

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: CS/SB 1620

INTRODUCER: Health Policy Committee and Senators Gainer and Passidomo

SUBJECT: Health Care Licensing Requirements

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____
	_____	_____	_____	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1620 creates s. 456.0231, F.S., to grant physicians who are employees of the U.S. Department of Veterans Affairs (VA) an exemption from Florida’s physician licensure statutes when providing medical treatment to veterans in a Florida-licensed hospital, if such physicians meet certain criteria and furnish specified documentation to the state Department of Health (DOH).

The bill has an effective date of July 1, 2019.

II. Present Situation:

Health Care for Veterans

Section 1.01, F.S., defines certain terms applicable to all Florida statutes. Section 1.01(14), F.S., defines “veteran” to mean a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only, or who later received an upgraded discharge under honorable conditions.

To be eligible for VA health care services, an individual:

- Must have served in the active military, naval, or air service and did not receive a dishonorable discharge; and
- If enlisted after September 7, 1980, or entered active duty after October 16, 1981, must have served 24 continuous months or the full period for which he or she was called to active duty.

This minimum duty requirement; however, may not apply if:

- The individual was discharged for a disability that was caused, or made worse, by active-duty service; or
- The individual was discharged for a hardship or “early out”; or
- Served prior to September 7, 1980.¹

If an individual is a current or former member of the Reserves or National Guard, he or she must have been called to active duty by a federal order and completed the full period for which he or she was called or ordered to active duty, in order to be eligible for VA health care. If the individual has active-duty status for training purposes only, he or she does not qualify for VA health care.

When service members leave active duty, they may be eligible for benefits offered by TRICARE² and the VA, depending whether they retire or how they separate from the military. A retiring, service member is eligible for TRICARE as a military retiree and may also be eligible for certain VA health care benefits. Service members who separate due to a service-connected disease or injury may be eligible for VA health care benefits as well as certain TRICARE benefits. Medically-retired veterans receive care for their service-connected disability at VA hospitals and facilities and may be eligible to receive all other care through TRICARE.³

Under certain circumstances, active duty service members may receive limited VA health benefits and health care services at VA medical centers through sharing agreements⁴. VA health care services are provided to active duty and reserve component (RC) service members under the following circumstances:

- Emergent or urgent care; and
- Routine care with a valid TRICARE referral or authorization.⁵

¹ U.S. Department of Veteran Affairs, *Eligibility for VA Health Care*, available at: <https://www.va.gov/health-care/eligibility/> (last visited April 8, 2019).

² The TRICARE program used to be called CHAMPUS. CHAMPUS stands for Civil Health and Medical Program of the Uniformed Services. It is a government-funded health program that provides medical care for military members and their dependents. Military dependents can remain on CHAMPUS until they reach age 65, then they are eligible to switch to Medicare. CHAMPUS is a lot like Medicare, in which the government contracts through private parties that provide health care to participants in the program. Through the years, CHAMPUS has changed names and is now known as the TRICARE program. See Answer. Military Law, *What is TRICARE/CHAMPUS?* available at https://www.justanswer.com/topics-champus/?sipredirect=&r=ppc|gal26|&mkwid=s_dc&pclid=251941105852&pkw=&pmt=b&plc=&cmpid=1059487105&agid=53628128562&fiid=&tgtid=dsa-19959388920&ntw=s&dvc=c&gclid=EAIAIQobChMI0szOwrXB4QIVz1uGCh09UAbREAAAYBiAAEgKmmPD_BwE (last visited April 8, 2019).

³ United States Department of Veteran Affairs, *Health Benefits*, (last updated October 17, 2017) available at https://www.va.gov/healthbenefits/apply/active_duty.asp (last visited April 8, 2019).

⁴ Title 38 U.S.C. s. 8111, *Sharing of Department of Veterans Affairs (VA) and Department of Defense (DoD) Health Care Resources*, provides that the VA and DoD must facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments. Title 38 U.S.C. s. 8111(d), stipulates that the Secretaries established a Joint Incentives Program to provide incentives to implement, fund, and evaluate creative coordination and sharing initiatives at the facility, regional, and national levels. See *Department of Veterans Affairs - Department of Defense Health Care Resources Sharing Agreements*, VHA Handbook 1660.04(1), July 29, 2015, (amended Feb. 13, 2018), available at https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=3128 (last visited April 8, 2019).

⁵ United States Department of Veteran Affairs, *Health Benefits, Active Duty Service members* (last updated June 3, 2015), available at https://www.va.gov/healthbenefits/access/active_duty.asp (last visited April 8, 2019).

VA Practitioners in Florida

Health care practitioners practicing in VA facilities in Florida are not required to be licensed in Florida. In order for a practitioner to practice at any VA facility, the VA requires the practitioner to have an active, unrestricted license from any state.⁶ Thus, a VA health care practitioner may treat any veteran in a VA facility located in Florida, regardless of the state of licensure. However, a VA practitioner may not provide medical services to any patient, veteran or otherwise, outside of a VA facility unless he or she holds a Florida license. If a VA practitioner is not licensed in Florida and provides such services outside a VA facility, the practitioner could be prosecuted for the unlicensed practice of a health care practitioner under current law.

VA Background Checks

All VA employees are subject to an evaluation process for the purpose of determining their suitability for work through a background investigation process. The level of investigation is determined by the sensitivity of the position in question, which is then rated as low, moderate, or high risk. At a minimum, VA employees should receive a Tier 1 investigation to verify that the individual is suitable for employment. Most medical facility staff, including physicians, nurses, pharmacists, and laboratory technicians, are required to receive this type of investigation.⁷

In March 2018, the VA Office of Inspector General published the findings of an investigation conducted to evaluate controls over the adjudication of background investigations at VA medical facilities for the five-year period ending September 30, 2016. The report included the following:⁸

- The VA did not provide effective governance of the personnel suitability program necessary to ensure that background investigation requirements were met at medical facilities nationwide;
- While background investigations were required for most medical facility staff, about 6,200 employees who were working at the facilities did not have a background investigation initiated, including health care practitioners who were employed to provide direct patient care to veterans;⁹
- VA adjudicators had not been reviewing background investigations timely, and suitability staff were not maintaining official personnel records as required;
- The VA office responsible for evaluating compliance with personnel suitability program requirements, including the background investigation process, lacked sufficient staff to conduct regular oversight;
- The VA personnel suitability program was allowed to operate unmonitored and without assurance that background investigations were properly initiated and adjudicated; and
- The VA cannot reliably attest to the suitability of its largest workforce, thereby exposing veterans and employees to individuals who have not been properly vetted.

⁶ U.S. Department of Veterans Affairs, *Navigating the Hiring Process*, (updated January 06, 2019) available at <https://www.vacareers.va.gov/ApplicationProcess/NavigatingHiringProcess> (last visited April 8, 2019)

⁷ VA Office of Inspector General, *Veterans Health Administration, Audit of Personnel Suitability Program*, p. 1, available at <https://www.va.gov/oig/pubs/VAOIG-17-00753-78.pdf> (last visited April 11, 2019)

⁸ *Id.* pp. i-ii

⁹ *Id.* p. 4

Health Care Practitioner Licensure in Florida

The Department of Health (DOH) is responsible for the regulation of health care practitioners and certain 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.¹⁰ Any person desiring to be a licensed health care professional in Florida must apply to the MQA in writing.¹¹ Most health care professions are regulated by a board or council in conjunction with the DOH, and all professions have different requirements for initial licensure and licensure renewal.¹²

Florida Background Checks

Effective January 1, 2013, all applicants for initial physician licensure must undergo a Level 2 background screening¹³ and use a *Livescan* provider¹⁴ to submit a set of fingerprints to the Florida Department of Law Enforcement (FDLE) for the purpose of conducting a search for any Florida and national criminal history records that may pertain to applicant. The results of the search are returned to the Care Provider Background Screening Clearinghouse and made available to the DOH for consideration during the licensure process. The fingerprints submitted by the applicant are retained by FDLE and the Clearinghouse. All costs for conducting a criminal history background screening are borne by the applicant.¹⁵

Applicants for physician licensure can use any FDLE-approved *Livescan* provider to submit their fingerprints. The applicant is fully responsible for selecting the service provider and ensuring the results are reported to the DOH. An applicant must use a DOH form available on its website and take it to the *Livescan* provider.¹⁶

A physician licensed in Florida must undergo a Level 2 background screening every five years. Effective January 1, 2019, the fee to retain fingerprints within the Clearinghouse is \$43.25, plus minimal service fee. Once fingerprints have been retained by the Clearinghouse, they are good for five years. Clearinghouse renewals can only be requested within a specific timeframe that is based on the retained print expiration date.

Initial Licensure Requirements

Military Health Care Practitioners

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

¹⁰ Florida Department of Health, Medical Quality Assurance, *Annual Report and Long Range Plan, 2017-2018*, p. 6, available at: <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited Apr. 4, 2019).

¹¹ Section 456.013, F.S.

¹² See chs. 401, 456-468, 478, 480, 483, 484, 486, 490, and 491, F.S.

¹³ Sections 435.04 and 458.311(1) (g), FS.

¹⁴ Section 435.12, F.S.

¹⁵ Florida Department of Health, *Board of Medicine, Medical Doctor – Licensure Requirements*, available at <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited Apr. 11, 2019)

¹⁶ *Id.*

System (VALOR).¹⁷ 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. There is no application fee, licensure fee, or unlicensed activity fee for such expedited licensure.¹⁸

Section 456.024, F.S., provides that any member of the U.S. Armed Forces is eligible for licensure as a health care practitioner in Florida if he or she:

- Serves, or has served, as a health care practitioner in the U.S. Armed Forces, the U.S. Reserve Forces, or the National Guard;
- Serves, or has served, on active duty with the U.S. Armed Forces as a health care practitioner in the United States Public Health Service; or
- Is the spouse of a person serving on active duty with the U.S. Armed States Armed Forces and is a health care practitioner in another state, the District of Columbia, or a possession or territory of the U.S.¹⁹

The DOH is required to waive fees and issue a license if such individuals submit a completed application and proof of the following:

- An honorable discharge within 6 months before or after the date of submission of the application;²⁰
- One of the following:
 - An active, unencumbered license from another state, the District of Columbia, or U.S. possession or territory, with no disciplinary action taken within the 5 years preceding the application; or
 - That he or she is a military health care practitioner in a profession that does not require licensure in a state or jurisdiction to practice in the U.S. Armed Forces, if he or she submits to the DOH evidence of :
 - Military training or experience substantially equivalent to the requirements for licensure; and
 - Evidence of a passing score on an examination from a national or regional standards organization, if such exam is required in this state; or
 - That he or she is the spouse of a person serving on active duty in the U.S. Armed Forces and is a health care practitioner in a profession that licensure is not required in another state or jurisdiction, if he or she submits to the DOH evidence of:
 - Training or experience substantially equivalent to the requirements for licensure in this state; and
 - Evidence of a passing score on an examination from a national or regional standards organization, if such exam is required in this state.
- An affidavit that he or she is not the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U. S. Department of Defense for reasons related to the practice of the profession; and
- Active practice in the profession for the 3 years preceding the application.

¹⁷ Florida Dep't of Health, *Veterans*, <http://www.flhealthsource.gov/valor#Veterans>, (last visited April 4, 2019).

¹⁸ *Id.*

¹⁹ Section 456.024(3)(a), F.S.

²⁰ A form DD-214 or an NGB-22 is required as proof of honorable discharge. See Department of Health, *Veterans*, available at <http://www.flhealthsource.gov/valor> (last visited Apr. 4, 2019).

An applicant must also submit fingerprints for a background screening, if required for the profession for which the applicant is applying.²¹

The DOH must verify all information submitted by an applicant using the National Practitioner Data Bank; and an applicant under s. 456.024(3), F.S., for initial licensure as a physician or advanced practice registered nurse (APRN) must submit all information required by ss. 456.039(1) and 456.0391(1), F.S., no later than 1 year after the license is issued.²²

A board, or the DOH 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 U.S. 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.

III. Effect of Proposed Changes:

CS/SB 1620 creates s. 456.0231, F.S., to grant physicians who are employees of the VA an exemption from Florida's physician licensure statutes when providing medical treatment to veterans in a Florida-licensed hospital, if such physicians meet certain criteria and furnish specified documentation to the DOH.

The bill defines "physician" as a person who holds an active, unencumbered license to practice allopathic medicine or osteopathic medicine issued by another state; the District of Columbia; or a possession, commonwealth, or territory of the United States.

To be exempt from Florida licensure requirements pertaining to medical doctors under ch. 458, F.S., or osteopathic physicians under ch. 459, F.S., such a physician must submit the following to the DOH:

- Proof that the physician holds an active, unencumbered license to practice allopathic medicine or osteopathic medicine, as applicable, issued by another state; the District of Columbia; or a possession, commonwealth, or territory of the United States; and
- Proof of current employment with the VA;

As a condition of receiving the licensure exemption, the physician must attest that he or she will provide only medical services to veterans:

- At VA facilities or outreach locations;
- Pursuant to employment with the VA; and
- In Florida-licensed hospitals.

The bill requires the DOH to notify the physician within 15 business days after receipt of the documentation that the physician is exempt.

²¹ Section 456.024(3)(b), F.S.

²² Section 456.024, (3)(d), F.S. The information required by ss. 356.039(1) and 356.0931(1), F.S., includes: 1) school name where education and training received; 2) names of locations and hospitals where practice; 3) address of primary practice location; 4) year applicant began practice; 5) any certification or designation; 6) any faculty appointments; 7) any criminal record; and 8) Any professional disciplinary action.

The bill authorizes the DOH to adopt rules to implement the exemption provisions.

The bill has an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1620 may provide an avenue for veterans who do not live near a VA facility and/or face transportation problems with getting to a VA facility, to receive medical services from VA physicians at a Florida-licensed hospital that is more accessible.

C. Government Sector Impact:

The DOH will potentially do fewer background screenings due to the new exemption. This could impact the DOH's current screening practices. The fees collected for criminal background check and fingerprint retention are deposited into the Florida Department of Law Enforcement's (FDLE) Operating Trust Fund. Because the applicants would normally be screened with fingerprint retention services included, each screening

deferred under the bill lost will result in \$48 not being deposited into the trust fund, resulting in an indeterminate loss of revenue for the FDLE.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

Each physician exempted from licensure under the bill will result in a deferral of criminal background checks and fingerprinting, which would normally occur before a physician is allowed to practice in the state outside of a VA facility. Therefore, a physician exempted under the bill who has committed a Florida-licensure disqualifying offense may still be able to practice in Florida-licensed hospitals under the bill.²⁴

The bill does not provide any circumstances for an exemption from physician licensure to expire or be revoked for any reason. The bill is silent as to whether an exemption remains in effect after the physician is no longer employed by the VA or is no longer licensed to practice medicine by another state, the District of Columbia, or a possession, commonwealth, or territory of the United States.

On lines 34-36, the bill provides that as a condition of “receiving” the exemption, a physician must attest that he or she “will provide only medical services to veterans.” However:

- After a physician “receives” the exemption, the physician could technically remain exempt under the bill from Florida’s physician licensure requirements, regardless of whether he or she abides by the attestation.
- The bill does not require a physician to provide documentation of the attestation. The DOH is required to notify a physician that he or she is exempt after receiving proof that the physician holds the required out-of-state license and proof that he or she is currently employed by the VA, but proof of the attestation is not among the documentation that must be sent to the DOH.
- The phrase “will provide only medical services to veterans” is unclear, i.e. the physician could be attesting that he or she will provide medical services to veterans without providing other types of services to veterans. If the bill seeks an attestation that a physician will provide medical services to veterans but will not provide medical services to anyone else, clearer language is needed.

Under the bill, physicians not licensed in Florida may provide medical services to “veterans” in Florida-licensed hospitals. According to the definition of “veterans” in s. 1.01(14), F.S., the bill does not authorize exempted physicians to provide medical services to active duty service members in such hospitals under the bill, even though the VA allows active duty service members to receive limited health benefits and health care services from the VA under certain circumstances.

²³ Florida Department of Law Enforcement, *Senate Bill 1620 Analysis* (March 2, 2019) (on file with the Senate Committee on Health Policy).

²⁴ *Id.*

VIII. Statutes Affected:

This bill creates section 456.0231 of the Florida Statutes.

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 Health Policy on April 8, 2019

The CS:

- Removes the statement of legislative intent from the underlying bill;
- Provides that a person holding an unencumbered license to practice medicine as a physician in another state, D.C., or a U.S. possession or territory, is exempt from needing a Florida license to practice medicine in Florida if he or she submits to the DOH:
 - Proof that he or she holds such a license described above;
 - Proof of current employment with the VA; and,
 - An attestation that he or she will provide only medical services to veterans at a VA facility or outreach location, pursuant to his or her employment with the VA, and in Florida-licensed hospitals.
- Requires the DOH to notify such a physician that he or she is exempt within 15 business days after receiving the documentation required for the exemption;
- Limits the exemption of licensure to medical doctors and osteopaths only, instead of including other types of health care practitioners as provided in the underlying bill;
- Removes the allowance from the underlying bill that practitioners licensed in other countries could also be exempted from needing a Florida license;
- Removes the underlying bill's requirement for the executive director of the Florida Department of Veterans' Affairs to provide the state surgeon general with a list of all practitioners who are eligible for exemption under the bill;
- Removes from the underlying bill the provision for the bill to not be construed to preempt or supplant a medical facility's policies regarding the award of emergency privileges to medical personnel; and
- Provides authority for the DOH to adopt rules, as opposed to the underlying bill's *requirement* for the DOH to adopt rules.

- B. **Amendments:**

None.