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 Health Policy

BILL:	SB 918
INTRODUCER:	Senator Richter
SUBJECT:	Licensure of Health Care Professionals
DATE:	January 8, 2016
REVISED:	01/11/2016,

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 918 authorizes the Department of Health (DOH) to waive fees and issue health care licenses to active duty U.S. military personnel who are within 6 months of an honorable discharge, and issue temporary licenses to active duty military spouses, in professions that do not require licensure in other states, if the applicant can provide evidence of training or experience equivalent to that required in Florida, and proof of a passing score on a national standards organization exam, if one is required in Florida. The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license practice under the indirect supervision of a Florida dentist.

SB 918 also updates various provisions regulating health care professions to reflect current operations and to improve operational efficiencies, including:

- Conforming the statutes to reflect implementation of the integrated electronic continuing education (CE) tracking system with the licensure and renewal process;
- Authorizing the DOH to contract with a third party to serve as the custodian of medical records in the event of a practitioner's death, incapacitation, or abandonment of records;
- Modifying procedures for handling professions that have been operating at cash deficits and which are at the statutory fee cap;
- Deleting the requirement for pre-licensure courses relating to HIV/AIDS and medical errors for certain professions;
- Deleting a loophole pertaining to the licensure and license renewal of certain felons, persons convicted of Medicaid fraud, or other excluded individuals;
- Eliminating the requirement for annual inspections of dispensing practitioners' facilities;
- Providing definitions and clarification to the impaired practitioner program;
- Repealing the Council on Certified Nursing Assistants and the Advisory Council of Medical Physicists; and
- Providing for a one year temporary license for medical physicists.

II. Present Situation:

Health Care Practitioner Licensure

The DOH is responsible for the regulation of health practitioners and health care facilities in Florida for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), working in conjunction with 22 boards and six councils, licenses and regulates seven types of health care facilities, and more than 200 license types, in over 40 health care professions.[1] Any person desiring to be a licensed health care professional in Florida must apply to the DOH, MQA in writing.[2] Most health care professions are regulated by a board or council in conjunction with the DOH and all profession have different requirements for initial licensure and licensure renewal.[3]

Initial Licensure Requirements

Military Health Care Practitioners

Section 456.024, F.S., provides that any member of the U.S. Armed Forces who has served on active duty in the military, reserves, National Guard, or in the United States Public Health Service, as a health care practitioner, is also eligible for licensure in Florida. The DOH is required to waive fees and issue these individuals a license if they submit a completed application and proof of the following:

- A honorable discharge within 6 months before or after, the date of submission of the application;[4]
- An active, unencumbered license issued by another state, the District of Columbia, or a U.S. possession or territory, with no disciplinary action taken against it in the 5 years preceding the date of submission of the application;
- An Affidavit that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Documentation of actively practicing his or her profession for the 3 years preceding the date of submission of the application; and
- A completed fingerprint card for a background screening, if required for the profession for which he or she is applying.[5]

Florida offers an expedited licensure process to facilitate veterans seeking licensure in a health care profession in Florida through its Veterans Application for Licensure Online Response

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[1] Florida Dep't of Health, Medical Quality Assurance, *Annual Report and Long Range Plan, 2014-2015*, p.6, *available at:* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf
[2] Section 456.013, F.S.
[3] *See* chs. 401, 456-468, 478, 480, 483, 484, 486, 490, and 491, F.S.
[4] A form DD-214 or an NGB-22 is required as proof of honorable discharge. Department of Health, *Veterans,* http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html (last visited Dec. 15, 2015).
[5] *Id.* The Military Veteran Fee Waiver Request Form, also must be submitted with the application for licensure to receive waiver of fees and is available on the DOH website.

System (VALOR).[6] In order to qualify, a veteran must apply for the license within 6 months before, or 6 months after, he or she is honorably discharged from the Armed Forces; and there is no application fee, licensure fee, or unlicensed activity fee.[7]

A board, or the department if there is no board, may also issue a temporary health care professional license to the spouse of an active duty member of the Armed Forces upon submission of an application form and fees. The applicant must hold a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States and may not be the subject of any disciplinary proceeding in any jurisdiction relating to the practice of a regulated health care profession in Florida. A spouse who is issued a temporary professional license to practice as a dentist under this authority must practice under the indirect supervision of a Florida dentist.

HIV and AIDS Course Requirements

Section 381.0034(3), F.S. and s. 468.1201, F.S., require prospective licensees for midwifery, radiology technology, laboratory technicians, medical physicists, speech-language pathology and audiology, as a condition of initial licensure, to complete an approved course on HIV and AIDS. An applicant who has not completed the required HIV and AIDS course at the time of initial licensure will, upon submission of an affidavit showing good cause, be allowed 6 months to complete this requirement.

Medical Errors Course Requirements

Section 456.013(7), F. S., requires that every practitioner regulated by DOH complete a DOH approved 2-hour course relating to the prevention of medical errors as part of the licensure and renewal process. The 2-hour course shall count towards the total number of CEs required for the profession.

Licensure Renewal Requirements

CE Tracking

Under s. 456.025(7), F.S., the DOH is required to utilize an electronic CE tracking system for each new biennial renewal cycle; and all approved CE providers are to provide information on course attendance to DOH for this system. The initial CE tracking system was not linked to the DOH license renewal system so in order for a practitioner to renew his or her license, he or she certified that the required CEs had been completed. The DOH is currently deploying an integrated CE tracking system for all professions. Several practice acts still reference the submission of sworn affidavits, audits for compliance, and other methods for proof of completion of CE requirements.[8]

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[6] Florida Dep't of Health, *Veterans*, http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html, (last visited Dec. 15, 2015).
[7] *Id.*
[8] *See* Florida Dep't of Health, *Senate Bill 918 Analysis*, p. 6, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).

Felons, Medicaid Fraud and Excluded Individuals

Section 456.0635(2), F.S., provides that a board or the DOH, if there is no board, must refuse to admit a candidate to any examination, and refuse to issue a license, certificate, or registration, to any applicant if the candidate, applicant, or principal, officer, agent, managing employee, or affiliated person of an applicant:

- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies;
- Has been terminated for cause from any Medicaid program; or
- Is listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities.

Section 456.0635(2), F.S., provides a tiered timeframe for these individuals to apply for a license, certificate, or registration, depending on the degree and age of the violation; and there is a general exception for candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012.

According to the DOH, recently, when it refused to renew licenses based on the provisions of s. 456.0635(3), F.S., the licensees have immediately reapplied under the exception in s. 456.0635(2), F.S., and have been granted a license. By taking advantage of the exception, licensees who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies; or were terminated for cause from the Florida Medicaid or any other state's Medicaid program; or are currently listed on the United States Department of Health and Human Services, List of Excluded Individuals and Entities have been able to regain a license to practice. When the next renewal cycle ends, those licensees will once again be denied renewal based on s. 456.0635(3), F.S., but can again reapply for licensure under the exception.[9]

Continuing Education Reporting for Renewal

Section 463.007, F.S., authorizes the DOH to periodically require an optometrist to demonstrate his or her professional competence, as a condition of licensure renewal, by completing up to 30 CE hours in the 2 years preceding renewal. For certified optometrists, the 30 hours of CE must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.

Section 464.203, F.S., requires a Certified Nursing Assistant (CNA) to complete 12 CE hours of in service training every year.

Sections 457.107(3), 458.347(4)(e)3., 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4), F.S., require acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists to provide an affidavit or written statement attesting to the completion of the required CEs for his or her biennial renewal period;

[9] *Id* at p. 7.

and authorize the DOH to request a licensee, with or without cause, produce documentation of his or her completed CEs reported for the biennial renewal period.

Licensure Regulation Costs

Section 456.025, F.S., sets forth the legislative intent that all costs of regulating health care professions must be borne solely by licensees and license applicants, and that no profession is to operate with a negative cash flow balance. Fees are set by the board, or the DOH where there is no board; and are required to be reasonable, and not serve as a barrier to licensure. Fees are to be based on potential earnings of licensees, must be similar to similarly licensed professions, and must not be more than 10 percent higher than the actual cost of regulating a profession the previous biennium. All funds collected by the DOH from fees, fines or costs awarded to the agency by a court shall be paid into the Medical Quality Assurance Trust Fund. The DOH may not expend funds from one profession to pay for the expenses incurred by another profession, except that the Board of Nursing is responsible for the costs incurred in regulating certified nursing assistants.

The DOH may adopt rules for advancing funds to professions operating with a negative cash balance. However, it may not advance funds to one profession for more than two consecutive years, and must charge interest at the current rate earned on trust funds used by the DOH to implement ch. 456, F.S. Interest earned by the trust fund must be allocated to the professions in accordance with their respective investment. Each board or the DOH, by rule, may also assess a one-time fee to each active and inactive licensee in an amount necessary to eliminate a cash deficit in the profession, if there is no deficit, to maintain the financial integrity of the profession. Not more than one such assessment may be made in any 4-year period.

The DOH has provided the following recap of professions that have faced negative cash balances. [10]

> The boards have imposed four one-time assessments in the past 10 years as follows:
> Electrolysis – FY 05-06 $1,306
> Nursing Home Administrators – FY 05-06 $200
> Dentistry – FY 07-08 $250
> Midwifery – FY 08-09 $250
>
> Three professions operate in a chronic deficit. Each is at their statutory fee cap and, according to the DOH, midwifery and electrologists does not have a large enough licensure base to generate adequate revenue to cover expenditures. The professions and the deficit amount under which they operate are:

	Cash Balance	Renewal Fee	Statutory Fee Cap	Total Licensees
Dentistry	$ (2,144,333)	$ 300	$ 300	14,285
Electrologists	$ (638,545)	$ 100	$ 100	1,591
Midwifery	$ (900,115)	$ 500	$ 500	206

[10] *Id*. at p. 5.

If the boards or department were to impose a one-time assessment, the amount to eliminate the deficit and result in solvency though FY 19-20 would be:
Dentistry - $450 per active/inactive licensee
Electrolysis - $900 per active/inactive licensee
Midwifery - $5,500 per active/inactive licensee

Section 456.025, F.S., also allows the boards or DOH where there is no board to collect up to $250.00 from CE providers seeking approval or renewal of individual courses. The fees are required to be used to review the proposed courses, and for implementation of the electronic CE tracking system which is integrated with the licensure and renewal systems.

Section 456.025, F.S., also requires the chairpersons of the boards and councils to meet annually to review the long range policy plan and current and proposed fee schedules. The chairpersons are required to make recommendations for any necessary statutory changes relating to fees and fee caps which must be compiled by DOH and included in its annual report to the Legislature.

Impaired Practitioner Programs

Section 456.076, F.S., requires DOH to designate and retain one or more approved impaired practitioner programs, for professions that do not have one designated in their practice act, to assist practitioners who misuse or abuse alcohol or drugs, or have a mental or physical condition, which could affect their ability to practice. Each board or profession may refer an applicant to a consultant to determine if he or she is impaired before deciding whether to certify a license application. If the applicant agrees to the evaluation, the consultant must report his findings to the board.

When DOH has received a complaint alleging that a licensed practitioner is impaired, with no other allegations, the reporting of that information is not grounds for discipline, if the licensee:
- Acknowledges the impairment;
- Voluntarily enrolls in an approved treatment program;
- Voluntarily withdraws from practice until either the consultant, board or DOH are satisfied that the licensee has successfully completed his or her treatment plan; and
- Executes medical releases for all his or her medical records to the consultant.[11]

The statute also provides that an impaired practitioner may seek treatment on his or her own from an approved treatment program without ever having had a complaint filed against him or her. If the practitioner contacts the treatment program and voluntarily withdraws from practice until cleared to practice by a consultant or is released from a treatment program, then DOH and the boards are not involved in the case.[12]

The consultant is the official custodian of all records relating to any action between an impaired practitioner or applicant and the consultant.[13] The DOH is not responsible for paying for any care

[11] Section 456.076(4)(a), F.S.
[12] Section 456.076(4)(b), F.S.
[13] Section 456.076(9), F.S.

provided by approved treatment providers or consultants.[14] Section 456.076, F.S, does not define the terms, "approved impaired practitioner programs," "treatment program," "treatment provider," or "consultant," and the terms are used interchangeably.

Ownership and Control of Patient Records

Section 456.057(20), F.S., provides that the board or department may appoint a medical records custodian for patient records in the event of the death or incapacitation of a practitioner; or when patient records have been abandoned. The custodian is required to comply with all requirements of s. 456.057, F.S. The DOH reports that 10 or more times per year, most frequently upon the death or incarceration of a practitioner, patient records are abandoned and patients cannot access them. The DOH attempts to secure the abandoned records, but does not have the manpower or storage capacity to assume control and release the records to the patients.[15]

Dispensing Practitioner Facility Inspections

Section 465.0276(3), F.S., requires DOH to inspect any facility where a dispensing practitioner dispenses medicinal drugs in the same manner, and with the same frequency, as it inspects pharmacies to determine whether the practitioner is in compliance with all applicable statutes and rules. The DOH currently inspects pharmacies upon opening, annually, when they change locations, and when changing ownership.[16] The DOH inspects the dispensing practitioner's practice location(s) prior to the registration being added to their license and annually thereafter.[17]

The DOH inspects dispensing practitioners annually for the following:
- Proper registration with the board;[18]
- A clean and safe dispensing area;[19]
- Display of a generic drug sign;[20]
- Appropriate labeling of stock medications from a licensed manufacturer;[21]
- Proof that medications were purchased from a Florida licensed wholesaler/distributor;[22]
- No outdated medications in stock;[23]
- Medications requiring refrigeration are appropriately stored;[24]
- Medications dispensed are placed in childproof container;[25]
- Completed prescription medication is labeled properly;[26]

[14] Section 456.076(2)(c)(2), F.S.
[15] *Supra* note 8.
[16] Florida Dep't of Health, *Inspection Programs – Who We Inspect* http://www.floridahealth.gov/licensing-and-regulation/enforcement/inspection-program/index.html, (last visited Dec. 23, 2015).
[17] *Id*.
[18] Section 465.0276(2)(a), F.S.
[19] Rule 64B16-28.102(4), F.A.C.
[20] Section 465.025(7), F.S., and Rule 64B8-8.011(3)(b)10, F.A.C.
[21] Section 499.007(2), F.S.
[22] Section 499.005(14), F.S.
[23] Rule 64B16-28.110, F.A.C.
[24] Rule 64B16-28.102(3), F.A.C.
[25] 16 CFR 1700.14 and 64B8-8.011(3)(b)16., F.A.C.
[26] Section 893.04(1)(e), F.S., and Rule 64B16-28.108, F.A.C.

- Presence of all written prescriptions for medication to be dispensed;[27]
- Proof practitioner is advising patients that prescription may be filled on premise or at any pharmacy;[28]
- Use of counterfeit-resistant prescription blanks for all controlled substances;[29]
- Documentation that prescriptions are written with the quantity of the drug prescribed in both text and numerical formats, and dated with the abbreviated month written out on the face of the prescription.[30]
- That all labels for dispensed medication include expiration date;[31]
- Documentation that practitioner is present when dispensing occurs;[32]
- Documentation that practitioner is personally checking prescriptions for accuracy prior to the patient receiving them;[33]
- Proof that patients are received both verbal and printed offers to counsel;[34]
- Documentation in patient record of medical history required for counseling;[35]
- Daily hard copy log of all prescriptions, dated-signed by each practitioner if computer system utilized;[36]
- Retrievable pedigree records for medication;[37]
- Documentation that controlled substances are being dispensed in compliance with s. 465.0276, F.S.;
- Documentation that Schedule II or Schedule III controlled substances are being dispensed pursuant to exemptions under s. 465.0276(1)(b), F.S.;
- Documentation of proper reporting to the Prescription Drug Monitoring Program (PDMP)[38] within 7 days of dispensing controlled substances;[39]
- Presence and use of a locking cabinet for controlled substances;[40]
- Controlled substance prescriptions signed and dated by practitioner;[41]
- Controlled substance prescriptions with patient's name and address filled in;[42] and
- That controlled substance prescriptions have the practitioner's name, address and DEA number on them.[43]

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[27] Section 465.0276(2)(c), F.S.
[28] Section 465.0276(2)(c), F.S.
[29] Section 893.065, F.S.
[30] Section 456.42(1)(2), F.S.
[31] Rule 64B16-28.108(2)(h), F.A.C.
[32] Rule 64B16-27.1001, F.A.C.
[33] *Id.*
[34] Rule 64B16-27.820(1), F.A.C.
[35] Rule 64B16-27.800, F.A.C.
[36] Rule 64B16-28.140(3)(d)(e), F.A.C.
[37] Rule 64F-12.012 (3)(a)2.,(d), F.A.C.
[38] The PDMP, known as E-FORCSE® (Electronic-Florida Online Reporting of Controlled Substance Evaluation Program), was created by the 2009 Legislature in an initiative to encourage safer prescribing of controlled substances and to reduce drug abuse and diversion within the state of Florida. See Florida Dep't of Health, *E-FORCSE, available at* http://www.floridahealth.gov/statistics-and-data/e-forcse/, (last visited Dec. 22, 2015).
[39] Section 93.055(4), F.S.
[40] 21 CFR 1301.75.
[41] Section 893.04(1)(b), F.S.
[42] Section 893.04(1)(c) 1., F.S.
[43] Section 893.04(1)(c) 2., F.S.

Dispensing practitioners can dispense any prescription medication in their office, except Schedule II and III controlled substances, unless the controlled substance is:

- In connection with a surgical procedure, and then no more than a 14 day supply;
- In an approved clinical trial;
- In a medication-assisted opiate treatment facility licensed under s. 397.427, F.S.; or
- In a hospices facility licensed under part IV of chapter 400.[44]

During the last two fiscal years the department conducted 15,062 dispensing practitioner inspections with a passing rate of 99 percent.[45]

Council on Certified Nursing Assistants

Section 464.2085, F.S., creates the council on certified nursing assistants within the DOH, under the board of nursing. The council consists of two members who are registered nurses, one member who is a licensed practical nurse, and two CNAs who are appointed by the State Surgeon General. The duties of the council are to make recommendations to the DOH and the board on:

- Policies and procedures for the certification of nursing assistants;
- Rules regulating the education, training, and certification process for nursing assistants;
- Concerns and problems of certified nursing assistants to improve safety in the practice.

Historically, the council met every 2 months in conjunction with board of nursing meetings at an estimated cost of $40,000 per year. The council's last face-to-face meeting was in 2013. Beginning in 2014, the council met by telephone conference call only on an as-needed basis. Both the board of nursing and the council have supported abolishment of the council since 2014.[46]

Advisory Council of Medical Physicists

The Advisory Council of Medical Physicists (advisory council) was created in 1997 in s. 483.901(3), F.S., to advise the DOH in regulating the practice of medical physics. The nine-member advisory council is charged with recommending rules to administer the regulation of the practice of medical physics, recommending practice standards, and developing and recommending CE requirements for licensed medical physicists.

According to the DOH, the advisory council fulfilled its statutory role and last met in December 1998. The State Surgeon General appointed new member in 2015 and the advisory council will meet for the first time in 17 years at an estimated cost of $3,535 per meeting. The DOH advises that an Advisory Council on Radiation Protection includes medical physicists as council

[44] Florida Dep't of Health, Investigative Services, Form INV387, *Dispensing Practitioners*, available at: http://www.floridahealth.gov/licensing-and-regulation/enforcement/inspection-program/_documents/dispensing-practitioners.pdf, (last visited Dec. 23, 2015).
[45] *Supra* note 8, at p.8. The restrictions on dispensing controlled substances listed in Schedule II or Schedule III was enacted in 2011. *See*, ch. 2011-141, s. 15, Laws of Fla.
[46] *Supra* note 8, at p.8.

members and that group may be used for guidance on matters of practice and public safety pertaining to the practice of medical physics.[47]

III. Effect of Proposed Changes:

SB 918 updates various sections of law relating to the regulation of health care practitioners.

Initial Licensure Requirements

Military Health Care Practitioners [48]

SB 918 amends s. 456.024, F.S., to authorize the DOH to waive fees and issue health care licenses to active duty U.S. military personnel who apply either six months before, or 6 months after, an honorable discharge, in professions that do not require licensure in other states,[49] if the applicant can provide evidence of training or experience equivalent to that required in Florida, and proof of a passing score on a national standards organization exam, if one is required in Florida.

The DOH may also issue temporary licenses to active duty military spouses, in professions that do not require licensure in other states,[50] if the applicant can provide evidence of training or experience equivalent to that required in Florida, and proof of a passing score on a national standards organization exam, if one is required in Florida. The applicant must pay the required application fee.

The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license practice under the indirect supervision of a Florida dentist.

Temporary Licensure for Medical Physicysts

SB 918 amends s. 483.901 to allow DOH to issue a temporary license for no more than one year upon proof that the physicist has completed a residency program and payment of a fee set forth by rule. The department may adopt by rule requirements for temporary licensure and renewal of temporary licenses.

HIV and AIDS Course Requirement - Deleted[51]

SB 918 amends s. 381.0034, F.S., and repeals s. 468.1201, F.S., to delete the requirement that applicants under part IV of ch. 468, F.S., (radiological personnel), medical physicists under ch. 483, F.S., speech and language pathology practitioners, and audiology practitioners complete

[47] *Supra* note 8, at p. 9.
[48] See section 3 of the bill.
[49] Professions not licensed in all states: Respiratory therapists (and assistants), Clinical Laboratory Personnel, Medical Physicists, Opticians, Athletics trainers, Electrologists, Nursing home administrators, Midwives, Orthotists (and assistants), Prosthetists (and assistants), Pedorthotists (and assistants), Orthotic fitters (and assistants), Certified chiropractic physician assistants, Pharmacy Technicians.
[50] *Id*.
[51] See sections 1 and 18 of the bill.

courses in HIV and AIDS before their license may be initially issued. According to the DOH, this will accelerate the initial licensure process and reduce costs to licensees.[52]

Medical Errors Course Requirement - Deleted [53]

SB 918 amends s. 456.013(7), F.S., to delete the requirement that health care practitioners take two hours of Continuing Education (CE) in medical errors before a license may be issued; but keeps that requirement for biennial renewal. The amendment clarifies that the two course hours count toward the total required CE hours for renewal, and are not in addition to the required hours.

Licensure Renewal Requirements

CE Tracking[54]

SB 918 moves the requirement that DOH establish an electronic continuing education (CE) tracking system which integrates tracking licensee CEs with the DOH licensure and renewal process from s. 456.025, F.S., to a newly created s. 456.0361, F.S. The new section of law prohibits the DOH from renewing licenses unless the licensee's CE requirements are complete, authorizes the imposition of additional penalties under the applicable practice act for the failure to comply with CE requirements, and authorizes the DOH to adopt rules to implement this section. This codifies in statute DOH's new CE tracking system and allows for uniformity in handling CEs across the various professions.

Accordingly, the bill amends ss. 457.107(3), 458.347(4)(e)3., 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4). F.S., to simplify and conform the license renewal process for acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists by eliminating the requirement of an affidavit or written statement attesting to the completion of the required CEs for the biennial renewal period, and eliminating DOH's authority to request a licensee, with or without cause, to produce documentation of his or her completed CEs for the biennial renewal period.[55]

Similarly, SB 918 amends s. 463.007, F.S., to clarify and conform the CE requirements of an optometrist, as a condition of license renewal and amends s. 464.203, F.S., to require CNAs to complete 24 CE hours of in service training every biennium, rather than requiring hours annually. This change matches the 2 year renewal cycle.[56]

Felons, Medicaid Fraud and Excluded Individuals[57]

SB 918 amends s. 456.0635(2), F.S., to delete the exception to the requirement that a board or department deny the initial licensure of candidates or applicants who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies; have been terminated for cause from a Medicaid program; or who are listed on the U.S.

[52] *Supra* note 8 at pp. 9 and 12.
[53] See section 2 of the bill.
[54] See sections 4 and 5 of the bill.
[55] See sections 9, 10, 15, 16, 17, 20 and 21 of the bill.
[56] See sections 11 and 12 of the bill.
[57] See section 7 of the bill.

Department of Health and Human Services, List of Excluded Individuals and Entities. These individual will be unable to re-apply unless their sentence, and any probation, would end within the time frame set out in s. 256.0635(2), F.S.

According to DOH, recently, when it refused to renew licenses based on the provisions of s. 456.0635(3), F.S., the licensees have immediately reapplied under the exception in s. 456.0635(2), F.S., and have been granted a license. By taking advantage of the exception, licensees who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies; or were terminated for cause from the Florida Medicaid or any other state's Medicaid program; or are currently listed on the United States Department of Health and Human Services, List of Excluded Individuals and Entities, have been able to regain a license to practice. Removal of the exception will end this cycle of applying for licensure renewal and when denied reapplying for licensure under the exception.[58]

Licensure Regulation Costs[59]

SB 918 amends s. 456.025, F.S., to include a method to address professions which operate in a chronic deficit and that are at their statutory fee cap. The bill:

- Deletes the requirement for the department to increase license fees if the cap has not been reached;
- Deletes the requirement to include recommendations for increases to fee caps in the annual report;
- Deletes rule authority to authorize advances to the profession's account with interest;
- Deletes the prohibition on using funds from one profession for operating another profession;
- Allows the DOH to waive the deficit profession's allocated indirect administrative and operational costs until the profession has a positive cash balance; and
- Allows cash in the unlicensed activity account of the profession whose indirect costs haven been waived to be transferred to the operating account up to the amount of the deficit.

According to the DOH, as of June 30, 2014, three of 34 professions regulated under ch. 456, F.S. were in a chronic cash flow deficit and at their statutory fee cap. The total amount of the deficit was $3,682,993.[60]

The bill deletes the requirement that the chairpersons of the boards and councils meet annually to review the long range policy plan and current and proposed fee schedules, and recommend statutory changes relating to fees and fee caps for compilation by the DOH for inclusion in its annual report to the Legislature.

Council on Certified Nursing Assistants[61]

SB 918 repeals s. 464.2085, F.S., which created the Council on Certified Nursing Assistants within the DOH under the Board of Nursing. According to the DOH the council has been

[58] *Supra* note 8 at p. 7.
[59] See section 4 of the bill.
[60] *Supra* n. 8 at p. 10.
[61] See section 13 of the bill.

meeting only to recommend new rules and amendments to existing rules affecting CNAs. Historically, the Council met every 2 months in conjunction with Board of Nursing meetings at an estimated cost of $40,000 per year. Its last face-to-face meeting was in 2013. Beginning in 2014, the Council met by telephone conference call only on an as needed basis. The Board of Nursing has responsibility for determinations regarding CNA applications and discipline. According to the DOH, the Board of Nursing, in conjunction with stakeholders, has the knowledge and experience to undertake rule promulgation for the CNAs. The Board of Nursing and Council have supported abolishment of the council since 2014. The Board of Nursing would assume responsibility for all matters relating to the CNAs.[62]

Advisory Council of Medical Physicists[63]

SB 918 repeals the advisory council in s. 483.901(3), F.S. According to the DOH, the advisory council fulfilled its statutory role and last met in December 1998. The State Surgeon General appointed new members in 2015 and the advisory council will meet for the first time in 17 years at an estimated cost of $3,535 per meeting. However, the DOH advises that an Advisory Council on Radiation Protection includes medical physicists as council members and that group may be used for guidance on matters of practice and public safety pertaining to the practice of medical physics.[64]

Impaired Practitioner Programs[65]

SB 918 amends s. 456.076, F.S., to specifically define an "approved impairment practitioner program, "approved treatment program," "approved treatment provider," and "consultant" for Florida's impaired practitioner programs as follows:

- "A*pproved impaired practitioner program*" means a program designated by the department to provide services for impaired practitioners through a contract that requires the program to initiate interventions and to recommend evaluations of impaired practitioners, refer impaired practitioners to approved treatment programs or approved treatment providers, and monitor the progress of impaired practitioners during treatment. Approved impaired practitioner programs may not provide medical services.
- "*Approved treatment program*" means a state-licensed or nationally accredited residential, intensive outpatient, partial hospital, or other treatment program that employs a multidisciplinary team of providers to treat an impaired practitioner based on the impaired practitioner's individual diagnosis and a treatment plan for the impaired practitioner approved by the consultant who referred the impaired practitioner to the treatment program.
- "*Approved treatment provider*" means a state-licensed or nationally certified individual with experience in the treatment of specific types of impairment who provides treatment to an impaired practitioner based on the impaired practitioner's individual diagnosis and a treatment plan for the impaired practitioner approved by the consultant who referred the impaired practitioner to the treatment provider, or a treatment program employing such individual.

[62] *Supra* note 8 at p.11.
[63] See section 19 of the bill.
[64] *Supra* n. 4, at p. 9.
[65] See section 8 of the bill.

- *"Consultant"* means an approved impaired practitioner program and the program's medical director. Consultants must receive allegations of a practitioner's impairment, intervene or arrange for an intervention with the practitioner, refer an impaired practitioner to an approved treatment program or an approved treatment provider, monitor and evaluate the progress of treatment of an impaired practitioner, and monitor the continued care provided by an approved treatment program or an approved treatment provider to an impaired practitioner.

SB 918 defines two separate types of treatment entities; while current law treats an "approved impaired practitioner program" and an "approved treatment program" as interchangeable terms.[66] Based on the new definitions, the bill requires an "approved treatment program" to actually provide multi-disciplinary treatment, on both an inpatient and outpatient basis, to an impaired practitioner. This is something IPN and PRN are not currently under contract with the DOH to perform; and not currently staffed to provide.

The proposed definition for approved impaired practitioner program requires IPN and PRN to initiate interventions which are not currently part of their program. It also prohibits them from providing direct medical services. Unless some type of distinction can be drawn between medical services and health care, the two definitional duties imposed appear to be contradictory. The bill also clarifies that the DOH is not responsible for paying for any care provided by those treatment programs or practitioners.

Ownership and Control of Patient Records[67]

SB 918 amends s. 456.057(20), F.S., to require DOH approval of all board-appointed medical records custodians for the patient medical records of a practitioner who has died, become incapacitated or abandoned his or her records. It further authorizes the DOH to contract with a third party for this service and designates the vendor to become the "records owner," under the same disclosure and confidentiality requirements imposed on licensees.

Dispensing Practitioner Facility Inspections[68]

SB 918 amends s.465.0276, F.S., to eliminate any required DOH inspection of the facilities of dispensing practitioners. Dispensing practitioners will still be required to register with their appropriate boards,[69] but there will no longer be any statutory mandate for DOH to inspect those facilities within specified timeframes. The department may inspect dispensing practitioner locations at such times as the department determines it is necessary as a random, unannounced inspection or during the course of an investigation.[70]

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[66] *See Dept. of Health, Board of Medicine v. Mark T. Ramsey, M.D.*, Case No. 14-5649PL, ¶ 51 (DOAH Rec. Order March 4, 2015).
[67] See section 6 of bill.
[68] See section 14 of the bill.
[69] Section 465.0276(2)(a), F.S.
[70] *See* s. 456.069, F.S.

The DOH indicates that due to the restrictions on dispensing controlled substances in Schedules II or III, the frequency and manner in which inspections are conducted are no longer necessary.[71]

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:

Sections 9, 10, 11, and 12 of the bill will reduce the costs associated with initial applications for licensure, and renewals, as practitioners will not incur the costs of taking additional specific courses, or for obtaining notarized affidavits before initial licensure or renewal.

Section 14 of the bill eliminates the DOH's routine inspection of dispensing practitioners' facilities Although speculative, this lack of routine oversight could result in a public health and safety risk to patients due to issues relating to cleanliness, improper storage and labeling of medications, use of counterfeit medication, etc.

C. Government Sector Impact:

Sections 6 of the bill may require the DOH to incur costs related to the vendor maintaining the security and distribution of medical records for practitioners who have left practice. The DOH estimates a recurring coast of approximately $4,020 for which current spending authority is reported to be adequate to absorb.

Section 13 of the bill eliminates the CNA Council which will result in a cost savings to the DOH of approximately $40,000 per fiscal year for face-to-face meetings.

[71] See Florida Dep't of Health, *Senate Bill 918 Agency Analysis*, pp. 11-12, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).

Section 14 of the bill eliminates the DOH's costs associated with the annual routine inspection of dispensing practitioners' facilities. The DOH reports that based on Fiscal Year 14-15 data, the total cost to complete these mandatory inspections was $597,707.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Responsibilities of the approved impaired practitioner program, approved treatment programs and approved treatment providers are not clearly defined as currently drafted in Section 8 of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0034, 456.013, 456.024, 456.025, 456.0361, 456.057, 456.0635, 456.076, 457.107, 458.347, 463.007, 464.203, 465.0276, 466.0135, 466.014, 466.032, 483.901, 484.047, 486.109, 458.331, 459.015, 499.028, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 464.2085 and 468.1201.

IX. Additional Information:

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

None.

B. Amendments:

None.