

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/CS/SB 230

**INTRODUCER:** Rules Committee; Appropriations Committee; Health Policy Committee; and Senator Harrell

**SUBJECT:** Department of Health

**DATE:** March 4, 2020

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	Howard	Kynoch	AP	<b>Fav/CS</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 230 updates numerous provisions relating to health care practitioners and facilities regulated by the Department of Health (DOH), Division of Medical Quality Assurance (MQA). The bill:

- Provides that the Statewide Medical Director for Child Protection reports directly to the DOH’s deputy secretary in charge of the state’s Children’s Medical Services Program and the medical director of each child protection teams reports directly to the statewide medical director;
- Substitutes the term “human immunodeficiency virus” (HIV) in place of “acquired immune deficiency syndrome” (AIDS) to broaden the scope of the DOH’s regional patient care networks for persons with AIDS to also include persons with HIV;
- Grants rulemaking authority to the DOH for responsibilities relating to maximizing the use of existing programs and coordinating stakeholders and resources to develop a state strategic plan, including the process of selecting physicians under the Conrad 30 Waiver Program and to encourage qualified physicians to relocate to Florida and practice in medically underserved and rural areas;
- Increases the period of time a cancer center may participate as a Tier 3 cancer center, and is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer, from a maximum of six years to until June 30, 2024;

- Modifies the DOH’s rule-making authority pertaining to minimal standards governing ground ambulance and vehicle equipment, supplies, design, and construction;
- Defines “useful beam” radiation as that portion of a radiation beam designed to focus on a specific target; and specifies the requirements for the maintaining and operating the useful beam radiation machine, as well as the conditions for use on humans;
- Requires the applicant’s date of birth on health care professional licensure applications;
- Revises the DOH’s health care practitioner licensing provisions to permit the DOH to issue a temporary license, that expires in 60 days, instead of 30 days, to a non-resident or non-citizen physician who has accepted a residency, internship, or fellowship in Florida and has not yet received a social security number;
- Deletes a health care practitioner’s failure to repay student loans, as grounds for discipline by the DOH;
- Authorizes the DOH to issue medical faculty certificates, without examination, to full-time faculty at Nova Southeastern University or Lake Erie College of Osteopathic Medicine;
- Repeals the requirement that the Board of Medicine (BOM) conduct a review of organizations that board-certify physicians in dermatology;
- Updates the osteopathic internship and residency accrediting agencies to include the Accreditation Council for Graduate Medical Education (ACGME) and repeals the Board of Osteopathic Medicine’s (BOOM) authority to approve other internship programs upon showing of good cause;
- Deregulates Registered Chiropractic Assistants (RCAs);
- Extends the requirement for the Florida Center for Nursing (FCN) to provide an implementation study and annual report on the availability of nursing programs and production of quality nurses to the Governor, the President of the Senate, and the Speaker of the House of Representatives until January 30, 2025;
- Allows a nursing education program seeking accreditation to apply to the Board of Nursing (BON) for a single extension, of not more than two years if the program meets specific criteria, and grants the BON rulemaking authority on criteria to qualify for the extension of time to become accredited;
- Grants rulemaking authority to the BON to establish standards of practice, including discipline and standards of practice for certified nursing assistants (CNA);
- Recognizes CNA certification in a U.S. territory or the District of Columbia for certification in Florida and eliminates the element of intent for violations of the practice act by CNAs;
- Defines the supplemental general dentistry education required for dental licensure applicants who have not graduated from a dental school accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA), to exclude education in an advanced dental specialty;
- Repeals the requirement for Florida dentists and dental hygienists to grade dental and dental hygienist licensure examinations;
- Revives, reenacts, and amends statutory provisions relating to health access dental licenses, notwithstanding their repeal on January 1, 2020;
- Requires dentists and dental hygienists to report adverse incidents to the Board of Dentistry (BOD) and gives the BOD rule making authority;
- Authorizes an employee or independent contractor of a dental laboratory to engage in onsite consultation with a licensed dentist during a dental procedure and requires a dental laboratory to be inspected at least biennially;

- Requires an athletic trainer to work within his or her scope of practice as defined by the Board of Athletic Trainers (BOAT) and revises the educational and internship requirements for licensure;
- Requires the DOH to issue a single prosthetist-orthotist license to qualified applicants and establishes the educational requirements for dual registration;
- Revises massage therapy licensure requirements to:
  - Require passage of a Board of Massage Therapy (BMT) specified national examination;
  - Eliminate massage apprenticeships as a path to licensure by 2023; and
  - Revises the definition of a massage therapy “apprentice” to include only those persons approved by the BMT to study colonic irrigation under a licensed massage therapist;
- Updates the name of the accreditation body for psychology programs and revises the requirements for psychology licensure;
- Limits the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to the issuance of only one additional internship registration;
- Revises the licensure requirements for Marriage and Family Therapists and Licensed Mental Health Counselors; and
- Deletes obsolete language, makes technical and conforming changes, and reenacts references related to the bill.

The bill has an insignificant negative impact on state revenues and expenditures, which can be absorbed within existing resources of the DOH.

The bill has an effective date of July 1, 2020.

## II. Present Situation:

### Child Protection Teams

#### *Description*

The Department of Health (DOH) currently contracts with 22 independent, community-based organizations that serve as child protection teams.<sup>1</sup> A child protection team is a group of professionals, directed by a physician, who receive referrals from the investigators of the Department of Children and Families (DCF) and sheriff’s offices when child abuse or neglect is alleged.<sup>2</sup> The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.

#### *Composition and Responsibilities*

Each of the 22 teams operates under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect. In the case of large geographical areas, some may have an associate medical director to ensure adequate coverage. The physician must be approved by Children’s Medical Services at the DOH. Teams consist of additional

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<sup>1</sup> Florida Department of Health, *Senate Bill 256 Agency Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

<sup>2</sup> Department of Health, Children’s Medical Services, *Child Protection Teams*, [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) and s. 39.303(3), F.S.

physicians, attorneys, advanced registered nurse practitioners, psychologists, physician assistants,<sup>3</sup> registered nurses, team coordinators, support staff, case coordinators, and support data personnel.<sup>4</sup>

Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services. The groups that the teams target for assessments are children who may be physically abused, sexually abused, and those who lack health care, including medically neglected children.<sup>5</sup>

### ***Services***

When a child protection team accepts a referral from DCF or law enforcement, the team may provide these services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.<sup>6</sup>

### ***Cases that must be referred to a Child Protection Team***

The following cases involving child abuse, abandonment, or neglect that are reported to the Child Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child where emotional or other forms of abuse, abandonment, or neglect are suspected.<sup>7</sup>

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<sup>3</sup> Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, pp. 6-7 (June 2015) [http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook\\_cpt.pdf](http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf).

<sup>4</sup> Id.

<sup>5</sup> Id at p. 4

<sup>6</sup> Id. at p. 6-7

<sup>7</sup> Section 39.303(4), F.S.

### ***Funding***

The Child Protection Team Program receives funding through the DOH's Division of Children's Medical Services.<sup>8</sup>

### **Human Immunodeficiency Virus (HIV)**

Human immunodeficiency virus (HIV)<sup>9</sup> is a virus spread through certain body fluids that attacks the body's immune system, specifically the CD4 cells, often called T cells. Over time, HIV can destroy so many of these cells that the body cannot fight off infections and disease. Opportunistic infections or cancers take advantage of a very weak immune system, which can lead to acquired immune deficiency syndrome (AIDS).<sup>10</sup>

Currently there is no effective cure for a person infected with HIV, but with proper medical care, HIV can be controlled. The medicines used to treat HIV are antiretroviral drugs. If persons with HIV receive prescribed antiretroviral therapy (ART), their viral load (the amount of the HIV in their blood) can become undetectable.<sup>11</sup>

When people get the HIV and do not receive treatment, they will typically progress through three stages of disease. ART helps people at all stages of the disease. Treatment can slow or prevent the progression from one stage to the next.

### ***Acquired Immunodeficiency Syndrome (AIDS)***

AIDS is the most severe phase of an HIV infection. Persons with AIDS have such badly damaged immune systems that they get an increasing number of severe illnesses, called opportunistic infections. Without treatment, persons with AIDS typically survive about three years. Common symptoms of AIDS include:

- Chills;
- Fever;
- Sweats;
- Swollen lymph glands;
- Weakness; and
- Weight loss.

### ***Florida Aids Legislation***

In 1988, the Florida Legislature enacted the predecessor of s. 381.0042, F.S., declaring AIDS the nation's and state's number one public health problem, noting that there were over 59,000 known cases in the U.S, and 4,226 in Florida.<sup>12</sup>

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<sup>8</sup> *Child Protection Team Program Handbook*, at p. 4 (June 2015)The Department of Health, Division of Children's Medical Services, Bureau of Child Protection and Special Technologies staff oversees the statewide Child Protection Team system.

<sup>9</sup> Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

<sup>10</sup> Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

<sup>11</sup> Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

<sup>12</sup> CS/HB 1519, Bill Analysis, May 25, 1988 on file with the Senate Health Policy Committee.

Section 381.0042, F.S., authorizes the DOH to establish AIDS patient care networks in each region of the state where the number of cases of AIDS and other human immunodeficiency virus infections justifies the establishment of cost-effective regional patient care networks. The networks are to be delineated by the DOH's rule which must take into account natural trade areas and centers of medical excellence that specialize in the treatment of AIDS, as well as available federal, state, and other funds.

Each patient care network must include representation of the following:

- Persons with HIV;
- Health care providers;
- Business interests;
- The DOH, including its county health departments and other possible agency resources; and
- Local government units.

Each network must plan for the care and treatment of persons with AIDS, and AIDS related complex, in a cost-effective, dignified manner that emphasizes outpatient and home care. Once each year, each network must make its recommendations concerning the needs for patient care to the DOH.

### **The Conrad 30 Program**

The Conrad 30 Program, authorized by the U.S. Department of State and the U.S. Citizenship and Immigration Services, addresses the shortage of qualified doctors in medically underserved areas. The program allows a medical doctor holding a J-1 Visa to apply for a waiver of the two-year residence requirement upon completion of the J-1 Visa exchange visitor program under s. 214(1) of the Immigration and Nationality Act.

State public health agencies are authorized to sponsor up to 30 physicians annually to serve in a designated U.S. Department of Health and Human Services (HHS) Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Populations (MUP). The program requires a medical doctor holding a J-1 Visa who wishes to participate in a Conrad 30 Program to:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by the U.S. HHS as a HPSA, MUA, or MUP;
- Obtain a contract from the health care facility located in an area designated by U.S. HHS as an HPSA, MUA, or MUP;
- Obtain a "no objection" letter from his or her home country if the home government funded his or her exchange program; and
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The DOH has administered Florida's Conrad 30 Waiver Program since 1994. In recent years, the number of applicants has exceeded the maximum number of 30 slots allowed by the program. The DOH does not have explicit rulemaking authority to establish additional criteria for selecting

the Conrad 30 applicants for sponsorship, thereby limiting the DOH's ability to place qualified foreign physicians in areas of highest need.<sup>13</sup>

### **Florida Consortium of National Cancer Institute Centers Program**

Florida-based cancer centers are authorized in s. 381.915, F.S., to seek National Cancer Institute (NCI) designation to enhance the quality and competitiveness of cancer care in Florida and further a statewide biomedical research strategy directly responsive to the health needs of Florida's citizens. Beginning in 2017, and every 3 years thereafter, the DOH, in conjunction with participating cancer centers, must submit a report to the Cancer Control and Research Advisory Council on specific metrics relating to cancer mortality and external funding for cancer-related research in the state<sup>14</sup>

The NCI Cancer Centers Program was created as part of the National Cancer Act of 1971 and is one of the anchors of the nation's cancer research effort. Through this program, NCI recognizes centers around the country that meet rigorous standards for transdisciplinary, state-of-the-art research focused on developing new and better approaches to preventing, diagnosing, and treating cancer. The NCI funds 71 NCI-Designated Cancer Centers, located in 36 states and the District of Columbia, to deliver cutting-edge cancer treatments to patients. Florida currently has two NCI Designated Cancer Centers:

- Moffitt Cancer Center, Tampa; and
- Sylvester Comprehensive Cancer Center, Miami.<sup>15</sup>

During Fiscal Year 2019-2020, \$62.2 million is appropriated for the Florida Consortium of NCI Centers Program, and proviso language designates one entity as a Tier One comprehensive cancer center, the H. Lee Moffitt Cancer Center and Research Institute and two entities, the University of Miami (UM) Sylvester Comprehensive Cancer Hospital and the University of Florida (UF) Health Shands Cancer Hospital, as a Tier Three cancer center seeking designation as a NCI cancer center or comprehensive cancer center. In July 2019, the University of Miami (UM) Sylvester Comprehensive Cancer Hospital achieved designation as a NCI-Designated Cancer Center.<sup>16</sup>

The funding for the program is distributed based on a competitive statutory formula. The Fiscal Year 2019-2020 appropriation of \$62.2 million is dispersed as follows: Moffitt, \$25.3 million; UF, \$19.5 million; and UM, \$17.4 million. Under current statutory requirements, the University of Florida Health Shand's Cancer Center was given six years, or until June 30, 2020, to achieve NCI designation. Otherwise, the NCI-designation incentive funding would revert to the state's other NCI designated cancer centers. While much progress has been made towards the

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<sup>13</sup> Florida Department of Health, *Senate Bill 188 Analysis* (2019) (on file with the Senate Committee on Health Policy), p. 2.

<sup>14</sup> Florida Department of Health, Provider and partner Resources., Research, National Cancer Institute, *Florida Consortium of National Cancer Institute Centers Program*, available at <http://www.floridahealth.gov/provider-and-partner-resources/research/index1.html> (last visited Feb. 6, 2020)

<sup>15</sup> National Cancer Institute, *NCI-Designated Cancer Centers*, available at: <https://www.cancer.gov/research/nci-role/cancer-centers> (last visited Feb. 6, 2020).

<sup>16</sup>National Cancer Institute, *Sylvester Comprehensive Cancer Center*, available at: <https://www.cancer.gov/research/nci-role/cancer-centers/find/sylvester-miami> (last visited Feb. 6, 2020).

designation, the UF Health Shands Cancer Hospital needs additional time given the rigorous process involved to receive NCI designation.<sup>17</sup>

### **Emergency Medical Transport Services**

In 1973, the Florida Legislature passed and enacted what is known today as the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act. The Legislature recognized the need for the uniform and systematic provision of emergency medical services to save lives and reduce disability associated with illness and injury.

The emergency medical services (EMS) system of care must be equally capable of assessing, treating, and transporting children, adults, and elderly persons. Today, the Emergency Medical Services Section of the DOH is responsible for the licensure and oversight of over 60,000 emergency medical technicians and paramedics, more than 270 advanced and basic life support agencies, and over 4,500 EMS vehicles. In addition, the section certifies 911 public safety telecommunicators.<sup>18</sup>

Chapter 401, F.S., relates to medical telecommunications and transportation. Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., is specific to medical transportation services and provides for the regulation of emergency medical services by the DOH, including:

- The licensure of the emergency medical service entities;
- The certification of the staff employed by those services; and
- The permitting of vehicles used by the staff in those services, whether for basic life support (BLS), advanced life support (ALS), or air ambulance services (AAS).

Every person or entity owning, operating, conducting, maintaining, or engaging in the business of providing prehospital or inter-facility ALS or BLS transportation services must be licensed before offering such service to the public. The DOH issues licenses for the operation of BLS and ALS services for applicants meeting the following requirements:

- Payment of an application fee;
- Ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant must meet the requirements for either a BLS service or an ALS service, whichever is applicable;
- Proof of:
  - Personal injury and property damage insurance coverage, in limits set by the DOH, sufficient to cover claims arising out of the injury or death of persons and property damages for which the owner, the business or service would be liable; or
  - Certificate of self-insurance evidencing an adequate self-insurance plan approved by the Office of Insurance Regulation; and
- Certificate of public convenience and necessity from each county in which the applicant will operate.<sup>19</sup>

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<sup>17</sup> See ch. 2014-51, 2-3, Laws of Fla.

<sup>18</sup> Department of Health, Licensing and Regulation, *Emergency Medical Services System*, available at: <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Feb. 6, 2020).

<sup>19</sup> Section 401.25, F.S.



Each BLS and ALS transportation service must also employ or contract with a medical director to supervise and assume direct responsibility for the medical performance of the emergency medical technicians and paramedics operating for that EMS system. The medical director must be:

- A licensed physician;
- A corporation, association, or partnership composed of physicians; or
- Physicians employed by a hospital that delivers in-hospital EMS and employs or contracts with physicians specifically for that purpose.<sup>20</sup>

The medical director must perform the following duties:

- Advising;
- Consulting;
- Training;
- Counseling; and
- Overseeing of services, including quality assurance.

The medical director's mandated duties do not include administrative and managerial functions. The DOH has rule making authority to regulate medical directors.<sup>21</sup>

### **Radiation Machines and Components**

The DOH's, Division of Emergency Preparedness and Community Support. Bureau of Radiation Control, is charged, through ch. 404, F.S., the Florida Radiation Protection Act, to institute and maintain a program to permit development and utilization of sources of radiation for purposes consistent with the health and safety of the public. The Bureau's activities include: responding to radiation incidents, inspecting facilities that contain radiation sources, issuing certificates and licenses to businesses and individuals who possess and use radiation sources, conducting environmental sampling and radiochemistry, and partnering with law enforcement and other radiation agencies to conduct radiation monitoring and surveillance.<sup>22</sup>

#### ***Ionizing Radiation Machines***

Medical radiation machines make up the largest man-made source of radiation exposure to the public. In 1958, the state Board of Health began a program to inspect radiation machines. Today over 18,000 facilities, including hospitals, doctors' offices, universities, and corporations, have registered more than 50,000 X-ray machines with the DOH.

The radiation machine program works to reduce exposure to workers and the public from machines that emit radiation for medical, scientific, educational, and industrial purposes. The program accomplishes this by:

- Stopping unauthorized uses and users;

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<sup>20</sup> Section 401.265(1), F.S.

<sup>21</sup> Id.

<sup>22</sup> Florida Department of Health, Statement of Agency Organization and Operation, Organization and Responsibilities Statement of Agency Organization and Operation, Division of Emergency Preparedness and Community Support, *Bureau of Radiation Control*, (August 2017) available at: <http://www.floridahealth.gov/about/documents1/doh-statement-of-agency-organization.pdf> (last visited Feb. 6, 2020).

- Preventing accidental or unintended exposures;
- Ending ineffective or inappropriate uses of radiation; and
- Reducing the amount of exposure needed to accomplish the task.

One way these goals are achieved is through on-site inspections. The DOH regularly inspects each radiation machine according to a schedule that varies depending upon how the machine is used. This schedule ranges from annually for mammography and cancer therapy machines to every five years for dental and podiatry machines. DOH staff performed over 13,000 inspections last year. During these inspections they:

- Check the machine to see that it operates as it was designed,
- Ensure the people who use the machine are qualified to do so, and
- Verify the machine is used safely and appropriately.

If a machine poses an immediate threat to the public health, the DOH requests its immediate removal from service. For less serious problems, the DOH gives machine owners 90 days to correct the deficiencies.<sup>23</sup>

### **The Department of Health’s General Health Care Professional Licensing Authority**

The DOH’s general licensing provisions, authorized under s. 456.013, F.S., require every applicant for licensure to apply to the DOH before sitting for a licensure examination. Section 456.013, F.S., also requires all applications for licensure to be submitted to the DOH on a form that may be submitted electronically. The requirement that an applicant submit his or her application for licensure before sitting for the licensure examination was initially imposed when the DOH developed and administered its own examinations. A strict statutory interpretation of this section requires an applicant, even one who has already passed the licensure examination before applying for a license, to take the examination after applying to the DOH for licensure.

If an applicant has not been issued a social security number at the time of application because the applicant is not a U.S. citizen or resident, the DOH may process the application using a unique personal identification number. If the applicant is otherwise eligible for licensure, the DOH may issue a temporary license, which expires in 30 days after issuance unless a social security number is obtained and submitted in writing to the DOH. Upon receipt of the applicant’s social security number, the DOH must issue a new license, which expires at the end of the current biennium.<sup>24</sup>

Section 456.017, F.S., was amended in 2005 to provide that neither a board<sup>25</sup> nor the DOH could administer a state-developed written examination if a national examination was certified by the DOH. National examinations have been certified for all professions, and the requirement for applicants to apply to the DOH to take the state examination has become obsolete. All state examinations have ceased.

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<sup>23</sup>Department of Health, Environmental Health, Radiation Control, Ionizing Radiation Machines (X-ray), (Oct. 25, 2019) available at <http://www.floridahealth.gov/environmental-health/radiation-control/ion/index.html> (last visited Feb. 6, 2020).

<sup>24</sup> Section 456.01 (1)(b), F.S.

<sup>25</sup> Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the department’s Division of Medical Quality Assurance.

The provision also requires an applicant to provide his or her social security number (SSN). However, there is no statutory requirement that an applicant provide his or her date of birth. An applicant's birth date is a requirement to fulfill other statutory licensure requirements under ss. 456.039 and 456.0135, F.S, for fingerprinting and fingerprint retention by the Agency for Health Care Administration (AHCA) and the Care Provider Background Screening Clearinghouse.

According to the DOH, the Joint Administrative Procedures Committee (JAPC) has objected to applications for licensure that contained a data field for the applicant's date of birth. The JAPC indicates that the DOH has no statutory authority to ask for a date of birth. To ensure accurate matches through the Florida Department of Law Enforcement, the Federal Bureau of Investigation, and the Sex Offender Registry, the DOH must have available three identifiers: the name, social security number, and date of birth.<sup>26</sup>

### **Student Loans Available to Health Care Practitioners**

Federal student loan programs were first established in the mid-twentieth century to increase the supply of skilled labor, promote economic and technological development, and provide upward socioeconomic mobility.<sup>27</sup> Federal student loans were first offered in 1958 under the National Defense Education Act to help the United States compete with other countries, especially the Soviet Union with the launch of the satellite *Sputnik*. High school students who showed promise in mathematics, science, engineering, and foreign language, or those who wanted to be teachers, were offered grants, scholarships, and loans.<sup>28</sup> Federal student loans have provided low-cost credit to millions of students, helped increase educational attainment, while holding administrative costs lower than those of the private sector, and generating a profit for the federal government.<sup>29</sup>

### **State Student Loans Available to Health Care Practitioners**

#### ***Florida Health Service Corps***

Florida backed health care student loans, and scholarships with service obligation, began in 1992 with the creation of the Florida Health Services Corps (FHSC), to encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel. The FHSC was developed by the DOH with the Florida Department of Education (FDOE) and the State University System. The DOH was to award scholarships to qualified students studying medicine, chiropractic, nursing, or dentistry. The program required a student receiving a scholarship to accept an assignment in a public health care program or work in a specific community located in a medically underserved area upon graduation for one year for each school year of financial assistance, up to a maximum of three years.

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<sup>26</sup> *Id.*, at p. 2.

<sup>27</sup> Michael Simkovic, *Risk-Based Student Loans*, 70 Wash. & Lee L. Rev. 527 (2013), available at <https://scholarlycommons.law.wlu.edu/wlulr/vol70/iss1/8> (last visited Feb. 6, 2020).

<sup>28</sup> National Defense Education Act of 1958, Pub. L. 85 – 864, 72 Stat. 1580, 20 U.S.C. 401 et seq., available at <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg1580.pdf> (last visited Feb, 2020).

<sup>29</sup> *Supra* note 1.

The financial penalties for noncompliance with the participation requirements were determined in the same manner as in the National Health Service Corps (NHSC) scholarship program.<sup>30</sup> Noncompliance with participation requirements also resulted in ineligibility for professional licensure under chs. 458, 459, 460, 464, 465, and 466, F.S. For a participant unable to complete his or her service obligation for reasons beyond his or her control, such as a disability, the penalty was the actual amount of financial assistance provided to the participant. The financial penalties collected by the DOH were deposited into the FHSC Trust Fund and used to provide additional scholarship and financial assistance.<sup>31, 32</sup>

The FHSC was modeled after the NHSC. It offered loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program was not funded after 1996 and was repealed in 2012.<sup>33</sup> The Office of Student Financial Assistance (OSFA) within the FDOE is the designated guaranty agency for the state of Florida for many years for the Federal Family Education Loans.<sup>34</sup>

In 2002, the Florida Legislature created the Student Loan Program. Section 1009.85, F.S., required the State Board of Education to adopt rules necessary for participation in the guaranteed student loan program, as provided by the Higher Education Act of 1965, as amended. The intent of this legislation was to authorize student loans when Florida, through the FDOE, become an eligible lender under the provisions of the applicable federal laws providing for the guarantee of loans to students and the partial payment of interest on such loans by the United States Government.<sup>35</sup>

In 2002, the Legislature revised the grounds for disciplinary action against health care practitioners who failed to pay student loans by amending s. 456.072(1)(k), F.S., and created s. 456.074(4), F.S., to enforce these provisions. When amending s. 456.072(1)(k), F.S., and enacting s. 456.074(4), F.S., the 2002 Legislature made the following specific findings:

- The U.S. Department of Health and Human Services reported 9,454 health care practitioners in the nation, and 556 health care practitioners in Florida, had defaulted on educational loan or service scholarship obligations;
- The U.S. Department of Health and Human Services reported that these defaulters cost taxpayers over \$694 million, of which \$45.6 million was attributable to Florida health care practitioners;
- Needy communities lost the services of essential clinicians when practitioners fail to meet their service obligations;

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<sup>30</sup> The National Health Service Corps (NHSC) Scholarship Program, enacted by Public Law 94- 484 on October 12, 1976, is a program established to bring health care to regions of the country that have critical shortages of health personnel. See The U.S. Department of Health and Human Services, Health Resources & Services Administration, *National Health Services Corps*, available at: <https://bhwh.hrsa.gov/loans-scholarships/nhsc> (last visited Feb. 6, 2020).

<sup>31</sup> Chapter 92-33, s. 111, Laws of Fla.

<sup>32</sup> Section 381.0302, (1992 – 2012), F.S.

<sup>33</sup> Chapter 2012-184, s. 45, Laws of Fla.

<sup>34</sup> The Department of Education, Office of Student Financial Assistance, *FFELP Home*, available at: <http://www.floridastudentfinancialaid.org/FFELP/> (last visited Feb. 6, 2020).

<sup>35</sup> Sections 1009.78 – 1009.88, F.S.

- Defaulters had received the substantial economic benefit of a health practitioner career education at taxpayer expense;
- It was imperative that defaulters be required to honor their service obligations;
- Because health care practitioners are licensed by the states and not the federal government, it was anticipated that state licensure discipline of the defaulters would motivate the defaulters to honor their commitments and deter others from defaulting on their student loans and service obligations;
- Taxpayers should not have to foot the bill for individuals who had reneged on the repayment obligation of a federal or state loan or scholarship which gave them access to a career as a health care practitioner;
- Defaulters had been, or would be, excluded from participating in Medicare and Medicaid programs and therefore unable to practice in many of the neediest and most underserved areas;
- Defaulters would not be practicing as health care practitioners had the programs not been available to help finance their education; and, while it was not possible to “repossess” the education these programs allowed them to obtain, it was possible to “repossess” the results of that education by suspending their ability to practice through suspension of their licenses; and
- Florida law at that time provided recourse only for failing to repay certain state student loans through s. 381.0302, F.S., and did not address federal educational loan and service scholarship defaulters.<sup>36</sup>

In 2010, with the passage of the federal Health Care and Education Reconciliation Act and the Health Care and Education Reconciliation Act, the FDOE, through the OSFA, stopped guaranteeing student loans with first disbursement dates after July 1, 2010. For student loans that had first disbursements dates before July 1, 2010, the OSFA continued to provide support for the life of the loans as long as the loans remained in the state’s portfolio, and FDOE remained the designated guaranty agency for Florida.<sup>37</sup>

### **Health Care Practitioner Regulation**

The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), is responsible for the boards and professions within the DOH.<sup>38</sup> The health care practitioners licensed by the DOH include the following:

- Acupuncturist;<sup>39</sup>
- Allopathic physicians and physician assistants;<sup>40</sup>
- Osteopathic physicians and physician assistants;<sup>41</sup>
- Chiropractic physicians, physician assistants, and registered chiropractic assistants;<sup>42</sup>

<sup>36</sup> Chapter 2002-254, Preamble, Laws of Fla.

<sup>37</sup> The Department of Education, Office of Student Financial Assistance (OSFA), The Federal Family Education Loan Program, *FFELP Home*, available at <http://www.floridastudentfinancialaid.org/FFELP/> (last visited Oct. 21, 2019).

<sup>38</sup> Section 20.43, F.S.

<sup>39</sup> Chapter 457, F.S.

<sup>40</sup> Chapter 458, F.S.

<sup>41</sup> Chapter 459, F.S.

<sup>42</sup> Chapter 460, F.S.

- Podiatric physicians;<sup>43</sup>
- Naturopathic physicians;<sup>44</sup>
- Optometrists;<sup>45</sup>
- Advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;<sup>46</sup>
- Pharmacists;<sup>47</sup>
- Dentists, dental hygienist and dental laboratories;<sup>48</sup>
- Midwives;<sup>49</sup>
- Speech and language pathologists;<sup>50</sup>
- Audiologists;<sup>51</sup>
- Occupational therapists;<sup>52</sup>
- Respiratory therapists;<sup>53</sup>
- Dieticians and nutritionists;<sup>54</sup>
- Athletic trainers;<sup>55</sup>
- Orthotists, prosthetists, and pedorthists;<sup>56</sup>
- Electrologists;<sup>57</sup>
- Massage therapists;<sup>58</sup>
- Clinical laboratory personnel;<sup>59</sup>
- Medical physicists;<sup>60</sup>
- Opticians;<sup>61</sup>
- Hearing aid specialists;<sup>62</sup>
- Physical therapists;<sup>63</sup>
- Psychologists and school psychologists;<sup>64</sup> and
- Clinical social workers, mental health counselors and marriage and family therapists.<sup>65</sup>

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<sup>43</sup> Chapter 461, F.S.

<sup>44</sup> Chapter 462, F.S.

<sup>45</sup> Chapter 463, F.S.

<sup>46</sup> Chapter 464, F.S.

<sup>47</sup> Chapter 465, F.S.

<sup>48</sup> Chapter 466, F.S.

<sup>49</sup> Chapter 467, F.S.

<sup>50</sup> Part I, Ch. 468, F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Part III, Chapter 468, F.S.

<sup>53</sup> Part V, Chapter 468, F.S.

<sup>54</sup> Part X, Chapter 468, F.S.

<sup>55</sup> Part XIII, Chapter 468, F.S.

<sup>56</sup> Part XIV, Chapter 468, F.S.

<sup>57</sup> Chapter 478, F.S.

<sup>58</sup> Chapter 480, F.S.

<sup>59</sup> Part II, ch. 483, F.S.

<sup>60</sup> Part III, ch. 483, F.S.

<sup>61</sup> Part I, ch. 484, F.S.

<sup>62</sup> Part II, ch. 484, F.S.

<sup>63</sup> Chapter 486, F.S.

<sup>64</sup> Chapter 490, F.S.

<sup>65</sup> Chapter 491, F.S.

Section 456.0721, F.S., requires the DOH to obtain from the U. S. Department of Health and Human Services (now the U.S. DOE) information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations pursuant to s. 456.072(1)(k), F.S. The DOH is further required to obtain from the U.S. Department of Health and Human Services (now U.S. DOE) a list of default health care practitioners each month, along with the information necessary to investigate a complaint. The DOH may obtain evidence to support the investigation and prosecution from any financial institution or educational institution involved in providing the loan or education to a practitioner.

Section 456.0721, F.S., also requires the DOH to report to the Legislature, as part of its annual report, the number of practitioners in default, along with the results of the DOH’s investigations and prosecutions, and the amount of fines collected from the practitioners prosecuted for violating s. 456.072(1)(k), F.S. The DOH Annual Reports to the Legislature from state fiscal year 2005-06, (the first year health care practitioners student loan defaults were reported) through 2017-18, show the following data on health care practitioners student loan defaults.

**Health Care Providers Student Loan Defaults for Fiscal Years 2005 through 2018**

State Fiscal Year	Reports of Defaults Received	Investigations Complete	Emergency Suspension Orders Issued	Probable Cause Found	No Probable Cause Found	Disciplinary Actions Taken	Amount of Fines Collected
2017-18	850	76	26	21	1	0	\$0
2016-17	1	1	1	1	0	0	\$0
2015-16	0	1	0	0	0	0	\$0
2014-15	1	0	0	0	0	1	\$0
2014-13	1	0	1	1	0	0	\$0
2013-12	2	2	1	1	0	1	\$2,500
2012-11	2	1	0	0	1	0	\$0
2011-10	19	0	0	0	0	2	\$16,216
2010-09	11	2	2	3	0	2	\$7,500
2009-08	13	4	3	4	0	2	\$6,000
2008-07	16	1	0	0	0	2	\$9,190
2007-06	0	3	1	2	5	4	\$29,307
2006-05	13	5	6	4	2	7	\$23,886
<b>TOTAL</b>	<b>929</b>	<b>96</b>	<b>41</b>	<b>16</b>	<b>9</b>	<b>21</b>	<b>\$94,600</b>

Section 456.074(4), F.S., further requires the DOH, upon receipt of information that a Florida-licensed health care practitioner has defaulted on his or her student loan issued or guaranteed by the state or the federal government, to notify the licensee by certified mail that he or she is subject to immediate suspension of his or her professional license unless, within 45 days after the date of mailing, the licensee provides proof of new payment terms between all parties to the loan. If, after 45 days from the date of mailing the certified notice, the licensee has failed to provide proof of new student loan payment terms, the DOH must issue an emergency order suspending the licensee’s license.

Sections 456.0635(2)(e) and (3)(e), F.S., also require each board, or the DOH if there is no board, to refuse to admit a candidate to any examination, refuse to issue a license, certificate, or

registration, and refuse to renew a license, certificate or registration, if the candidate or practitioner is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities (LEIE). Section 1128(b)(14) of the Social Security Act and 42 U.S.C. ss. 1320a-7(b)(14), provide that a default on a health education loan or scholarship obligation is permissive grounds for being placed on the LEIE; placement on the exclusion list continues until the default or obligation is resolved. Paragraphs 456.0635(2)(e) and (3)(e), F.S., are not permissible, but mandatory, and require the boards, or the DOH, to refuse to issue, or renew, licenses, certificates, or registrations to a person in default on his or her health education loan or scholarship obligation.

### **Other States with Licensure Suspension Laws for Student Loan Defaulters**

Seven states—Alaska, Hawaii, Iowa, Kentucky, Massachusetts, Tennessee, and Texas—have laws requiring all occupational boards to revoke licenses for defaulting on any type of federal or state education loan. Louisiana will revoke a license only if the professional has defaulted on an education loan issued by the state.<sup>66</sup>

Prior to July 1, 2019, Georgia was included in the above group. During the 2019 Georgia legislative session, the Georgia passed SB 214, which amended the Official Code of Georgia to prohibit a professional licensing board from suspending a person licensed by that board because:

- He or she was a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation; or
- He or she had been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.<sup>67</sup>

Five states—Arkansas, California, Mississippi, Minnesota and Florida—revoke the licenses only of health care professionals for defaulting on education loans. In Arkansas and Mississippi, the laws are even narrower, applying only to state health care education loans and scholarship agreements. For example, defaulting physicians in Arkansas may have their license suspended for “a period of years equivalent to the number of years that the recipient is obligated to practice medicine in a rural area” if they default on an Arkansas Rural Medical Practice Student Loan.<sup>68</sup>

Two states—Iowa and South Dakota—revoke all state-issued licenses, including driver's licenses and recreational hunting licenses.<sup>69</sup>

### **Medical Specialists**

A physician licensed under ch. 458, F.S., may not hold himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency that has been

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<sup>66</sup> Wagner, Andrew; National Conference of State Legislatures, *License Suspension for Student Loan Defaulters*, Vol. 26, No. 40, 2018, available at: <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Feb. 6, 2020).

<sup>67</sup> Section 43-1-29, *Suspension of license for nonpayment of student loans prohibited*, Official Code of Georgia

<sup>68</sup> *Supra* note 93.

<sup>69</sup> *Supra* note 93.



approved by the Board of Medicine (BOM). A physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the BOM.<sup>70</sup>

### Medical Faculty Certificates

To become a licensed medical doctor in Florida, an individual generally has two paths to licensure: licensure by examination<sup>71</sup> or licensure by endorsement.<sup>72</sup> However, s. 458.3145, F.S., provides another limited path to practice in Florida by teaching in a program of medicine. Under s. 458.3145, F.S., the DOH is authorized to issue a medical faculty certificate to a qualified medical physician to practice in conjunction with his or her full-time faculty position at a medical school, if the physician has met specified criteria in current law and accepted a full-time faculty appointment to teach at the following programs in medical schools with campuses in Florida:

- University of Florida;
- University of Miami;
- University of South Florida;
- Florida State University;
- Florida International University;
- University of Central Florida;
- Mayo Clinic College of Medicine and Science in Jacksonville, Florida;
- The Florida Atlantic University; or
- The Johns Hopkins All Children's Hospital in St. Petersburg, Florida.<sup>73</sup>

The list does not include any medical schools for osteopathic physicians with campuses in Florida.

Currently there are 58 physicians holding medical faculty certificates in Florida, with nine of those residing out of state.<sup>74</sup>

### Osteopathic Physicians

There are two types of medical physicians fully licensed to practice in Florida. Those holding the M.D. degree – doctor of allopathic medicine – licensed under ch. 458, F.S., and those holding the D.O. degree – doctor of osteopathic medicine – licensed under ch. 459, F.S. Both types of physicians are licensed in Florida to perform surgery and prescribe medicine in hospitals, clinics, and private practices, as well as throughout the U.S. Osteopathic physicians offer all the same services as M.D.s.

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<sup>70</sup> Section 458.3312, F.S.

<sup>71</sup> See s. 458.311, F.S., and Florida Board of Medicine, *Medical Doctor - Unrestricted*, available at <http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Feb. 6, 2020).

<sup>72</sup> See s. 458.313, F.S., and Board of Medicine, *Medical Doctor - Unrestricted*, available at <http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted>, (last visited Feb. 6, 2020).

<sup>73</sup> Section 458.3145(1)(i), F.S.

<sup>74</sup> Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2017-2018*, p. 16, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited Feb. 6, 2020).

Osteopathic physicians can specialize in every recognized area of medicine, from neonatology to neurosurgery, but more than half of all osteopathic physicians practice in primary care areas, such as pediatrics, general practice, obstetrics/gynecology, and internal medicine.<sup>75</sup>

### ***Osteopathic Residencies and Florida Licensure***

After acquiring a four-year undergraduate college degree with requisite science classes, students are accepted into one of the nation's 21 osteopathic medical schools accredited by the Bureau of Professional Education of the American Osteopathic Association (AOA). Following graduation, osteopathic physicians complete an approved 12-month internship. Interns rotate through hospital departments, including internal medicine, family practice, and surgery. They may then choose to complete a residency program in a specialty area, which requires two to six years of additional training.<sup>76</sup>

Any person desiring to be licensed, or certified, as an osteopathic physician in Florida must:

- Submit an application with a fee;
- Be at least 21 years of age;
- Be of good moral character;
- Have completed at least three years of pre-professional postsecondary education;
- Have not previously committed any act that would constitute a violation of ch. 459, F.S.;
- Not be under investigation anywhere for an act that would constitute a violation of ch. 459, F.S.;
- Have not been denied a license to practice osteopathic medicine, or had his or her osteopathic medicine license revoked, suspended, or otherwise acted against by any jurisdiction;
- Have met the criteria for:
  - A limited license under s. 459.0075, F.S.;
  - An osteopathic faculty certificate under s. 459.0077, F.S.; or
  - A resident physician, intern, or fellow under s. 459.021, F.S.;
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the AOA;
- Demonstrate that he or she has successfully completed a resident internship of not less than 12 months in a hospital approved by the Board of Trustees of the AOA or any other internship program approved by the Board of Osteopathic Medicine (BOOM) upon a showing of good cause; and
- Demonstrate that he or she has achieved a passing score, established by rule of the BOOM, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the BOOM no more than five years before making application.<sup>77</sup>

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<sup>75</sup> Florida Osteopathic Medical Association, *Osteopathic Medicine*, available at: <http://www.foma.org/osteopathic-medicine.html> (last visited Feb. 6 2020).

<sup>76</sup> *Id.*

<sup>77</sup> Section 459.0055, F.S.

### *The Accreditation Council for Graduate Medical Education (ACGME)*

The ACGME is a non-profit corporation whose mission is to improve health care and population health by assessing and advancing the quality of resident physicians' graduate medical education through accreditation. Accreditation is achieved through a voluntary process of evaluation and review based on published accreditation standards. ACGME accreditation provides assurance that a sponsoring institution or program meets the quality standards (institutional and program requirements) of the specialty or subspecialty practice(s) for which it prepares its graduates. The ACGME accreditation is overseen by a review committee made up of volunteer specialty experts from the field that set accreditation standards and provide peer evaluation of sponsoring institutions and specialty and subspecialty residency and fellowship programs.<sup>78</sup>

The ACGME was established by five medical organizations in 1981<sup>79</sup> and, in 2014, was joined by the AOA and the American Association of Colleges of Osteopathic Medicine. A primary responsibility of each of the organizations is to nominate individuals to be considered for membership on the ACGME Board of Directors. The ACGME board currently includes 24 members nominated by member organizations, two resident members, three public directors, four at-large directors, the chair of the Council of Review Committee Chairs, and two non-voting federal representatives.

The ACGME sets the standards for graduate medical education (GME) and renders residency accreditation decisions based on compliance with those standards. The member organizations are corporately separate from the ACGME and do not participate in accreditation, pay dues, or make any other monetary contribution to the ACGME. In academic year 2018-2019, there were approximately 11,700 ACGME-accredited residency and fellowship programs in 181 specialties and subspecialties at approximately 850 sponsoring institutions. There were approximately 140,500 active full and part time residents and fellows. One out of seven active physicians in the United States is a resident or fellow.<sup>80</sup>

By June 2020, all osteopathic residency programs for GME will need to be ACGME accredited. As the AOA guides residency programs through the process, resident physicians will be protected throughout the transition. If a residency program does not achieve ACGME accreditation by June 2020, a resident who has not completed the required training will be able to complete AOA-accredited training and advance to AOA board eligibility. This is the result of an agreement between the AOA, the ACGME, and the American Association of Colleges of Osteopathic Medicine (AACOM) that gives the AOA restricted authority to extend the AOA accreditation date to allow any remaining resident physicians to finish training in an accredited

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<sup>78</sup> American Council of Graduate Medical Education, *What We Do*, available at <https://www.acgme.org/What-We-Do/Overview> (last visited Feb. 6, 2020).

<sup>79</sup> American Council of Graduate Medical Education, *Member Organizations*, available at <https://www.acgme.org/About-Us/Overview/Member-Organizations> (last visited Feb. 6, 2020). The five organizations are: The American Board of Medical Specialists, The American Hospital Association, The American Medical Association, The Association of American Medical Colleges, and Council of Medical Specialty Societies.

<sup>80</sup> American Council of Graduate Medical Education, *About Us*, available at <https://www.acgme.org/About-Us/Overview> (last visited Feb. 6, 2020).

program. If a resident physician's program does not achieve ACGME accreditation by June 2020, he or she may also be able to transfer to another ACGME accredited program.<sup>81</sup>

### ***The National Residency Matching Program***

The National Resident Matching Program (NRMP) is a private, not-for-profit corporation established in 1952 to optimize the rank-ordered choices of applicants and program directors for residencies and fellowships. The NRMP is not an application processing service. Instead, it provides an impartial venue for matching applicants and program preferences for each other using an internationally recognized mathematical algorithm.

The first Main Residency Match® (“Match”) was conducted in 1952 when 10,400 internship positions were available for 6,000 graduating U.S. medical school seniors. By 1973, there were 19,000 positions for just over 10,000 graduating U.S. seniors. Following the demise of internships in 1975, the number of first-year post-graduate (PGY-1) positions declined to 15,700. The number of PGY-1 positions gradually increased through 1994 and then began to decline slowly until 1998. In 2019, there was an all-time high of 32,194 PGY-1 positions offered. The total number of positions offered, including, PGY-1 and second-year post-graduates (PGY-2), was also at an all-time high of 35,185.<sup>82</sup>

Beginning in 2014, osteopathic medical school graduates could participate in the Match, which opened up additional residency programs available to osteopathic medical graduates.<sup>83</sup> In 2019, 6,001 osteopathic candidates applied to the Match and 5,077 matched – an 84.6 percent match rate.<sup>84</sup> By June 2020, an osteopathic residency program will need to be accredited by ACGME to participate in the Main Residency Match.<sup>85</sup>

All residents who have completed an AOA- or ACGME-accredited residency program are eligible for AOA board certification. AOA board certification is a quality marker for patients that highlights the commitment to the uniquely osteopathic approach to patient care and allows engagement in continuous professional development throughout a career. Requirements are slightly different for osteopathic medical physicians pursuing certification through the American Board of Medical Specialties (ABMS). The ABMS requires candidates' residency programs to have been ACGME-accredited for a specified amount of time. Requirements vary by specialty.<sup>86</sup>

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<sup>81</sup> American Osteopathic Association, *What does single GME mean for DO resident physicians?* available at <https://osteopathic.org/residents/resident-resources/residents-single-gme/> (last visited Feb. 6, 2020).

<sup>82</sup> The Match, National Resident Matching Program, Results and Data 2019 Main Residency Match, *About the NRMP*, p. v, 1, available at [https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/04/NRMP-Results-and-Data-2019\\_04112019\\_final.pdf](https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/04/NRMP-Results-and-Data-2019_04112019_final.pdf) (last visited Feb. 6, 2020).

<sup>83</sup> The Accreditation Council for Graduate Medical Education, *Member Organizations*, available at <https://www.acgme.org/About-Us/Member-Organizations>, (last visited Feb. 6, 2020).

<sup>84</sup> *Supra* note 108.

<sup>85</sup> The Match, National Residency Match Program, *2020 Match Participation Agreement for Applicants and Programs*, available at <https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/09/2020-MPA-Main-Residency-Match-for-Applicants-and-Programs.pdf> (last visited Feb. 6, 2020).

<sup>86</sup> *Id.*

## **Registered Chiropractic Assistants**

Registered Chiropractic Assistants (RCAs) perform duties not directly related to chiropractic patient care under the direct supervision of a chiropractic physician or chiropractic physician's assistant. There are no regulatory provisions associated with the work of an RCA. The registration is voluntary and not required for an individual to assist with patient care management activities, execute administrative and clinical procedures, or perform managerial and supervisory functions in an office.<sup>87</sup> According to the DOH, in Fiscal Year 2017-2018, there were 2,659 active in-state RCAs.<sup>88</sup>

## **Florida Center for Nursing**

In 2001, the Florida Legislature created s. 464.0195, F.S., establishing the Florida Center for Nursing (FCN) "to address issues of supply and demand for nursing, including issues of recruitment, retention, and utilization of nurse workforce resources."<sup>89</sup> The primary statutory goals address collecting and analyzing nursing workforce data; developing and disseminating a strategic plan for nursing; developing and implementing reward and recognition activities for nurses; and promoting nursing excellence programs, image building, and recruiting into the profession. The FCN is further charged to convene various stakeholder groups to review and comment on nursing workforce data and to recommend systemic changes that will improve the recruitment and retention of nurses in Florida.

The FCN conducts an analysis of licensed practical nurses (LPN), registered nurses (RN), and advanced practice registered nurses (APRN) annually to assess Florida's nurse supply, including the numbers of nurses, demographics, education, employment status, and specialization pursuant to s. 467.019, F.S. The FCN submits a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually through January 30, 2020.

## **Board of Nursing Rulemaking Authority to Establish Standards of Practice**

Section 464.004, F.S., established the Board of Nursing (BON) within the DOH to license and regulate nursing to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It was the Legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public should be prohibited from practicing in this state.<sup>90</sup>

The Legislature has granted the BON rulemaking authority to:

- Establish guidelines for remedial courses for those nurses who fail the nursing examination three times;<sup>91</sup>

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<sup>87</sup> Section 460.4166, F.S.

<sup>88</sup> The Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2017-2018*, available at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1718.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1718.pdf) (last visited Feb. 6, 2020).

<sup>89</sup> The Florida Center for Nursing, *2018 Annual Report*, available at <https://www.flcenterfornursing.org/AboutUs/AnnualReport.aspx> (last visited Feb. 6, 2020).

<sup>90</sup> Section 456.002, F.S.

<sup>91</sup> Section 464.008, F.S.

- Administer the certification of clinical nurse specialists;<sup>92</sup>
- Administer the certification of advanced practice registered nurses, including the appropriate requirements for advanced practice registered nurses in the categories of certified registered nurse anesthetists, certified nurse midwives, and certified nurse practitioners;<sup>93</sup>
- Establish a procedure for the biennial renewal of licenses and to prescribe continuing education requirements for renewal of licenses;<sup>94</sup>
- Provide application procedures for inactive status, the biennial renewal of inactive licenses, and the reactivation of licenses, including applicable fees;<sup>95</sup>
- Establish the testing procedures for use in certifying nursing assistants, regulating the practice of certified nursing assistants, and specifying the scope of practice and the level of supervision required for the practice of certified nursing assistants;<sup>96</sup> and
- Establish disciplinary guidelines.<sup>97</sup>

The Legislature did not expressly grant rulemaking authority to the BON to promulgate nursing standards of practice.<sup>98</sup> The authority to define the scope of practice for nurses is absent from ss. 464.018 and 456.003(6), F.S., which expressly limits the ability of the DOH boards to modify or contravene the lawful scope of practice of a regulated profession.

From 2003 through 2012, the BON proposed various rules on nursing standards of practice for conscious sedation and unprofessional conduct, which were ultimately withdrawn after the JAPC objected.

In 2012, the BON proposed another rule establishing professional guidelines for the administration of conscious sedation and to update the instances of unprofessional conduct. The 2012 rule was met with rule challenges from various associations, and the JAPC objected to the rule as lacking statutory rulemaking authority. The rule was ultimately challenged at the Division of Administrative Hearings (DOAH) in case number 121545RP. That decision found that the BON lacked the statutory authority to define nursing “scope of practice” in the Nurse Practice Act. The decision was affirmed by the First District Court of Appeal in case numbers 1D12-5656, 1D12-5671, and 1D12-5739 (all related to DOAH 12-1545RP).

The Legislature has granted statutory authority to set standards of practice for professions that are authorized to practice independently, including: allopathic and osteopathic physicians,<sup>99</sup>

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<sup>92</sup> Section 464.0115, F.S.

<sup>93</sup> Section 464.012, F.S.

<sup>94</sup> Section 464.013, F.S.

<sup>95</sup> Section 464.014, F.S.

<sup>96</sup> Section 464.202, F.S.

<sup>97</sup> Section 464.018(5), F.S.

<sup>98</sup> See *Florida Medical Association, Inc., Florida Osteopathic Medical Association, and Florida Podiatric Medical Association vs. Department Of Health, Board Of Nursing*, DOAH Case No. 12-001545 RP, *Summary Final Order*, Nov. 2, 2012; *affirmed per curiam, Department of Health, Board of Nursing, Florida Association of Nurse Anesthetists and Florida Nurses Association, v. Florida Medical Association, Inc., Florida Osteopathic Medical Association, Inc., and Florida Podiatric Medical Association*, Case Nos. 1D12-5656, 1D12-5671, 1D12-5739 (Fla. 1<sup>st</sup> DCA, Feb. 12, 2014).

<sup>99</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

podiatric physicians,<sup>100</sup> pharmacists,<sup>101</sup> psychotherapists,<sup>102</sup> clinical social workers,<sup>103</sup> dentists,<sup>104</sup> optometrists,<sup>105</sup> and opticians.<sup>106</sup>

### **Certified Nursing Assistants (CNAs)**

Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.<sup>107</sup>

The BON issues certificates to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates:

- Successful completion of an approved training program and achieving no less than a minimum score;
- Achieving a minimum score on the nursing assistant competency examination, and:
  - Having a high school diploma, or its equivalent; or,
  - Being at least 18 years of age;
- Being currently certified in another state and having not been found to have committed abuse, neglect, or exploitation in that state; and
- Having completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieving a minimum score.<sup>108</sup>

Section 464.204, F.S., relating to the denial, suspension, or revocation of a CNA certification, sets forth the grounds for the BON to discipline a CNA. Two actions constitute grounds for which the BON may impose disciplinary sanctions:

- Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the BON; and
- Intentionally violating any provision of ch. 464, F.S., ch. 456, F.S., or the rules adopted by the BON.

When pursuing discipline against a CNA, the DOH must be prepared to prove that the CNA “intentionally” violated the law or rule.

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<sup>100</sup> Section 461.003, F.S.

<sup>101</sup> Sections 465.003(13) and 465.0155, F.S.

<sup>102</sup> Section 490.003(4), F.S.

<sup>103</sup> Section 491.003, F.S.

<sup>104</sup> Section 466.003(3), F.S.

<sup>105</sup> Section 463.005(1)(a), F.S.

<sup>106</sup> Section 463.002(7), F.S.

<sup>107</sup> Section 464.201, F.S.

<sup>108</sup> Section 464.203, F.S.

The BON can only approve applications for licensure by endorsement from currently licensed CNAs in other states. If a CNA from the District of Columbia or a U.S. territory wishes to be licensed in Florida, he or she must apply for licensure by examination instead of endorsement.<sup>109</sup>

### ***Nursing Education Program Approval and Accreditation***

Florida law requires an educational institution desiring to offer a prelicensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency if the institution is accredited.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.<sup>110</sup>

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny.<sup>111</sup>

Nursing programs currently offered in Florida include: public school districts, community colleges, state universities, private institutions licensed by the Commission for Independent Education (CIE), private institutions that are members of the Independent Colleges and Universities of Florida, and Pensacola Christian College, which is statutorily authorized to offer a bachelor of science in nursing degree by s. 1005.06(1)(e), F.S.

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.<sup>112</sup>

An "accredited program" is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.<sup>113</sup> The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.<sup>114</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> Section 464.019(1), F.S.

<sup>111</sup> Section 464.019(2), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

<sup>112</sup> The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

<sup>113</sup> Section 464.003(1), F.S.

<sup>114</sup> United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, [https://www2.ed.gov/admins/finaid/accred/accreditation\\_pg7.html](https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html) (last visited March 2, 2020).



A BON-approved nursing education program<sup>115</sup> is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.<sup>116</sup>

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year.<sup>117</sup> One hundred and ten schools are currently on probation. Of these, 37 are LPN programs, 11 are BSN-RN programs, and 62 are Associate Degree-RN Programs. The following are the 2018-2019 average passage rates, compared to the national average:<sup>118</sup>

- LPN programs were 76%, compared to 86% nationally;
- AA - RN programs were 68%, compared to 85% nationally; and
- BSN-RN programs were 92% compared to 89% nationally.

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.<sup>119</sup>

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.<sup>120</sup>

A nursing education program that prepares students for the practice of professional nursing (RNs) to must be accredited within five years of certain triggering dates. A program approved before July 1, 2014, is required to become accredited by July 1, 2019. If a program was approved but had not enrolled students before July 1, 2014, then the program must become accredited

<sup>115</sup> Section 464.003(4), F.S., defines an "approved program" as "a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status."

<sup>116</sup> Section 464.019(3), F.S.

<sup>117</sup> Section. 464.019(5)(a)3., F.S.

<sup>118</sup> Florida Center for Nursing, *2019 Annual Report July 2018 - June 2019*, pp. 7 & 9, available at [https://www.flcenterfornursing.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core\\_Download&EntryId=1821&PortalId=0&TabId=151](https://www.flcenterfornursing.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core_Download&EntryId=1821&PortalId=0&TabId=151) (last visited Mar. 2, 2020). See also Office of Program Policy Analysis and Government Accountability, *Approximately 42% of Nursing Programs Had Licensure Exam Passage Rates Below the Required Legislative Standard in 2016*, Report No. 17-07, 2 (June 2017), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1707rpt.pdf> (last visited Mar. 2, 2020).

<sup>118</sup> Section 464.019(5)(c), F.S.

<sup>119</sup> Section 464.019(5)(c), F.S.

<sup>120</sup> Section 464.019(9)(b), F.S.

within five years of enrolling its first students. A program approved after June 30, 2014, has five years after enrolling the program's first students to become accredited.<sup>121</sup> A nursing education program that fails to meet the accreditation requirements shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of three years after the date of termination. An institutional name-change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

The Legislature has also authorized the BON to conduct on site-evaluations of nursing education program applicants, if necessary, to confirm compliance with the application requirements in s. 464.019(1), F.S., and requiring approved programs to demonstrate a licensure exam passage rate of no more than 10 percent below the average pass rate for all United States educated, first-time exam takers of the National Council Licensure Examination (NCLEX). The BON must terminate a program, whether accredited or non-accredited, which has been placed on probationary status for failing to achieve the examination passage rate if it is not granted a one-year extension or fails to achieve the required passage rate. An accredited or non-accredited program which has been placed on probationary status must disclose to its students and applicants of that status and explain the implications. A program that has been terminated or closed is prohibited from seeking subsequent program approval under its original name, a new program or institutional name, or a new institution with the same ownership, for a minimum of three years after the date of termination or closing.

The BON may also terminate a program if it fails to submit the annual report within six months after it is due or if a program director for an approved program fails to appear before the BON to explain the reason for failing to submit the annual report timely.

The BON has rulemaking authority to adopt rules related to nursing program curricula, including rules relating to the uses and limitations of simulation technology.

## **Dentistry, Dental Hygiene, Health Access Dental Licensure, and Dental Laboratories**

### ***Licensure Examinations for Dentists and Dental Hygienists***

Section 466.004, F.S., establishes the Board of Dentistry (BOD) within the DOH to regulate the practice of dentistry and dental hygiene. The requirements for dental licensure by examination are found in s. 466.006, F.S. A person desiring to be licensed as a dentist must apply to the DOH to take the examinations. To take the examination, an applicant must be 18 years of age and be:

- A graduate from a dental school accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA) or any other dental accrediting entity recognized by the U.S. Department of Education (DOE); or
- A dental student in the final year of a program at such an ADA CODA accredited dental school who has completed all the coursework necessary to prepare the student to perform the clinical and diagnostic procedures required to pass the examinations.

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<sup>121</sup> Section 464.019(11), F.S. Pensacola Christian College is exempt from this certification requirement due to its status under s. 1005.06(1)(e), F.S.

Dental school graduates from a school not accredited by the ADA CODA, the U.S. DOE recognized dental accrediting entity, or approved by the BOD, desiring to take the Florida dental licensure examinations, are not entitled to take the examinations until the applicant:

- Demonstrates completion of a program of study defined by BOD rule, at an accredited American dental school and receipt of a D.D.S. or D.M.D. from the school; or
- Submits proof of successful completion of at least two consecutive years at a full-time supplemental general dentistry program accredited by the ADA CODA.<sup>122</sup>

The Legislature has authorized the BOD to use the American Dental Licensing Examination (ADLEX), developed by the American Board of Dental Examiners, Inc., in lieu of an independent state-developed practical or clinical examination. Section 466.007, F.S., requires a dental hygiene applicant to pass the American Dental Hygiene Licensing Examination (ADHEX) also developed by the American Board of Dental Examiners, Inc.

Sections 466.006(4)(b) and 466.007(4)(b), F.S., require that the ADLEX examination for dentists, and ADHEX for hygienists, be graded by Florida licensed dentists, and dentists and hygienists, respectively. Such practitioners must be employed by the DOH for this purpose. This provision refers to requirements that were necessary when the ADLEX and ADHEX examinations were purchased and administered by the DOH. This requirement is now obsolete since the BOD has certified national examinations for both dentists and hygienists.

According to the DOH, by limiting the grading to Florida-only licensed dentists and hygienists, this requirement has created a shortage of personnel available to grade the examinations, thus jeopardizing the administration of the ADLEX and the ADHEX.<sup>123</sup>

### ***Health Access Dental Licensure***

In 2008, the Legislature established the health access dental license in order to attract out-of-state dentists to practice in underserved health access settings.<sup>124</sup> With this license, a dentist actively licensed in good standing in another state, the District of Columbia, or a U.S. territory is authorized to practice dentistry in Florida in a health access setting if the dentist:

- Submits proof he or she graduated from a dental school accredited by the Commission on Dental Accreditation of the ADA or its successor agency;
- Submits proof he or she has successfully completed parts I and II of the National Board of Dental Examiners (NBDE) examination and a state or regional clinical dental licensing examination that the BOD has determined effectively measures the applicant's ability to practice safely;

<sup>122</sup> Florida Department of Health, *Senate Bill 188 Analysis*, p. 2 (2019) (on file with the Senate Committee on Health Policy) According to the department, it is unclear whether the two years of a full time supplemental general dentistry program includes specialty or advanced education programs.

<sup>123</sup> *Id.*, at p. 4.

<sup>124</sup> A "health access setting" is defined in s. 466.003(14), F.S., as a program or institution of the Department of Children and Families, the Department of Health, or the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center (FQHC) or FQHC look-alike as defined by federal law, a school-based prevention program, or a clinic operated by an accredited college of dentistry or an accredited dental hygiene program in this state if such community service programs and institutions immediately report to the Board of Dentistry practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such settings.

- Submits ADLEX examination scores mailed to the BOD directly from the American Dental Association;
- Submits a final official transcript from a dental school sent to the BOD by the registrar's office;
- Submits a certification of licensure from each state in which he or she currently holds or has held a dental or dental hygiene license;
- Submits proof of training in cardiopulmonary resuscitation (CPR) at the basic support level;
- Files a BOD-approved application and pays the applicable fees;
- Has not been convicted of, nor pled *nolo contendere* to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Currently holds a valid, active dental license in good standing which has not been revoked, suspended, restricted, or otherwise disciplined from another state, the District of Columbia, or a U.S. territory;
- Has never had a license revoked from another state, the District of Columbia, or a U.S. territory;
- Has never failed an exam under s. 466.006, F.S., unless the applicant was reexamined and received a license to practice in Florida;
- Has not been reported to the NBDE, unless the applicant successfully appealed to have his or her name removed from the data bank;
- Submits proof that he or she has been engaged in the active, clinical practice of dentistry and has provided direct patient care for five years immediately preceding the date of application, or proof of continuous clinical practice, and has provided direct patient care since graduation if the applicant graduated less than five years from his or her application date;<sup>125</sup>
- Submits documentation that she or he has completed, or will complete prior to licensure, continuing education equivalent to this state's requirement for dentists licensed under s. 466.006, F.S., for the last full reporting biennium before applying for a health access dental license;<sup>126</sup> and
- Successfully completes the examination covering the laws and rules of the practice of dentistry in this state.<sup>127,128</sup>

A health access dental license is subject to biennial renewal. The BOD will renew a health access dental license if the applicant:

- Submits a renewal application and has paid a renewal fee;
- Submits documentation from the employer in the health access setting that the licensee has at all times pertinent remained an employee;
- Has not been convicted of, nor pled *nolo contendere* to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has not failed the examination specified in s. 466.006, F.S., since initially receiving a health access dental license or since the last renewal; and
- Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the data bank.

<sup>125</sup> Section 466.0067, F.S.

<sup>126</sup> See ch. 64B5-12.013, Fla. Admin. Code R. (2019) for continuing education requirements.

<sup>127</sup> Section 466.006(4)(a), F.S.

<sup>128</sup> Department of Health, Board of Dentistry, *Health Access Dentist*, available at <https://floridasdentistry.gov/licensing/health-access-dentist/> (last visited Feb. 6, 2020).

The BOD may undertake measures to independently verify the health access dental licensee's ongoing employment status in the health access setting.<sup>129</sup>

The BOD may revoke a health access dental license if the licensee is terminated from employment at the health access setting or practices outside of the health access setting, fails the Florida dental examination, or is found by the BOD to have committed a violation of ch. 466, F.S., (the Dental Practice Act), other than a violation that is a citation offense or a minor violation.<sup>130</sup>

Currently, there are 58 health access dental licenses. Of those, 37 are in-state active, two are in-state delinquent, 10 are out-of-state active, two are out-of-state delinquent, and seven are retired.<sup>131</sup>

The program is scheduled for repeal effective January 1, 2020, unless reenacted by the Legislature.<sup>132</sup>

### ***Adverse Incident Reporting in the Practice of Dentistry***

There is no statutory requirement for dentists or dental hygienists to report adverse incidents or occurrences in office practice settings. In contrast, the BOM and BOOM have specific statutory authority to require licensees to report adverse incidents in office practice settings.<sup>133</sup>

The BOD, by rule, defines an “adverse occurrence” and specifies reporting requirements. The rule specifies that an adverse occurrence in a dental office must be reported to the BOD within 48 hours followed by a more specific written report within 30 days. These reports are forwarded to the chair of the Probable Cause Panel to determine if further investigation is necessary. If further investigation is warranted, the report and recommendation are forwarded to the MQA Consumer Services Unit (CSU) for further investigation. All reported mortalities occurring in a dental office are forwarded to the CSU for investigation.

The rule does not provide a penalty for failure to report an adverse occurrence.<sup>134</sup>

### ***Dental Laboratories***

Section 466.031, F.S., defines a “dental laboratory” to include any person, firm, or corporation who, for a fee or gratuitously, manufactures artificial substitutes for natural teeth, or who furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, or appliance

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<sup>129</sup> Section 466.00671, F.S.

<sup>130</sup> Section 466.00672, F.S.

<sup>131</sup> *Supra* note 88. “In-State Active” means the licensed practitioner has a Florida mailing address and is authorized to practice. “In-State Delinquent” means the licensed practitioner has a Florida mailing address and is not authorized to practice in the state because of failure to renew the license by the expiration date. “Out-of-State Active” means the licensed practitioner has an out-of-state mailing address and is authorized to practice. “Out-of-State Inactive” means the licensed practitioner has an out-of-state mailing address and is not authorized to practice. “Retired” means the licensed practitioner is not authorized to practice. The practitioner is not obligated to update licensure data. Section 456.036, F.S.

<sup>132</sup> Section 466.00673, F.S.

<sup>133</sup> Sections 458.351 and 459.026, F.S.

<sup>134</sup> Fla. Admin. Code. R. 64B5-14.006 (2019).

to be worn in the human mouth, or which holds itself out as a dental laboratory. The definition specifically excludes a dental laboratory technician who constructs or repairs dental prosthetic appliances in the office of a licensed dentist, for that dentist only, and under the dentist's supervision and work order.

Section 466.032, F.S., sets forth the registration and biennial registration renewal for a dental laboratory. It directs the DOH to issue a certificate upon payment of a fee, which entitles the registrant to operate a dental laboratory for a period of two years. Section 466.032, F.S., sets forth the requirements for a periodic inspection of dental laboratories for required equipment and supplies, mandates 18 hours biennially of continuing education for the dental laboratory owner or at least one employee who must be in programs of learning that contribute directly to the education of the dental technician, and establishes disciplinary guidelines for violations.

According to the DOH, there were 989 dental laboratories in Florida as of June 30, 2018; 792 have active licenses and 197 have delinquent licenses.<sup>135</sup> In the 2017-2018 fiscal year, the DOH reports that there were four cases opened against dental laboratories, none of which resulted in disciplinary cases.<sup>136</sup>

### **Athletic Trainers**

Section 468.703, F.S., establishes the Board of Athletic Trainers (BOAT) within the DOH to license and regulate the practice of athletic trainers in Florida. Applicants for licensure as an athletic trainer are required to:

- Submit to a background screening;
- Have a baccalaureate or higher degree from a college or university in professional athletic training accredited by the Commission on Accreditation of Athletic Training Education, and have passed the national examination to be certified by the Board of Certification (BOC)<sup>137</sup> for athletic trainers;
- Have a current certification from the BOC, if they graduated before 2004;<sup>138</sup> and
- Have current certifications in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).<sup>139</sup>

An athletic trainer must practice under the direction of an allopathic, osteopathic or chiropractic physician licensed under chs. 458, 459, or 460, F.S., or otherwise authorized by Florida law. The physician must communicate his or her direction through oral or written prescriptions or

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<sup>135</sup> *Supra* note 88 at p. 34

<sup>136</sup> *See supra* note 88.

<sup>137</sup> The Board of Certification, Inc. (BOC) was incorporated in 1989 as a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. The BOC establishes both the standards for the practice of athletic training and the continuing education requirements for BOC Certified Athletic Trainers (ATs). The BOC also works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues. The BOC also has the only accredited certification program for ATs in the United States and has mutual recognition agreements with Canada and Ireland. *See* Board of Certification for the Athletic Trainer, *What is BOC?* available at <http://www.bocac.org/about-us#what-is-the-boc> (last visited Feb. 6, 2020).

<sup>138</sup> *Supra* note, at 88. p. 4 According to the department prior to 2004, and the inception of athletic training programs, athletic trainers obtained training through a Board of Certification (BOC) internship program to obtain licensure in Florida. Current law does not allow athletic trainers who obtained training through the BOC internship program to become licensed in Florida.

<sup>139</sup> Section 468.707, F.S.

protocols for the provision of services and care by the athletic trainer, and the athletic trainer must provide service or care as dictated by the physician.<sup>140</sup>

The services of an athletic trainer must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition involving exercise, sport, recreation, or related physical activity. In providing care and services, an athletic trainer may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, and mechanical devices.<sup>141</sup>

The BOAT is authorized to adopt rules to implement the provisions of part XIII, ch. 468, F.S. Such rules must include, but are not limited to:

- The allowable scope of practice regarding the use of equipment, procedures, and medication;
- Mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;
- Licensure requirements;
- Licensure examination;
- Continuing education requirements;
- Fees;
- Records and reports to be filed by licensees;
- Protocols; and,
- Any other requirements necessary to regulate the practice of athletic training.<sup>142</sup>

At renewal, licensed athletic trainers must demonstrate a current BOC certification; however, there is no requirement for that certification to be held without lapse and in good standing.<sup>143</sup>

### **Orthotics, Prosthetics, and Pedorthics**

Section 468.801, F.S., establishes the Board of Orthotists and Prosthetists (BOOP) within the DOH to license and regulate the practice of Prosthetist-Orthotist, Prosthetist,<sup>144</sup> Orthotist,<sup>145</sup> Pedorthist,<sup>146</sup> Orthotic Fitter, and Orthotic Fitter Assistant in Florida. Applicants for licensure under part XIV, ch. 468, F.S., must:

- Submit an application and fee, not to exceed \$500;
- Submit fingerprints for background screening;
- Submit the cost of the state and national criminal background checks;

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<sup>140</sup> Section 468.713, F.S.

<sup>141</sup> Section 468.701, F.S.

<sup>142</sup> Section 468.705, F.S.

<sup>143</sup> Section 468.711, F.S.

<sup>144</sup> Section 468.80(15), F.S., defines “prosthetics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a prosthesis.

<sup>145</sup> Section 468.80(9), F.S., defines “orthotics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.

<sup>146</sup> Section 468.80(12), F.S., defines “pedorthics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a pedorthic device.

- Be of good moral character;
- Be 18 years of age or older; and
- Have completed the appropriate educational preparation requirements.<sup>147</sup>

Licenses must be granted independently in orthotics, prosthetics, or pedorthics, but a person may be licensed in more than one discipline. A prosthetist-orthotist license may be granted to persons meeting the requirements for both a prosthetist and an orthotist license. Persons seeking to obtain the required orthotics or prosthetics experience in the state must be approved by the BOOP and registered as a resident by the DOH. A registration may be held in both practice fields, but the board may not approve a second registration until at least one year after the issuance of the first registration.<sup>148</sup> Currently, a dual registration is not authorized.<sup>149</sup>

### Massage Therapy

Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the DOH to license and regulate the practice of massage in Florida. Individuals seeking an initial massage therapist license in Florida have two options for meeting the educational requirements:

- They may attend an approved program at a massage therapy school and complete 500 hours of classroom training; or
- They can become an apprentice under a licensed massage therapist for a period of one year. During that year, the sponsor of the massage apprentice is required to file quarterly reports and the apprentice must complete the following courses of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, five hours of hygiene, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of board-approved HIV/AIDS instruction.<sup>150</sup>

Any person may obtain a license to practice as a massage therapist if he or she:

- Submits an application and fee;
- Is at least 18 years of age;
- Has received a high school diploma or high school equivalency diploma;
- Submits to background screening;
- Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and,
- Has received a passing grade on an examination testing general areas of competency specified by the board<sup>151</sup> and administered by the DOH.<sup>152</sup>

Rule 64B7-25.001(2), F.A.C., lists five national exams that are approved by the board. The exam currently taken by applicants is the National Examination for State Licensure administered by the National Certification Board for Therapeutic Massage and Bodywork. The DOH does not

<sup>147</sup> Section 468.803, F.S.

<sup>148</sup> *Id.*

<sup>149</sup> *Supra* at note 111, p. 4.

<sup>150</sup> Fla. Admin. Code R. 64B7-29.003, (2019).

<sup>151</sup> Section 480.042, F.S.

<sup>152</sup> Section 480.041, F.S.



offer or administer a specific state licensure exam.<sup>153</sup> According to the DOH, there are 172 approved licensed massage schools in Florida, and 32,387 licensed massage therapists in the 2017-2018 fiscal year. There were only 71 apprentices licensed under the Florida apprenticeship program.<sup>154</sup>

The term “massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.<sup>155</sup>

The BMT also licenses apprentices in colonic hydrotherapy.<sup>156</sup> These individuals are either attending a massage therapy school that does not offer colonic training or are licensed massage therapists who are seeking to add colonic hydrotherapy to their practice. Since there are few schools in the state that offer a colonic hydrotherapy program, apprenticeships are the primary method of training for this service.<sup>157</sup>

## Psychology

Section 490.004, F.S., creates the Board of Psychology (BOP) within the DOH to license and regulate the practice of psychologists in Florida. The practice of psychology is defined as the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal behavioral health and mental or psychological health.<sup>158</sup>

Licensure as a psychologist under ch. 490, F.S., requires a doctoral degree in psychology from an educational institution that, at the time the applicant was enrolled and graduated, held institutional accreditation from an approved agency and programmatic accreditation from the American Psychological Association (APA).

Section 490.003(3)(a), F.S., refers to educational requirements in effect prior to July 1, 1999, and are no longer applicable. The outdated language could create confusion among applicants as to the current educational requirements, which are correctly defined in s. 490.003(3)(b), F.S. Section 490.003(3)(b), F.S., generically refers to programs approved and recognized by the U.S. DOE. The only accrediting agency recognized by the U.S. DOE to provide programmatic accreditation for doctoral psychology programs is the APA.

Section 490.005, F.S., refers to educational requirements in effect prior to July 1, 1999, which are no longer applicable to augment a deficient education or show comparability to the current

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<sup>153</sup> *Id.*

<sup>154</sup> *Supra*, at note 88, p. 15.

<sup>155</sup> Section 480.033, F.S.

<sup>156</sup> Colonic hydrotherapy is a method of colon irrigation used to cleanse the colon with the aid of a mechanical device and water. *See* s. 480.033(6), F.S.

<sup>157</sup> Fla. Admin. Code R. 64B7-29.007, (2019).

<sup>158</sup> Section 490.003(4), F.S.

educational requirements. This section includes an outdated reference to the APA accrediting programs in Canada. Currently, the APA no longer accredits Canadian doctoral programs.<sup>159</sup>

Section 490.005(2)(b)1., F.S., refers to school psychology applicants graduating from a college or university accredited and approved by the Commission on Recognition of Postsecondary Accreditation; however, the correct reference is to the Council for Higher Education Accreditation.

Section 490.006, F.S., relating to licensure of a psychologist or school psychologist by endorsement, requires:

- Submission of an application to the DOH and payment of a fee;
- Proof of a valid license or certificate in another jurisdiction provided that, when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in ch. 490, F.S. (but, if no Florida law existed at that time the applicant received his or her license or certificate, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in ch. 490, F.S., when the application is made);
- Proof of good standing as a diplomat with the American Board of Psychology; or
- Proof of a doctoral degree in psychology as described in s. 490.003, F.S., and at least 20 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.

Obtaining licensure under the current endorsement standards requires a law-to-law comparison, and applicants who otherwise might qualify for licensure may be denied, or have licensure delayed, until they select a different application method.

### **Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling**

Section 491.004, F.S., creates the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling within the DOH to ensure that every clinical social worker, marriage and family therapist, and mental health counselor practicing in this state meets minimum requirements for safe practice. The Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling is responsible for licensing, monitoring, disciplining, and educating clinical social workers, marriage and family therapists, and mental health counselors to assure competency and safety to practice in Florida.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework

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<sup>159</sup> Florida Department of Health, *Senate Bill 188 Analysis*, p. 10 (2019) (on file with the Senate Committee on Health Policy).

or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.<sup>160</sup>

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.<sup>161</sup>

Section 491.0045(6), F.S., specifies the length of time an intern registration for clinical social work, marriage and family therapy, and mental health counseling is valid. A footnote to this section points out that, through multiple amendatory acts to s. 491.0045(6), F.S., during the same legislative session, two irreconcilable versions of the section were created, and the editors were thus required to publish both versions of the amended provision.

Section 491.0045(6), F.S., states, "An intern registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. A registration issued after March 31, 2017, expires 60 months after the date of issuance. No subsequent intern registration may be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d)." The footnote refers to an April 1, 2017, date, rather than the March 31, 2017 in the statute.

Section 491.005(3)(b), F.S., relating to licensure by examination for marriage and family therapists requires:

- A master's degree with major emphasis in marriage and family therapy or a closely related field;
- Specific coursework in 12 content areas; and
- A practicum, internship, or field experience of 180 hours providing direct client contact hours of marriage and family services under the supervision of a licensed marriage and family therapist with at least five years of experience.

Section 491.005(3)(c), F.S., is inconsistent as it requires both two years, and three years, of clinical experience for a marriage and family therapy licensure applicant. According to the DOH, the three years of clinical experience was a technical error and is inconsistent with other statutory requirements. Only two years of clinical experience for a marriage and family therapy applicant is required.<sup>162</sup>

Section 491.005(4), F.S., relating to licensure by examination for mental health counselors names the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors as the required examination for a mental health counselor. The correct name of the examination required for licensure as a mental health counselor is the National

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<sup>160</sup> Section 491.0046, F.S.

<sup>161</sup> Section 491.0045, F.S.

<sup>162</sup> *Id.*

Clinical Mental Health Counseling Examination. The examination was developed by, and is administered by, the National Board for Certified Counselors.

Section 491.005(4), F.S., contains a 300-hour difference between the hours of practicum, internship, or field experience required for graduates from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) and non-CACREP graduates. A mental health counselor applicant who graduated from a program not accredited by CACREP is required to complete 1,000 hours of practicum, internship, or field experience. A Mental Health Counseling (MHC) applicant who graduated from a CACREP accredited program is required to meet the CACREP standards to complete 700 hours of practicum or internship.<sup>163</sup>

Section 491.006, F.S., relating to licensure or certification by endorsement requires an applicant for licensure by endorsement in the practice of clinical social work, marriage and family therapy, or mental health counseling to demonstrate to the board that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active valid license to practice, and has actively practiced the profession in another state, for three of the last five years immediately preceding licensure;
- Meets the education requirements of ch. 491, F.S., in the profession for which the applicant seeks licensure;
- Has passed a substantially equivalent licensure examination in another state, or has passed the licensure examination in this state in the profession for which the applicant seeks licensure;
- Holds a license in good standing; and
- Is not under investigation for, nor has been found to have committed, an act that would constitute a violation of ch. 491, F.S.

To satisfy the education requirements of s. 491.005, F.S., specific particular course work, rather than a degree from an accredited school or college, or proof of licensure in another state, is required of an applicant for licensure by endorsement under ch. 491, F.S. The endorsement applicant must show proof that he or she completed certain statutorily-specified courses, which may not have been available at the time he or she graduated. Current law places barriers on licensure by endorsement by requiring many applicants to complete additional courses often difficult to obtain when the applicant is not a full-time graduate student.

Section 491.007(3), F.S., provides for the renewal of a license, registration, or certificate for clinical social workers, marriage and family therapists, and mental health counselors, and gives the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling rulemaking authority to prescribe the requirements for renewal of an intern registration. Section 491.0045(6), F.S., now addresses renewal of an intern registration; therefore, rulemaking authority is no longer necessary.

Section 491.009, F.S., sets out what acts by a clinical social worker, marriage and family therapist, or mental health counselor constitute grounds for discipline, or denial of licensure.

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<sup>163</sup> Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited Feb. 6, 2020).

However, s. 491.009(2), F.S., incorrectly references psychologists, who are not licensed under ch. 491, F.S., and does not include the certified master social worker profession regulated by the DOH.

### **III. Effect of Proposed Changes:**

#### **Section 1: Florida's Child Protection Teams**

The bill amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to report to the Department of Health's (DOH) deputy secretary in charge of the state's Children's Medical Services Program; and requires the local medical directors of the state's 22 child protection teams to report directly to the Statewide Medical Director for Child Protection.

#### **Section 2: Human Immunodeficiency Virus (HIV)**

The bill amends s. 381.0042, F.S., the statute for patient care for persons with Acquired Immunodeficiency Syndrome (AIDS), to replace the term "acquired immune deficiency syndrome" with "human immunodeficiency virus" to broaden the purpose of the DOH regional patient care networks to include persons with HIV, who might not have developed AIDS, as well as patients with AIDS.

#### **Section 3: The Conrad 30 Waiver Program**

The bill amends s. 381.4018(3), F.S., to authorize the DOH to adopt rules to implement that subsection, which includes the implementation of the federal Conrad 30 Waiver Program to encourage qualified physicians to relocate to Florida and practice in medically underserved and rural areas.

#### **Section 4: Florida Consortium of National Cancer Institute Centers Program**

The bill amends s. 381.915(4), F.S., relating to the Florida Consortium of National Cancer Institute Centers Program, to increase the period of time a cancer center may participate as a Tier 3 cancer center from a maximum of six years to until June 30, 2024, and increases the period of time a cancer center that qualifies as a designated Tier 3 center is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer center from a maximum of six years after qualification to until June 30, 2024.

#### **Section 5: Emergency Medical Transport Services**

The bill amends s. 401.35, F.S., and modifies the DOH's directive to develop rules for emergency medical transportation services, and:

- Requires the DOH rules provide at least minimal standards governing ground ambulance and vehicle equipment and supplies that a licensee with a valid vehicle permit under s. 401.26 F.S., is required to maintain for providing basic life support and advanced life support;
- Deletes the requirement that the DOH rules on ambulance and EMS equipment and supplies be at least as comprehensive as standards published in the most current edition of the American College of Surgeons' Committee on Trauma;

- Deletes the requirement that the standards for the DOH rules on ambulance and EMS vehicle design and construction be at least equal to those most currently recommended by the U.S. General Services Administration; and
- Requires the DOH rules on ground ambulance or vehicle design and construction to be based on national standards recognized by the DOH and interpreted by department rule.

### **Sections 6 and 7: Radiation Machines and Components**

The bill amends s. 404.031, F.S., to add the definition of “Useful beam.” A Useful beam is a portion of the radiation emitted from a radiation machine through the aperture of the machine’s beam-limiting device which is designed to focus the radiation on the intended target in order to accomplish the machine’s purpose when the machine’s exposure controls are in a mode to cause the system to produce radiation.

The bill amends s. 404.22, F.S., to regulate the use and operation of radiation machines intentionally exposing humans to useful beams. Specifically, these radiation machines:

- Must be maintained and operated according to manufacturer standards or nationally recognized consensus standards accepted by the DOH;
- Must be operated at the lowest exposure that will achieve the intended purpose; and
- May not be modified in a manner that causes the original parts to operate in a way that differs from the original manufacturer’s design specification or the parameters approved for the machine and its components by the United States Food and Drug Administration.

A human being may be exposed to the useful beam of a radiation machine only under the following conditions:

- If a licensed health care practitioner operating within the scope of his or her practice has determined that the exposure provides a medical or health benefit greater than the health risks posed by the exposure and the health care practitioner uses the results of the exposure in the medical or health care of the exposed individual; or
- If an individual trained in evaluating and calculating comparative mortality and morbidity risks according to standards set by the DOH determines that the exposure will provide a life safety benefit to the individual exposed which is greater than the health risk posed by the exposure. To be valid, the calculation and method of making the determination must be submitted to and accepted by the DOH.

The DOH is authorized to adopt rules to set limits on the annual total exposure based on nationally recognized limits or relevant consensus standards.

### **Section 8: General Health Care Professional Licensing Provisions**

The bill amends s. 456.013, F.S., to eliminate obsolete language regarding applying to the DOH to take an examination. The bill adds the date of birth as a required element on the application, which provides an increased likelihood of a confirmation of a criminal background check for the DOH.

The bill also permits the DOH to issue a temporary license to a non-resident or non-citizen, eligible applicant, who has accepted a position with a residency, internship, or fellowship

program in Florida and is applying for registration under ss. 458.345 or 459.021, F.S. The temporary license expires in 60 days, instead of 30, unless the applicant is issued a social security number and submits it in writing to the DOH.

### **Sections 9, 10 and 11: Health Care Practitioner Discipline**

The bill amends s. 456.072(1)(k), F.S., to provide that the failure of a licensed health care practitioner to repay a state or federal student loan issued or guaranteed by the state or the federal government does not constitute a failure to perform a statutory or legal obligation.

The bill repeals s. 456.0721, F.S., which authorizes the DOH to obtain from the U.S. Department of Health and Human Services (now the U.S. Department of Education) information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations.

The bill amends s. 456.074(4), F.S., to delete the requirement for the DOH to notify a practitioner whose student loan is in default, and of the DOH's intent to suspend his or her license if the practitioner does not provide proof that new payment terms have been agreed upon by all parties to the loan.

### **Section 12: Medical Faculty Certificates**

The bill amends s. 458.3145, F.S., to authorize the DOH to issue medical faculty certificates, without examination, to qualified foreign physicians, and qualified physicians licensed in another jurisdiction, who have been offered, and accepted, full-time faculty positions in a program of medicine at Nova Southeastern University or Lake Erie College of Osteopathic Medicine, in addition to those programs of medicine already listed in current law.

### **Section 13: Medical Specialists**

The bill amends s. 458.3312, F.S., relating to holding oneself out as a medical specialist, to repeal the requirement that the Board of Medicine (BOM) conduct a review of organizations that board-certify physicians in dermatology every three years in order for a physician to hold himself or herself out as board-certified in dermatology.

### **Section 14: Osteopathic Internships and Residencies**

The bill amends s. 459.0055, F.S., to recognize the agreement between the American Osteopathic Association (AOA) and the Accreditation Council for Graduate Medical Education (ACGME). Both organizations have committed to improving the patient care delivered by resident and fellow physicians today and in their future independent practice, and to do so in clinical learning environments characterized by excellence in care, safety, and professionalism, thereby creating a single path for Graduate Medical Education (GME).

This single path for GME allows osteopathic and allopathic medical school graduates to seek residencies and fellowship programs accreditation by ACGME. This will enable osteopathic medical school graduates, residents, and fellows to apply to the National Resident Match

Program and participate in the Main Residency Match for internships, residencies, and fellowships, thereby creating more residency opportunities for osteopathic residents.

The bill deletes reference to the Board of Trustees of the AOA as an internship and residency accrediting organization during the transition to a single path for GME, while maintaining reference to the AOA, and repeals the BOOM's authority to accredit other internship programs upon a showing of good cause.

### **Section 15: Registered Chiropractic Assistants (RCAs)**

The bill repeals s. 460.4166, F.S., thus deregulating the profession of RCAs, as the duties an RCA performs are not directly related to patient safety and the registration is voluntary.

### **Sections 16 through 19: The Florida Center for Nursing (FCN), Board of Nursing (BON) Rulemaking Authority, and Certified Nursing Assistants**

The bill amends s. 464.019, F.S., to extend the requirement for the FCN to provide an implementation study and annual report on the availability of nursing programs and production of quality nurses to the Governor, the President of the Senate, and the Speaker of the House of Representatives until January 30, 2025, as opposed to January 30, 2020, under current law.

The bill further allow nursing education programs seeking accreditation to apply to the BON for a single extension, of not more than two years, if the school:

- Applies at least 90 days before the accreditation deadline;
- Has a graduate passage rate of 60 percent plus on the FLEX-RN exam in the most recent calendar year;
- Meets the majority of the BON's additional criteria, including, the following:
  - A student retention rate of 60 percent or higher for the most recent calendar year;
  - A graduate work placement rate of 70 percent or higher for the most recent calendar year;
  - The program has applied for approval or been approved by an institutional or programmatic accreditor recognized by the United States Department of Education;
  - The program is in full compliance with the program application and reporting requirements; and
  - The program is not currently in its second year of probationary status.

The bill tolls applicable deadline from the date the program applies for the extension until the date on which the BON issues a decision on the requested extension. The bill also gives the BON authority to adopt rules relating to criteria to qualify for the extension of time to become accredited.

The bill amends ss. 464.202, 464.203, and 464.204, F.S., relating to rulemaking, duties, and powers of the BON, to authorize the BON to create rules detailing standards of practice for its licensees, which include: Advanced practice registered nurses (APRNs), clinical nurse specialists, registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs).



The bill authorizes the BON to grant licenses by endorsement, for CNA applicants with certifications in U.S. territories or Washington, D.C. This will expedite licensure as a CNA because the applicant would no longer have to apply for licensure by examination.

The bill amends s. 464.204, F.S., to eliminate the element of intent to violate the laws or rules relating to CNAs, which will align CNA prosecution with the law for disciplining registered nurses and licensed practical nurses.

### **Sections 20 and 24: Examinations for Dental and Hygiene Graduates**

The bill amends ss. 466.006(3), F.S., to clarify that a “supplemental general dentistry program” does not include an advanced education program in a dental specialty and amends ss. 406.006(4) and 466.007, F.S., to delete the requirement that the American Dental Licensing Examination (ADLEX) and American Dental Hygiene Licensing Examination (ADHEX) given in Florida must be graded by a Florida licensed dentist, or dentist and hygienist, respectively.

The bill amends ss. 466.006 and 466.007, F.S., to eliminate obsolete dental and dental hygiene licensure examination requirements.

### **Sections 21, 22, 23, and 48: Health Access Dental Licensure**

The bill revives, reenacts, and amends ss. 466.0067, 466.00671, and 466.00672, F.S., notwithstanding the January 1, 2020, repeal date for those sections. The bill’s amendments to those sections are for the purpose of grammatical corrections only. The bill includes a statement of legislative intent that the reenactments are remedial in nature and apply retroactively to January 1, 2020. The bill provides that this legislative intent is effective upon the bill becoming a law.

### **Section 25: Dental Adverse Incident Reporting**

The bill amends s. 466.017, F.S., to require dentists and dental hygienists to report adverse incidents to the DOH, which is currently only required by a Board of Dentistry (BOD) rule. This new section requires the reporting of deaths, or any incident that results in the temporary or permanent physical or mental injury, that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a result of the use of anesthesia or sedation, and creates grounds for discipline for the failure to report an adverse incident.

### **Sections 26 and 27: Dental Laboratories**

The bill amends s. 466.031, F.S., to authorize an employee or independent contractor of a dental laboratory, acting as an agent of that dental laboratory, to engage in onsite consultation with a licensed dentist during a dental procedure.

The bill amends s. 466.036, F.S., to require that a dental laboratory must be inspected at least biennially.

**Sections 28 through 32: Athletic Trainers**

The bill amends s. 468.701, F.S., to remove a substantive statutory provision from the definition of “athletic trainer” and relocate that provision to s. 468.713, F.S. The provision in question restricts a licensed athletic trainer from providing, offering to provide, or representing that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

The bill also specifies within s. 468.713, F.S., that an athletic trainer must work within his or her allowable scope of practice as specified in Board of Athletic Trainers (BOAT) rule under s. 468.705, F.S.

The bill amends the licensure requirements for an athletic trainer in s. 468.707, F.S., to create a new licensure pathway for applicants who hold a bachelor’s degree, have completed the Board of Certification (BOC) internship requirements, and hold a current certification from the BOC to become licensed in Florida.

The bill amends s. 468.711, F.S., relating to licensure renewal requirements to require an athletic trainer to maintain his or her BOC certification in good standing without lapse. Licensees will have to demonstrate continuous good standing of his or her BOC certification at the time of renewal.

The bill amends 468.723, F.S., to give the BOAT rulemaking authority to further define the supervision between an athletic training student and a licensed athletic trainer rather than relying on compliance with standards set by the Commission on Accreditation of Athletic Training Education.

**Section 33: Orthotics, Prosthetics, and Pedorthics**

The bill amends s. 468.803, F.S., to authorize the DOH to issue a joint registration in orthotics and prosthetics as a dual registration rather than requiring separate registrations and to recognize the dual residency program and educational requirements for dual registration.

**Sections 34, 35, and 36: Massage Therapy**

The bill amends the definition of “apprentice” in s. 480.033(5), F.S., to eliminate the statutory authority for massage therapy apprenticeships, except for apprentices studying colonic hydrotherapy. The bill allows apprentices licensed before July 1, 2020, to maintain their apprentice license until its expiration date, but no later than July 1, 2023, and to qualify for licensure based on that apprenticeship.

The bill amends s. 480.041, F.S., to specify that the licensure examination is a national examination designated by the Board of Massage Therapy (BMT), not an examination administered by the BMT.

The bill repeals s. 480.042, F.S., relating to a massage therapy examination by the board, which is obsolete.

**Sections 37, 38, and 39: Psychology**

The bill amends s. 490.003, F.S., to eliminate outdated language in s. 490.003(3)(a), F.S.

The bill amends and renumbers s. 490.003(3)(b), F.S., to delete the generic reference to programs accredited by an agency recognized and approved by the U.S. Department of Education (DOE), and inserts a specific reference to the American Psychological Association (APA), which is the only accrediting agency recognized by the U.S. DOE to provide program accreditation for doctoral psychology programs. A specific reference to the APA clarifies current education requirements, but does not impose any new requirements.

The bill amends s. 490.005, F.S., relating to licensure by examination for psychologists. The bill eliminates the specific reference to Canada, which will allow applicants who obtained their education anywhere outside the U.S. to demonstrate they have an education comparable to an APA accredited program.

The bill removes outdated language referencing an augmented or comparable doctoral education pathway. The ability of applicants who obtained their degree in the United States, to augment an insufficient degree or show comparability to an APA accredited program, is no longer available.

The bill eliminates an outdated reference to the school psychology educational accrediting agency, the Commission on Recognition of Postsecondary Accreditation, and updates the reference with the successor agency, the Council for Higher Education Accreditation.

The bill amends s. 490.006, F.S., relating to a psychologist licensure by endorsement, to eliminate the requirement that the licensing provisions of the other state must have been substantially equivalent to, or more stringent than, those of either the law in Florida at the time the applicant obtained an out-of-state license or the current Florida law. The bill reduces from 20 years of licensed psychology experience, to 10 years of experience, within the preceding 25 years from the date of application. Licensure of qualified applicants will be expedited by amending these provisions.

**Sections 40 through 44: Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling**

The bill amends s. 491.0045, F.S., to clarify conflicting language passed in the same legislative session to permit the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling to make a one-time exception for an additional intern registration for interns registered on or before March 31, 2017. For those interns who's registration expires March 31, 2022, the board may grant an additional intern registration in emergency or hardship cases, as defined by board rule, if the candidate has passed the theory and practice examination described in ss. 491.005(1)(d), (3)(d), and (4)(d), F.S.

The bill amends s. 491.005(3), F.S., relating to licensure by examination for marriage and family therapists, to require:

- A master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education; or,
- A master's degree with major emphasis in marriage and family therapy from a Florida university program accredited by the Council for Accreditation of Counseling and Related Education Programs and graduate courses approved by the board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling.

The bill eliminates the requirement for marriage and family therapists to complete 12 specific content areas and 180 practicum hours. This change will simplify the education review process, eliminate the course requirement review, and expedite licensure.

The bill amends s. 491.005(3)(c), F.S., to correct a technical discrepancy in the number of years of clinical experience required for a marriage and family therapist applicant from three years to two years.

The bill amends s. 491.005(4), F.S., relating to mental health counseling applicants to update the name of the examination to be taken by mental health counselor applicants. The bill amends s. 491.005(4)(b)1.c., F.S., to reduce the number of practicum, internship, or field experience hours for those applicants who graduated from a non-Counseling and Related Educational Programs (CACREP) accredited program, from 1,000 hours to 700 hours, to bring this provision in line with graduates from CACREP accredited programs.

The bill amends s. 491.006, F.S., relating to licensure, or certification by endorsement, for applicants for licensure in clinical social work, marriage and family therapy, or mental health counseling. The bill removes the requirement for endorsement applicants to meet the same educational requirements required of new applicants, provided the applicant for endorsement meets the requirements to have an active, valid license and has actively practiced the profession in another state for three of the last five years. Amending this provision will increase licensure portability for applicants applying by endorsement for licensure as marriage and family therapists in Florida.

The bill amends s. 491.007, F.S., relating to renewal of a license, registration, or certificate, to delete obsolete board rulemaking authority regarding intern registration renewal.

The bill amends s. 491.009(2), F.S., to delete an inaccurate reference to psychologists who are licensed under ch. 490, F.S., and to add the profession of certified master social worker that is licensed under ch. 491, F.S. The bill corrects a reference to the DOH, and places the correct reference of authority with the board to take disciplinary action for certain violations. By adding certified master social worker to this provision, the bill gives the DOH authority to enter an order denying licensure to a certified master social worker or impose discipline against any certified master social worker who is found guilty of violating any provision in ch. 491, F.S.

**Sections 45 through 47: Technical Changes**

The bill makes additional technical amendments to ss. 491.0046 and 945.42, F.S., to conform cross-references and makes a technical change to s. 945.42, F.S., to conform the definition of psychological professional in cross-references.

The bill reenacts s. 459.021(6), F.S., to incorporate by reference a related statutory change in the bill.

**Section 49** provides an effective date of July 1, 2020.

**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:**

None.

**C. Government Sector Impact:**

CS/CS/CS/SB 230 has an insignificant negative impact on state revenues and expenditures. The deregulation of chiropractic assistants will result in an insignificant negative impact on state revenues associated with the licensure of chiropractic assistants, which will be offset by the reduction in expenditures associated with regulating

chiropractic assistants. The DOH will experience an insignificant increase in workload associated with rulemaking activities required in the bill. These costs can be absorbed within existing resources of the DOH.<sup>164</sup> The amendment to s. 381.915, F.S., related to Tier 3 National Cancer Center designations will have no impact on state expenditures.

The entities providing student loans for licensed healthcare practitioners may be negatively impacted since the bill removes punitive actions related to failure to repay the loan. The DOH's workload associated with notifying practitioners should decrease.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.303, 381.0042, 381.4018, 381.915, 401.35, 404.031, 404.22, 456.013, 456.072, 456.074, 458.3145, 458.3312, 459.0055, 464.019, 464.202, 464.203, 464.204, 466.006, 466.0067, 466.00671, 466.00672, 466.007, 466.017, 466.031, 466.036, 468.701, 468.707, 468.711, 468.713, 468.723, 468.803, 480.033, 480.041, 490.003, 490.005, 490.006, 491.0045, 491.005, 491.006, 491.007, 491.009, 491.0046, and 945.42.

This bill repeals the following sections of the Florida Statutes: 460.4166, 456.0721, and 480.042.

This bill reenacts the following sections of the Florida Statutes: 459.021 and 459.0055.

This bill creates one non-statutory section of the Laws of Florida.

**IX. Additional Information:**

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

**CS/CS/CS by Rules on March 2, 2020:**

**The CS:**

- Amends s. 464.019 F.S., to allow nursing education programs seeking accreditation to apply to the BON for an extension of the deadline for achieving accreditation, of not more than two years, if the program meets certain criteria;
- Grants the BON rulemaking authority on criteria to qualify for the extension of time to become accredited; and

<sup>164</sup> Florida Department of Health, Agency Analysis of SB 230 (October 11, 2019) and email correspondence from the Department of Health (January 6, 2020) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Amends the bill’s statement of Legislative intent for the reenactments of statutes relating to the health access dental program are remedial in nature and apply retroactively to January 1, 2020. The bill provides that this Legislative intent is effective upon the bill becoming a law.

**CS/CS by Appropriations on February 5, 2020:**

**The CS:**

- Requires that the Statewide Medical Director for Child Protection to report directly to the DOH’s deputy secretary in charge of the state’s Children’s Medical Services Program and the medical directors of each child protection team reports directly to the statewide medical director.
- Requires an increase in the period of time a cancer center, participation in the Florida Consortium of National Cancer Institute Centers Program, may participate as a Tier 3 cancer center, and is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer, from a maximum of six years until June 30, 2024;
- Deletes a health care practitioner’s failure to repay student loans, as grounds for discipline by the DOH;
- Modifies the DOH’s rule-making authority pertaining to minimal standards governing ground ambulance and vehicle equipment, supplies, design, and construction;
- Defines “useful beam” radiation as that portion of a radiation beam designed to focus on a specific target; and specifies the requirements for maintaining and operating the useful beam radiation machine, as well as the conditions for use on humans.

**CS by Health Policy on October 15, 2019:**

**The CS:**

- Replaces the term “acquired immune deficiency syndrome” with “human immunodeficiency virus” to broaden the purpose of the DOH’s regional patient care networks to include persons with Human Immunodeficiency Virus (HIV), who might not have developed Acquired Immunodeficiency Syndrome (AIDS), as well as patients with AIDS;
- Modifies the DOH’s rule-making authority pertaining to minimal standards governing ambulance and emergency medical services vehicle equipment, supplies, design, and construction;
- Revises the DOH’s health care practitioner licensing provisions to allow the DOH to issue a temporary license, that expires in 60 days, instead of 30 days, to a non-resident or non-citizen physician who has accepted a residency, internship, or fellowship in Florida and has not yet received a social security number; and
- Authorizes the DOH to issue medical faculty certificates, without examination, to full-time faculty at Nova Southeastern University or Lake Erie College of Osteopathic Medicine.

**B. Amendments:**

None.

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

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