

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 713 Health Regulation

**SPONSOR(S):** Health & Human Services Committee and Health Care Appropriations Subcommittee and Health Quality Subcommittee, Rodriguez, A. M.

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/CS/SB 230

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**FINAL HOUSE FLOOR ACTION:** 110 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 713 passed the House on March 6, 2020, as amended. The bill was amended in the Senate on March 13, 2020, and was returned to the House. The House concurred in the Senate amendments as amended by the House on March 13, 2020. The Senate concurred in the Senate amendments as amended by the House and subsequently passed the bill on March 13, 2020. The bill contains portions of CS/SB 221, HB 485, CS/CS/CS/HB 647, CS/HB 1341, and CS/HB 1461.

The bill makes numerous changes to programs and health care professions regulated under the Department of Health (DOH):

- Establishes reporting requirements for certain Child Protection Team medical directors;
- Authorizes DOH to establish patient care networks to plan for the care of individuals living with HIV, rather than only those diagnosed with AIDS;
- Authorizes DOH to adopt rules to implement the Conrad 30 Waiver program;
- Extends the time for certain cancer centers to pursue a National Cancer Institute designation;
- Revises DOH's rulemaking authority relating to the minimum standards for ground ambulances;
- Establishes requirements for maintaining and operating radiation machines and the use of radiation machines on humans;
- Establishes battery against a patient or resident of certain health care facilities a disqualifying offense for certain health care licenses and employment in certain health care facilities;
- Authorizes DOH to request a date of birth on a licensure application;
- Authorizes 60-day, rather than 30-day, temporary license for certain applicants without social security numbers;
- Creates an exemption to the prohibition against physician self-referral for radiological services for certain entities;
- Authorizes DOH to issue medical faculty certificates to certain full-time faculty members of Nova Southeastern University and Lake Erie College of Osteopathic Medicine;
- Repeals a requirement that the Board of Medicine triennially review board certification organizations for dermatology;
- Revises the composition of the Council on Physician Assistants;
- Revises the requirements for osteopathic internships and residencies to include those accredited by the Accreditation Council for Graduate Medical Education;
- Authorizes the Board of Nursing to extend the time by which a nursing education program must be accredited for up to two years if the program meets certain standards;
- Extends the sunset date for Florida Center for Nursing annual reports on nursing education to January 30, 2025;
- Repeals a requirement that Florida-licensed dental practitioners grade the dental licensure examinations;
- Requires dentists and dental hygienists to report adverse incidents to the Board of Dentistry;
- Requires DOH to biennially inspect dental laboratories;
- Revives and reenacts health access dental licenses and makes the reenactments retroactive to January 1, 2020;
- Repeals the voluntary registration of registered chiropractic assistants;
- Authorizes DOH to issue combined, rather than separate, registrations to prosthetist-orthotists;
- Requires athletic trainers to work within his or her scope of practice and revises licensure requirements;
- Limits massage therapy apprenticeships to those in colonic irrigation, and requires licensure applicants to pass a national licensure examination designated by the Board of Massage Therapy;
- Revises psychology licensure requirements;
- Authorizes the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to approve a one-time exception to the 60-month limit on an internship registration;
- Revises the licensure requirements for Marriage and Family Therapists and Licensed Mental Health Counselors;
- Authorizes local governments, in consultation with DOH, to develop a special use permit process for surf pools, and exempts such pools from DOH permitting until DOH adopts rules to regulate them; and
- Requires the Agency for Health Care Administration to develop a webpage to inform the public about direct care workers.

The bill has an insignificant, positive and negative fiscal impacts on DOH and no fiscal impact on local governments.

The bill was approved by the Governor on June 29, 2020, ch. 2020-133, L.O.F., and will become effective on July 1, 2020 except as otherwise provided.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0713z1.HQS.DOCX

**DATE:** 7/6/2020

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Child Protection Teams

##### Current Situation

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements child protective investigation efforts in cases of child abuse and neglect.<sup>1</sup> CPTs are independent community-based programs contracted by the Department of Health (DOH) Children's Medical Services that provide expertise in evaluating alleged child abuse or neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.<sup>2</sup> The state is divided into 15 circuits and DOH assigns a CPT to each. CPTs serve all 67 counties by utilizing satellite offices and telemedicine services.<sup>3</sup> Each of the 15 circuits served by CPTs are supervised by one or multiple CPT directors, depending on the size and subdivision of the particular circuit.<sup>4</sup>

DCF must refer certain reports of child abuse, abandonment, or neglect to CPTs for assessment and other appropriate available support services:

- Injuries to the head, bruises to the neck, or head, burns or fractures in a child of any age;
- Bruises anywhere on a child 5 years of age or under;
- Any report alleging sexual abuse of a child;
- Any sexually transmitted disease in a prepubescent child;
- Reported malnutrition of a child and failure of a child to thrive;
- Reported medical neglect of a child;
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect;
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected; and
- A child who does not live in this state who is currently being evaluated in a medical facility in this state.<sup>5</sup>

When a child protective investigator accepts a referral from DCF or law enforcement, CPTs may provide one or more of the following services:

- Medical diagnosis and evaluation;
- Telephone consultation services during emergencies and other situations;
- Psychological and psychiatric evaluations;
- Expert court testimony;
- Multidisciplinary staffings; and
- Specialized forensic interviews.

CPT staff also train child protective investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community to enable them to develop and

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<sup>1</sup> Children's Medical Services, *Child Protection Teams*, available at [http://www.cms-kids.com/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html) (last visited February 12, 2020).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Section 39.303(4), F.S.

maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.<sup>6</sup>

### *CPT Medical Directors*

The Statewide Medical Director for Child Protection must be a board-certified pediatrician licensed to practice allopathic or osteopathic medicine in this state who holds a subspecialty certification in child abuse from the American Board of Pediatrics.<sup>7</sup> The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Statewide Medical Director for Child Protection and the Secretary of the Department of Children and Families, are responsible for screening and employment of the circuit CPT medical directors.<sup>8</sup>

Each circuit CPT medical director must be a board-certified pediatrician or family medicine practitioner.<sup>9</sup> A CPT medical director must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or meet the requirements established by a third party credentialing agency for demonstrating specialized competence in child abuse pediatrics. The CPT medical directors are responsible for oversight of the CPTs in the circuits.<sup>10</sup>

The statute does not define the reporting structure for the Statewide Medical Director for Child Protection or the circuit CPT medical directors.

### Effect of Proposed Changes – Child Protection Teams

The bill establishes that the Statewide Medical Director for Child Protection is to report directly to the Deputy Secretary for Children's Medical Services and the CPT medical directors are to report directly to the Statewide Medical Director for Child Protection.

## **HIV/AIDS**

### Current Situation

Human Immunodeficiency Virus (HIV) is an immune system debilitating virus that can lead to fatal acquired immunodeficiency syndrome (AIDS). HIV affects specific cells of the immune system and over time the virus can destroy enough of these cells that the body can no longer fight off infection and disease.<sup>11</sup> HIV is transmitted by sexual contact, sharing needles to inject drugs, and by a mother to her baby during pregnancy, birth, or breastfeeding. There is no cure for HIV but it can be controlled with proper medical care, including antiretroviral therapy (ART). If taken properly, ART can dramatically prolong the lives of people infected with HIV, keep them healthy, and greatly lower the chance of infecting others. However, untreated HIV is almost always fatal.

There are three stages of HIV infection through which an infected person typically progresses:<sup>12</sup>

- Stage 1: Acute HIV infection. Within two to four weeks after infection with HIV, an individual may experience a flu-like illness.
- Stage 2: Clinical latency. HIV is still active but reproduces at a very low level. Those who are taking ART may remain at this stage for several decades.

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<sup>6</sup> Section 39.303(3)(h), F.S.

<sup>7</sup> Section 39.303(2)(a), F.S.

<sup>8</sup> Id.

<sup>9</sup> Section 39.303(2)(b), F.S.

<sup>10</sup> Id.

<sup>11</sup> Centers for Disease Control and Prevention, *About HIV/AIDS*, (last rev. Aug. 14, 2019), available at: <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited November 22, 2019).

<sup>12</sup> Id.

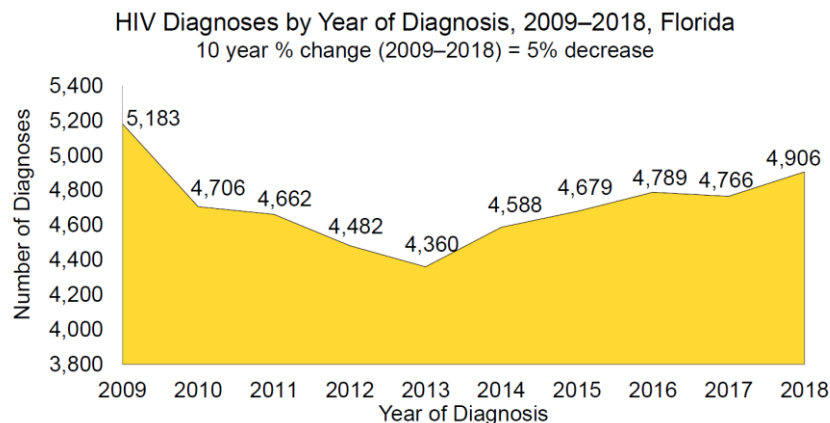
- Stage 3: AIDS. This is the most severe phase of HIV infection. Opportunistic infections or cancers take advantage of a very weak immune system and signal that the person has AIDS. Without treatment, a person with AIDS typically survives about three years.

### *AIDS and HIV in Florida*

The Department of Health (DOH) has identified the reduction in the transmission of HIV as one of its priority goals. It has adopted a comprehensive plan to prevent HIV transmission and strengthen patient care activities to reduce the risk of further transmission of HIV from those diagnosed and living with HIV. The plan includes:<sup>13</sup>

- Implementing routine HIV and sexually transmitted infections (STIs) screening in health care settings and priority testing in non-health care settings;
- Providing rapid access to treatment and ensuring retention in care;
- Improving and promoting access to antiretroviral pre-exposure prophylaxis and non-occupational post-exposure prophylaxis; and
- Increasing HIV awareness and community response through outreach, engagement, and messaging.

There has been an overall decrease in the number of newly diagnosed cases of HIV infection in the last 10 years. However, in the last five years, the number of newly diagnosed cases has increased.



Approximately, 1,918 individuals in Florida have AIDS.<sup>14</sup> This number has steadily declined in the last 20 years, with 4,646 AIDS cases in the state in 1999.<sup>15</sup> With advances in the treatment of HIV with ART, the number of individuals living with HIV has increased. In 2018, there were 119,661 individuals living with HIV in this state.<sup>16</sup> In the U.S., approximately 15 percent of individuals who have HIV are unaware that they are infected.<sup>17</sup> DOH estimated in 2017, that more than 18,000 Floridians were unaware of their HIV infection.<sup>18</sup>

<sup>13</sup> Department of Health, *HIV/AIDS*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/> (last visited December 6, 2019).

<sup>14</sup> Department of Health, Florida Health Charts, *AIDS Cases*, available at <http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=HIVAIDS.DataViewer&cid=0141> (last visited November 22, 2019).

<sup>15</sup> Id.

<sup>16</sup> Department of Health, Florida Health Charts, *Persons Living with HIV*, available at <http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=HIVAIDS.DataViewer&cid=9866> (last visited November 22, 2019).

<sup>17</sup> HIV.gov, *Ending the HIV Epidemic: HIV in America*, (last rev. June 27, 2019), available at <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/hiv-in-america> (last visited November 22, 2019).

<sup>18</sup> Department of Health, *2017 Florida HIV Surveillance Summary*, (Nov. 2018), available at [http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/fact-sheet/HIV\\_Surveillance\\_Trifold.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/fact-sheet/HIV_Surveillance_Trifold.pdf) (last visited November 22, 2019).

## Patient Care Networks

Current law authorizes DOH to establish patient care networks for individuals with AIDS in those areas of the state where the number of cases of AIDS and other HIV infections justifies the establishment of such networks.<sup>19</sup> The patient care networks must plan for the care and treatment of individuals with AIDS and AIDS-related conditions in a cost-effective and dignified manner, which emphasizes outpatient and home care.<sup>20</sup> In establishing the networks, DOH must take into account the natural trade areas and centers of medical excellence in treating AIDS, as well as federal, state, and other funds. The patient care networks have been established in the following geographic areas:<sup>21</sup>

- South Florida, consisting of Dade and Monroe counties;
- Palm Beach County;
- East central Florida, consisting of Orange, Osceola, Seminole, and Brevard counties;
- West central Florida, consisting of Hillsborough, Polk, Pinellas, and Pasco counties; and
- Northeast Florida, consisting of Duval, St. Johns, Nassau, Baker, Clay, and Flagler counties.

Each network must annually make recommendations regarding patient care needs to DOH.<sup>22</sup>

### Effect of Proposed Changes – HIV/AIDS

The bill expands DOH's authority to establish patient care centers for individuals who carry HIV rather than limiting patient care centers to those who have been diagnosed with AIDS. The inclusion of HIV providers into the network has a planning focus, not a service delivery focus. That planning, with this change, is more inclusive of persons living with HIV.<sup>23</sup>

### **Conrad 30 Waiver Program**

#### Current Situation

Federal law requires a foreign physician pursuing graduate medical education or training in the United States to obtain a J-1 visa. A holder of a J-1 visa is ineligible to apply for an immigrant visa, permanent residence, or certain nonimmigrant statuses unless he or she has resided and been physically present in his or her country of nationality for at least two years after completion of the J-1 visa program.<sup>24</sup> However, the Conrad 30 Waiver program allows such foreign physicians to apply for a waiver of the two-year residency requirement upon the completion of the J-1 visa program. To be eligible for a Conrad 30 Waiver, the foreign physician must:<sup>25</sup>

- Obtain a contract for full-time employment at a health care facility in an area dedicated as a Health Professional Shortage Area, Medically Underserved Area, or Medically Underserved Population;
- 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, no later than the date his or her J-1 visa expires.

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<sup>19</sup> Section 381.0042, F.S.

<sup>20</sup> Id.

<sup>21</sup> Rule 64D-2.001, F.A.C.

<sup>22</sup> *Supra* note 19.

<sup>23</sup> Email correspondence with Ty Gentle, Office of Budget and Revenue Management, Department of Health, dated Jan. 21, 2020, on file with the Health Care Appropriations Subcommittee.

<sup>24</sup> Department of Homeland Security, U.S. Citizenship and Immigration Services, *Conrad 30 Waiver Program*, (last rev. May 5, 2014), available at <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/conrad-30-waiver-program#Background> (last visited November 22, 2019).

<sup>25</sup> Id.

A state may only sponsor 30 physicians for waivers per year and each state may develop its own application rules and guidelines. DOH does not currently have statutory authority to develop rules and guidelines for its Conrad 30 program. Applicants must submit a waiver application<sup>26</sup> to DOH to request a sponsorship. DOH then submits waiver applications to the U.S. Department of State for final waiver approval.<sup>27</sup> If DOH receives more than 30 waiver applications in a year, it awards sponsorships on a first-come basis if the applicants meet the federal requirements listed above.

Florida has sponsored 30 physicians each year for each of the last 10 years under the program.<sup>28</sup> More than 70 percent, or nearly 450 physicians, have remained in practice in Florida since the inception of the Conrad 30 Waiver Program.<sup>29</sup>

### Effect of Proposed Changes – Conrad 30 Program

The bill authorizes DOH to adopt rules to implement the Conrad 30 Waiver program in this state. This allows DOH to set guidelines in addition to those required by federal law. The bill also directs DOH to develop strategies to maximize federal and state resources to recruit physicians to practice in medically underserved and rural areas in the state.

## **Florida Consortium of National Cancer Center Institute Programs**

### Current Situation

The National Cancer Institute (NCI) is the federal government's principal agency for cancer research and training.<sup>30</sup> NCI leads the National Cancer Program, which is the largest funder of cancer research in the world.<sup>31</sup> NCI designates cancer centers as either comprehensive cancer centers or cancer centers. Comprehensive cancer centers must demonstrate significant research activities in each of three major scientific areas: laboratory-based research, population-based research, and clinical research, and which have substantial multidisciplinary research efforts. Cancer centers are primarily focused in one or more of the above-listed three scientific areas.<sup>32</sup>

In 2014, the Legislature established the Florida Consortium of National Cancer Institute Centers Program (Program) to enhance the quality and competitiveness of cancer care in Florida, further a statewide biomedical research strategy directly responsive to the health needs of Florida's citizens, and capitalize on the potential educational opportunities available to students.<sup>33</sup> Under the program, DOH makes quarterly distributions to Florida-based cancer centers that are NCI-designated cancer centers or comprehensive cancer centers, as well as cancer centers working toward achieving designation.<sup>34</sup>

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<sup>26</sup> The applicant must complete and submit a U.S. Department of State Form DS-3035, J-1 Visa Waiver Review Application.

<sup>27</sup> *Supra* note 24.

<sup>28</sup> Presentation by Jennifer Johnson, Division Director, Division of Public Health Statistics and Performance Management, Department of Health, before the Health Quality Subcommittee on January 23, 2019, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3021&Session=2019&DocumentType=Meeting%20Packets&FileName=hqs%201-23-19.pdf> (last visited November 22, 2019).

<sup>29</sup> *Id.*

<sup>30</sup> National Cancer Institute, *National Cancer Institute Overview and Mission*, available at <https://www.cancer.gov/about-nci/overview> (last visited February 13, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> In Haejin, et. al, *The Role of National-Cancer Institute-Designated Cancer Center Status: Observed Variation in Surgical Care Depends of the Level of Evidence*, ANNALS OF SURGERY 255(5):890-895, May 2012, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3428029/> (last visited February 13, 2020).

<sup>33</sup> Section 381.915, F.S.

<sup>34</sup> *Id.* Such distributions are subject to an appropriation by the Legislature.

DOH calculates allocations on tier-allocated weights for distributing funds to participating cancer centers.<sup>35</sup> The tier-allocated weights are based on the NCI status:<sup>36</sup>

- Tier 1: NCI-designated comprehensive cancer centers.
- Tier 2: NCI-designated cancer centers.
- Tier 3: Cancer centers seeking designation as either an NCI-designated cancer center or NCI-designated comprehensive cancer center.

Three cancer centers participate in the Program:<sup>37</sup>

- Moffitt Cancer Center, which is an NCI-designated a comprehensive cancer center;
- Sylvester Comprehensive Cancer Center at the University of Miami, which is an NCI-designated a cancer center; and
- The University of Florida Health Cancer Center, which is pursuing an NCI designation.

To be eligible to continue receiving funding under the Program with Tier 3 designation, a cancer center seeking NCI-designation must:<sup>38</sup>

- Conduct cancer-related basic scientific research and cancer-related population scientific research;
- Offer and provide the full range of diagnostic and treatment services on site, as determined by the Commission on Cancer of the American College of Surgeons;
- Host or conduct cancer-related interventional clinical trials that are registered with the NCI's Clinical Trials Reporting Program;
- Offer degree-granting programs or affiliate with universities through degree-granting programs accredited or approved by a nationally recognized agency and offered through the center or through the center in conjunction with another institution accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;
- Provide training to clinical trainees, medical trainees accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and postdoctoral fellows recently awarded a doctorate degree; and
- Have more than \$5 million in annual direct costs associated with their total NCI peer-reviewed grant funding.

A cancer center's participation as a Tier 3 cancer center is limited to 6 years.<sup>39</sup> A cancer center that qualified as a designated Tier 3 cancer center before July 1, 2014, must obtain a designation as a cancer center or a comprehensive cancer center by June 30, 2020.<sup>40</sup> The Legislature previously extended this deadline in 2018, from 5 years to 6 years.<sup>41</sup>

The General Appropriations Act or accompanying legislation may limit the number of cancer centers that receive Tier 3 designations or provide additional criteria for such designation.<sup>42</sup>

### Effect of Proposed Changes – Florida Consortium of National Cancer Institute Programs

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<sup>35</sup> Florida Consortium of National Cancer Institute Centers Program, *Report to the Cancer Control and Research Advisory Council*, (July 2017), available at <http://www.floridahealth.gov/provider-and-partner-resources/research/NCI%20Report%202017.pdf> (last visited February 13, 2020).

<sup>36</sup> Section 381.915(4), F.S.

<sup>37</sup> National Cancer Center Institute, *Find a Cancer Center*, available at: <https://www.cancer.gov/research/nci-role/cancer-centers/find#Florida> (last visited February 13, 2020).

<sup>38</sup> Section 381.915(4)(c), F.S.

<sup>39</sup> Section 381.915(4)(c)3., F.S.

<sup>40</sup> Section 381.915(4)(c)4., F.S.

<sup>41</sup> Chapter 2018-24, Laws of Fla.

<sup>42</sup> Section 381.915(4)(c)2., F.S.

The bill increases the period of time a cancer center may participate in the Tier 3 designation of the Program from 6 years to 10 years, by establishing a deadline of June 30, 2024. The bill also increases the period of time a cancer center that qualifies as a Tier 3 center may pursue NCI designation from 6 years to 10 years, by establishing a deadline of June 30, 2024. This will provide University of Florida Health Cancer Center, which is the only Tier 3 center, four additional years to qualify for NCI designation, for a total of 10 years.

## **Emergency Medical Transportation Services**

### Current Situation

DOH regulates medical transportation services under part III of ch. 401, F.S. The statute establishes the licensing and operational requirements for emergency medical services, and creates the Emergency Medical Services Advisory Council (Council)<sup>43</sup> to act as an advisory body to the emergency medical services within DOH.<sup>44</sup> The Council's duties include, among other things, identifying and making recommendations to DOH regarding the appropriateness of suggested changes to statutes and administrative rules.<sup>45</sup>

### *Licensure*

Current law requires providers of basic or advanced life support transportation services to be licensed by DOH in their respective fields.<sup>46</sup> Basic life support (BLS) service refers to any emergency medical service that uses only basic life support techniques.<sup>47</sup> BLS includes basic non-invasive interventions to reduce morbidity and mortality associated with out-of-hospital medical and traumatic emergencies.<sup>48</sup> The services provided may include stabilization and maintenance of airway and breathing, pharmacological interventions, trauma care, and transportation to an appropriate medical facility.<sup>49</sup>

Advanced life support (ALS) service refers to any emergency medical or non-transport service that uses advanced life support techniques.<sup>50</sup> ALS includes the assessment or treatment of a person by a qualified individual, such as a paramedic, who is trained in the use of techniques such as the administration of drugs or intravenous fluid, endotracheal intubation, telemetry, cardiac monitoring, and cardiac defibrillation.<sup>51</sup>

To be licensed as a BLS or ALS service, an applicant must comply with the following requirements:

- The ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant meet the statutory requirement and administrative rules for either a BLS service or an ALS service, whichever is applicable;
- Have adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable; and

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<sup>43</sup> Section 401.245(2), F.S. The Council consists of 15 members appointed by the State Surgeon General, except that state agency representatives are appointed by the respective agency heads. Members are typically appointed for four year terms, with the chair being designated by the State Surgeon General and Secretary of Health. Additional members include six ex officio representatives appointed by various other state agency heads.

<sup>44</sup> Section 401.245(1), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 401.25(1), F.S.

<sup>47</sup> Section 401.23(8), F.S.

<sup>48</sup> Section 401.23(7), F.S., and U.S. Department of Transportation, National Highway Safety Administration, *National EMS Scope of Practice Model 23-24*, available at [www.nhtsa.gov/people/injury/ems/pub/emtbnsnc.pdf](http://www.nhtsa.gov/people/injury/ems/pub/emtbnsnc.pdf) (last visited December 11, 2019).

<sup>49</sup> *Id.*

<sup>50</sup> Section 401.23(2), F.S.

<sup>51</sup> Section 401.23(1), F.S.



- A Certificate of Public Convenience and Necessity from each county in which the applicant will operate.<sup>52</sup>

DOH must establish rules for ground ambulance or vehicle design and construction that are at least equal to those recommended by the United States General Services Administration.<sup>53</sup> The federal guideline went into effect in 1974 and was for use by federal agencies and federal grant recipients purchasing ambulances.<sup>54</sup> This federal standard was to be discontinued in 2016, however, it was recently updated in July 2019.<sup>55</sup> Many states use the federal recommendations as there were no standards for ambulance design.<sup>56</sup> In recent years, however, at least two other organizations have created standards: the Commission on Accreditation of Ambulance Services and the National Fire Protection Association.<sup>57</sup>

In addition to the general licensure requirement, DOH provides a list of the equipment and supplies with which each BLS vehicle must be equipped and maintained and the equipment and medication with which each ALS vehicle must be equipped and maintained by rule.<sup>58</sup> Current law requires the list of equipment and supplies established by DOH in rule, be at least as comprehensive as those listed in the most current edition of the American College of Surgeons, Committee on Trauma, list of essential equipment for ambulances.<sup>59</sup> The American College of Surgeons developed this list more than 40 years ago, and in 2000, it jointly produced a list of standardized ambulance equipment with the American College of Emergency Physicians. Since that time, the joint document has been updated and has included participation by the National Association of EMS Physicians, Federal Emergency Medical Services for Children Stakeholder Group, National Association of State EMS Officials, Emergency Nurses Association, and endorsed by the American Academy of Pediatrics.<sup>60</sup>

#### Effect of Proposed Changes – Emergency Medical Transportation Services

The bill repeals a requirement that DOH rules on ground ambulance be at least as comprehensive as the standards published by the American College of Surgeons. DOH may use any standard it deems appropriate to develop the list of required equipment for licensed ground ambulances. The bill also repeals the requirement that DOH's rules on ambulance or vehicle design be at least equal to those recommended by the U.S. General Services Administration and requires that the rules be based on national standards recognized by DOH.

### **Radiation Machines**

#### Current Situation

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<sup>52</sup> Section 401.25(2), F.S.

<sup>53</sup> Section 401.35, F.S.

<sup>54</sup> Richard Huff, NREMT-B, *Competing Ambulance Safety Standards Await State Adoption*, 40 J EMER. MED. SERV. (Jan. 26, 2015), available at <https://www.jems.com/2015/01/26/competing-ambulance-safety-standards-await-state-adoption/> (last visited December 11, 2019).

<sup>55</sup> Id., and SafeAmbulances.org, Ground Ambulance Standards and EMS Safety Resource, *General Services Administration*, available at <https://www.safeambulances.org/organizations/gsa/> (last visited December 11, 2019).

<sup>56</sup> Id.

<sup>57</sup> *Supra* note 54.

<sup>58</sup> Rule 64J-1.002(4) F.A.C. (Basic Life Support Service License – Ground); Rule 64J-1.003(7), F.A.C. (Advanced Life Support Service License – Ground).

<sup>59</sup> Section 401.35, F.S.

<sup>60</sup> American Academy of Pediatrics, American College of Emergency Physicians, American College of Surgeons Committee on Trauma, Emergency Medical Services for Children, Emergency Nurses Association, National Association of EMS Physicians & National Association of State EMS Officials, *Equipment for Ground Ambulances*, PREHOSPITAL EMERGENCY CARE, 18:1, 92-97, (Oct. 2013), available at <https://www.tandfonline.com/doi/pdf/10.3109/10903127.2013.851312> (last visited December 11, 2019).

A radiation machine is a device designed to produce, or which produces, ionizing radiation or nuclear particles when such machine is operated.<sup>61</sup> An example of ionizing radiation is an x-ray.<sup>62</sup> DOH, through the Bureau of Radiation Control, works to reduce exposure to workers and the public from radiation machines by:<sup>63</sup>

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

DOH inspects hospitals, health care facilities, or other places in the state with radiation machines to determine if DOH-established measures are being met.<sup>64</sup> Such standards address:<sup>65</sup>

- Radiation machine performance, surveys, calibrations, and spot checks;
- Requirements for quality assurance programs and quality control programs;
- Standards for facility electrical systems, safety alarms, radiation-monitoring equipment, and dosimetry systems;
- Requirements for visual and aural communication with patients;
- Procedures for establishing radiation safety committees for a facility; and
- Qualifications of persons who cause a radiation machine to be used, who operate a radiation machine, and who ensure that a radiation machine complies with DOH requirements.

DOH performs more than 13,000 inspections per year.<sup>66</sup> If a machine poses an immediate threat to public health, DOH immediately requires the machine to be removed from service.<sup>67</sup> For less serious problems, DOH gives the machine owner 90 days to correct the deficiency. DOH collects an annual fee for the registration and inspection of radiation machines.<sup>68</sup>

According to DOH, technological advances since the enactment of this inspection program has resulted in a variety of providers using radiation machines in a manner that was not originally contemplated.<sup>69</sup> For example, dentists and podiatric physicians now use machines that were previously used only by medical doctors.<sup>70</sup>

### Effect of Proposed Changes – Radiation Machines

The bill establishes standards for radiation machines that are used to intentionally expose individuals to the useful beam. The bill defines “useful beam” as the portion of radiation emitted from a radiation machine through the aperture of the machines beam-limiting device which is designed to focus the radiation on the intended target to accomplish its purpose. Radiation machines:

- Must be maintained and operated according to manufacturer standards or nationally-recognized consensus standards accepted by DOH;
- Must be operated at the lowest exposure needed to achieve the intended purpose; and

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<sup>61</sup> Section 404.031, F.S.

<sup>62</sup> Centers for Disease Control and Prevention, *Radiation and Your Health*, (last rev. Dec. 7, 2015), available at [https://www.cdc.gov/nceh/radiation/ionizing\\_radiation.html#whatis](https://www.cdc.gov/nceh/radiation/ionizing_radiation.html#whatis) (last visited November 25, 2019).

<sup>63</sup> Department of Health, Environmental Health, Bureau of Radiation Control, *Ionizing Radiation Machines (X-ray)*, available at <http://www.floridahealth.gov/environmental-health/radiation-control/ion/index.html> (last visited February 13, 2020).

<sup>64</sup> Section 404.22, F.S.

<sup>65</sup> Id. Rule 64E-5, F.A.C., specifies the radiation machine standards established by DOH.

<sup>66</sup> *Supra* note 63.

<sup>67</sup> Id.

<sup>68</sup> Section 404.22(5), F.S.

<sup>69</sup> Department of Health, *Agency Legislative Analysis of Proposed Legislation on Radiation Machines*, on file with the Health Quality Subcommittee.

<sup>70</sup> Id.

- May not be modified in a manner that cause the machines to operate differently from the manufacturer's design specification or the parameters approved for the machines and their components by the U.S. Food and Drug Administration.

The bill requires that human beings only be exposed to the useful beam for medical or health care, if the licensed health care practitioner determines that the health benefit outweighs the health risk from exposure or to provide security for facilities or other venues if such exposure is determined to provide a life safety benefit that outweighs the health risk from exposure. The bill requires DOH to adopt rules establishing limits to annual total exposure for non-health related, security purposes for entities that screen people before allowing access or entry, such as courthouses, correctional facilities, or stadiums. DOH must base such rules on national standards, which set limits on dose per individual screened.<sup>71</sup>

## Background Screenings

### Current Situation

Chapter 435, F.S., establishes standard procedures and requirements for criminal history background screening of prospective employees. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>72</sup> and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>73</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>74</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.<sup>75</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.<sup>76</sup> Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.<sup>77</sup> For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>78</sup> For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>79</sup> As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>80</sup>

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<sup>71</sup> See U.S. Food and Drug Administration, *Products for Security Screening of People*, available at <https://www.fda.gov/radiation-emitting-products/security-systems/products-security-screening-people> (last visited March 24, 2020).

<sup>72</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited February 18, 2020).

<sup>73</sup> Section 435.04, F.S.

<sup>74</sup> Section 435.05(1)(a), F.S.

<sup>75</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

<sup>76</sup> Section 435.05(1)(b)-(c), F.S.

<sup>77</sup> *Id.*

<sup>78</sup> Section 435.05(1)(b), F.S.

<sup>79</sup> Section 435.05(1)(c), F.S.

<sup>80</sup> Section 435.05(1)(d), F.S.

### *Disqualifying Offenses*

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, certain offenses under Florida law, or similar law of another jurisdiction.<sup>81</sup>

#### *Health Care Facility Background Screening Under Ch. 408, F.S.*

Florida law<sup>82</sup> requires certain owners, officers, and staff of abortion clinics, ambulatory surgery centers, birth centers, multiphasic health testing centers, organ procurement organizations, tissue banks, eye banks, assisted living facilities, home health agencies, homemaker and companion service providers, home medical equipment providers, hospices, nurse registries, nursing homes, health care clinics, and hospitals licensed by the Agency for Health Care Administration to undergo a level 2 criminal background screening. Individuals who must be screen include:

- The licensee;
- Administrators and financial officers;
- Any person with a controlling interest; and
- Staff of health care providers who is expected to provide personal care or services directly to clients or have access to client funds, personal property, or living areas.

#### *Health Care Practitioner Background Screening Under Ch. 456, F.S.*

Section 456.0135, F.S., requires physicians, physician assistants, chiropractic physicians, podiatric physicians, nurses, certified nursing assistants, pharmacy owners, athletic trainers, massage therapists, and massage establishment owners to undergo a Level 2 background screening as a part of the licensure process. The appropriate regulatory board reviews the background screening results of an applicant or licensee to determine if there is a disqualifying offense. The only automatic disqualifying offenses for licensure are the following offenses under federal law or Florida law, or similar law in another jurisdiction:<sup>83</sup>

- A felony under:
  - Chapter 409, related to social and economic assistance;
  - Chapter 817, relating to fraudulently practices; and
  - Chapter 893, relating to drug abuse prevention and control.
- A felony under 21 U.S.C. ss. 801-970, relating to controlled substances, or 42 U.S.C. ss. 1395-1396, relating to health insurance for the aged and disabled, if the sentence and any subsequent probation ended less than 15 years before the date of application.

#### *Exemption from Disqualification*

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, DCF) to exempt applicants from that disqualification under certain circumstances:<sup>84</sup>

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<sup>81</sup> Section 435.04(2), F.S.

<sup>82</sup> Section 408.809, F.S.

<sup>83</sup> Section 456.0635, F.S.

<sup>84</sup> Section 435.07(1), F.S.

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,<sup>85</sup> career offender,<sup>86</sup> or sexual offender (unless not required to register)<sup>87</sup> cannot ever be exempted from disqualification.<sup>88</sup>

### *Battery*

Battery occurs when a person actually and intentionally touches or strikes another person against that person's will or intentionally causes bodily harm to another.<sup>89</sup> Battery is punishable as a first degree misdemeanor;<sup>90</sup> however battery may be punishable as a felony under certain circumstances. A felony battery occurs when:

- The person has at least one prior conviction for battery, aggravated battery, or felony battery;<sup>91</sup>
- The battery causes great bodily harm, permanent disability, or permanent disfigurement;<sup>92</sup>
- The battery is committed on a law enforcement officer, firefighter, emergency medical care provider, or public transit worker;<sup>93</sup>
- The battery is committed on staff member of sexually violent predators detention or commitment;<sup>94</sup>
- The battery is committed on a juvenile probation officer or staff of a juvenile detention or commitment facility;<sup>95</sup>
- The battery is committed on staff of certain correctional facilities and juvenile justice facility and involves throwing, tossing, or expelling certain fluids or materials;<sup>96</sup>
- The battery is committed on a person age 65 or older;<sup>97</sup>
- The battery is committed on certain sports officials;<sup>98</sup>
- The battery is committed on a visitor of a prison, jail, or detention center by a person who is being detained in such facility;<sup>99</sup>
- The battery is committed on a code inspector;<sup>100</sup>
- The battery is committed on a minor and involves throwing, tossing, projecting, or expelling certain fluids, or materials.<sup>101</sup>

If a person commits a battery on an individual who is in a vulnerable situation, such as when under anesthesia or temporarily disabled after a medical procedure, that person would commit a misdemeanor battery unless the victim falls into one of the exceptions listed above. Under current law,

<sup>85</sup> Section 775.261, F.S.

<sup>86</sup> Section 775.261, F.S.

<sup>87</sup> Section 943.0435, F.S.

<sup>88</sup> Section 435.07(4)(b), F.S.

<sup>89</sup> Section 784.03(1), F.S.

<sup>90</sup> A first degree misdemeanor is punishable by up to one year imprisonment and a fine of up to \$1,000 (see ss. 775.082 and 775.083, F.S., respectively).

<sup>91</sup> Section 784.03(2), F.S.

<sup>92</sup> Section 784.041(1), F.S.

<sup>93</sup> Section 784.07, F.S.

<sup>94</sup> Section 784.074, F.S.

<sup>95</sup> Sections 784.075 and 784.076, F.S.

<sup>96</sup> Section 784.078, F.S.

<sup>97</sup> Section 784.08, F.S.

<sup>98</sup> Section 784.081, F.S.

<sup>99</sup> Section 784.082, F.S.

<sup>100</sup> Section 784.083, F.S.

<sup>101</sup> Section 784.085, F.S.

a person who commits a misdemeanor battery is not disqualified from employment in a health care facility or licensure as a health care practitioner. Therefore, an individual who commits a battery against a person who is vulnerable due to care received as a patient of a health care facility or some other mental or physical impairment, is not disqualified from employment in a health care facility or health care practitioner licensure.

### Effect of Proposed Changes – Background Screenings

Currently, battery is a disqualifying offense for employment only if it is a felony or if the victim is a minor. The bill makes battery against a vulnerable adult<sup>102</sup> or patient or resident of a hospital, ambulatory surgery center, nursing home, hospice, home health agency, or assisted living facility, a disqualifying offense for employment in health care facilities and for certain health care practitioner licensure.

The disqualifying offense applies to individuals seeking employment in health care facilities, such as hospitals, ambulatory surgical centers, nursing homes, home health agencies, nurse registries, hospices, homemaker and companion services, and other facilities licensed by AHCA, and who are owners or administrators or will provide personal care or services directly to clients or have access to client funds, personal property, or living areas. The disqualifying offense also applies to physicians, physician assistants, anesthesiologist assistants, nurses, certified nurses, athletic trainers, massage therapists, and massage establishment owners.

### **Health Care Professional Licensure**

#### Current Situation

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.<sup>103</sup> MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.<sup>104</sup> Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

#### *General Licensure Requirements*

There are general licensure provisions that apply to all licensure applications, regardless of profession. For example, all applicants for licensure must apply in writing on an application form approved by DOH or electronically on a web-based application form.<sup>105</sup> Additionally, an applicant must provide his or her social security number for identification purposes.<sup>106</sup> However, an applicant is not required to provide his or her date of birth as DOH is not currently authorized to collect this information.

If, at the time of application, an applicant has not been issued a social security number because he or she is not a U.S. citizen or resident, DOH may process the application using a unique personal identification number.<sup>107</sup> If the applicant is eligible for a license, the applicable board, or DOH when

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<sup>102</sup> A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

<sup>103</sup> Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

<sup>104</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf> (last visited November 22, 2019).

<sup>105</sup> Section 456.013, F.S.

<sup>106</sup> Id.

<sup>107</sup> Id.

there is no board, may issue a temporary license to the applicant.<sup>108</sup> The temporary license is only valid for 30 days unless the applicant submits a social security number. On average, it takes about two weeks to receive a social security number once all required documentation is submitted to the U.S. Social Security Administration.<sup>109</sup> If the Social Security Administration is unable to immediately verify immigration documents with the U.S. Citizenship and Immigration Services, it may take an additional two weeks to issue the social security number.<sup>110</sup>

### Effect of Proposed Changes – Health Care Professional Licensure

The bill requires the application for licensure to include the applicant's date of birth, in addition to the currently required social security number. This will provide DOH an additional method to verify the identity of an individual applicant.

The bill also authorizes DOH to issue a temporary license to an eligible applicant, who has accepted a position with an accredited residency, internship, or fellowship program in Florida and who has submitted an application for registration for such position under s. 458.345, F.S., or s. 459.021, F.S., which expires 60 days, rather than 30 days, after issuance unless the applicant obtains and submits a social security number to DOH.

### **Florida Patient Self-Referral Act of 1992**

#### Current Situation

##### *Patient Self-Referral Act of 1992*

The Patient Self-Referral Act of 1992 (Act) prohibits the referral of patients by a health care provider to an entity that the referring health care provider holds a financial interest, if the financial interest is a type that is regulated by the Act and an exemption does not apply.<sup>111</sup> The prohibition against patient self-referral stems from a concern that a health care practitioner with a personal financial involvement may overutilize health care services, thus driving up the cost of health care and possibly adversely affecting quality.<sup>112</sup>

The Act does not apply to certain financial interests, including an investment interest in an entity which owns or leases and operates a hospital.<sup>113</sup> For those financial interests subject to the Act, a health care provider is prohibited from referring a patient to an entity that the health care provider has an investment interest, unless:<sup>114</sup>

- For entities whose shares are publicly traded:
  - The provider's investment interest is in registered securities purchased on a national exchange or over-the-counter market and issued by a publicly held corporation; and
  - The entities total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million; or
- For entities other than publicly held corporations:
  - No more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity;

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<sup>108</sup> Id.

<sup>109</sup> U.S. Social Security Administration, *Apply for your Social Security Number While Applying for Your Work Permit*, available at <https://www.ssa.gov/ssnvisa/ebe.html> (last visited November 25, 2019).

<sup>110</sup> Id.

<sup>111</sup> Section 456.053, F.S.

<sup>112</sup> Section 456.053(2), F.S.

<sup>113</sup> Section 456.053(3)(k), F.S.

<sup>114</sup> Section 456.053(5)(b), F.S.

- The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make such referrals;
- The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity; and
- There is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for becoming or remaining an investor.

The entity in which the health care provider holds an interest must also meet the following conditions for a referral to be exempt for the Act:<sup>115</sup>

- The entity or corporation does not loan funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of such loan to obtain the investment interest; and
- The amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair-market value of any preoperational services rendered, and invested in the entity or corporation by that investor.

Certain referrals are not considered referrals, including referrals made by a health care practitioner who is a sole provider or member of a group practice that are prescribed or provided for that health care practitioner's or group practice's own patients and are performed under the direct supervision of the health care practitioner or group practice.<sup>116</sup> However, a referral for diagnostic imaging services must be normally provided within the scope of practice to the patients of the health care practitioner or group practice and such practice may not accept more than 15 percent of outside referrals for patients receiving diagnostic imaging services.<sup>117</sup>

A health care provider found to have violated the Act is subject to one or more disciplinary actions or penalties, including:

- A penalty of up to \$100,000 for each arrangement if a health care provider or other entity enters into an arrangement that has the principal purpose of assuring referrals between the provider and the entity;<sup>118</sup>
- Discipline by his or her regulatory board (hospitals are subject to penalties imposed by the Agency for Health Care Administration (AHCA));<sup>119</sup> and
- Being charged with a first degree misdemeanor<sup>120</sup> and subject to additional penalties and disciplinary action by his or her respective board if a health care provider fails to comply with the notice provisions of the Act and s. 456.052, F.S., which requires a physician to disclose to a patient if he or she has a financial interest in an entity to which the patient is being referred.<sup>121</sup>

A health care provider may not submit a claim for payment for a services provided pursuant to a referral prohibited by the Act; and if the provider receives payment for such services, he or she must be refund the payment.<sup>122</sup> Additionally, any person who knows or should know that such a claim is prohibited and who presents or causes to be presented such a claim, is subject to a fine of up to \$15,000 per service to be imposed and collected by that person's regulatory board.<sup>123</sup>

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<sup>115</sup> Id.

<sup>116</sup> Section 456.053(3)(o)3.e., F.S.

<sup>117</sup> Id.

<sup>118</sup> Section. 456.053(5)(f), F.S.

<sup>119</sup> Section 456.053(5)(g), F.S.

<sup>120</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>121</sup> Section 456.053(5)(j), F.S.

<sup>122</sup> Section 456.053(5)(c)-(d), F.S.

<sup>123</sup> Section 456.053(5)(e), F.S.



## Federal Payment Initiatives

### Accountable Care Organizations

An accountable care organization (ACO) is a network of doctors and hospitals that shares financial and medical responsibility for providing coordinated care to patients in hopes of limiting unnecessary spending.<sup>124</sup> The goal of coordinated care is to ensure that patients get the right care at the right time, while avoiding unnecessary duplication of services and preventing medical errors.<sup>125</sup> The Affordable Care Act encourages the use of ACOs in the Medicare program by authorizing the ACOs to share in the savings it achieves for the program. Each program must manage at least 5,000 Medicare beneficiaries for at least three years to participate.<sup>126</sup> There are approximately 55 ACOs that serve Medicare beneficiaries in Florida.<sup>127</sup>

### Advanced Alternative Payment Model

An advanced alternative payment model (AAPM) is a payment approach that gives added incentive payments to provide high quality and cost-efficient care, and can apply to a specific clinical condition, care episode, or a population.<sup>128</sup> APPMs are a part of the Quality Payment Program administered by the federal Centers for Medicare and Medicaid, which incentivizes Medicare providers to provide high-value, high-quality services to Medicare beneficiaries.<sup>129</sup> Providers can earn up to a five percent incentive for achieving certain payment or patient thresholds through APPMs. APPMs must:<sup>130</sup>

- Employ certified electronic health record technology;
- Provide payment for covered professional services based on certain federal quality measures; and
- Either use a medical home model or require the providers to bear a significant financial risk.

There are approximately 12 organizations in Florida that are qualified AAPM participants.<sup>131</sup>

### Effect of Proposed Changes – Florida Patient Self-Referral Act of 1992

The bill exempts entities that own an accountable care organization or an entity operating under an advanced alternative payment model under federal regulations from the 15 percent limitation on outside referrals for diagnostic imaging services if the entity has more than 30,000 patients enrolled per year.

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<sup>124</sup> Kaiser Health News, *Accountable Care Organizations, Explained*, (Sept. 14, 2015), available at <https://khn.org/news/aco-accountable-care-organization-faq/> (last visited March 24, 2020).

<sup>125</sup> Centers for Medicare & Medicaid Services, *Accountable Care Organizations*, available at <https://innovation.cms.gov/initiatives/ACO/> (last visited March 18, 2020).

<sup>126</sup> *Supra* note 124.

<sup>127</sup> Centers for Medicare & Medicaid Services, *Performance Year 2019 Medicare Shared Savings Program Accountable Care Organizations*, available at <https://data.cms.gov/Special-Programs-Initiatives-Medicare-Shared-Savin/Performance-Year-2019-Medicare-Shared-Savings-Prog/seu9-q8uk/data> (last visited March 24, 2020).

<sup>128</sup> Centers for Medicare & Medicaid Services, *Quality Payment Program: APMs Overview*, available at <https://qpp.cms.gov/apms/overview> (last visited March 18, 2020).

<sup>129</sup> Centers for Medicare & Medicaid Services, *Quality Payment Program Overview*, available at <https://qpp.cms.gov/about/qpp-overview> (last visited March 24, 2020).

<sup>130</sup> Centers for Medicare & Medicaid Services, *Quality Payment Program: Advanced Alternative Payment Models (APMs)*, available at <https://qpp.cms.gov/apms/advanced-apms> (last visited March 24, 2020).

<sup>131</sup> Centers for Medicare & Medicaid Services, *Quality Payment Program: Alternative Payment Models in the Quality Payment Program as of December 2019*, available at <https://qpp-cm-prod-content.s3.amazonaws.com/uploads/810/2020%20and%202019%20Comprehensive%20List%20of%20APMs.pdf> (last visited March 24, 2020).

## Medical Faculty Certificates

### Current Situation

The Board of Medicine may issue a medical faculty certificate to a qualified physician to practice in conjunction with a full-time faculty appointment at one of the following accredited medical school and its affiliated clinical facilities or teaching hospitals:<sup>132</sup>

- 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;
- Florida Atlantic University; or
- Johns Hopkins All Children's Hospital in St. Petersburg, Florida

Although the applicant does not have to sit for and successfully pass a national examination, the applicant must meet specified statutory criteria for the medical faculty certificate.

There is no limit on the number of initial certificates a medical school or teaching institution may receive. However, the number of medical faculty certificates that may be renewed by each medical school or teaching institution is statutorily limited.<sup>133</sup> All medical schools, except the Mayo Clinic College of Medicine in Jacksonville, Florida, are limited to 30 renewed medical faculty certificates. The Mayo Clinic College of Medicine is limited to 10 renewed medical faculty certificates. The H. Lee Moffitt Cancer Center and Research Institute is also permitted to have up to 30 renewed faculty certificates.<sup>134</sup>

An annual review of each medical faculty certificate recipient is made by the dean of the certificate recipient's accredited 4-year medical school and reported to the BOM within DOH on an annual basis.<sup>135</sup> Currently, there are 62 physicians holding a medical faculty certificate.<sup>136</sup>

### Effect of Proposed Changes – Medical Faculty Certificates

The bill expands the current medical faculty certificate eligibility by allowing a medical faculty certificate to be issued without examination to an individual who has been offered and accepted a full-time faculty appointment to teach at Nova Southeastern University and Lake Erie College of Osteopathic Medicine. The Board of Medicine may issue up to 30 medical faculty certificates to each of the institutions.

## Board Certification of Physicians

### Current Situation

Medical licensure of physicians sets the minimum competency requirements to diagnose and treat patients; it is not specialty specific.<sup>137</sup> Medical specialty certification is a voluntary process that gives a physician a way to develop and demonstrate expertise in a particular specialty or subspecialty.<sup>138</sup>

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<sup>132</sup> Section 458.3145, F.S.

<sup>133</sup> Section 458.3145(4), F.S.

<sup>134</sup> *Id.*

<sup>135</sup> Section 458.3145(5), F.S.

<sup>136</sup> *Supra* note 104.

<sup>137</sup> American Board of Physician Specialties, *Not All Physicians are Board Certified in the Specialties They Practice*, available at <https://www.abpsus.org/physician-board-certified-specialties> (last visited November 25, 2019).

<sup>138</sup> *Id.*

## *Board Certification and Florida Licensure*

DOH does not license a physician by specialty or subspecialty based upon board certification; however, ch. 458 and ch. 459, F.S., limit which physicians may hold themselves out as board-certified specialists. An allopathic physician licensed under ch. 458, F.S., may not hold himself or herself out as a board-certified specialist unless he or she has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties (ABMS) or other recognizing agency<sup>139</sup> approved by the Board of Medicine.<sup>140</sup>

Under Florida law, an allopathic 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 Board of Medicine.<sup>141</sup> Similarly, an osteopathic physician licensed under ch. 459, F.S., may not hold himself or herself out as a board-certified specialist unless he or she has successfully completed the requirements for certification by the American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME) and is certified as a specialist by a certifying agency<sup>142</sup> approved by the board.<sup>143</sup> These limitations on advertising are set out in rule 64B8-11.001, F.A.C. for allopathic physicians and rule 64B15-14.001, F.A.C., for osteopathic physicians.

### Effect of Proposed Changes – Board Certification of Physicians

Currently, dermatology is the only physician specialty that statutorily requires the Board of Medicine to review and authorize the recognizing agency. The bill repeals the statutory requirement that the Board of Medicine triennially review and reauthorize the recognizing agency for dermatology. An allopathic physician is still prohibited from holding himself or herself out as a specialist unless the physician is recognized as such by a specialty board of the American Board of Medical Specialties or other board-approved recognizing agency.

### **Osteopathic Medicine**

#### Current Situation

Following graduation from an AOA-approved medical school, osteopathic physicians (DOs) must complete an approved 12-month internship.<sup>144</sup> 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>145</sup>

Florida law requires DOs to complete an AOA-approved residency for licensure.<sup>146</sup> However, the Board of Osteopathic Medicine will accept a residency accredited by the ACGME<sup>147</sup> for licensure if the applicant demonstrates good cause, such as:<sup>148</sup>

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<sup>139</sup> The allopathic board has approved the specialty boards of the ABMS as recognizing agencies. Rule 64B8-11.001(1)(f), F.A.C.

<sup>140</sup> Section 458.3312, F.S.

<sup>141</sup> Id.

<sup>142</sup> The osteopathic board has approved the specialty boards of the ABMS and AOA as recognizing agencies. Rule 64B15-14.001(h), F.A.C.

<sup>143</sup> Section 459.0152, F.S.

<sup>144</sup> Florida Osteopathic Medical Association, *Osteopathic Education*, available at <https://www.foma.org/osteopathic-education.html> (last visited November 25, 2019).

<sup>145</sup> Id.

<sup>146</sup> Section 459.055(1)(l), F.S.

<sup>147</sup> The Accreditation Council for Graduate Medical Education sets the standards for U.S. graduate medical education (residency and fellowship) programs and accredits such programs based on compliance with these standards. In 2017-2018, there were 830 ACGME-accredited institutions sponsoring more than 11,000 residency and fellowship programs. See Accreditation Council for Graduate Medical Education, *What We Do*, available at <https://www.acgme.org/What-We-Do/Overview> (last visited November 25, 2019).

<sup>148</sup> Rule 64B15-16, F.A.C.

- Personal limitation created by a documented physical or medical disability;
- Unique documented opportunity otherwise unavailable that meets a practice area of critical need;
- Documented legal restriction which requires the physical presence in a particular state or local area;
- Documented unusual or exceptional family circumstances which limit training opportunities;
- The previous program met all AOA requirements, but due to documented circumstances beyond the control of the applicant, was discontinued;
- Documented inability to relocate to another geographic area with undue hardship; or
- Documented inability to obtain an AOA internship.

### *Single Graduate Medical Education Accreditation System*

In 2014, the ACGME, AOA, and American Association of Colleges of Osteopathic Medicine entered into a Memorandum of Understanding to transition to a single accreditation system for graduate medical education (GME).<sup>149</sup> Under this agreement, graduates of all allopathic and osteopathic medical schools complete residencies or fellowships in ACGME-accredited programs.<sup>150</sup> On July 1, 2015, the AOA and the ACGME began transitioning to a single GME accreditation system.<sup>151</sup>

The parties to this agreement indicate that a single accreditation system will:<sup>152</sup>

- Establish and maintain consistent evaluation and accountability for the competency of resident physicians across all accredited GME programs;
- Eliminate duplication in GME accreditation;
- Achieve efficiencies and cost savings for institutions that sponsor both AOA-accredited and ACGME-accredited programs; and
- Ensure all residency and fellowship applicants are eligible to enter all accredited programs in the nation and can transfer from one accredited program to another without repeating training or causing a sponsoring institution to lose Medicare funding.

The AOA will cease accrediting GME programs on June 30, 2020.<sup>153</sup> The single accreditation system requires all training programs to be ACGME-accredited by that date. If a program is solely AOA-accredited, the program must apply for ACGME accreditation or stop accepting trainees by June 30, 2020.<sup>154</sup> However, the terms of the agreement allow the AOA to extend a program's accreditation if the program has made a good faith effort to obtain ACGME accreditation but has not transitioned to ACGME accreditation by June 30, 2020.<sup>155</sup>

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<sup>149</sup> American Association of Colleges of Osteopathic Medicine, *Single GME Accreditation System*, available at <https://www.aacom.org/news-and-events/single-gme-accreditation-system> (last visited November 25, 2019).

<sup>150</sup> Accreditation Council for Graduate Medical Education, *Single GME Accreditation System*, available at <https://www.acgme.org/What-We-Do/Accreditation/Single-GME-Accreditation-System> (last visited November 25, 2019).

<sup>151</sup> Id.

<sup>152</sup> Accreditation Council for Graduate Medical Education, *Frequently Asked Questions: Single Accreditation System*, available at <https://www.acgme.org/Portals/0/PDFs/Nasca-Community/FAQs.pdf> (last visited November 25, 2019).

<sup>153</sup> American Osteopathic Association, *Single GME Resident FAQs*, available at <https://osteopathic.org/residents/resident-resources/residents-single-gme/single-gme-resident-faqs/> (last visited November 25, 2019).

<sup>154</sup> Id.

<sup>155</sup> Id.

## Effect of Proposed Changes – Osteopathic Medicine

To qualify for licensure as an osteopathic physician, an applicant must currently complete a resident internship approved by the Board of Trustees of the American Osteopathic Association or an internship program approved by the osteopathic board. The bill requires that such internship or residency be approved by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education, and repeals the authority of the osteopathic board to approve an internship program.

## Council on Physician Assistants

### Current Situation

A physician assistant (PA) is a health care practitioner who practices under the direct or indirect supervision of an allopathic or osteopathic physician. PAs may provide a number of medical services including:<sup>156</sup>

- Physical examinations;
- Diagnosis and treatment of illness;
- Counsel on preventative health care;
- Assistance in surgery; and
- Prescribing of medication.

In Florida, PAs are regulated by the Council on Physician Assistants (Council), in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. PAs are governed by the respective physician practice acts since PAs may only practice under the supervision of an allopathic or osteopathic physician.

### *Council on Physician Assistants*

The Council consists of five members including three physicians who are members of the Board of Medicine, one physician who is a member of the Board of Osteopathic Medicine, and one licensed PA appointed by the Surgeon General.<sup>157</sup> Two of the physician members must supervise PAs in their practices.<sup>158</sup> Each member serves a 4-year term.<sup>159</sup> The Council:<sup>160</sup>

- Makes recommendations to the Department of Health regarding the licensure of PAs;
- Develops rules for the regulation of PAs for consideration for adoption by the boards;<sup>161</sup>
- Makes recommendations to the boards regarding all matters relating to PAs;
- Addresses concerns and problems of practicing PAs to ensure patient safety;
- Denies, restricts, or places conditions on the license of PA who fails to meet the licensing requirements;<sup>162</sup> and
- Establishes a formulary of medicinal drugs that a PA may not prescribe.<sup>163</sup>

The Board of Medicine and the Board of Osteopathic Medicine is responsible for imposing disciplinary action against the license of a PA.<sup>164</sup> The Council has no authority discipline PAs.

### *PA Scope of Practice*

PAs may only practice under the direct or indirect supervision of an allopathic or osteopathic physician with whom they have a clinical relationship.<sup>165</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>166</sup> The supervising

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<sup>156</sup> Florida Academy of Physician Assistants, *What is a PA*, available at <https://www.fapaonline.org/page/whatisapa> (last visited January 14, 2020).

<sup>157</sup> Sections 458.347(9)(a) and 459.022(9)(a), F.S.

<sup>158</sup> Sections 458.347(9)(b) and 459.022(9)(b), F.S.

<sup>159</sup> Id.

<sup>160</sup> Sections 458.347(9)(c) and 459.022(9)(c), F.S. The boards may delegate powers and duties to the Council as they deem necessary.

<sup>161</sup> Both the Boards of Medicine and Osteopathic Medicine must accept and approve identical language prior to rule adoption.

<sup>162</sup> Sections 458.347(9)(d) and 459.022(9)(d), F.S.

<sup>163</sup> Sections 458.347(4)(f) and 459.022(4)(e), F.S.

<sup>164</sup> Sections 458.347(7)(f) and 459.022(7)(f), F.S.

<sup>165</sup> Sections 458.347(2)(f), F.S., and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

<sup>166</sup> Rules 64B8-30.012, F.A.C., and 64B15-6.010, F.A.C.

physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.<sup>167</sup>

The Boards have established by rule that “responsible supervision” of a PA means the ability of the supervising physician to exercise control and provide direction over the services or tasks performed by the PA. Whether the supervision of a PA is adequate, is dependent upon the:

- Complexity of the task;
- Risk to the patient;
- Background, training and skill of the PA;
- Adequacy of the direction in terms of its form;
- Setting in which the tasks are performed;
- Availability of the supervising physician;
- Necessity for immediate attention; and
- Number of other persons that the supervising physician must supervise.<sup>168</sup>

A supervising physician decides whether to permit a PA to perform a task or procedure under direct or indirect supervision based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.<sup>169</sup>

### Effect of Proposed Changes – Council on Physician Assistants

The bill revises the composition of the Council. The total membership of the Council will remain five. However, the bill requires appointment of one physician who is a member of the Board of Medicine, rather than three. The bill requires appointment of three licensed PAs, rather than one. The number of osteopathic physicians on the Council does not change and remains one. Each of the physician members of the Council must supervise PAs in his or her respective practice.

The bill does not alter the duties or responsibilities of the Council.

## **Chiropractic Assistants**

### Current Situation

There are two types of chiropractic assistants: certified and registered.<sup>170</sup> A certified chiropractic assistant is an allied health professional who, under supervision, performs tasks or a combination of tasks traditionally performed by a chiropractic physician.<sup>171</sup> A registered chiropractic assistant is a professional, multi-skilled person dedicated to assisting in all aspects of chiropractic medical practice under the direct supervision of a chiropractic physician or certified chiropractic assistant.<sup>172</sup>

A registered chiropractic assistant voluntarily registers with the Board of Chiropractic Medicine.<sup>173</sup> There are no educational or eligibility standards set in statute or rule for such registration. A supervising chiropractic physician must ensure that the registered chiropractic assistant adheres to ethical and

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<sup>167</sup> Sections 458.347(15), F.S., and 459.022(15), F.S.

<sup>168</sup> Rules 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.

<sup>169</sup> “Direct supervision” refers to the physical presence of the supervising physician so that the physician is immediately available to the PA when needed. “Indirect supervision” refers to the reasonable physical proximity of the supervising physician to the PA or availability by telecommunication. *Supra* note 168.

<sup>170</sup> Sections 460.4165 and 460.4166, F.S.

<sup>171</sup> Rule 64B2-18(5), F.A.C.

<sup>172</sup> Section 460.4166(1), F.S.

<sup>173</sup> Section 460.4166(3), F.S.

legal standards of professional practice, recognizes and responds to emergencies, and demonstrates professional characteristics.<sup>174</sup> A registered chiropractic assistant may:<sup>175</sup>

- Prepare patients for the chiropractic physician's care;
- Take vital signs;
- Observe and report patients' signs and symptoms;
- Administer basic first aid;
- Assist with patient examinations or treatments other than manipulations or adjustments;
- Operate office equipment;
- Collect routine laboratory specimens as directed by the chiropractic physician or certified chiropractic assistant;
- Administer nutritional supplements as directed by the chiropractic physician or certified chiropractic assistant; and
- Perform office procedures under the direct supervision of by the chiropractic physician or certified chiropractic assistant.

There are 3,991 registered chiropractic assistants.<sup>176</sup> DOH does not regulate the practice of registered chiropractic assistants.

### Effect of Proposed Changes – Chiropractic Assistants

Currently, registered chiropractic assistants may voluntarily register with DOH. The bill repeals this voluntary registration, thereby eliminating state recognition of registered chiropractic assistants. Chiropractic assistants may still perform duties under the direct supervision of a chiropractic physician.<sup>177</sup>

## **Nursing**

### Current Situation

The Board of Nursing (BON), within DOH, oversees the licensure and regulation of certified nursing assistants, licensed practical nurses, registered nurses, and advanced registered nurse practitioners. The Board has the authority to adopt rules to implement ch. 464, F.S., which regulates the practice of nursing in this state.<sup>178</sup>

#### *Certified Nursing Assistants*

Certified Nursing Assistants (CNAs) provide care and assist individuals with tasks relating to the activities of daily living, such as those associated with personal care, nutrition and hydration, maintaining mobility, toileting, safety and cleaning, end-of-life care, cardiopulmonary resuscitation and emergency care.<sup>179</sup> An applicant for certification as a CNA must complete an approved training program, pass a competency examination, and pass a background screening.<sup>180</sup> A CNA who is certified in another state, is listed on that state's CNA registry<sup>181</sup> and has not been found to have committed abuse, neglect, or exploitation in that state, is eligible for certification by endorsement in Florida.

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<sup>174</sup> *Supra* note 172.

<sup>175</sup> Section 460.4166, F.S.

<sup>176</sup> *Supra* note 104.

<sup>177</sup> Department of Health, Agency Legislative Bill Analysis for HB 713, (Nov. 19, 2019), on file with the Health Quality Subcommittee.

<sup>178</sup> Section 464.006, F.S.

<sup>179</sup> Section 464.201(5), F.S.

<sup>180</sup> Section 464.203, F.S. See also Department of Health, Board of Nursing, *Certified Nursing Assistant (CNA) by Examination*, available at <http://floridasnursing.gov/licensing/certified-nursing-assistant-examination/> (last visited November 25, 2019). An applicant who fails the competency examination 3 times, may not take the exam again until he or she completes an approved training program.

<sup>181</sup> A CNA Registry is a listing of CNAs who received certification and maintain an active certification. (Rule 64B9-15.004, F.A.C.)



However, a CNA from a territory of the United States or the District of Columbia is not eligible for certification by endorsement.

The BON may discipline a CNA for two violations:<sup>182</sup>

- Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board; or
- Intentionally violating any provision of ch. 464, F.S., the practice act for nursing professions, ch. 456, F.S., the general licensing act, or the rules adopted by the Board of Nursing.

When seeking to discipline a CNA for violating the nurse practice act, the general licensing act, or a rule adopted thereunder, the Board of Nursing must prove that such violation is intentional. Therefore, if the BON cannot prove intent or if a CNA acts negligently, the BON is unable to discipline the CNA.

### *Nursing Education Programs*

To be licensed as a registered nurse or a licensed practical nurse in this state, an individual must, among other things, graduate from an accredited program or a nursing education program by the BON.<sup>183</sup> A registered nurse is authorized to practice professional nursing<sup>184</sup> and a licensed practical nurse is authorized to practice practical nursing.<sup>185</sup>

Nursing programs in Florida are offered by public school districts, Florida colleges, state universities, private institutions licensed by the Commission for Independent Education, private institutions that are members of the Independent Colleges and Universities of Florida (ICUF), and Pensacola Christian College, which is statutorily authorized by s. 1005.06(1)(e), F.S.<sup>186</sup>

### *Board-Approved Nursing Education Programs*

To be an approved program, an educational institution must apply to DOH. An application to become an approved program must document compliance with program standards for faculty qualifications, clinical training requirements, written policies for faculty, signed agreements with clinical training sites in the curriculum plan, and curriculum and instruction requirements.<sup>187</sup>

An application deemed complete by DOH is forwarded to the BON for approval. Within 90 days of receipt of the application by DOH, the BON must approve the application or notify the applicant of the intent to deny the application. If noticed of the intent to deny, the applicant may request a hearing under chapter 120, F.S.<sup>188</sup>

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<sup>182</sup> Section 464.204, F.S.

<sup>183</sup> Section 464.008(1)(c), F.S.

<sup>184</sup> The practice of professional nursing means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skills, including observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; teaching and counseling of the ill, injured, or infirm; promotion of wellness, maintenance of health, prevention of illness in others; and the administration of medication and treatment as authorized or prescribed. A RN is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing. (Ss. 464.003(20) and (22), F.S.)

<sup>185</sup> The practice of practical nursing means the performance of selected acts in the care of the ill, injured, or infirm; the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, or a licensed dentist. An LPN is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing (Ss. 464.003(16) and (19), F.S.).

<sup>186</sup> This section of law exempts schools from the Commission for Independent Education's licensure requirements if the institution: had been so exempted prior to 2001; is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; the institution was exempt under that category prior to July 1, 1982; and the institution does not enroll any students who receive state or federal financial aid. Only two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

<sup>187</sup> Section 464.019(1), F.S.

<sup>188</sup> Section 464.019(2), F.S.

An approved program's curriculum must consist of at least 50 percent clinical training for an associate's degree registered nurse program or at least 40 percent clinical training for a bachelor's degree registered program.<sup>189</sup> No more than 50 percent of an approved program's clinical training may consist of clinical simulation.<sup>190</sup>

Approved programs must submit an annual report by November 1 of each year to the BON. The report must document application and enrollment, student retention rates, and accreditation status.<sup>191</sup> The BON must publish on its website the following data for each program:<sup>192</sup>

- Accreditation status;
- Probationary status;
- Graduate passage rate on the National Council on State Boards of Nursing Licensing Examination (NCLEX) for the most recent two calendar years;
- Student retention rates;
- Annual report summary; and
- Application documentation.

If the nursing education program fails to submit its annual report, the director of the nursing education program must appear before the BON, at its next regularly scheduled meeting, to explain the reason for the delay. If the annual report is not submitted within six months of its due date, the BON must terminate the program.<sup>193</sup>

#### Accountability

An approved program may not have a graduate passage rate for first-time takers who sit for the licensure examination within six months of graduation that is 10 percentage points or more below the national average for two consecutive years.<sup>194</sup> If a program fails to meet the required graduate passage rate, the program is placed on probation by the BON and the program must present a plan for remediation to the BON, which includes specific benchmarks for achieving the required graduate passage rate. If a program on probation does not achieve the required graduate passage rate for any one calendar year during the two calendar years it is on probation, the BON must terminate the program.<sup>195</sup> However, the BON is authorized to extend the probationary status for an additional year if the program demonstrates progress toward the graduate passage rate goal by meeting the majority of the benchmarks established in the remediation plan.<sup>196</sup>

#### Accredited Nursing Education Programs

To qualify as an accredited program, a nursing education program must be accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.<sup>197</sup> Because accredited programs have to meet stringent criteria to maintain program accreditation, many of the statutory requirements for approved programs are not applicable to accredited programs.<sup>198</sup> However, an accredited program is subject to the accountability requirements. If an accredited program ceases to be accredited, it must, within 10 business days, provide written notice to the BON, its students and applicants, and its clinical training sites.

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<sup>189</sup> Section 464.019(1)(b), F.S.

<sup>190</sup> Section 464.019(1)(c), F.S.

<sup>191</sup> Section 464.019(3), F.S.

<sup>192</sup> Section 464.019(4), F.S.

<sup>193</sup> Section 464.019(5), F.S.

<sup>194</sup> Id.

<sup>195</sup> Id.

<sup>196</sup> Id.

<sup>197</sup> Section 464.003(1), F.S.

<sup>198</sup> Section 464.019(9), F.S.

2014 legislation required all nursing education programs that prepare students to be registered nurses to become accredited by July 1, 2019, or within 5 years after the enrollment of the program's first students.<sup>199</sup> A nursing education program that does not become accredited by the applicable deadline, must close and may not apply for re-approval for at least three years after the school closes. Current law does not provide any exceptions to the accreditation deadline.

## Effect of Proposed Changes – Nursing

### *Certified Nursing Assistants*

The bill authorizes the BON to adopt rules related to disciplinary procedures and the standards of practice for CNAs. The bill authorizes CNA applicants who are licensed in other territories of the United States or the District of Columbia to qualify for licensure by endorsement. The bill also authorizes the BON to discipline CNAs for any violation of a law or rule regulating CNA practice, repealing the requirement that such violation be intentional.

### *Nursing Education Programs*

The bill authorizes the BON to adopt rules for providing a nursing education program an extension of time to meet the accreditation requirement. An extension may be granted to a nursing education program who applies at least 90 days before its accreditation deadline if the program:

- Has a graduate passage rate of at least 60 percent on the NCLEX for the most recent calendar year;
- Has a student retention rate of at least 60 percent for the most recent calendar year;
- Has a graduate work placement rate of at least 70 percent for the most recent calendar year;
- Has applied for approval or been approved by a recognized accreditation organization;
- Is in full compliance with program approval requirement and annual reporting requirements;
- Is not currently in its second year of probationary status for failing to meet accountability standards; and
- Any other criteria established by the BON.

The BON may grant an extension of up to two years; however, no additional extensions may be granted. The accreditation deadline is tolled from the date on which the program applies for the extension and until the BON issues a decision.

## **Florida Center for Nursing**

### Current Situation

The Florida Center for Nursing (center) was created in 2001<sup>200</sup> to address the issues of supply and demand for nursing, including issues of recruitment, retention, and utilization of nurse workforce issues. The center collects and analyzes nursing workforce data, develops and disseminates a strategic plan for nursing, develops and implements reward and recognition activities for nurses, and promotes nursing excellence programs, image building, and recruit into the profession.<sup>201</sup>

In 2009, the Legislature created a statutory framework for approving nursing education programs, which was revised in 2010 and 2014.<sup>202</sup> In 2014, the Legislature directed the center and the Office of

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<sup>199</sup> Chapter 2014-92, Laws of Fla.

<sup>200</sup> Chapter 2001-277, L.O.F., codified at s. 466.0195, F.S.

<sup>201</sup> Id. See also, Florida Center for Nursing, *Our History*, available at <https://www.flcenterfornursing.org/AboutUs/OurHistory.aspx> (last visited December 2, 2019).

<sup>202</sup> Chapters 2009-168, 2010-37, and 2014-92, L.O.F., respectively.

Program Policy Analysis and Government Accountability (OPPAGA) to produce an annual report to the Governor and Legislature on nursing education programs until January 2020.<sup>203</sup> In 2017, the report became the sole responsibility of the center.<sup>204</sup>

The annual report includes data and measurements on:<sup>205</sup>

- The number of programs and slots available;
- The number of applications, qualified applicants, and accepted students;
- The number of program graduates;
- Program retention rates;
- Graduate passage rates on the National Council of State Boards of Nursing Licensure Examination;
- The number of graduates who become employed in the state; and
- The programs progress in meeting accreditation requirements.

The report also evaluates the Board of Nursing's implementation of the program approval process and accountability processes.<sup>206</sup>

### Effect of Proposed Changes – Florida Center for Nursing

The bill extends the date of the scheduled sunset of the annual report on nursing education programs produced by the Florida Center for Nursing from January 30, 2020, to January 30, 2025.

## **Dentistry**

### Current Situation

#### *Examination for Licensure*

Any person wishing to practice dentistry in this state must apply to DOH and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for and pass the following licensure examinations:

- The National Board of Dental Examiners dental examination (NBDE);
- A written examination on Florida laws and rules regulating the practice of dentistry; and
- A practical examination, which is the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., and graded by a Florida-licensed dentist employed by DOH for such purpose.<sup>207</sup>

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association Commission on Dental Accreditation (CODA) or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.<sup>208</sup> If the applicant is not a graduate of a CODA-accredited program, the applicant must demonstrate that he or she holds a degree from an accredited American dental school or has completed two years at a full-time supplemental general

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<sup>203</sup> Chapter 2014-92, L.O.F.

<sup>204</sup> Chapter 2017-134, L.O.F.

<sup>205</sup> Section 464.019(10), F.S.

<sup>206</sup> Id.

<sup>207</sup> A passing score is valid for 365 days after the date the official examination results are published. A passing score on an examination obtained in another jurisdiction must be completed on or after October 1, 2011.

<sup>208</sup> Section 466.006(2), F.S.

dentistry program accredited by CODA.<sup>209</sup> DOH indicates that there is confusion on whether these programs may include specialty or advanced education programs.<sup>210</sup>

Any person wishing to be licensed as a dental hygienist must apply to DOH and meet the following qualifications:<sup>211</sup>

- Be 18 years of age or older;
- Be a graduate of an accredited dental hygiene college or school;<sup>212</sup> and
- Obtain a passing score on the:
  - Dental Hygiene National Board Examination;
  - Dental Hygiene Licensing Examination developed by the American Board of Dental Examiners, Inc., which is graded by a Florida-licensed dentist or dental hygienist employed by DOH for such purpose; and
  - A written examination on Florida laws and rules regulating the practice of dental hygiene.

According to DOH, it is unable to find enough Florida-licensed dentists and dental hygienists to grade the examinations.<sup>213</sup>

### *Health Access Dental Licenses*

The health access dental license was established in 2008 to attract out-of-state dentists to practice in underserved health access settings<sup>214</sup> in this state, without supervision.<sup>215</sup> In Fiscal Year 2018-2019, the Board of Dentistry issued 50 health access dental licenses.<sup>216</sup>

A dentist who holds a valid, active license in good standing issued by another state, the District of Columbia, or a U.S. territory may obtain a health access dental license to practice in a health access setting in Florida if the dentist:<sup>217</sup>

- Submits proof of graduation from an accredited dental school;
- Submits documentation that the dentist has completed, or will obtain prior to licensure, continuing education equivalent to Florida's requirement for dentists for the last full reporting biennium;
- Submits proof of successful passage of parts I and II of the National Board of Dental Examiners and a state or regional clinical dental examination approved by the Board;
- Has never had a license revoked in another state, the District of Columbia, or a U.S. territory;
- Has never failed the Florida dental licensing examination, unless the dentist was reexamined and received a license to practice in Florida;
- Has not been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the databank; and

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<sup>209</sup> Section 466.006(3), F.S.

<sup>210</sup> Department of Health, *2020 Agency Legislative Analysis for SB 230*, on file with the Health Quality Subcommittee.

<sup>211</sup> Section 466.007, F.S.

<sup>212</sup> If the school is not accredited, the applicant must have completed a minimum of 4 years of postsecondary dental education and received a dental school diploma, which must be reviewed and approved by the Board of Dentistry.

<sup>213</sup> *Supra* note 210, at p. 4.

<sup>214</sup> Section 466.003(14), F.S., defines "health access setting" as a program or institution operated by the Department of Children and Families, Department of Health, Department of Juvenile Justice, a nonprofit health care center, a Head Start center, a federally-qualified health center or a lookalike, a school-based prevention program, a clinic operated by an accredited college of dentistry, or certain accredited dental hygiene program.

<sup>215</sup> Chapter 2008-64, L.O.F., codified at s. 466.0067, F.S.

<sup>216</sup> *Supra* note 104.

<sup>217</sup> Section 466.0067, F.S.

- Submits proof that he or she has been actively engaged in the clinical practice of dentistry providing direct patient care for the five years immediately preceding application, or proof of continuous clinical practice providing direct patient care since graduation if the applicant graduated less than 5 years from his or her application.

Health access dental licenses must be renewed biennially<sup>218</sup>. A licensee must meet the same continuing education requirements as a Florida-licensed dentist.<sup>219</sup> Additionally, a licensee must continue to meet all the requirements for initial licensure.<sup>220</sup> DOH is authorized to establish application, examination, initial licensure, and licensure renewal fees for health access dental licenses.<sup>221</sup>

The Board may revoke a health access dental license if the licensee is terminated from employment at the health access setting, practices outside of the health access setting, fails the Florida dental examination, or is found to have violated the Dental Practice Act.<sup>222</sup>

Sections 466.067 through 466.00673, F.S., established the authority for Board to issue health access dental licenses. Section 466.00673, F.S., repeals the statutory authority for the health access dental license on January 1, 2020, if not reenacted by the Legislature. The Board's authority to issue such licenses was automatically repealed as the Legislature failed to reenact that authority by January 1, 2020.<sup>223</sup> Section 466.00673, F.S., also provides that any health access dental license that was issued before January 1, 2020, remains valid;<sup>224</sup> however, this provision authorizing the continued validity of the license was also repealed on that date.

The Board no longer has legal authority to issue or renew initial health access dental licenses. However, the Board was processing license renewals through February 28, 2020, without legal authority.<sup>225</sup>

### *Adverse Incident Reporting*

Dentists and dental hygienists certified by DOH to administer anesthesia must report, in writing, any adverse incident to the Board of Dentistry within 48 hours by registered mail.<sup>226</sup> An adverse incident in an office setting is defined as any mortality that occurs during or as the result of a dental procedure, or an incident that results in a temporary or permanent physical or mental injury the requires hospitalization or emergency room treatment of a patient as a direct result of the use of general anesthesia,<sup>227</sup> deep sedation,<sup>228</sup> moderate sedation,<sup>229</sup> pediatric moderate sedation,<sup>230</sup> minimal

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<sup>218</sup> Section 466.00671, F.S.

<sup>219</sup> Id.

<sup>220</sup> Id.

<sup>221</sup> Sections 466.0067(2) and 466.0067(1)(c), F.S.

<sup>222</sup> Section 466.00672, F.S.

<sup>223</sup> Section 466.00673, F.S.

<sup>224</sup> Id.

<sup>225</sup> Department of Health, Florida Board of Dentistry, *Health Access Dentist*, available at <https://floridasdentistry.gov/renewals/health-access-dentist/> (last visited January 21, 2020).

<sup>226</sup> Rule 64B5-14.006, F.A.C.

<sup>227</sup> General anesthesia is a controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command. (Rule 64B5-14.001(2), F.A.C.)

<sup>228</sup> Deep sedation is a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including either or both the inability to continually maintain an airway independently or to respond appropriately to physical stimulation or verbal command, produced by pharmacologic or non-pharmacologic method or combination thereof. (Rule 64B5-14.001(3), F.A.C.)

<sup>229</sup> Moderate sedation is a depressed level of consciousness produced by the administration of pharmacologic substances, that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. (Rule 64B5-14.001(4), F.A.C.)

<sup>230</sup> Pediatric moderate sedation is a depressed level of consciousness produced by the administration of pharmacologic substances, that retains a child patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command. (Rule 64B5-14.001(5), F.A.C.)

sedation,<sup>231</sup> nitrous oxide,<sup>232</sup> or local anesthesia.<sup>233</sup> The dentist must file a complete written report with the Board of Dentistry within 30 days.<sup>234</sup>

Allopathic and osteopathic physicians are statutorily required to report adverse incidents in office practice settings.<sup>235</sup> Although required by rule, there is no statutory requirement that dentists or dental hygienists report any adverse incidents, whether related or unrelated to anesthesia, that occur in the office practice settings.

### *Dental Laboratories*

A dental laboratory is a facility that supplies or manufactures artificial substitutes for natural teeth, or that furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, or appliance to be worn in the human mouth or that otherwise holds itself out as a dental laboratory.<sup>236</sup> Dental laboratories must biennially register with DOH, and the owner or at least one employee must complete 18 hours on continuing education each biennium.<sup>237</sup> A dental laboratory must:<sup>238</sup>

- Maintain and make available to DOH a copy of the laboratory's registration;
- Be clean and in good repair;
- Properly dispose of all waste materials at the end of each day in accordance with local restrictions;
- Maintain the original or a copy of a prescription from a dentist for each appliance or artificial restorative oral device authorizing its construction or repair for 4 years;
- Maintain a written policy and procedure manual on sanitation; and
- Have a designated receiving area.

A dental laboratory may not have dental chairs, x-ray machines, or anesthetics, sedatives, or medicinal drugs.<sup>239</sup> A dental laboratory may not solicit or advertise to the general public.<sup>240</sup>

DOH inspects dental laboratories at least once each year, and such inspections may occur with or without notice.<sup>241</sup>

## Effect of Proposed Changes – Dentistry

### *Dental Licensure*

Current law requires a dental licensure applicant who does not attend an accredited dental school to submit proof of completing at least 2 academic years at a full-time supplemental general dentistry program approved by the American Dental Association.<sup>242</sup> The bill clarifies that a supplemental dentistry program does not include an advanced dental education program in a dental specialty.

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<sup>231</sup> Minimal sedation involves the perioperative use of medication to relieve anxiety before or during a dental procedure and does not produce a depressed level of consciousness and maintains the patient's ability to maintain an airway independently and to respond appropriately to physical and verbal stimulation. (Rule 64B5-14.001(10), F.A.C.)

<sup>232</sup> The use of nitrous oxide produces an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command. (Rule 64B5-14.001(6), F.A.C.)

<sup>233</sup> Local anesthesia involves the loss of sensation of pain in a specific area of the body. (Rule 64B5-14.001(7), F.A.C.)

<sup>234</sup> *Supra* note 226.

<sup>235</sup> See ss. 458.351 and 459.026, F.S.

<sup>236</sup> Section 466.031, F.S.

<sup>237</sup> Section 466.032, F.S. However, dental laboratories that are located in another state or country that provides services to a Florida-licensed dentist is not required to register with the state and may provide services to a dentist in this state.

<sup>238</sup> Rule 64B27-1.001, F.A.C.

<sup>239</sup> *Id.* Personal prescriptions are permissible.

<sup>240</sup> Section 466.035, F.S.

<sup>241</sup> Rule 64B27-1.001(1), F.S.

<sup>242</sup> Section 466.006(3)(b), F.S.

The bill repeals a requirement that a Florida-licensed dentist grade the American Dental Licensing Examination, and that either a Florida-licensed dentist or dental hygienist grade Dental Hygienist Examination produced by the American Board of Dental Examiners, Inc., for applicants for licensure in this state. Under the bill, dentists or dental hygienists licensed in other states may grade such licensure examinations.

#### *Health Access Dental Licenses*

The bill revives and reenacts the statutory authority for health access dental licenses retroactively to January 1, 2020, and repeals the obsolete language setting the January 1, 2020, sunset of health access dental licenses. This gives DOH and the Board of Dentistry the statutory authority to resume issuing and renewing such licenses, and allows the program to continue as if it had not expired on January 1, 2020.

#### *Dental Adverse Incidents*

Dentists and dental hygienists are currently required to submit adverse incidents related to the administration of anesthesia under rules adopted by the Board of Dentistry. The bill statutorily requires a dentist to report an anesthesia-related adverse incident that occurs in his or her office to DOH in writing by certified mail and postmarked within 48 hours after the incident occurs. The bill defines an adverse incident as any death that occurs during or as a result of a dental procedure, or a temporary or permanent physical or mental injury that requires hospitalization or emergency room treatment as a result of the use of general anesthesia, deep sedation, conscious sedation, pediatric conscious sedation, oral sedation, minimal sedation, nitrous oxide, or local anesthesia. This has no practical effect on the responsibilities of a dentist or dental hygienist to report adverse incidents to the Board of Dentistry, because it merely codifies current rule requirements.

The bill also requires a dentist to report any death or other adverse incident that occurs in the dentist's outpatient facility to the Board of Dentistry in writing by certified mail within 48 hours of such occurrence. Within 30 days, the dentist must file a complete report with the Board of Dentistry.

The bill requires a registered dental hygienist who holds a certificate to administer local anesthesia to notify the Board of Dentistry in writing by registered mail within 48 hours of an adverse incident that was related to or the result of the administration of local anesthesia. The dental hygienist must file a complete report with the Board of Dentistry within 30 days.

DOH must review each adverse incident report to determine whether the incident involved conduct by a health care practitioner that warrants disciplinary action by the applicable regulatory board. A dentist or dental hygienist who fails to timely and completely report adverse incidents as required is subject to disciplinary action by the Board of Dentistry.

#### *Dental Laboratories*

The bill authorizes an employee or independent contractor of a dental laboratory to engage in onsite consultations with a dentist during a dental procedure if such person is acting as an agent of the dental laboratory. The bill also requires DOH to inspect dental laboratories biennially, rather than annually as currently required by rule.

### **Athletic Trainers**

#### Current Situation

Athletic trainers provide service and care to individuals related 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.<sup>243</sup> To be licensed as an athletic trainer, an applicant must:<sup>244</sup>

- Hold a bachelor's degree or higher from an accredited athletic training degree program and pass the national examination to be certified by the Board of Certification;<sup>245</sup>
- If graduated before 2004, hold a current certification from the Board of Certification;
- Hold a current certification in both cardiopulmonary resuscitation and the use of an automated external defibrillator at the professional rescue level; and
- Pass a background screening.

Prior to 2004, athletic trainers could complete a training through an internship program approved by the Board of Certification and it was deemed sufficient for licensure.<sup>246</sup> Colleges and universities have established athletic training programs since 2004.<sup>247</sup> Licensure now requires all applicants to graduate from an accredited program offered at a college or university. Individuals who complete an approved internship and hold a current certification from the Board of Certification, but do not hold a bachelor's degree from an accredited athletic training program, do not qualify for licensure.

An athletic trainer must renew his or her license biennially. During each biennial renewal period, an athletic trainer must complete at least 24 hours of continuing education, hold a current certification in both cardiopulmonary resuscitation and the use of an automated external defibrillator, and a current certification from the Board of Certification.<sup>248</sup> Although licensees must show current certification from the Board of Certification, there is no statutory requirement that a licensee maintain such certification without lapse and in good standing.

To maintain certification from the Board of Certification, an athletic trainer must:<sup>249</sup>

- Adhere to the Board of Certification standards of professional practice;
- Demonstrate ongoing certification in emergency cardiac care;
- Pay certification maintenance fees; and
- Biennially complete 50 hours of continuing education.

An athletic trainer must practice under the direction of an allopathic, osteopathic, or chiropractic physician,<sup>250</sup> and may provide care such as:<sup>251</sup>

- Injury prevention, recognition, and evaluation;
- First aid and emergency care;
- Injury management and treatment;
- Rehabilitation through the use of safe and appropriate physical rehabilitation practices;
- Conditioning;
- Performance of tests and measurements to prevent, evaluate, and monitor acute and chronic injuries;
- Therapeutic exercises;

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<sup>243</sup> Section 468.701(2), F.S.

<sup>244</sup> Section 468.707, F.S.

<sup>245</sup> The Board of Certification, Inc., is a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. See Board of Certification for the Athletic Trainer, *What is the BOC?*, available at <http://www.bocatc.org/about-us#what-is-the-boc> (last visited December 2, 2019).

<sup>246</sup> Department of Health, *2020 Agency Legislative Bill Analysis for HB 485*, (Jan. 9, 2020), on file with the Health Quality Subcommittee.

<sup>247</sup> Id.

<sup>248</sup> Section 468.711, F.S.

<sup>249</sup> Board of Certification, *Certification Maintenance Requirements for Certified Athletic Trainers*, available at <https://online.flowpaper.com/7f6907b2/201819CertMaintenanceRequirements/#page=1> (last visited January 14, 2020).

<sup>250</sup> Section 468.713, F.S.

<sup>251</sup> Rule 64B33-4.001, F.A.C.

- Massage;
- Cryotherapy and thermotherapy;
- Therapy using other agents such as water, electricity, light, or sound; and
- The application of topical prescription medications at the direction of a physician.

The physician must communicate direction through oral or written prescriptions or protocols, and the athletic trainer must provide service or care in the manner dictated by the physician.<sup>252</sup> A licensed athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or service that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.<sup>253</sup>

### Effect of Proposed Changes – Athletic Trainers

The bill requires athletic trainers to work within the scope of practice defined by the Board of Athletic Training in rule. The bill adds another route to licensure by authorizing individuals who hold any bachelor's degree, including those not obtained from an accredited athletic training degree program, to complete an internship approved by the Board of Certification and hold a certification from the Board of Certification to be eligible for licensure.

The bill establishes that a licensed athletic trainer must maintain the certification from the Board of Certification in good standing to be eligible for licensure renewal. The bill authorizes the Board of Athletic Training to establish rules for the supervision of an athletic training student.

## **Orthotists and Prosthetists**

### Current Situation

The Board of Orthotists and Prosthetists oversees the licensure and regulation of orthotists<sup>254</sup> and prosthetists.<sup>255</sup> A person applying for licensure must first apply to DOH to take the appropriate licensure examination. The board may accept the exam results of a national orthotic or prosthetic, standards organization in lieu of administering the state exam.<sup>256</sup> The board must verify that an applicant for licensure examination meets the following requirements:<sup>257</sup>

- Has completed the application form and paid all applicable fees;
- Is of good moral character;
- Is 18 years of age or older;
- Has completed the appropriate educational preparation, including practical training requirements; and
- Has successfully completed an appropriate clinical internship in the professional area for which the license is sought.

In addition to the requirements listed above, an applicant must meet the following requirements for each license sought:<sup>258</sup>

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<sup>252</sup> *Supra* note 250.

<sup>253</sup> Section 468.701(1), F.S.

<sup>254</sup> An orthotist is a health care professional who evaluates, formulates treatment, measures, designs, fabricates, assembles, fits, adjusts, services, or provides necessary training to accomplish the fitting of an orthosis or a pedorthic device (s. 468.80(9)-(10), F.S.)

<sup>255</sup> An prosthetist is a health care professional who evaluates, formulates treatment, measures, designs, fabricates, assembles, fits, adjusts, services, or provides necessary training to accomplish the fitting of a prosthesis (s. 468.80(15)-(16), F.S.)

<sup>256</sup> Section 468.803(4), F.S. The Board has approved the American Board for Certification in Orthotics, Prosthetics, and Pedorthics (ABC) exam for orthotist and prosthetist applicants (r. 64B14-4.001, F.A.C.)

<sup>257</sup> Section 468.803(2), F.S.

<sup>258</sup> Section 468.803(5), F.S. Licenses must be renewed biennially.

- A Bachelor of Science degree in Orthotics and Prosthetics from a regionally accredited college or university from an accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree with a certificate in orthotics or prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent;
- An internship of one year of qualified experience or a residency program recognized by the board;
- Completion of the mandatory classes;<sup>259</sup> and
- Passage of the state orthotic examination or board-approved orthotic examination if applying for an orthotist license, or the state prosthetic examination or board-approved examination if applying for a prosthetist license.

Currently, a person who qualifies to be registered as both an orthotist and a prosthetist must obtain two separate registrations.

### Effect of Proposed Changes – Orthotists and Prosthetists

The bill authorizes the Board of Orthotists and Prosthetists to issue a single registration for prosthetics and orthotics practice. Currently, an individual practicing in both areas must hold two separate registrations: one as a prosthetist and one as an orthotist. For purposes of resident registration, DOH may recognize a dual certificate in prosthetics and orthotics for an applicant who holds a bachelor's degree from a regionally accredited college or university. The bill also authorizes the completion of a dual residency program to qualify for the licensure examination.

## **Massage Therapy**

### Current Situation

#### *Massage Therapists*

To be licensed as a massage therapist, an applicant must:<sup>260</sup>

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a board-approved massage school or apprentice program;
- Pass a board-approved examination;<sup>261</sup> and
- Pass a background screening.

In the 2017-2018 fiscal year, 3,380 individuals were granted licensure, 13 of which qualified for licensure by completing an approved Florida apprenticeship program.<sup>262</sup> Massage therapy education has become more formalized and massage therapists are trained in licensed massage schools. Florida is one of a very small number of states that continue to allow apprenticeship as an acceptable course of study for licensure as a massage therapist.<sup>263</sup>

#### *Colonic Irrigation Apprenticeship Programs*

<sup>259</sup> Pursuant to r. 64B14-5.005, F.A.C., mandatory courses include two hours on Florida laws and rules, two hours on the prevention of medical errors, one hour on infection disease control, and a CPR certification course.

<sup>260</sup> Section 480.041, F.S. DOH must deny an application if the applicant has been convicted or found guilty of, or entered a plea of nolo contendere to a crime related to prostitution or a felony offense related to certain other crimes.

<sup>261</sup> In r. 64B27-25.001(3), F.A.C., the Board of Massage Therapy has approved the following national licensure examinations: Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards, National Certification Board for Therapeutic Massage and Bodywork Examination, National Certification Examination for Therapeutic Massage, National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork, and for colonic irrigation, The National Board for Colon Hydrotherapy Examination.

<sup>262</sup> *Supra* note 210.

<sup>263</sup> Department of Health, *2019 Agency Legislative Analysis for HB 7031*, on file with the Health Quality Subcommittee.

A massage therapist, a massage apprentice, or a student in a board-approved massage therapy school may study colonic irrigation<sup>264</sup> under the direct supervision of a sponsor.<sup>265</sup> The sponsor must be licensed to practice massage, authorized to practice colonic irrigation, and have practiced colonic irrigation for at least 3 years.<sup>266</sup> The apprenticeship must be completed within 12 months of commencement<sup>267</sup> and must consist of a minimum of 100 hours of training, including 45 hours of clinical practicum with a minimum of 20 treatments given.<sup>268</sup> Few schools in Florida offer a colonic irrigation program so apprenticeships are the primary method of training. There are 21 individuals certified to complete an apprenticeship in colonic irrigation.<sup>269</sup>

### Effect of Proposed Changes – Massage Therapy

The bill limits apprenticeships to only those in colonic irrigations. A licensed massage therapist practicing colonic irrigation must supervise a colonic irrigation apprentice. The bill eliminates a massage therapy apprenticeship as a path to licensure. However, if an individual has been issued a license as a massage therapy apprentice before July 1, 2020, he or she may continue to perform massage therapy until the license expires. A massage therapist apprentice may apply for full licensure upon completion of the apprenticeship and before July 1, 2023.

The bill authorizes the Board of Massage Therapy to designate a national examination for licensure and repeals provisions requiring DOH to develop a licensure examination.

## **Psychologists**

### Current Situation

The Board of Psychology oversees the licensure and regulation of psychologists.<sup>270</sup> To receive a license to practice psychology, an individual must:<sup>271</sup>

- Meet one of the following educational requirements:
  - Received a doctoral-level psychological education from an accredited school in the United States or Canada and a psychology program within that institution that is accredited from an agency recognized and approved by the U.S. Department of Education;<sup>272</sup>
  - Received the equivalent of a doctoral-level education from a program at a school or university located outside of the United States or Canada, which is officially recognized by the government of the country in which it is located as a program or institution to train students to practice professional psychology;
  - Received and submitted, prior to July 1, 1999, certification of an augmented doctoral-level psychological education from a doctoral-level psychology program accredited by an agency recognized and approved by the U.S. Department of Education; or
  - Received and submitted, prior to August 31, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training of a doctoral-level psychology program accredited by an agency recognized and approved by the U.S. Department of Education;

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<sup>264</sup> Colonic irrigation is a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water (s. 480.033(6), F.S.).

<sup>265</sup> Rule 64B7-29.001, F.A.C.

<sup>266</sup> Id.

<sup>267</sup> Rule 64B7-29.007, F.A.C.

<sup>268</sup> Rule 64B7-25.001, F.A.C.

<sup>269</sup> *Supra* note 210.

<sup>270</sup> Section 490.004, F.S.

<sup>271</sup> Section 490.005(1), F.S.

<sup>272</sup> Section 490.003(3), F.S., defines doctoral-level education as a Psy.D, an Ed.D., or a Ph.D in psychology.

- Complete 2 years or 4,000 hours of supervised experience;
- Pass the Examination for Professional Practice in Psychology;<sup>273</sup> and
- Pass an examination on Florida laws and rules.

The American Psychological Association (APA) is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation as the national accrediting authority for professional education and training in psychology.<sup>274</sup> The APA no longer accredits programs in Canada.<sup>275</sup>

An applicant who holds an active, valid license in another state may also qualify for licensure in this state if at the time the license was issued, the requirements were substantially equivalent to or more stringent than those in Florida at that time.<sup>276</sup> Such individuals must have 20 years of experience as a licensed psychologist in any jurisdiction of the U.S. within the 25 years preceding the date of application. DOH indicates that under this standard, a law-to-law comparison is difficult and applicants who may otherwise qualify for licensure may be denied.<sup>277</sup>

### Effect of Proposed Changes – Psychologists

The bill requires psychology programs within educational institutions to be accredited by the American Psychological Association (APA), which is recognized as the national accrediting authority for professional education and training in psychology by the U.S. Department of Education and the Council for Higher Education Accreditation.<sup>278</sup> The bill replaces references to the Commission on Recognition of Postsecondary Accreditation with references its successor organization, the Council for Higher Education Accreditation.<sup>279</sup> For applicants for licensure who obtained their education in Canada, the bill requires those applicants to demonstrate that they have completed a program comparable to APA-accredited programs.

The bill repeals a provision that allowed an applicant for licensure by endorsement to hold a license from another state that has licensure standards that are equivalent or more stringent than Florida to qualify for licensure. However, an individual may apply for licensure by endorsement if he or she has a doctoral degree in psychology and has practiced for at least 10 years of the last 25 years, rather than 20 years as required in current law.

The bill repeals obsolete provisions related to applicants for licensure prior to July 1, 1999.

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

### Current Situation

#### *Intern Registration*

To be licensed as a clinical social worker, marriage and family therapist, or mental health counselor, an applicant must meet educational requirements, complete at least 2 years of postgraduate or postmaster's clinical practice supervised by a licensed practitioner, and pass a theory and practice examination.<sup>280</sup> During the time in which an applicant is completing the required supervised clinical

<sup>273</sup> Rule 64B19-11.001, F.A.C.

<sup>274</sup> American Psychological Association, *Understanding APA Accreditation*, available at <http://www.apa.org/ed/accreditation/about/index.aspx> (last visited December 2, 2019).

<sup>275</sup> *Supra* note 210 at p. 5.

<sup>276</sup> Section 490.006, F.S.

<sup>277</sup> *Supra* note 210 at p. 5.

<sup>278</sup> American Psychological Association, *Understanding APA Accreditation*, available at <http://www.apa.org/ed/accreditation/about/index.aspx> (last visited January 21, 2019).

<sup>279</sup> U.S. Department of Education, *Accreditation in the U.S.*, available at <https://www2.ed.gov/admins/finaid/accred/accredus.html> (last visited January 21, 2019).

<sup>280</sup> Section 491.005, F.S. A procedure for licensure by endorsement is provided in s. 491.006, F.S.

experience or internship, he or she must register with DOH as an intern.<sup>281</sup> The supervised clinical experience may be met by providing at least 1,500 hours of face-to-face psychotherapy with clients, which may not be accrued in less than 100 weeks.<sup>282</sup>

An applicant seeking registration as an intern must:<sup>283</sup>

- Submit a completed application form and the nonrefundable fee to DOH;
- Meet education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

An intern registration expires 60 months after the date of issue and may only be renewed if the candidate has passed the theory and practice examination required for full licensure.<sup>284</sup> DOH has no authority to extend an intern registration beyond the 60 months if there are extenuating circumstances.

### *Marriage and Family Therapists*

Marriage and family therapy incorporates scientific and applied marriage and family theories, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.<sup>285</sup> An applicant seeking licensure as a mental health counselor must:<sup>286</sup>

- Possess a master's degree from an accredited program;
- Complete 36 semester hours of graduate coursework that includes a minimum of 3 semester hours of graduate-level coursework in:
  - The dynamics of marriage and family systems;
  - Marriage therapy and counseling theory;
  - Family therapy and counseling theory and techniques;
  - Individual human development theories throughout the life cycle;
  - Personality or general counseling theory and techniques;
  - Psychosocial theory; and
  - Substance abuse theory and counseling techniques.
- Complete at least one graduate-level course of 3 semester hours in legal, ethical, and professional standards;
- Complete at least one graduate-level course of 3 semester hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction;
- Complete at least one graduate-level course of 3 semester hours in behavioral research;
- Complete at least one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services;
- Complete two years of post-master's supervised experience under the supervision of a licensed marriage and family therapist with five years of experience or the equivalent who is a qualified supervisor as determined by the board;
- 
- Pass a board-approved examination; and

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<sup>281</sup> Section 491.0045, F.S.

<sup>282</sup> Rule 64B4-2.001, F.A.C.

<sup>283</sup> Section 491.0045(2), F.S.

<sup>284</sup> Section 491.0045(6), F.S.

<sup>285</sup> Id.

<sup>286</sup> Section 491.005(3), F.S. An individual may qualify for a dual license in marriage and family therapy if he or she passes an examination in marriage and family therapy and has held an active license for at least three years as a psychologist, clinical social worker, mental health counselor, or advanced registered nurse practitioner who is determined by the Board of Nursing to be a specialist in psychiatric mental health (s. 491.0057, F.S.)

- Demonstrate knowledge of laws and rules governing the practice.

DOH must verify that an applicant's education matches the specified courses and hours as outlined in statute. However, there are organizations that accredit marriage and family therapy education programs, including the Commission on Accreditation for Marriage and Family Therapy Education and the Council for the Accreditation of Counseling and Related Educational Programs that establish the minimum standards to meet the requirements to practice the profession.<sup>287</sup>

### *Mental Health Counselors*

A mental health counselor uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development and is based on research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.<sup>288</sup> To qualify for licensure as a mental health counselor, an individual must:<sup>289</sup>

- Have a master's degree from a mental health counseling program accredited by the Council of the Accreditation of Counseling and Related Educational Programs, or a program related to the practice of mental health counseling that includes coursework and a 1,000-hour practicum, internship, or fieldwork of at least 60 semester hours that meet certain requirements;
- Have at least two years of post-master's supervised clinical experience in mental health counseling;
- Pass an examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors; and
- Pass an eight-hour course on Florida laws and rules approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.<sup>290</sup>

Currently, an applicant for a mental health counselor license must, by rule, pass the National Clinical Mental Health Counseling Examination. Current law refers to an outdated mental health counseling examination.

### Effect of Proposed Changes - Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

#### *Intern Registration*

The bill authorizes the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to make a one-time exception to the 60-month limit on an internship registration. Such exceptions may only be granted in an emergency or hardship case, as defined by rule. The bill does not establish a defined duration for the exception. The bill deletes obsolete language related to biennial renewals of intern registrations.

#### *Marriage and Family Therapists*

The bill requires an applicant for licensure to hold a master's degree with an emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education or a Florida university program accredited by the Council for Accreditation of

<sup>287</sup> See Commission on Accreditation for Marriage and Family Therapy Education, *What Are the Benefits of COAMFTE Accreditation*, available at [https://www.coamfte.org/COAMFTE/Accreditation/About\\_Accreditation.aspx](https://www.coamfte.org/COAMFTE/Accreditation/About_Accreditation.aspx) (last visited December 2, 2019), and Council for the Accreditation of Counseling and Related Educational Programs, *About CACREP*, available at <https://www.cacrep.org/about-cacrep/> (last visited December 2, 2019).

<sup>288</sup> Sections 491.003(6) and (9), F.S.

<sup>289</sup> Section 491.005(4), F.S.

<sup>290</sup> Section 491.005(4), F.S., and r. 64B4-3.0035, F.A.C.

Counseling and Related Educational Programs. An applicant may also qualify for licensure if he or she holds a master's degree in a closely related field and has completed graduated courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The bill eliminates specified coursework and clinical experience required for licensure that is currently enumerated in statute.

To be licensed as a marriage and family therapist, s. 491.005(3), F.S., requires an applicant to complete two years of clinical experience. However, later in the same paragraph, it states the clinical experience required is three years. The bill corrects the scrivener's error in the paragraph to clarify that two years of clinical experience is required for licensure.

#### *Licensed Mental Health Counselors*

The bill updates the name of the organization that administers the licensure examination for mental health counseling licensure applicants to the National Board for Certified Counselors or its successor. This will conform the law to current practice.<sup>291</sup> The bill revises the content areas that must be included in educational programs used to qualify for licensure to include substance abuse; legal, ethical, and professional standards issues in the practice of mental health counseling; and diagnostic processes.

The bill reduces the number of hours required for the clinical practicum or internship from 1,000 hours to 700 hours to conform the number of hours to the accreditation standards established by the Council for Accreditation of Counseling and Related Educational Programs. The bill requires the clinical practicum or internship to include at least 280 hours of direct client services.

The bill requires that applicants who apply for licensure after July 1, 2025, to hold a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs.

#### *Licensure by Endorsement*

The bill repeals educational requirements for applicants for licensure by endorsement. Such applicant qualifies for licensure if he or she holds a valid, active license to practice in another state for 3 of the 5 years preceding the date of application, passes an equivalent licensure examination, and is not under investigation for and has not been found to have committed any act that would constitute a licensure violation in Florida.

The bill clarifies that DOH may deny or impose penalties on the license of a certified master social worker who violates the practice act or ch. 456, F.S., the general regulatory statute by deleting an inaccurate reference to psychologists. This will alleviate confusion regarding the authority of DOH to impose such discipline or deny a license.

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<sup>291</sup> *Supra* note 210.



## Direct Care Workers

### Current Situation

Direct care workers assist older individuals and those with disabilities with daily tasks, such as dressing, bathing, and eating.<sup>292</sup> They work in many different settings, such as private homes, group homes, residential care facilities, assisted living facilities, skilled nursing facilities, and hospitals.<sup>293</sup> Direct care workers account for 70 to 80 percent of all paid hands-on long-term care and personal assistance for the elderly or disabled.<sup>294</sup>

#### *Nursing Assistants or Nursing Aides*

Nursing assistants or nursing aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals.<sup>295</sup> The Florida Board of Nursing, within the Department of Health, certifies nursing assistants (CNAs) who must, among other things, hold a high school diploma or equivalent, complete a 120-hour board-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.<sup>296</sup> A CNA must biennially complete 24 hours of inservice training to maintain certification.<sup>297</sup>

The Board of Nursing establishes the general scope of practice for CNAs. A CNA performs services under the general supervision<sup>298</sup> of a registered nurse or licensed practical nurse.<sup>299</sup> A CNA may perform the following services:<sup>300</sup>

- Personal care services, such as bathing, dressing grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;
- Nutrition and hydration tasks, such a feeding or assisting with eating and drinking;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices;
- Maintaining the environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood, pressure, height, and weight;
- Reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with end of life care;
- Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques;
- Performing basic first aid, CPR, and emergency care; and

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<sup>292</sup> Paraprofessional Healthcare Institute, *Understanding the Direct Care Workforce*, available at <https://phinational.org/policy-research/key-facts-faq/> (last visited January 20, 2020).

<sup>293</sup> Paraprofessional Healthcare Institute, *Direct Care Workforce 2018 Year in Review*, <https://phinational.org/resource/the-direct-care-workforce-year-in-review-2018/> (last visited January 14, 2020), and Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?* <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited January 14, 2020).

<sup>294</sup> *Id.*

<sup>295</sup> Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?*, (Feb. 2011), available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited January 14, 2020).

<sup>296</sup> Section 464.203, F.S., and r. 64B9-15.006, F.A.C. Eighty hours must be classroom instruction and 40 hours must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home. 42 C.F.R. § 483.95 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.

<sup>297</sup> Section 464.203(7), F.S.

<sup>298</sup> Under general supervision, the registered nurse or licensed practical nurse does not need to be present but must be available for consultation and advice, either in person or by a communication device. Rule 64B9-15.001(5), F.A.C

<sup>299</sup> Rule 64B9-15.002, F.A.C.

<sup>300</sup> *Supra* note 299.

- Documentation of CNA services provided to the resident.

A CNA may not work independently and may not may not perform any tasks that require specialized nursing knowledge, judgment, or skills.<sup>301</sup>

### *Home Health Aides*

Home health aides (HHAs) provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or a physical, speech, occupational, or respiratory therapist.<sup>302</sup> In Florida, HHAs are not licensed or certified. However, the Agency for Health Care Administration (AHCA) licenses home health agencies and establishes training requirements for HHAs employed by home health agencies. A HHA must complete at least 75 hours of training and/or successfully pass a competency evaluation by the home health agency.<sup>303</sup> HHAs who work for a home health agency that is not certified by Medicare or Medicaid or who work for a nurse registry must complete 40 hours of training or pass an AHCA-developed competency examination.<sup>304</sup>

AHCA establishes the scope of practice for HHAs performing services under a licensed home health agency. A HHA performs services delegated by and under the supervision of a registered nurse, which include:<sup>305</sup>

- Assisting the patient or client with personal hygiene, ambulation, eating, dressing, shaving, physical transfer, and other personal care activities;
- Maintaining a clean, safe, and healthy environment, including light housekeeping;
- Activities taught by a licensed health professional for a specific patient or client and restricted to:
  - Toileting;
  - Assisting with tasks related to elimination;
  - Assisting with the use of devices for aid to daily living, such as a wheelchair;
  - Assisting with prescribed range of motion exercises;
  - Assisting with prescribed ice cap or collar;
  - Doing simple urine tests for sugar, acetone, or albumin;
  - Measuring and preparing special diets; and
- Assisting with self-administration of medication.

A HHA may not change sterile dressings, irrigate body cavities, irrigate a colostomy or wound, perform gastric irrigation or enteral feeding, catheterize a patient, administer medication, apply heat by any method, care for a tracheotomy tube, or any services not included in the patient's plan of care.<sup>306</sup>

### *Personal Care Assistants*

Personal care assistants (PCAs) work in either private or group homes.<sup>307</sup> They have many titles, including personal care attendant, home care worker, homemaker/companion, and direct support professional.<sup>308</sup> The latter specifically work with people with intellectual and developmental disabilities. In addition to providing assistance with activities of daily living, they also help individuals go to work and

<sup>301</sup> *Supra* note 299.

<sup>302</sup> *Supra* note 295. If the only service the home health agency provides, is physical, speech, or occupational therapy, in addition to the home health aide or CNA services, the licensed therapist may provide supervision.

<sup>303</sup> Agency for Health Care Administration, *Home Health Aides*, available at

[https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Lab\\_HomeServ/HHA/Home\\_health\\_aides.shtml](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/HHA/Home_health_aides.shtml) (last visited January 20, 2020).

<sup>304</sup> Rules 59A-8.0095(5)

<sup>305</sup> *Id.*, and 64B9-15.002, F.A.C.

<sup>306</sup> Rule 59A-8.0095(5)(p), F.A.C.

<sup>307</sup> *Supra* note 295.

<sup>308</sup> *Id.*

remain engaged in their communities.<sup>309</sup> A growing number of these workers are employed and supervised directly by consumers.

There are no minimum training requirements for PCAs, and no agency directly regulates them. PCAs may be employed by or provide services through a home health agency or homemaker/companion agency, although some PCAs work independently and are directly supervised by the employing family or individual.

A PCA does not have a clearly defined scope of practice because it is not a state-regulated profession. However, the Florida Medicaid program defines personal care services as medically necessary assistance with activities of daily living to enable an individual to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.<sup>310</sup> Florida Medicaid authorizes the following personal care services for coverage in that program:<sup>311</sup>

- Bathing or assistance with bathing;
- Assistance with dressing, including application of prosthetic devices or therapeutic stockings;
- Grooming and skin care;
- Positioning;
- Transfers;
- Toileting and maintaining continence;
- Assistance with eating; and
- Non-skilled medical task delegated by a registered nurse, and may include assisting with pre-measured medications, monitoring vital signs, and measuring intake and output.

#### *Direct Care Workforce Challenges*

The federal Bureau of Labor Statistics estimate that home health aides and personal care assistants are in the top five occupations with the fastest job growth in the U.S. economy.<sup>312</sup> The demand for home health aides and nursing assistants is expected to increase by 34 percent by 2025.<sup>313</sup> However, the turnover rate in long term care is estimated to be between 45 to 66 percent.<sup>314</sup>

Many factors contribute to the high turnover rate, including compensation, lack of full-employment, and low job satisfaction.<sup>315</sup> Direct care workers also often have substantial family caregiving obligations, which adds to the stress of the job and contribute to the days missed from work.<sup>316</sup>

High turnover rates have a negative impact on both employers and patients. Turnover may have a negative impact on patient care and employers must incur costs for continuous recruitment and training of new employees.<sup>317</sup> Indirect costs to employers include lost productivity, lost revenue, and reduced

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<sup>309</sup> Id.

<sup>310</sup> Agency for Health Care Administration, Florida Medicaid, *Personal Care Services Coverage Policy*, (Nov. 2016), adopted in r. 59G-4.215, F.A.C.

<sup>311</sup> Id.

<sup>312</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, National Center for Health Workforce Analysis, *Long-Term Services and Supports: Direct Care Worker Demand Projections 2015-2030*, (March 2018), available at <https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/hrsa-ltts-direct-care-worker-report.pdf> (last visited January 14, 2020).

<sup>313</sup> Id.

<sup>314</sup> Kezia Scales, PhD, *Staffing in Long-Term Care is a National Crisis*, (June 8, 2018), available at <https://phinational.org/recruitment-retention-long-term-care-national-perspective/> (last visited January 14, 2020).

<sup>315</sup> Paul Osterman, WHO WILL CARE FOR US: LONG-TERM CARE AND THE LONG-TERM CARE WORKFORCE 3 (2017).

<sup>316</sup> U.S. Department of Health and Human Services, *Understanding Direct Care Workers: A Snapshot of Two of America's Most Important Jobs – Certified Nursing Assistants and Home Health Aides*, (March 2011), available at [https://www.ahcancal.org/quality\\_improvement/Documents/UnderstandingDirectCareWorkers.pdf](https://www.ahcancal.org/quality_improvement/Documents/UnderstandingDirectCareWorkers.pdf) (last visited January 20, 2020).

<sup>317</sup> Institute of Medicine, Committee on the Future Health Care Workforce for Older Americans, Board on Health Care Services, *Retooling for an Aging America: Building the Health Care Workforce*, (2008), available at [https://www.ncbi.nlm.nih.gov/books/NBK215401/pdf/Bookshelf\\_NBK215401.pdf](https://www.ncbi.nlm.nih.gov/books/NBK215401/pdf/Bookshelf_NBK215401.pdf) (last visited January 14, 2020).

service quality.<sup>318</sup> Employers must pay costs related to filling vacancies and training new employees. It is estimated that turnover costs direct care employers approximately \$4.1 billion per year.<sup>319</sup> Turnover can cause a break in continuity of care and a reduction in the quality of care, which may ultimately affect the patient's quality of life.<sup>320</sup>

Approximately two-thirds of HHAs and PCAs work part time.<sup>321</sup> This may be due to personal needs; however, many home care workers receive several assignments to work in a day the total of which does not amount to a full work day. For example, a HHA may be scheduled to see two separate clients for three hours each, but due to the time to travel between patients, the HHA is unable to achieve a full 8-hour work day. Many direct workers also face other obstacles to remaining in their jobs, including challenges with transportation, family commitments, or health care.<sup>322</sup> Some states or regions have launched matching service registries to make it easier for workers to find clients and build schedules to suit individual needs and commitments.<sup>323</sup>

Low job satisfaction, which in turn leads to higher turnover, results from inadequate training and lack of opportunities for advancement.<sup>324</sup> Many direct care workers chose the career because they wanted to help people, and this motivation also plays a role in retaining workers in direct care.<sup>325</sup> However, many direct care workers leave the career field for other entry-level jobs in the food and hospitality industry that pay similarly, are less mentally and physically strenuous, and provide opportunities for advancement.<sup>326</sup> In fact, one in four CNAs and one in five HHAs report that they are actively seeking another job.<sup>327</sup>

Direct care workers are also at an increased risk of work-related injuries.<sup>328</sup> Direct care workers have an injury rate of 144 injuries per 10,000 workers among PCAs, 116 among HHAs, and 337 among CNAs.<sup>329</sup> By contrast, the injury rate across all occupations is 100 per 10,000 workers.<sup>330</sup>

In order to meet the future demand for direct care worker, employers will need to consider options such as offering better compensation, full-time hours, better training and advancement opportunities, and improved working conditions.<sup>331</sup>

### Effect of Proposed Changes – Direct Care Workers

The bill requires AHCA to develop a webpage to provide information to patients and their families about direct care workers, which must include a description of:

- Each type of direct care worker, including any licensure or certification requirements;
- The services that each type of direct care worker typically provides; and

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<sup>318</sup> Dorie Seavey, Better Jobs Better Care, *The Cost of Frontline Turnover in Long-Term Care*, (Oct. 2004), available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/TOCostReport.pdf> (last visited January 25, 2020).

<sup>319</sup> *Supra* note 317.

<sup>320</sup> *Id.*

<sup>321</sup> Paraprofessional Healthcare Institute, *U.S. Home Care Workers: Key Facts*, available at [https://phinational.org/wp-content/uploads/2017/09/phi\\_homecare\\_factsheet\\_2017\\_0.pdf](https://phinational.org/wp-content/uploads/2017/09/phi_homecare_factsheet_2017_0.pdf) (last visited January 14, 2020).

<sup>322</sup> Paraprofessional Healthcare Institute, *Growing a Strong Direct Care Workforce: A Recruitment and Retention Guide for Employers*, available at <https://phinational.org/wp-content/uploads/2018/05/RRGuide-PHI-2018.pdf> (last visited January 20, 2020).

<sup>323</sup> Allison Cook, Paraprofessional Healthcare Institute, *Issue Brief: Localized Strategies for Addressing the Workforce Crisis in Home Care*, (Oct. 2019), available at <https://phinational.org/wp-content/uploads/2019/11/Localized-Strategies-2019-PHI.pdf> (last visited January 20, 2020).

<sup>324</sup> *Supra* note 316.

<sup>325</sup> *Supra* note 316, at p. 48.

<sup>326</sup> *Supra* note 317.

<sup>327</sup> *Id.*

<sup>328</sup> *Supra* note 316.

<sup>329</sup> Stephen Campbell, Paraprofessional Healthcare Institute, *Issue Brief: Workplace Injuries and the Direct Care Workforce*, (April 2018), available at <https://phinational.org/wp-content/uploads/2018/04/Workplace-Injuries-and-DCW-PHI-2018.pdf> (last visited January 20, 2020).

<sup>330</sup> *Id.*

<sup>331</sup> *Supra* note 321, at p. 8.

- The types of business relationships that each type of direct care worker has with a patient or patient's family, including the consumer's responsibilities for each type of business relationship;

The webpage must include a link to [www.floridahealthfinder.gov](http://www.floridahealthfinder.gov), a website operated by AHCA, which allows consumers to search for and locate direct care workers by county and statewide.

## Public Swimming Facilities

### Current Situation

Chapter 514, F.S., governs public swimming and bathing facilities. DOH and county health departments are jointly responsible for administering the permitting, safety, and sanitation regulations for public swimming pools set forth in this chapter.<sup>332</sup>

Those wishing to construct, develop, or modify a public swimming pool in Florida must submit an application for an operating permit before filing an application for a building permit under s. 553.79, F.S., which must include:<sup>333</sup>

- A description of the structure, its appurtenances, and its operation;
- A description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- The method and manner of water purification, treatment, disinfection, and heating;
- The safety equipment and standards to be used; and
- A copy of the final inspection from the local enforcement agency.

DOH is authorized to establish a schedule of fees for plan approval and permitting.<sup>334</sup> Operating permits must be renewed annually and may be transferred from one name or owner to another.<sup>335</sup> DOH may deny an application for a permit and may suspend or revoke a permit, or impose an administrative fine upon an existing licensee.<sup>336</sup>

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.<sup>337</sup> Any public swimming pool that presents a significant risk to public health by failing to meet sanitation and safety standards can be declared a public nuisance. DOH or a county health department can seek an injunction to stop these types of violations.<sup>338</sup>

DOH also adopted rules specific to its public swimming and bathing places responsibilities. Pool water must be free of coliform bacteria contamination, and must be kept free from sediment, floating debris, visible dirt and algae.<sup>339</sup> All pools must be equipped with safety drain outlet covers, a shepherd's hook securely attached to a one piece pole, at least one lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck, and safety lines.<sup>340</sup>

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<sup>332</sup> A "public swimming pool" or "pool" is a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee.

<sup>333</sup> Sections 514.03 and 514.031, F.S.

<sup>334</sup> Section 514.033, F.S.

<sup>335</sup> Section 514.031(2) and (3), F.S.

<sup>336</sup> Section 514

<sup>337</sup> Section 514.04, F.S.

<sup>338</sup> Section 514.06, F.S.

<sup>339</sup> See r. 64E-9.004, F.A.C.

<sup>340</sup> See r. 64E-9.008, F.A.C.

For water recreation attractions and special purpose pools, the recirculation-filtration system must achieve a minimum of one turnover every two hours for pools over two feet deep.<sup>341</sup> Interactive water features require maintenance of chemical feeders and an automatic skimmer system.<sup>342</sup>

Current law provides several exemptions from regulatory oversight by DOH for several types of pools including:<sup>343</sup>

- Private pools and water therapy facilities connected with facilities such as hospitals, medical doctors' offices, and licensed physical therapy establishments;
- Pools serving condominium or cooperative associations of more than 32 units and which are not rented for less than 60 days, except for water quality;
- A private pool used for private swimming lessons;
- Any pool serving a residential child care agency registered and exempt under s. 409.176, F.S.;
- A portable pool used for swimming lessons; and
- A temporary pool.

DOH may also grant variances from its own rules under certain circumstances and grant variance under the Florida Building Code under certain circumstances.<sup>344</sup>

### *Wave and Surf Pools*

The first wave pool originated in the 19<sup>th</sup> Century, in which a lake was electrified in order to create breaking waves.<sup>345</sup> Today, wave pools artificially generate waves through a variety of techniques, including compressed air, levers and paddles, plunger, and submerged blocks pulled along a track.<sup>346</sup> Wave pools can be found throughout the world, including in the United Kingdom, Australia, Spain, Brazil, Germany, and the United States. In the United States, wave pools are located in Texas, California, North Carolina, and Florida.

Wave pools are typically designed for swimming but some are expressly designed for surfing.<sup>347</sup> Surf pools can range in size from 1.5 to 6 acres<sup>348</sup> and generate much larger and consistent waves than a standard wave pool.<sup>349</sup>

### Effect of Proposed Changes – Swimming Pool Facilities

The bill authorizes local governments to develop a special use permitting process for surf pools. Surf pools that are larger than 4 acres that have obtained a local special use permit are exempt from DOH oversight. This exemption will exist until DOH adopts rules for the regulation and supervision of surf pools. The bill distinguishes surf pools from wave pools for the purposes of this exemption. It defines a surf pool as a pool designed to generate waves dedicated to the activity of surfing on a surfboard or an

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<sup>341</sup> Id.

<sup>342</sup> Id.

<sup>343</sup> Section 514.0115, F.S.

<sup>344</sup> See s. 514.0115, F.S.

<sup>345</sup> SurferToday, *A Brief History of Artificial Wave Pools*, available at <https://www.surfertoday.com/surfing/a-brief-history-of-artificial-wave-pools> (last visited March 1, 2020).

<sup>346</sup> Bryan Dickerson, *Guide to All the World's Wave Pool Technology*, WAVEPOOL MAG (Sept. 4, 2019), available at <https://wavepoolmag.com/learn-the-nuts-and-bolts-behind-todays-crop-of-wave-pools/> (last visited March 1, 2020); see generally SurferToday, *Map of Wave Pools, River Waves and Indoor Surfing Machines*, available at <https://www.surfertoday.com/wave-pools> (last visited March 1, 2020); see also Polin Wave Parks, *Wave Pools*, <https://www.polinwaveparks.com/wave-pools/detail.aspx> (last visited March 1, 2020).

<sup>347</sup> Id.

<sup>348</sup> Allison Pries, *American Dream's Indoor Wave Pool Opens Soon. Check Out Surfers Testing It Out.*, NJ.com, (Nov. 17, 2019), available at <https://www.nj.com/bergen/2019/11/american-dreams-indoor-wave-pool-opens-soon-check-out-surfers-testing-it-out.html> (last visited on March 1, 2020); see also Bryan Dickerson, *World's largest PerfectSwell to open in Richmond Virginia*, WAVEPOOL MAG, (Jan. 18, 2020), available at <https://wavepoolmag.com/worlds-largest-perfectswell-to-open-in-richmond-virginia/> (last visited on March 1, 2020).

<sup>349</sup> *Supra* note 346.

analogous surfing device commonly used in the ocean and intended for sport, as opposed to general play intent for wave pools, other large-scale public swimming pools, or other public bathing places. Under the bill, DOH retains the right to enter and examine a surf pool and the authority to seek an injunction to restrain a surf pool from operating if it poses a significant risk to public health.

Finally, the bill deletes obsolete language and makes other technical and conforming changes.

The bill provides an effective date of July 1, 2020, except those provisions relating to the retroactive reenactment of the health access dental licenses, which become effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DOH will experience a loss of revenue from biennial registration fees due to the deregulation of registered chiropractic assistants. The estimated biennial loss of revenue is approximately \$166,125.<sup>350</sup> However, the loss of revenue will be offset by eliminating the cost of registering chiropractic assistants.

DOH may experience a loss of revenue due to the authorization of a single prosthetist-orthotist registration. It is unknown how many single registrations may be issued but it is estimated the loss of revenue will be insignificant.

#### 2. Expenditures:

The bill will have an insignificant, negative fiscal impact on DOH related to various rulemaking provisions. The bill authorizes DOH, or the appropriate regulatory board, to adopt or amend rules related to emergency medical transportation services, Conrad 30 Waiver program, general licensure requirements, medical faculty certificates, dermatology, osteopathic physician licensure, disciplinary guidelines and standards of practice for CNAs, dental licensure, athletic trainer licensure and supervision, massage therapy, psychology, licensed clinical social work, marriage and family therapy, and mental health counseling. Additionally, DOH will need to repeal adopted rules related to the deregulation of registered chiropractic assistants. Current resources are adequate to absorb these costs.

DOH may experience an increase in workload related to reviewing and investigating dental adverse incidents for disciplinary action. It is unknown how many adverse incidents may be reported, however, current resources are estimated to be adequate to absorb these costs.

DOH will experience a reduction in workload and costs due to the repeal of DOH's authority to discipline a health care practitioner for failing to repay government-backed student loans, changing the inspections of dental laboratories from annual to biennial, repealing the registration of chiropractic assistants, and reviewing and determining whether an applicant for osteopathic medicine licensure has demonstrated good cause completing an ACGME-accredited residency instead of an AOA-approved residency.

DOH will also incur costs associated with making minor changes to its LEIDS licensure system to reflect changes made in the bill, which current resources are adequate to absorb.<sup>351</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>350</sup> *Supra* note 210.

<sup>351</sup> *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who voluntarily registered as chiropractic assistants will no longer have to pay fees associated with such registration due to the bill's repeal of the registration program.

Individuals who wish to obtain a single prosthetist-orthotist registration may save money because they will no longer have to obtain separate prosthetic and orthotic registrations.

D. FISCAL COMMENTS:

None.