

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 1579 Health Care Practitioner Discipline  
**SPONSOR(S):** Professions & Public Health Subcommittee, Aloupis  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1934

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**FINAL HOUSE FLOOR ACTION:** 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 1579 passed the House on April 27, 2021, as CS/SB 1934.

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), regulates health care practitioners. The MQA works in conjunction with 22 boards and four councils to license and regulate more than 40 professions. Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory authority and licensure authority for MQA, including discipline of practitioners.

Under current law, DOH must issue an emergency order suspending the license of a physician, physician assistant, chiropractor, podiatrist, naturopath, optometrist, nurse, nursing assistant, pharmacist, dentist, optician, or hearing aid specialist who pleads guilty to or is convicted of certain violations of federal law and offenses relating to Medicare, fraud, drug offenses, and reproductive battery. The bill expands DOH's authority to issue an emergency suspension order to all licensed health care practitioners and adds felonies under ch. 782, F.S., relating to homicide, to the list of offenses that DOH must issue an emergency suspension order.

The bill also requires DOH to issue an emergency order suspending the license if a health care practitioner is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of certain offenses in this state or similar offenses in another jurisdiction. The bill also includes such offenses as acts that constitute grounds for discipline of a licensed health care practitioner.

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

The bill was approved by the Governor on June 29, 2021, ch. 2021-190, L.O.F., the effective date of this bill is July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Background**

##### Criminal Background Screening

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>1</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>2</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>3</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.<sup>4</sup>

##### *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>5</sup>

##### *Exemption from Disqualification*

If an individual is disqualified due to a 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 to exempt applicants from that disqualification under if:<sup>6</sup>

- 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.

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<sup>1</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 April 27, 2021).

<sup>2</sup> Section 435.04, F.S.

<sup>3</sup> Section 435.05(1)(a), F.S.

<sup>4</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

<sup>5</sup> Section 435.04(2), F.S.

<sup>6</sup> Section 435.07(1), F.S.

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>7</sup> career offender,<sup>8</sup> or sexual offender (unless not required to register)<sup>9</sup> cannot be exempted from disqualification.<sup>10</sup>

### Health Care Professional Licensure

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners. 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>11</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. MQA is statutorily responsible for the following boards and professions established within the division:<sup>12</sup>

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.;
- Medical physicists, as provided under part IV of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.

### *Background Screening*

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<sup>7</sup> Section 775.261, F.S.

<sup>8</sup> Section 775.261, F.S.

<sup>9</sup> Section 943.0435, F.S.

<sup>10</sup> Section 435.07(4)(b), F.S.

<sup>11</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, p. 6, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited on April 27, 2021).

<sup>12</sup> Section 456.001(4), F.S.; Id.

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 felonies under the following state and federal laws:<sup>13</sup>

- Chapter 409, related to social and economic assistance;
- Chapter 817, relating to fraudulent practices;
- Chapter 893, relating to drug abuse prevention and control; and
- Title 21 U.S.C. ss. 801-970, relating to controlled substances, or Title 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.

Only the appropriate regulatory board, or DOH when there is no board, may grant an exemption from disqualification.<sup>14</sup>

### *Disciplinary Proceedings*

DOH can discipline a licensee for violating various Florida statutes, a rule of the department, or a rule of a board.<sup>15</sup> This includes, among others, criminal violations which relate to the practice of, or the ability to practice, a licensee's profession if the licensee is convicted or is found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, the crime in any jurisdiction.<sup>16</sup> DOH does not have express authority to discipline a licensee for being *arrested*.

Current law authorizes DOH to pursue disciplinary actions against a licensee either through a standard process or, in cases of serious danger to public health, through an expedited, emergency process. The law requires DOH to afford licensees due process in all disciplinary proceedings irrespective of whether DOH utilizes the standard or emergency process.

The standard disciplinary process is a lengthy, multi-step process governed by the Administrative Practice Act (ch. 120, F.S.) that ensures that the licensee is afforded all due process rights. DOH is required to investigate all legally sufficient complaints and may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute, a rule of the department, or a rule of a board.<sup>17</sup> DOH must complete its initial findings and recommendations concerning the existence of probable cause within 6 months of receipt of the complaint and must submit its investigative report to a probable cause panel.<sup>18</sup> The probable cause panel must determine whether probable cause exists within 30 days of receiving the investigative report from DOH; however, the Surgeon General may grant 15-day and 30-day time extensions for this determination.<sup>19</sup> The probable cause panel must direct DOH file a formal complaint against the licensee if it finds probable cause exists.<sup>20</sup> A formal hearing before an administrative law judge from the Division of Administrative Hearings must be held if there are any disputed issues of material fact.<sup>21</sup>

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<sup>13</sup> Section 456.0635, F.S.

<sup>14</sup> Section 456.36, F.S.

<sup>15</sup> Section 456.072, F.S.

<sup>16</sup> Section 456.072(1)(c), F.S.

<sup>17</sup> Section 456.073(1), F.S.

<sup>18</sup> Section 456.073(2), F.S.

<sup>19</sup> Section 456.073(4), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 456.073(5), F.S. Pursuant to s. 120.60(5), no revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the governmental agency has served, by personal service or certified mail, an administrative

If the board or DOH finds that a licensee committed a violation, the board or DOH may:<sup>22</sup>

- Refuse to certify, or to certify with restrictions, an application for a license;
- Suspend or permanently revoke a license;
- Place a restriction on the licensee's practice or license;
- Impose an administrative fine not to exceed \$10,000 for each count or separate offense; if the violation is for fraud or making a false representation, a fine of \$10,000 must be imposed for each count or separate offense;
- Issue a reprimand or letter of concern;
- Place the licensee on probation;
- Require a corrective action plan;
- Refund fees billed and collected from the patient or third party on behalf of the patient; or
- Require the licensee to undergo remedial education.

This is the process through which all licensure actions are taken absent extraordinary circumstances necessitating emergency action by DOH.

### *Emergency Disciplinary Proceedings*

DOH may enter an emergency order suspending, restricting or limiting a health care practitioner's license if it finds that the health care practitioner presents an immediate serious danger to the public health, safety, or welfare to issue such an order.<sup>23</sup> A health care practitioner whose license has been suspended by emergency order will not be able to practice for the duration of the suspension and could potentially have his or her license revoked.

Current law requires DOH to promptly initiate a standard (non-emergency) suspension or revocation proceeding against the licensee after entering the emergency order.<sup>24</sup> Consistent with the standard disciplinary process, DOH must prove that the licensee violated a Florida statute, a rule of the department, or a rule of a board.<sup>25</sup>

Currently, DOH has no express authority to discipline a health care practitioner for an *arrest* (as opposed to a conviction). This prevents DOH from disciplining such a practitioner through the standard disciplinary process. DOH could enter an emergency order against such a practitioner under the immediate serious danger to the public health, safety or welfare standard. However, because there is no basis to discipline a practitioner for being arrested, DOH would not be able to meet the statutory requirement to follow up on the emergency order by initiating a standard disciplinary proceeding to suspend or revoke based merely on the arrest. Current law thus allows a licensee to continue to practice despite being arrested for crimes including, among others, human trafficking, sexual battery and kidnapping.

### *Mandatory Emergency Suspension*

In some instances, current law not only authorizes DOH to initiate emergency discipline, but requires it. Section 456.74(1), F.S., requires DOH to take emergency licensure action to suspend specific types of

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complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a hearing under ss. 120.569 and 120.57, F.S.

<sup>22</sup> Section 456.072(2), F.S.

<sup>23</sup> Section 120.60(6), F.S. An emergency order is proper if: the licensee is provided the same procedural protection as is given by other statutes, the State Constitution, or the U.S. Constitution; DOH takes only that action necessary to protect the public interest under the emergency procedure; and DOH states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.

<sup>24</sup> *Id.*

<sup>25</sup> Section 456.072, F.S.

licenses if a health care practitioner pleads guilty or is convicted of various criminal offenses. DOH must issue an emergency suspension order (ESO) suspending the license of a licensed physician, physician assistant, chiropractor, podiatrist, naturopath, optometrist, nurse, nursing assistant, pharmacist, dentist, optician, or hearing aid specialist who pleads guilty to or is convicted of:<sup>26</sup>

- A felony under:
  - Chapter 409, related to social and economic assistance;
  - Chapter 817, relating to fraudulent 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;
- A misdemeanor or felony under:
  - 18 U.S.C. s. 669, relating to theft or embezzlement in connection with health care;
  - 18 U.S.C. ss. 285-287, relating to taking or using papers relating to claims, conspiracy to defraud the government with respect to claims, and false, fictitious or fraudulent claims;
  - 18 U.S.C. s. 371, relating to conspiracy to commit offense or to defraud United States;
  - 18 U.S.C. s. 1001, relating to statements or entries generally;
  - 18 U.S.C. s. 1035, relating to false statements relating to health care matters;
  - 18 U.S.C. s. 1341, relating to frauds and swindles;
  - 18 U.S.C. s. 1343, relating to fraud by wire, radio, or television;
  - 18 U.S.C. s. 1347, relating to health care fraud;
  - 18 U.S.C. s. 1349, relating to attempt and conspiracy;
  - 18 U.S.C. s. 1518, relating to obstruction of criminal investigations of health care offenses; or
  - 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.
- A felony under s. 784.086, F.S., relating to a reproductive battery.

DOH is not required to issue an ESO suspending the license of any other type of licensed health care practitioner who pleads guilty or is convicted of the crimes listed above. For example, a physical therapist who violated any of the above statutes would not be subject to the mandatory ESO requirement under current law.

Additionally, DOH is not currently required to suspend the license of a health care practitioner who is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to a felony under ch. 782, F.S., relating to homicide.<sup>27</sup>

## **Effect of the Bill**

### Emergency Suspension Orders

#### *Convictions*

CS/HB 1579 expands the requirement for DOH to issue ESOs against health care practitioners who are convicted or plead guilty to certain offenses. It requires DOH to issue ESOs against all licensed health

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<sup>26</sup> Section 456.074(1), F.S. and Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, Prosecution Services, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know*, <http://www.floridahealth.gov/licensingand-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process-discretionary-emergency-orders.pdf> (last visited April 27, 2021).

<sup>27</sup> This includes murder, attempted felony murder, manslaughter, vehicular homicide, vessel homicide, assisting self-murder, commercial exploitation of self-murder, killing of an unborn child by injury to the mother, unnecessary killing to prevent an unlawful act and partial-birth abortion.

care practitioners, instead of a limited list of practitioners, who plead guilty to, are convicted or found guilty of, or enter a plea of nolo contendere to, regardless of adjudication, any offense listed in s. 456.074(1), F.S., and adds felonies under ch. 782, F.S., relating to homicide, to this list.

Expanding the list of health care providers subject to a mandatory ESO and adding homicide related felonies to the list of offenses in s. 456.074(1), F.S. may not result in a substantial increase in disciplinary actions. DOH has no express authority to discipline a health care practitioner who is convicted or pleads guilty to an offense listed in s. 456.074(1), F.S. unless it is related to the practitioner's practice.<sup>28</sup> Without this disciplinary authority, DOH may not be able to meet the statutory requirement to follow up on the emergency order by initiating a standard disciplinary proceeding to suspend or revoke for any guilty plea or conviction for a health care practitioner if the offense is not related to the practitioner's practice.

### *Arrests*

The bill also requires DOH to issue an ESO against any licensed health care practitioner who is *arrested* for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar offenses in another jurisdiction:

- Section 393.135(2), F.S., relating to sexual misconduct against an individual with a developmental disability;
- Section 394.4593(2), F.S., relating to sexual misconduct against a patient of a receiving or treatment facility or otherwise in the custody of the Department of Children and Families;
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025(2), F.S., relating to luring or enticing a child;
- Section 787.06(3)(b),(d), (f), or (g), F.S., relating to human trafficking for commercial sexual activity;
- Former s. 787.06(3)(h), F.S., relating to human trafficking of a child under the age of 15 for commercial sexual activity;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery, excluding s. 794.011(10), F.S.;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- Section 794.08, F.S., relating to female genital mutilation;
- Former s. 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former s. 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S., relating to deriving support from the proceeds of prostitution;
- Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons younger than 16 years of age;
- Section 810.145(8), F.S., relating to video voyeurism of a minor;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.011, F.S., relating to prohibited acts in connection with obscene, lewd, etc., materials;
- Section 847.012, F.S., relating to materials harmful to minors;
- Section 847.013, F.S., relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;
- Section 847.0133, F.S., relating to the protection of minors from obscene materials;

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<sup>28</sup> Section 456.72(1)(c), F.S.

- Section 847.0135, F.S., relating to computer pornography, prohibited computer usage, or traveling to meet minors, excluding s. 847.0135(6) F.S.;
- Section 847.0137, F.S., relating to transmission of child pornography by electronic device or equipment;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment;
- Section 847.0145, F.S., relating to the selling or buying of minors;
- Section 856.022, F.S., relating to loitering or prowling in close proximity to children;
- Section 895.03, F.S., relating to racketeering activity, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive;
- Section 916.1075(2), F.S., relating to sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability;
- Section 985.701(1), F.S., relating to sexual misconduct against a juvenile offender; or
- Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in the bill.

The bill authorizes DOH to take disciplinary action against a practitioner who is convicted or found guilty of, pleads guilty or nolo contendere, regardless of adjudication, to any such offense. DOH may also take disciplinary action against a practitioner who commits or attempts, solicits, or conspires to commit an act that violates any such offense, or a similar offense in another jurisdiction. This allows DOH to comply with the requirement to pursue a standard (non-emergency) action after entering an ESO. However, it is unclear how DOH will meet evidentiary standards necessary to take disciplinary actions against a practitioner based solely upon an arrest which has not been adjudicated.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

DOH may experience an increase in workload related to rulemaking, investigating complaints against a health care practitioner and issuing disciplinary actions or emergency suspension orders, which can be absorbed within current resources.<sup>29</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>29</sup> Department of Health, Agency Analysis of 2021 House Bill 1579 (March 22, 2021).



None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed health care practitioners arrested for certain offenses will experience a decrease in revenue because of the inability to practice for the duration of the suspension.

D. FISCAL COMMENTS:

None.