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 Appropriations

BILL:	CS/SB 1250
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Latvala
SUBJECT:	Behavioral Health Workforce
DATE:	February 29, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1250 expands the behavioral health workforce, recognizes the need for additional psychiatrists is of critical state concern, integrates primary care and psychiatry, and allows persons with disqualifying offenses that occurred five or more years ago to work under the supervision of certain qualified personnel until a final determination regarding the request for an exemption from disqualification is made.

The bill authorizes physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to prescribe controlled substances with certain limitations.

The bill requires a PA or an ARNP who prescribes any controlled substance for the treatment of chronic, nonmalignant pain, to register with the Department of Health (DOH) as a controlled substance prescribing practitioner. This new requirement also subjects PAs and ARNPs who are registered as controlled substance prescribing practitioners to meet the statutory practice standards for such prescribing practitioners. Additionally, the bill provides that only a physician may dispense medication or prescribe a controlled substance on the premises of a registered pain management clinic.

The bill makes the process of retaining a patient in a receiving facility, or placing a patient in a treatment facility under the Baker Act, more efficient by allowing the psychiatrist providing the first opinion and the psychiatrist or clinical psychologist providing a second opinion to examine

the patient through electronic means. Currently, only the psychiatrist or clinical psychologist providing a second opinion may perform an examination electronically.

The bill provides that persons employed directly or under contract with the Department of Corrections (DOC) in an inmate substance abuse program are exempt from a fingerprinting and background check requirement unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.

The bill expands who is eligible to be a service provider in a substance abuse program by allowing persons who have had a disqualifying offense that occurred five or more years ago and who have requested an exemption from disqualification to work with adults with substance abuse disorders.

The bill requires a hospital to provide advance notice to certain obstetrical physicians within 90 days before it closes its obstetrical department or ceases to provide obstetrical services.

The bill has an indeterminate fiscal impact.

The bill, except as otherwise expressly provided, takes effect upon becoming law.

II. Present Situation:

Behavioral Health Workforce Shortage

The Institute of Medicine (IOM) has chronicled efforts, beginning as early as the 1970s, to deal with workforce issues regarding mental and substance abuse disorders, but notes that most have not been sustained long enough or have not been comprehensive enough to remedy the problems.[1] Shortages of qualified workers, recruitment and retention of staff, and an aging workforce have long been cited as problems.[2] Lack of workers in rural areas and the need for a workforce more reflective of the racial and ethnic composition of the U.S. population create additional barriers to accessing care for many.[3] Recruitment and retention efforts are hampered by inadequate compensation, which discourages many from entering or remaining in the field.[4]

---

[1] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues,* January 24, 2013, pg. r, citing the following Institute of Medicine reports: Institute of Medicine, (2006), *Improving the quality of health care for mental and substance-use conditions.*, Washington, DC, National Academies Press; Institute of Medicine, (2003), Greiner, A., & Knebel, E. (Eds.), *Health professions education: A bridge to quality.*, Washington, DC, National Academies Press; Institute of Medicine, (2004), Smedley, B. D., Butler, A. S., Bristow, L. R. (Eds.), *In the nation's compelling interest: Ensuring diversity in the health-care workforce.*, Washington, DC, National Academies Press; and Institute of Medicine, & Eden, J., (2012), *The mental health and substance use workforce for older adults: In whose hands?*, Washington, DC, National Academies Press; *available at* https://store.samhsa.gov/shin/content/PEP13-RTC-BHWORK/PEP13-RTC-BHWORK.pdf (last accessed on February 18, 2016).

[2] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues*, January 24, 2013, pg. 4, available at https://store.samhsa.gov/shin/content/PEP13-RTC-BHWORK/PEP13-RTC-BHWORK.pdf (last accessed on February 18, 2016).

[3] *Id.*

[4] *Id.*

In addition, the misperceptions and prejudice surrounding mental and substance use disorders and those who experience them may be imputed to those who work in the field.[5]

Of additional concern, the IOM found that the workforce is unprepared to meet the mental and substance use disorder treatment needs of the rapidly growing population of older adults. The IOM data indicate that 5.6 to 8 million older adults have one or more mental health and substance use conditions which compound the care they need. However, there is a shortage of mental health or substance abuse practitioners who are trained with this population.[6]

The IOM projects that by 2020, there will be 12,625 child and adolescent psychologists needed, but a supply of only 8,312 is anticipated.[7] In 2010, the Substance Abuse and Mental Health Services Administration (SAMHSA) reported that more than two-thirds of primary care physicians who tried to obtain outpatient mental health services for their patients reported they were unsuccessful because of shortages in mental health care providers, health plan barriers, and lack of coverage or inadequate coverage.

As of January 2016, the Health Resources and Services Administration has designed 4,362 Mental Health Professional Shortage Areas, including at least one in each state, the District of Columbia, and each of the territories.[8]

Behavioral Health Practice

In the U.S., states generally require a person to achieve higher levels of education to become a mental health counselor compared to that of a substance abuse counselor. As of 2011, 49 states required a master's degree to qualify as a mental health counselor but 23 states did not require any college degree to qualify as a substance abuse counselor. For behavioral health care disciplines, independent practice requires a master's degree in most states; however, for addiction counselors, data available a decade ago indicated that about 50-55 percent of those certified or practicing in the field held at least a master's degree, 75 percent held a bachelor's degree, and the reminder had either completed some college or held a high school diploma or equivalent degree.[9]

Because of major changes to the field of behavioral health, including the integration of behavioral health and primary care, behavioral health workers are in need of additional pre-service training and continuing education.[10] Behavioral health has moved to a chronic care, public health model to define needed services. This model recognizes the importance of prevention, the primacy of long-term recovery as its key construct, and is shaped by those with experience of recovery.[11] This new care model will require a diverse, skilled, and trained

[5] *Id.*
[6] *Id.*
[7] *Id.* At 10.
[8] Health Resources and Services Administration, *Data Warehouse, Health Professional Shortage Areas (HPSA)* and *Medically Underserved Areas/Populations (MUA/P),* available at http://datawarehouse.hrsa.gov/topics/shortageAreas.aspx (last accessed on February 6, 2016).
[9] *Supra* note 2.
[10] *Id*. at 4-5.
[11] *Id*. at 6.

workforce that employs a range of workers, including people in recovery, recovery specialists, case workers, and highly trained specialists.[12] In fact, the movement to include primary care providers in the field of behavioral health has led to a lack of consensus as to which health care provider types make up the workforce.[13] Generally, however, the workforce is made up of professionals practicing psychiatry, clinical psychology, clinical social work, advanced practice psychiatric nursing, marriage and family therapy, substance abuse counseling, and counseling[14]

Involuntary Examination and Inpatient Placement under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act, also known as the Baker Act[15], codified in part I of ch. 394, F.S., to address mental health needs in the state.[16] The Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities that examine persons with evidence of mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under the Baker Act.[17] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[18]

Current law provides that an involuntary examination may be initiated if there is reason to believe a person has a mental illness, and, because of the illness:[19]

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and

---

[12] *Id*.

[13] Congressional Research Service, *The Mental Health Workforce: A Primer*, April 16, 2015, *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjK9voubzKAhVCVyYKHYx5DHYQFgguMAI&url=http%3A%2F%2Ffas.org%2Fsgp%2Fcrs%2Fmisc%2FR43255.pdf&usg=AFQjCNHkmHp_4SMtmCWS7gImwEWxhPGl1g&sig2=5JBwSXTV1PHBeGZJGig0Xw(last accessed on February 6, 2016).

[14] *Id.* At 2 (using the Substance Abuse and Mental Health Services Administration definition).

[15] "The Baker Act" is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. *See* University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, *available at* http://www.library.ufl.edu/spec/pkyonge/baker.htm (last accessed January 21, 2016), and Department of Children and Families and University of South Florida, Department of Mental Health and Law, *Baker Act Handbook and User Reference Guide 2014 (2014)*, *available at* http://myflfamilies.com/service-programs/mentalhealth/baker-act (select "2014 Baker Act Manual) (last accessed January 21, 2016).

[16] Chapter 71-131, s. 1, Laws of Fla.

[17] Section 394.455(32), F.S.

[18] Section 394.463(1), F.S.

[19] Section 394.463(2)(a)1.-3., F.S.

- The person is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.[20] A circuit court may enter an ex parte order stating a person meets the criteria for involuntary examination. A law enforcement officer[21] may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination. Health care practitioners may initiate an involuntary examination by executing the Certificate of a Professional Initiating an Involuntary Examination, an official form adopted in DCF rule.[22] The health care practitioner must have examined the person within the preceding 48 hours and must state that the person meets the criteria for involuntary examination.[23] The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:[24]

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders;
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure;
- A physician or psychologist employed by a facility operated by the U.S. Department of Veterans Affairs that qualifies as a receiving or treatment facility;
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician;
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.

In 2014, there were 181,471 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.18 percent), followed closely by mental health

[20] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. s. 943.10(1), F.S.

[21] The Certificate of a Professional Initiating an Involuntary Examination is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under the Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person. See Florida Department of Children and Families, CF-MH 3052b, incorporated by reference in Rule 65E-.280, F.A.C., and available at http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf. (last visited February 6, 2016).

[22] Section 394.463(2)(a)3., F.S.

[23] *Id.*

[24] *Id.*

professionals (47.86 percent), with the remaining initiated pursuant to ex parte orders by judges (1.96 percent).[25]

Background Screening of Substance Abuse Treatment Provider Staff

Substance abuse treatment programs are licensed by the DCF Substance Abuse Program Office under authority granted in s. 397.401, F.S., which provides that it is unlawful for any person to act as a substance abuse service provider unless he or she is licensed or exempt from licensure. In order to obtain a license, a provider must apply to the DCF and submit "sufficient information to conduct background screening as provided in s. 397.451, F.S."[26] According to administrative rule, the required documentation is verification that fingerprinting and background checks have been completed as required by ch. 397, F.S., and ch. 435, F.S.[27]

Section 397.451, F.S., requires that "all owners, directors, and chief financial officers of service providers are subject to level 2 background screening as provided under chapter 435, F.S." All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435, F.S. Church or nonprofit religious organizations that are exempt from licensure as substance abuse treatment programs must also comply with personnel screening requirements.

Exemptions from personnel screening requirements include:

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections (DOC) in a substance abuse service program who have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.[28]

The requirements for level 1 and level 2 screening are found in ch. 435, F.S. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE), a check of the Dru Sjodin National Sex Offender Public Website,[29] and may include criminal records checks through local law enforcement agencies. Level 2 screening is required for all employees in positions designated by law as positions of trust or responsibility, and it includes security background investigations which consist of at least fingerprinting, statewide criminal and juvenile records checks through FDLE, and federal criminal records checks through the Federal Bureau of

[25] Annette Christy & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: summary of 2014 Data,* available at http://bakeract.fmhi.usf.edu/document/BA_Annual_2014.pdf (last visited February 6, 2016).
[26] Section 397.403, F.S.
[27] Rule 65D-30.003(6)(s), F.A.C.
[28] Section 397.451(2)(c), F.S.
[29] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited February 6, 2016.

Investigation (FBI) and may include local criminal records checks through local law enforcement agencies.[30]

Under certain circumstances, the DCF may grant an exemption from disqualification as provided in s. 435.07, F.S. These circumstances are:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors prohibited under any of specified Florida Statutes or under similar statutes of other jurisdictions;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30, F.S.

Under s. 435.07, F.S., employees bear the burden of proving, by clear and convincing evidence, they should not be disqualified and have administrative hearing rights under ch. 120, F.S., for denials.[31] However, the DCF may not remove a disqualification for or grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03, F.S., solely by pardon, executive clemency, or restoration of civil rights.[32]

Substance Abuse Treatment Provider Staff

Since many substance abuse treatment programs employ persons who are themselves in recovery, the DCF is authorized to grant additional exemptions from disqualification for employees of substance abuse treatment programs.[33] Employees must submit a request for an exemption for disqualification within 30 days after being notified of a pending disqualification. Pending disposition of the exemption request, an employee's employment may not be adversely affected. However, upon disapproval of a request for an exemption the service provider must immediately dismiss the employee from employment.[34]

Physician Assistants

A physician assistant (PA) is a person who has completed an approved medical training program and is licensed to perform medical services, as delegated by a supervising physician.[35] Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards

[30] Section 435.04(1), F.S.
[31] The employee must set forth sufficient evidence of rehabilitation, such as the circumstances surrounding the criminal incident, the time period that has elapsed since the incident, the nature of the harm to the victim, and the history of the employee since the incident.
[32] Section 435.07(4), F.S.
[33] Section 397.451(4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older; as well as personnel who work exclusively with adults.
[34] Section 397.451(1)(f), F.S.
[35] Sections 458.347(2)(e) and 459.022(2)(e), F.S.

through the Council on Physician Assistants.[36] During the 2014-2015 state fiscal year, there were 6,744 in-state, actively licensed PAs in Florida.[37]

Physician Assistants are trained and required by statute to work under the supervision and control of allopathic or osteopathic physicians.[38] The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[39] and indirect[40] supervision. A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[41] Each physician, or group of physicians supervising a licensed PA, must be qualified in the medical areas in which the PA is to work and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[42]

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.[43] However, the law allows a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient during the patient's stay in a facility licensed under ch. 395, F.S.[44]

Licenses are renewed biennially.[45] At the time of renewal, a PA must demonstrate that he or she has met the continuing medical education requirements of 100 hours and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.[46] If a PA is licensed as a prescribing PA, an additional 10 hours of continuing medical education in the specialty areas of his or her supervising physician must be completed.[47]

---

[36] The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (s. 458.348(9), F.S. and s. 459.022(9), F.S.)

[37] Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 11, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf, (last visited Feb. 1, 2016).

[38] Sections 458.347(4), and 459.022(4), F.S.

[39] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).

[40] "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.

[41] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

[42] Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.

[43] Sections 458.347(4)(e) and (f)1., and 459.022(4)(e), F.S.

[44] *See* s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

[45] For timely renewed licenses, the renewal fee is $275 and the prescribing registration fee is $150. Additionally, at the time of renewal, the PA must pay an unlicensed activity fee of $5. See Rules 64B8-30.019 and 64B15-6.013, F.A.C. [43] Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

[46] Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

[47] Rules 64B8-30.005(6) and 64B15-6.0035(6), F.A.C.

According to the American Academy of Physician Assistants, all accredited PA educational programs include pharmacology courses, and the average amount of formal classroom instruction in pharmacology is 75 hours.[48] Course topics, include pharmacokintetics, drug interactions, adverse effects, contraindications, indications, and dosage, generally by doctoral-level pharmacologists or clinical pharmacists.[49] Additionally, pharmacology education occurs on all clinical clerkships or rotations.[50]

A PA may only practice under the delegated authority of a supervising physician. A physician may not supervise more than four PAs at any time.[51]

Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of advanced registered nurse practitioners (ARNPs) in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).[52] There are 22,003 actively licensed ARNPs in Florida.[53]

In Florida, an ARNP is a licensed nurse who is certified in advanced or specialized nursing practice and may practice as a certified registered nurse anesthetist, a certified nurse midwife, or a nurse practitioner.[54] Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include the performance of advanced-level nursing acts approved by the BON, which by virtue of post-basic specialized education, training, and experience are appropriately performed by an ARNP.[55]

Pursuant to s. 464.012(3), F.S., ARNPs may only perform nursing practices delineated in an established protocol filed with the BON that is filed within 30 days of entering into a supervisory relationship with a physician and upon biennial license renewal.[56] Florida law allows a primary care physician to supervise ARNPs in up to four offices, in addition to the physician's primary practice location.[57] If the physician provides specialty health care services, then only two medical offices, in additional to the physician's primary practice location, may be supervised.

The supervision limitations do not apply in the following facilities:
- Hospitals;
- Colleges of medicine or nursing;
- Nonprofit family-planning clinics;

[48] American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications, Professional Issues – Issue Brief* (Dec. 2013), (on file with the staff of the Senate Committee on Children, Families & Elder Affairs).
[49] *Id.*
[50] *Id.*
[51] Sections 458.347(3) and 459.022(3), F.S.
[52] Section 464.004, F.S.
[53] E-mail correspondence with the Department of Health (Nov. 9, 2015). This number includes all active licenses, including out of state practitioners.
[54] Section 464.003(3), F.S.
[55] Section 464.003(2), F.S.
[56] Physicians are also required to provide notice of the written protocol and the supervisory relationship to the Board of Medicine or Board of Osteopathic Medicine, respectively. See ss. 458.348 and 459.025, F.S.
[57] Sections 458.348(4) and 459.025(3), F.S.

- Rural and federally qualified health centers;
- Nursing homes;
- Assisted living facilities;
- Student health care centers or school health clinics; or
- Other government facilities.[58]

To ensure appropriate medical care, the number of ARNPs a supervising physician may supervise is limited based on consideration of the following factors:

- Risk to the patient;
- Educational preparation, specialty, and experience in relation to the supervising physician's protocol;
- Complexity and risk of the procedures;
- Practice setting; and
- Availability of the supervising physician or dentist.[59]

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Act) and classifies controlled substances into five categories, known as schedules.[60] The distinguishing factors between the different drug schedules are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance. Schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. The Act provides requirements for the prescribing and administering of controlled substances by health care practitioners and proper dispensing by pharmacists and health care practitioners.[61]

As of January 1, 2012, every physician, podiatrist, or dentist, who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain,[62] must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.[63]

Patients being treated with controlled substances for chronic nonmalignant pain must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.[64] Patients at special risk for drug abuse or diversion may require consultation with or a referral to an addiction medicine physician or a psychiatrist.[65] Anyone with signs or symptoms of substance

[58] Sections 458.348(4)(e) and 459.025(3)(e), F.S.
[59] Rule 64B9-4.010, F.A.C.
[60] *See* s. 893.03, F.S.
[61] Sections 893.04 and 893.05, F.S.
[62] "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.
[63] Chapter 2011-141, s. 3, Laws of Fla. (creating ss. 456.44, F.S., effective July 1, 2011).
[64] Section 465.44(3)(d), F.S.
[65] Section 465.44(3)(e), F.S.

abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.[66]

Obstetrical Departments in Hospitals

Hospitals are required to report the services which will be provided by the hospital as a requirement of licensure. These services are listed on the hospital's license. A hospital must notify the Agency for Health Care Administration (AHCA) of any change of service that affects information on the hospital's license by submitting a revised licensure application between 60 and 120 days in advance of the change.[67] The list of services is also used for the AHCA's inventory of hospital emergency services. According to the AHCA website, there are currently 143 hospitals in Florida that offer emergency obstetrical services.[68]

Provider Hospitals

Section 383.336, F.S., defines the term "provider hospital" and creates certain requirements for such hospitals. A provider hospital is defined as a hospital in which 30 or more births occur annually that are paid for partly or fully by state funds or federal funds administered by the state.[69] Physicians in such hospitals are required to comply with additional practice parameters[70] designed to reduce the number of unnecessary cesarean sections performed within the hospital. These parameters must be followed by physicians when performing cesarean sections partially or fully paid for by the state.

The statute also requires provider hospitals to establish a peer review board consisting of obstetric physicians and other persons with credentials to perform cesarean sections within the hospital. The board is required to review, on a monthly basis, all cesarean sections performed within the hospital that were partially or fully funded by the state.

These provisions are not currently being implemented, and DOH rules regarding provider hospitals were repealed by ss. 9-10 of ch. 2012-31, Laws of Florida.

Closure of an Obstetrical Department in Bartow, Florida

In June of 2007, Bartow Regional Medical Center in Polk County announced to patients and physicians that it would close its obstetrics department at the end of July of the same year.[71] Although many obstetrical physicians could continue to see patients in their offices, they would

[66] Section 456.44(3)(g), F.S.
[67] AHCA, *Senate Bill 380 Analysis* (December 20, 2013) (on file with Senate Committee on Health Policy). See also ss. 408.806(2)(c) and 395.1041(2), F.S.
[68] Report generated by http://www.floridahealthfinder.gov/index.html on Nov. 24, 2015 (on file with the Senate Committee on Health Policy).
[69] Section 383.336 (1), F.S.
[70] These parameters are established by the Office of the State Surgeon General in consultation with the Board of Medicine and the Florida Obstetric and Gynecologic Society and are required to address, at a minimum, the feasibility of attempting a vaginal delivery, dystocia, fetal distress, and fetal malposition.
[71] Jennifer Starling, *Community Unites Against OB Closure*, THE POLK DEMOCRAT, July 12, 2007, *available at* http://ufdc.ufl.edu/UF00028292/00258/1x?vo=12, (last visited Nov. 24, 2015).

no longer be able to deliver babies at the hospital.[72] Physicians and the local community protested the short timeframe for ceasing to offer obstetrical services. According to the Florida Medical Association and several physicians who worked at the hospital, the short notice "endangered pregnant women who [were] too close to delivery for obstetricians at other hospitals to want them as patients."[73]

III. Effect of Proposed Changes:

Section 1 amends s. 110.12315, F.S., to allow advanced registered nurse practitioners and physician assistants to write prescriptions under the state employees' prescription drug program for brand name drugs under certain conditions.

Section 2 amends 2. 310.071, F.S., to allow applicants for certification as a deputy pilot of a watercraft or vessel to meet certain requirements and minimum standards for passing a physical examination. Such standards must include zero tolerance for any controlled substance unless the applicant is under the care of, and the controlled substance was prescribed by, a physician, advanced registered nurse practitioner (ARNP), or physician assistant (PA).

Section 3 amends s. 310.073, F.S., to require applicants for state licensure as a pilot of a watercraft or vessel to meet certain minimum standards for physical and mental capabilities necessary to carry out their professional duties. Such minimum standards must include zero tolerance for any controlled substance unless the applicant is under the care of, and the controlled substance was prescribed by, a physician, ARNP, or PA.

Section 4 amends s. 310.081, F.S., to allow licensed pilots to hold their licenses so long as they meet certain minimum standards. Such standards include zero tolerance for any controlled substance unless the applicant is under the care of, and the controlled substance was prescribed by, a physician, advanced registered nurse practitioner or physician assistant.

Section 5 amends 394.453, F.S., to provide legislative intent to address a behavioral health workforce shortage in the state. The bill finds that there is a need for additional psychiatrists and recommends the establishment of an additional psychiatry program to be offered by one of Florida's medical schools, which shall seek to integrate primary care and psychiatry, and other evolving models of care for persons with mental health and substance use disorders. Additionally, the bill finds that the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation.

Section 6 amends s. 394.467, F.S., to allow a psychiatrist providing the first opinion and a psychiatrist or clinical psychologist providing a second opinion about the patient's placement, to examine the patient electronically.

Section 7 amends s. 395.1051, F.S., to require hospitals to notify physicians within 90 days before the hospital closes its obstetrical department or ceases to provide obstetrical services.

---

[72] Robin W. Adams, *Bartow Hospital Plan Criticized*, THE LEDGER, July 11, 2007, *available at* http://www.theledger.com/article/20070711/NEWS/707110433?p=1&tc=pg&tc=ar. (last visited Nov. 24, 2015).
[73] Id.

Section 8 amends s. 397.451, F.S., to clarify that persons employed with the Department of Corrections (DOC) in an inmate substance abuse program are exempt from fingerprinting and background check requirement, unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled. The current law erroneously states the inverse.

The bill also provides that a person who has had a disqualifying offense that occurred five or more years ago and who has requested an exemption from disqualification to work with adults with substance abuse disorders, must work under the supervision of qualified professionals under chapter 490 or chapter 491 or a master's level certified addiction professional until "the agency" makes a final determination regarding the request for an exemption from disqualification.

Section 9 amends s. 456.072, F.S., to provide that an ARNP who prescribed or dispensed in a manner that violates the standards of practice is subject to disciplinary action.

Section 10 amends s. 456.44, F.S., to increase access to behavioral health treatment by allowing PAs licensed under chapters 458 or 459, F.S., and ARNPs certified under part I of ch. 464, F.S., to prescribe controlled substances listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, F.S., for the treatment of chronic nonmalignant pain under certain conditions.

Section 11 amends s. 458.3265, F.S., to allow only physicians licensed under chapters 458 or 459, F.S., to dispense medication or prescribe controlled substance regulated under ch. 893 on the premises of a registered pain-management clinic.

Section 12 amends s. 459.0137, F.S., to allow only physicians licensed under chapters or 458 or 459, F.S., to dispense medication or prescribe controlled substance regulated under ch. 893 on the premises of a registered pain-management clinic.

Section 13 amends s. 458.347, F.S., to provide that three of the ten continuing medical education hours required for a PA must consist of a continuing education court on the safe and effective prescribing of controlled substance medications. The continuing education must be offered by a statewide professional association of physicians in this state accredited to provide educational activities designated by the American Medical Association Physician's Recognition Award Category I Credit or designated by the American Academy of Physician Assistants as a Category I Credit.

Section 14 amends s. 458.347, F.S., to direct the establishment of a formulary of medicinal drugs that a fully licensed PA may not prescribe. The formulary must include certain drugs and must limit the prescription of Schedule II controlled substance to a seven-day supply and restrict the prescribing of psychiatric mental health controlled substances to children under 18 years of age, effective January 1, 2017.

Section 15 amends s. 464.003, F.S., to provide that an ARNP may perform certain acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol.

Section 16 amends s. 464.012, F.S., to direct the Board of Nursing to establish a committee to recommend a formulary of controlled substances that an ARNP may not prescribe or may prescribe only for specific uses or in limited quantities. The bill sets out who will be members of the committee and that the committee's initial recommendation is to be adopted no later than October 31, 2016.

Section 17 amends s. 464.012, F.S., to allow ARNPs to prescribe, dispense, administer, or order any drug but may only prescribe or dispense a controlled substance if the ARNP meets specified education and training requirements, effective January 1, 2017.

Section 18 amends s. 464.013, F.S., to provide that ARNPs must meet certain continuing education requirements and participate in at least three hours of continuing education requirements on the safe and effective prescription of controlled substances.

Section 19 amends 2. 464.018, F.S., to specify the acts that constitute grounds for denial of a license or disciplinary actions for ARNPs.

Section 20 amends s. 893.02, F.S., to include ARNPs and PAs in the definition of practitioner.

Section 21 amends s. 948.03, F.S., to provide that a probationer is prohibited from using intoxicants or possessing any drugs or narcotics unless prescribed by a physician, ARNP, or PA.

Section 22 amends s. 458.348, F.S., to correct cross-referencing.

Section 23 amends s. 459.025, F.S., to correct cross-referencing.

Section 24 reenacts s. 458.331, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 25 reenacts s. 458.347, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 26 reenacts s. 459.015, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 27 reenacts s. 459.022, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 28 reenacts s. 459.0158, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 29 reenacts s. 459.02751, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.072, F.S.

Section 30 reenacts s. 466.0271, F.S., for the purpose of incorporating the amendment made by the bill to s. 456.44, F.S.

Section 31 reenacts s. 458.303, F.S., for the purpose of incorporating the amendment made by the bill to s. 458.347, F.S.

Section 32 reenacts s. 458.3475, F.S., for the purpose of incorporating the amendment made by the bill to s. 458.347, F.S.

Section 33 reenacts s. 459.023, F.S., for the purpose of incorporating the amendment made by the bill to s. 458.347 F.S.

Section 34 reenacts s. 459.023, F.S., for the purpose of incorporating the amendment made by the bill to s. 458.347, F.S.

Section 35 reenacts s. 456.041, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.012, F.S.

Section 36 reenacts s. 458.348, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.012, F.S.

Section 37 reenacts s. 464.013, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.0205, F.S.

Section 38 reenacts s. 320.0848, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.018, F.S.

Section 39 reenacts s. 464.008, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.018, F.S.

Section 40 reenacts s. 464.009, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.018, F.S.

Section 41 reenacts s. 464.0205, F.S., for the purpose of incorporating the amendment made by the bill to s. 464.018, F.S.

Section 42 reenacts s. 775.051, F.S., for the purpose of incorporating the amendment made by the bill to s. 893.02, F.S.

Section 43 reenacts s. 944.17, F.S., for the purpose of incorporating the amendment made by this the bill to s. 948.03, F.S.

Section 44 reenacts s. 948.101, F.S., for the purpose of incorporating the amendment made by the bill to s. 948.03, F.S.

Section 46 provides that except as otherwise expressly provided, the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

CS/SB 1250 is a bill relating to the "behavioral health workforce." Article III, section 6 of the Florida Constitution requires that [e]very law shall embrace but one subject and matter properly connected therewith and the subject shall be briefly expressed in the title." The bill in section 7, requires hospitals to provide physicians with notice before a hospital closes its obstetrical department or ceases to provide obstetrical services. Consideration should be given to revising the "relating to" clause in the bill's title or whether certain provisions of the bill constitute more than "one subject and matter properly connected therewith."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1250, health care entities may experience some cost savings by allowing additional practitioners to provide treatment and care. Cost savings may be passed on to patients.

C. Government Sector Impact:

The Department of Health may experience an indeterminate workload impact for handling additional complaints and conducting additional investigations due to the expanded scope of practice for advanced registered nurse practitioners (ARNPs) and physician assistants (PAs).

VI. Technical Deficiencies:

The bill amends s. 397.451, F.S., to provide that a person who has had a disqualifying offense that occurred five or more years ago and who has requested an exemption from disqualification to work with adults with substance abuse disorders, must work under the supervision of qualified

professionals under chapter 490, F.S. or chapter 491, F.S. or a master's level certified addiction professional until "the agency" makes a final determination regarding the request for an exemption from disqualification. Chapter 391, F.S., refers to several different types of agencies, and it is unclear which agency is being referenced under the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.12315, 310.071, 310.073, 310.081, 394.453, 394.467, 395.1051, 397.451, 456.072, 456.44, 458.3265, 459.0137, 458.347, 464.003, 464.012, 464.013, 464.018, 893.02, 948.03, 458.348, and 459.025.

This bill reenacts the following sections of the Florida Statutes: 458.331, 458.347, 459.015, 459.022, 465.0158, 456.072, 466.02751, 458.303, 458.3475, 459.022, 459.023, 456.041, 458.348, 464.0205, 320.0848, 464.008, 464.009, 464.0205, 775.051, 944.17, 948.001, and 948.101.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 10, 2016:

- Removes language expanding the Statewide Medicaid Residency Program to include psychiatry in the list of primary care specialty programs included in the program.
- Requires hospitals notify physicians within 90 days of the closing of an obstetrical department.
- Provides grounds for disciplinary actions for advanced registered nurse practitioners (ARNPs) and physician assistants.
- Provides required hours for continuing education credits for ARNPs and physician assistants prescribing controlled substances.
- Directs the Board of Nursing (BON) to establish a formulary of controlled substances that ARNPs cannot prescribe.

B. Amendments:

None.