

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 818

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Mental Health Professionals

DATE: March 30, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	Favorable
2.	Siples	Jones	CJ	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 818 revises licensure requirements for marriage and family therapists. The bill revises the educational requirements for licensure as a marriage and family therapist; and grandfather's certain programs that do not hold accreditation from certain accrediting organizations. The bill also requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) to designate theory and practice examination for licensure as a marriage and family therapist.

The bill deletes the current-law requirement that a licensed mental health professional must remain on the premises when clinical services are provided by a registered mental health counseling intern or a marriage and family therapy intern in a private practice setting. When a registered marriage and family therapy intern is providing clinical services through telehealth, the bill requires that a licensed mental health professional be accessible by telephone or other electronic means.

The bill also authorizes the appointment of physicians licensed under chs. 458 or 459, F.S., and mental health professionals licensed under ch. 491, F.S., as experts in criminal cases.

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

II. Present Situation:

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

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

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) within the DOH regulates the practices of social work, marriage and family therapy, and mental health counseling.⁴ Chapter 491, F.S., sets forth the licensure requirements for each profession, as well as requirements for licensure renewal, continuing education, discipline, and professional conduct.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, or mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.⁵

Marriage and Family Therapists

A marriage and family therapist uses scientific and applied marriage and family theories, methods, and procedures to describe, evaluate, and modify marital, family, and individual behavior within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques.⁶ The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether

¹ Section 20.43(1), F.S.

² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43(3)(g), F.S.

⁴ Section 491.004, F.S.

⁵ Section 491.0046, F.S.

⁶ Section 491.003(8), F.S.

cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.⁷

Section 491.005(3), F.S., provides the licensure by examination requirements for marriage and family therapists. The DOH must issue a license to an applicant as a marriage and family therapist if the board certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has a minimum of a master's degree from:
 - A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education,⁸ which has an emphasis on marriage and family therapy or a closely related field; or
 - A Florida university program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP)⁹ and graduate courses approved by the board;
- Has had at least two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, at the post-master's level, under the supervision of a licensed marriage and family therapist who is a board-qualified supervisor;
- Has passed the examination developed by the Examinations Advisory Committee of the Association of Marital and Family Therapy Regulatory Boards;¹⁰ and
- Has completed a board-approved 8-hour course on Florida laws and rules governing the practice of clinical social work, marriage and family, and mental health counseling.¹¹

Mental Health Counselors

A mental health counselor is someone who is licensed in this state to practice mental health counseling.¹² The practice of mental health counseling involves the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from 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.¹³ The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate,

⁷ *Id.*

⁸ See Commission on Accreditation for Marriage and Family Therapy Education, *Accreditation Manual: Policies and Procedures*, November 2019, available at <https://www.coamfte.org/documents/COAMFTE/COAMFTE%20Accreditation%20Manual%20Policies%20and%20Procedures.pdf> (last visited March 29, 2021).

⁹ See Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited March 29, 2021).

¹⁰ Fla Admin. Code R. 64B4-3.003(2)(c), (2021).

¹¹ Fla Admin. Code R. 64B4-3.0035, (2021).

¹² Section 491.003(6), F.S.

¹³ Section 491.003(9), F.S.

assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.¹⁴

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. The DOH must issue a license to an applicant as a mental health counselor if the board certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has a minimum of a master's degree from:
 - A mental health counseling program accredited by the CACREP which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
 - A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:
 - Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours of graduate-level coursework in 11 content areas;¹⁵
 - Includes a minimum of three semester hours, or four quarter hours, of coursework in the diagnostic processes and emphasized the common core curricular experience; and
 - Includes at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes 280 hours of direct client services, as required in the accrediting standards of the CACREP for mental health counseling programs; or the equivalent, as determined by the board;
- Has passed the National Clinical Mental Health Counseling Examination, the clinical simulation examination by the National Board for Certified Counselors;¹⁶ and
- Has had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor who is a board-qualified supervisor.¹⁷

In 2020, the Legislature enacted legislation that requires applicants who apply for licensure as a licensed mental health counselor on or after July 1, 2025, to hold a master's degree from a program accredited by the CACREP.¹⁸

Registered Mental Health Interns

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An

¹⁴ *Id.*

¹⁵ See s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

¹⁶ Fla Admin. Code R. 64B4-3.003(2)(b), (2021).

¹⁷ Section 491.005(4), F.S.

¹⁸ Chapter 2020-133, s. 44, L.O.F.

individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.¹⁹

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting.²⁰ Neither the statute, nor board rule, define a “private practice setting.”

Section 491.005, F.S., contains the same provision for registered clinical social worker interns and registered marriage and family therapy interns.

In response to the COVID-19 pandemic, the board revised Rule 64B4-2.002 of the Florida Administrative Code, defining supervision, to authorize registered interns to provide face-to-face psychotherapy by electronic methods (telehealth) if the intern establishes a written telehealth protocol and safety plan with their qualified supervisor.²¹ The protocol must include a provision that the supervisor remain readily available during electronic therapy sessions and that the registered intern and their qualified supervisor have determined that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient, is necessary to protect the health, safety, or welfare of the patient, and does not violate any existing statutes or regulations.²²

Accreditation of Educational Programs

The goal of accreditation is to ensure that higher education institutions and programs meet acceptable levels of quality.²³ There are two types of accreditation: institutional and specialized or programmatic. Institutional accreditation applies to the entire institution, and specialized or programmatic accreditation normally applies to programs, departments, or schools that are part of an institution.²⁴

Colleges and universities are accredited by one of 19 recognized institutional accrediting organizations, and programs are accredited by one of approximately 60 recognized programmatic accrediting organizations.²⁵ Accrediting organizations are private, nongovernmental organizations created to review higher education institutions and programs for quality.²⁶ All recognized accrediting organizations have been reviewed for quality by the U.S. Department of Education (DOE) or the Council for Higher Education Accreditation (CHEA).²⁷

¹⁹ Section 491.0045, F.S.

²⁰ Section 491.005(4)(c), F.S.

²¹ Florida Department of Health, State Surgeon General, Emergency Order, DOH No.20-002, filed Mar. 16, 2020, available at <https://www.flhealthsource.gov/pdf/emergencyyorder-20-002.pdf> (last visited March 29, 2021).

²² Fla Admin. Code R. 64B4-2.002(6), (2021).

²³ U.S. Dep’t of Education, *Overview of Accreditation in the United States*, (last rev. February 2, 2021), available at <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited March 29, 2021).

²⁴ *Id.*

²⁵ Council for Higher Education Accreditation, *About Accreditation*, available at <https://www.chea.org/about-accreditation> (last visited March 29, 2021).

²⁶ *Id.*

²⁷ *Id.*

The U.S. DOE oversees the accreditation of post-secondary educational institutions and programs by reviewing all federally-recognized accrediting organizations. The Secretary of Education will recognize an accrediting organization that is determined to be a reliable authority as to the quality of education or training provided by the institutions it accredits.²⁸ The primary functions of accreditation are:

- Assessment of the quality of academic programs;
- To create a culture of continuous improvement and simulate a general raising of the standards;
- To involve faculty and staff in institutional evaluation and planning; and
- To establish criteria for professional certification and licensure and for upgrading courses offering such preparation.²⁹

The CHEA is an association of degree-granting colleges and universities that recognizes institutional and programmatic accrediting organizations.³⁰ Recognition by the CHEA affirms that the standards and processes of the accrediting organization are consistent with the academic quality, improvement, and accountability expectations that the CHEA has established.³¹

Both the CHEA and the U.S. DOE recognize the Commission of Accreditation for Marriage and Family Therapy Education and the CACREP.³²

Appointment of Experts

In criminal proceedings involving mentally ill and intellectually disabled persons, s. 916.115, F.S., authorizes a court to appoint no more than three experts to determine the mental condition of a defendant in a criminal case. Under current law, the appointed experts must be a psychiatrist, licensed psychologist, or physician.³³

III. Effect of Proposed Changes:

The bill revises the licensure requirements for marriage and family therapists and licensed mental health counselors and the supervision requirements for registered mental health interns.

The bill revises the educational requirements for licensure by examination for marriage and family therapy to require an applicant to hold, at a minimum, one of the following degrees:

- A master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education;

²⁸ *Supra*, note 23.

²⁹ *Id.*

³⁰ Council for Higher Education Accreditation, *CHEA at a Glance*, July 1, 2019, available at <https://www.chea.org/about> (last visited March 29, 2021).

³¹ Council for Higher Education Accreditation, *2020-2021 Directory of CHEA-Recognized Accrediting Organizations*, February 2021, available at <https://www.chea.org/2020-2021-directory-chea-recognized-accrediting-organizations-pdf> (last visited March 29, 2021).

³² Council for Higher Education Accreditation, *CHEA- and USDE-Recognized Accrediting Organizations*, April 1, 2018, available at <https://www.chea.org/chea-and-usde-recognized-accrediting-organizations> (last visited March 29, 2021).

³³ Section 916.115(1)(a), F.S.

- A master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the CACREP and graduate programs approved by the board; or
- A master's degree with an emphasis in marriage and family therapy or a closely related field, which is conferred before July 1, 2026, from an institutionally accredited college or university and graduate courses approved by the board.

The bill requires course work for licensure as a marriage and family therapist to be taken at an institutionally accredited institution, rather than one accredited by a regional accrediting body. The bill requires marriage and family licensure applicants to pass a theory and practice examination designated by board rule, rather than an examination provided by the DOH, conforming the law to current practice.

The bill removes the requirement that a licensed mental health professional remain on the premises when clinical services are provided by a registered mental health counselor intern or a registered marriage and family therapy intern in a private practice setting. The bill requires that a licensed mental health professional be accessible by telephone or other electronic means when a registered marriage and family therapy intern is providing clinical services through telehealth.

The bill also authorizes the appointment of mental health professionals licensed under ch. 491, F.S., as experts in criminal cases, in addition to psychiatrists, licensed psychologists, or physicians currently authorized to serve as experts.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 491.005 and 916.115.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 30, 2021:

The committee substitute:

- Revises the educational requirements for licensure by examination for marriage and family therapists;
- Removes the requirement that a licensed mental health professional be on the premises when a registered marriage and family therapy intern is providing clinical services in a private setting;
- Requires that a licensed mental health professional be accessible by telephone or other electronic means when a registered marriage and family therapy intern is providing clinical services through telehealth; and
- Requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling designate a theory and practice examination by rule; rather than the Department of Health providing the examination.

B. Amendments:

None.

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