available throughout the state in a variety of settings. Over 30,000 people receive AIDS treatment and prevention services from the DOH through the CHD and different programs of the DOH.[25]

A nonhealth care setting that offers HIV testing services must first register with the DOH and comply with other statutory requirements listed in s. 381.004(4), F.S., such as providing opportunities for pre-test and post-test counseling by counselors specifically trained to address the needs of persons who may receive positive test results.

The Closing the Gap Grant Program

In 2000, the Legislature created the Reducing the Racial and Ethnic Health Disparities: "Closing the Gap" grant program, to stimulate the development of community and neighborhood-based projects to improve health outcomes of racial and ethnic populations.[26] The program is administered by the Department of Health (DOH). Grants are awarded for one year but may be renewed annually – subject to the availability of funds – upon the approval of the DOH based on the achievement of quality standards, objectives, and outcomes.[27] Grants require a local match of one dollar for every three dollars awarded, although a portion[28] of the match may be in-kind, in the form of free services or human resources.[29]

[23] Section 384.30, F.S. and Rule 64D-2.004(4), F.A.C.
[24] Sections 381.004(2)(h)(2) and 384.31, F.S.
[25] Department of Health, *County Health Departments*, http://www.floridahealth.gov/public-health-in-your-life/county-health-departments/index.html (last visited: Mar. 26, 2014).
[26] Section 381.7352, F.S.
[27] Section 381.7356(4), F.S.
[28] Up to 50% in counties over 50,000 in population and 100% in counties of 50,000 or less. (s. 381.7355(2)(a), F.S.)
[29] Section 381.7356(2), F.S.

Sickle Cell Disease

Sickle cell disease (SCD) is a group of inherited red blood cell disorders. Healthy red blood cells are round. In someone who has SCD, the red blood cells become hard, sticky, and shaped like a sickle or the letter "C." The sickle cells die early, which causes a constant shortage of red blood cells, and the cells clog blood flow in small blood vessels, which can cause pain and other serious problems such as infection, acute chest syndrome, and stroke.[30]

Sickle cell disease is diagnosed with a blood test, most often at birth during routine newborn screening tests.[31] It is a genetic disorder, inherited when a child inherits the gene from both parents. The only cure is bone marrow or stem cell transplant.

The exact number of persons with SCD is not known. The Centers for Disease Control and Prevention estimates that:[32]

- SCD affects 90,000 to 100,000 Americans.
- SCD occurs among about 1 out of every 500 Black or African-American births.
- SCD occurs among about 1 out of every 36,000 Hispanic-American births.

In 2005, medical expenditures for children with SCD averaged $11,702 for children with Medicaid coverage and $14,772 for children with employer-sponsored insurance. About 40 percent of both groups had at least one hospital stay.[33]

Color Photographic or Digital Imaged Licenses

Drivers' licenses are issued by the Department of Highway Safety and Motor Vehicles (DHSMV) with a full face color photograph or digital image of the licensee.[34] Records of the digital image maintained by the DHSMV are exempt from public records disclosure, but copies may be made for use by the DHSMV or other specified agencies for activities related to their responsibilities, e.g. Department of Business Regulation for reproduction of licenses; Department of State in connection with determining voter eligibility; and Department of Revenue for use in enforcing child support provisions, among others. The law does not authorize release of the records to the DOH.[35]

Currently, some, but not all, initial applicants for licensure as a health care practitioner are required to provide a passport photograph at the time of initial application but are not required to maintain a current photograph on file with the DOH. The DOH stores licensing records electronically and most imaged photographic records become distorted and no longer legible once scanned and converted to a digital image. Photographs assist the DOH in confirming the identity of licensed health care practitioners during its investigation of disciplinary cases and in

[30] Centers for Disease Control and Prevention, *Facts About Sickle Cell Disease*, http://www.cdc.gov/ncbddd/sicklecell/facts.html (last visited Mar. 22, 2014).
[31] Florida's newborn screening program includes sickle cell among the genetic disorders that are tested in newborns.
[32] Centers for Disease Control and Prevention, *Sickle Cell Disease, Data and Statistics*, http://www.cdc.gov/ncbddd/sicklecell/data.html (last visited Mar. 22, 2014).
[33] *Id.*
[34] Section 322.142(1), F.S.
[35] Section 322.142(4), F.S.

the service of legal documents. In addition, licenses which are displayed in a practitioner's place of practice do not currently contain a photograph.[36]

Size Requirements for Licenses; Renewal of License

Section 456.013(2), F.S., requires the DOH to issue a wallet-size identification card and a wall card measuring 6.5 inches by five inches to health care practitioners licensed in Florida. The DOH produced 494,115 licenses in the 2011-2012 fiscal year at a cost of $72,140.79. The DOH would like the opportunity to explore less costly options.[37]

Health Care Practitioner Continuing Education and Training

Florida law generally requires health care practitioners to complete continuing education or training as a condition of licensure or re-licensure. Some requirements are general obligations to complete a number of hours in subject areas determined by the relevant regulatory board. Examples of these are as follows:

- The Board of Medicine, Board of Chiropractic Medicine, Board of Osteopathic Medicine, and Board of Podiatric Medicine must require licensees to periodically demonstrate professional competency by completing at least 40 hours of continuing education every two years. The boards generally establish the criteria and content for continuing education and may authorize up to 25 percent of the hours to be fulfilled by pro bono service to an underserved community.[38] In addition, the boards may approve alternative methods for obtaining credit in risk management, which include: attendance at a board meeting where another practitioner is disciplined; service as a volunteer expert for the DOH; or service on the board's probable cause panel.[39]
- Certified nursing assistants (CNAs) are required by statute to complete 12 hours of in-service training each calendar year.[40] CNA licenses renew biennially on May 31, which conflicts with the statutory requirement of calendar year training. The next scheduled renewal deadline is May 31, 2015.[41]

Other continuing education requirements are expressly created in statute. Examples of these are as follows:

- All health care practitioners regulated by the DOH or a board must complete a course related to prevention of medical errors at initial licensure and biennial renewals thereafter.[42]
- Practitioners licensed or certified under ch. 457, F.S. (Acupuncture), ch. 458, F.S. (Allopathic Medicine), ch. 459, F.S. (Osteopathic Medicine), ch. 460, F.S. (Chiropractic Medicine), ch. 461, F.S., (Podiatric Medicine), ch. 463, F.S. (Optometry), part I of ch. 464, F.S. (Nursing), ch, 465, F.S. (Pharmacy), ch. 466, F.S. (Dentistry and Dental Hygiene), parts II, III, V, and X of ch.468, F.S. (Nursing Home Administration; Occupational Therapy;

[36] Fla. Dept. of Health, *supra* note 13.
[37] *Id.*
[38] Section 456.013(9), F.S.
[39] Section 456.013(6), F.S.
[40] Section 464.203(7), F.S.
[41] Florida Board of Nursing, *Certified Nursing Assistant (CNA)*, http://floridasnursing.gov/renewals/certified-nursing-assistant/ (last visited March 22, 2014).
[42] Section 456.013(7), F.S.

Respiratory Therapy; and Dietetics and Nutrition), are required to complete a course on HIV/AIDS one time, no later than first renewal.[43]

Licensure Fees

The law requires the costs of regulating health care practitioners to be borne solely by licensed practitioners and licensure applicants. The boards, in consultation with the DOH, are responsible for establishing fees that are:[44]

- Based on revenue projections prepared using generally accepted accounting procedures;
- Adequate to cover all expenses relating to that board identified in the DOH's long-range policy plan;
- Reasonable, fair, and not serve as a barrier to licensure;
- Based on potential earnings from working under the scope of the license;
- Similar to fees imposed on similar licensure types; and,
- Not more than 10 percent greater than the actual cost to regulate that profession for the previous biennium.

Licensure fees are subject to challenge pursuant to ch. 120, F.S.

Since the 2008 Session, a total of $82 million has been authorized for transfer from the MQA Trust Fund to the Budget Stabilization Fund and General Revenue Fund in the General Appropriations Act. Despite the transfers, the MQA Trust Fund continues to maintain an average cash balance of $24 million. Since the 2008-2009 fiscal year, the cost of regulating health care practitioners has averaged $63,198,327 annually, and the MQA has collected an average of $72,035,217 in revenue annually. The MQA's revenue projections for the 2012-2013 fiscal year and the next five years indicate an average of $74,672,466 in revenue annually. The MQA projects that operating expenses will remain stable and may even decrease as a result of implementation of a number of process efficiencies.[45]

Medical Assistants

Current law creates a definition of "medical assistant" and describes the duties a medical assistant may undertake under the direct supervision and responsibility of a licensed physician. These limited duties include certain basic office and laboratory procedures, assisting with first aid, taking vital signs, and performing aseptic procedures, among others. The law says that a medical assistant may be certified by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologist, but the law does not require certification as a condition of performing the specified duties. Other agencies that certify medical assistants are not recognized in law.[46]

[43] Section 456.033, F.S.
[44] Section 456.025(1), F.S.
[45] Fla. Dept. of Health, *supra* note 13.
[46] *See, e.g.* The American Registry of Medical Assistants, http://arma-cert.org/ (last visited March 17, 2014).

Council of Certified Nursing Assistants

The Council on Certified Nursing Assistants is created under the Board of Nursing to make recommendations to the DOH regarding policies and procedures for certification of CNAs and to develop rules regulating the education, training, and certification process. The Board of Nursing has discretion to adopt the rules recommended by the council.[47]

Dental Laboratories

Dental laboratories must be registered and reregistered biennially with the DOH.[48] Renewal notices are sent to the last known address of each dental laboratory 120 days prior to the expiration date of the license, which is February 28 of even-numbered years.[49] If a dental laboratory operator fails to reregister timely, the DOH must notify the operator by registered mail, within one month after the renewal date, return receipt requested.[50] Dental laboratory operators then have three additional months to renew the establishment license with no late fee. If a dental laboratory fails to renew within that three-month window, the operator must pay a delinquency fee of $40, in addition to the current renewal fee, to renew.[51] As of March 30, 2013, 1,086 dental laboratories were licensed in Florida.[52]

During this past licensure renewal period, the DOH mailed 281 return-receipt notices to delinquent dental laboratories. Eighty-six were returned as undeliverable. The requirement to send registered letters to delinquent dental laboratories costs over $2,000 every two years. Staff spends approximately 35 hours preparing and mailing the registered letters. This process is not required for any other regulated health care professions.[53]

Nursing Home Administrators

Nursing home administrators are regulated by the Board of Nursing Home Administrators, within the DOH, under part II, ch. 468, F.S. The board consists of seven members appointed by the Governor and confirmed by the Senate to a four-year term. Three members must be licensed nursing home administrators; two members must be health care practitioners; and the remaining two members must be laypersons. At least one member of the board must be older than 60 years of age.[54]

The DOH may issue a provisional license to fill a position of a nursing home administrator that unexpectedly becomes vacant due to illness, sudden death of the administrator, or abandonment of the position. The provisional license is valid for six months.[55] The last provisional license was issued by the Board of Nursing Home Administrators in December 2007. The board repealed the

[47] Section 464.2085, F.S.
[48] Section 466.032(1), F.S.
[49] Fla. Board of Dentistry, *Dental Laboratory*, http://floridasdentistry.gov/renewals/dental-laboratory/ (last visited Mar. 22, 2014).
[50] Section 466.032(2), F.S.
[51] Section 466.032(3), F.S.
[52] Fla. Dept. of Health, *supra* note 13.
[53] *Id.*
[54] Section 468.1665, F.S.
[55] Section 468.1735, F.S.

rule implementing the provisional license in 2010 because provisional licenses were no longer necessary for the regulation of the profession.[56]

Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy, within the DOH, under the Massage Practice Act, ch. 480, F.S. A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.[57] In order to be licensed as a massage therapist, an applicant must: [58]

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school approved by the board or apprenticeship program; and,
- Pass an examination.

For the 10-year period ending June 21, 2013, the Board of Massage Therapy has received 300 applications for apprenticeship. Of those 300, only eight have obtained full licensure as a massage therapist.[59]

Physical Therapists

Current law allows the Board of Physical Therapy to license a qualified applicant who has graduated from a foreign education program with education credentials deemed equivalent to those required for physical therapy in the United States.[60] The statute requires the board to use a third party to make the determination and currently the board uses the assessment provided by the Foreign Credentialing Commission on Physical Therapy.[61]

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[62] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of

[56] Fla. Dept. of Health, *supra* note 13.
[57] Section 480.047(1)(a), F.S.; s. 480.034, F.S.
[58] Section 480.041 and 480.042, F.S.
[59] Fla. Dept. of Health, *supra* note 13.
[60] Section 486.031(3), F.S.
[61] Rule 64B17-3.001(3)(b), F.A.C.
[62] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $22,980 is at 200 percent of the federal poverty level using Medicaid data. *See 2013 Poverty Guidelines, Annual Guidelines* at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2013-Federal-Poverty-level-charts.pdf (last visited December 13, 2013).

the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

III. Effect of Proposed Changes:

Section 1 amends s. 322.142, F.S., to authorize the DHSMV to enter into an interagency agreement with the DOH authorizing it to access digital images retained from drivers' licenses to verify the identity of a health care practitioner who is under investigation pursuant to ch. 456, F.S., and for use in reproducing licenses.

Section 2 amends s. 381.004, F.S., and adds definitions for "health care setting" and "nonhealth care setting." A health care setting is defined as a setting devoted to both the diagnosis and care of persons.

The bill modifies the consent requirements for HIV tests specifically conducted in a health care setting to require the health provider to notify the patient the test is planned and advise the patient of his or her option to decline the planned test. This is changed from requiring informed consent and more closely implements the CDC guidelines for HIV testing. The provider must also inform the patient of his or her right to confidential treatment of identifying information under the law. If the patient opts out of the test, the provider must note the denial in the patient's record.

A nonhealth care setting is defined as a site that conducts HIV testing for the sole purpose of identifying HIV infection.

In a nonhealth care setting, the bill requires the provider to obtain the patient's informed consent for the HIV test after an explanation of the patient's right to confidential treatment of identifying information as provided under law, including test results.

In either setting, the patient must be informed that a positive HIV test will be reported to the local CHD with sufficient information to identify the patient. The patient must also be provided information about the availability of anonymous testing sites. Each CHD will be responsible for maintaining a list of available sites with locations, telephone numbers, and hours of operation.

The bill updates the definition for "preliminary HIV test" with current terminology and testing options.

The bill authorizes hospitals licensed under ch. 395, F.S., to release HIV test results, as is currently permitted, if the hospital notifies the patient of the confidentiality protections included in medical records. The bill conforms this requirement to the notification requirements in the bill related to HIV testing in a health care setting.

Section 3, amends s. 381.7355, F.S., to add projects with the goal of decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease, to the priority areas that a project receiving a Closing the Gap grant may address.

Section 4 amends s. 395.3025, F.S., to authorize hospitals, ambulatory surgical centers, and mobile surgical facilities to release patient records without patient consent to the DOH for use in health care practitioner investigation and disciplinary proceedings. This corrects an error created when the enforcement responsibilities were transferred from the AHCA to the DOH in 2002. The bill also deletes obsolete language regarding public access to the records, which is already in s. 456.057, F.S.

Section 5 amends s. 456.013, F.S., to eliminate the size requirements for licenses issued by the DOH.

Section 6 amends s. 456.025, F.S., to delete authority for the boards, or the DOH when there is no board, to charge a fee up to $25 for issuing wall certificates. This section also authorizes the boards, or the DOH when there is no board, to adopt rules to waive fees (initial application, initial licensure, unlicensed activity, or renewal) for any profession the DOH determines, based on its long-range estimate, will have more revenue than necessary to fund its operations. A fee waiver may not exceed two years. This will allow the DOH to keep fund balances more closely aligned to current statutory requirements without the need for actual fee adjustments.

Section 7 amends s. 458.319, F.S., to create new authority for the BOM to determine continuing education requirements for allopathic physicians. Physicians will continue to complete 40 hours biennially, inclusive of the three statutorily mandated courses in HIV, domestic violence, and medical errors prevention. The BOM is authorized to determine and mandate specific continuing education and to approve alternative methods for obtaining credits, including: attending board meetings; serving as a volunteer expert witness; or as a member of a probable cause panel. These options exist today, but only as a means to obtain risk management credit. In addition, the BOM is authorized to allow up to 25 percent of the required hours through pro bono service to indigent, underserved populations, or patients in areas of critical need. This option exists in current law. Finally, the BOM is authorized to award credit for research in critical need areas, or training for advanced professional certification. The BOM is given rulemaking authority to define underserved and critical need area.

Section 8 amends s. 458.3485, F.S., removes language that contains a partial listing of entities that certify medical assistants. Because the state does not require medical assistants to be certified, the language is unnecessary.

Section 9 amends s. 464.203, F.S., to change the annual in-service training requirement for CNAs to a biennial requirement of 24 hours, thereby conforming, without reducing, the requirement to the renewal schedule. The authority for the Council on Certified Nursing Assistants to recommend rules for implementation of the section is deleted.

Section 10 repeals s. 464.2085, F.S., thereby eliminating the Council on Certified Nursing Assistants.

Section 11 amends s. 466.032, F.S., to delete the requirement for the DOH to send laboratory operators a registered letter when the operator misses the deadline for renewing the laboratory's registration.

Section 12 amends s. 467.009, F.S., to reflect the name change of the midwifery education accrediting organization, from Commission on Recognition of Postsecondary Accreditation to Council for Higher Education Accreditation.

Section 13 amends s. 468.1665, F.S., to revise the composition of the Board of Nursing Home Administrators. The number of administrator representatives is increased by one, to four, and the number of health care practitioners is decreased by one, to one.

Section 14 amends s. 468.1695, F.S., to allow a candidate who has a master's degree, not just a bachelor's degree, in the specified subject areas to take the nursing home administrator examination.

Section 15 repeals s. 468.1735, F.S., thereby eliminating the provisional nursing home administrator license.

Sections 16 and 17 amend ss. 468.503 and 468.505, F.S., to reflect the name change of the accrediting body for registered dietitians, from Commission on Dietetic Registration, the accrediting body of the American Dietetic Association, to the accrediting body of the Academy of Nutrition and Dietetics.

Sections 18, 19, and 21 amend ss. 480.033, 480.041, and 480.044, F.S., to eliminate the apprenticeship program as a pathway to licensure as a massage therapist and repeal related provisions of law.

Section 20 amends s. 480.042, F.S., to delete obsolete language. The DOH no longer administers the massage therapy license.

Section 22 amends s. 486.031, F.S., to allow the board of Physical Therapy to determine whether the education credentials of a foreign educated applicant are the equivalent of the credentials required of applicants educated in the United States.

Section 23 amends s. 766.1115, F.S., to state that a health care provider shall continue to be an agent for purposes of s. 768.28(9), F.S., for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under contract with the state may not be names as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section.

Section 24 amends s. 456.032, F.S., conform a cross-reference.

Section 25 amends s. 823.05, F.S., to conform a cross-reference.

Section 26 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care practitioners will experience a positive fiscal impact if a fee waiver is implemented as authorized by CS/SB 1066.

Private entities that provide HIV testing may need to modify their policies and procedures to meet any revised requirements for informed consent or notification, depending on their status as a health care seeing or nonhealth care setting.

The bill expands the types of community-based projects that may receive state funding. Actual amounts will result from the award of available funds and are unknown at this time.

C. Government Sector Impact:

Licensure Fee Waiver

The DOH will experience a decrease in revenues if a fee waiver as a result of excess trust fund balance is implemented as authorized by the bill.

Color Photographic or Digital Imaged Licenses

The MQA may experience a non-recurring increase in workload associated with the initial set up for the DOH to access the DHSMV photographic records of licensed health care practitioners, but current resources are adequate to absorb.

Size Requirements for Licenses

The fiscal impact is indeterminate at this time, but the DOH anticipates the change will result in a cost savings.

HIV and AIDS Instruction

The DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

HIV Testing

The DOH will need to revise Rule 64D-2.004, F.A.C., to conform to the changes in this bill.

Elimination Council of Certified Nursing Assistants

The DOH will experience a cost savings of approximately $40,000 per fiscal year related to the administration of the council.

Dental Laboratory

The DOH will experience a cost savings of over $2,000 biennially for postage and staff time required to send delinquency notices by registered mail.[63]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 322.142, 381.004, 381.7355, 395.3025, 456.013, 456.025, 456.032, 458.319, 458.3485, 464.203, 466.032, 467.009, 468.1665, 468.1695, 468.503, 468.505, 480.033, 480.041, 480.042, 480.044, 486.031, and 823.05.

The bill repeals the following sections of the Florida Statutes: 464.2085 and 468.1735.

[63] Fla. Dept. of Health, *supra* note 13.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Transportation on April 10, 2014:

- Expands the potential focus of Closing the Gap projects to include sickle cell disease.
- Allows a health care provider who provides free care to low income patients under the Access to Health Care Act, to retain sovereign immunity and provide care for up to 30 days after a patient is determined not to meet the financial eligibility standard while the patient finds a new provider.
- Revises requirements for notification and consent for HIV testing in health care and non-health care settings.

CS by Health Policy on March 25, 2014:

The committee substitute:

- Restores current law requiring allopathic physicians to complete a two-hour course in medical errors prevention as part of licensure and renewal licensure.
- Restores current law requiring allopathic physicians to complete a one-time, two-hour course in HIV.
- Restores current law directing the AHCA to maintain a consumer complaint hotline.
- Deletes references in statute to medical assistant certification agencies.
- Further revises the membership of the board of nursing home administrators, by reducing the number of health care practitioners by one, to one, instead of reducing the number of consumer representatives by one, as originally proposed by the bill.
- Authorizes the Board of Physical Therapy to approve a curriculum of foreign education as equivalent to education required in the U.S. for licensure.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.