

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 693 Department of Health
SPONSOR(S): Health & Human Services Committee and Professions & Public Health Subcommittee, Drake
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 768

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 693 passed the House on March 9, 2022, as CS/CS/SB 768, as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 10, 2022.

CS/CS/HB 693 makes numerous changes to programs under the Department of Health (DOH) and health care professions regulated by the Division of Medical Quality Assurance (MQA) within DOH.

DOH administers the Targeted Outreach for Pregnant Women Act (TOPWA) Program which supports high risk pregnant women to prevent health issues for themselves and their newborns. The bill updates the TOPWA to account for current medication options, information on HIV, and mental health issues that may lead to a pregnancy being high risk.

DOH regulates medical marijuana treatment centers (MMTCs), and ensures medical marijuana products are safe for human consumption and meet potency and labeling requirements. The bill requires DOH to adopt potency variation rules and MMTCs to recall all marijuana that fails to meet the safety and potency requirements. The bill authorizes DOH to test samples of all forms of marijuana and immunizes DOH staff from prosecution for possessing marijuana for this purpose. The bill prohibits DOH from renewing a MMTC license if it fails to process and dispense marijuana by its license renewal date. The bill also allows a qualified applicant for the Pigford v. Glickman or In Re Black Farmers Litigation MMTC license to transfer its initial application fee to one subsequent application.

The bill amends licensure laws for various professions regulated by DOH. The bill:

- Updates changes "regional" to "institutional" for certain accreditation to align with federal law;
- Authorizes DOH to deny a nursing application or discipline a licensed nurse under certain circumstances;
- Removes obsolete references to DOH-issued licensure examinations for clinical social workers and marriage and family therapists;
- Revises education, training, and temporary certification requirement for midwives;
- Removes obsolete form and fee requirements for fingerprinting of orthotists and prosthetists;
- Revises educational requirements for psychologists applying for licensure by endorsement; and
- Allows DOH to continue to issue licenses to marriage and family therapy graduates until July 1, 2026, while such programs seek accreditation; and
- Requires physicians to prove payment of Florida Birth-Related Neurological Injury Compensation Association (NICA) assessments as a condition of licensure.

The bill also amends laws for other programs administered, in some manner, by DOH. The bill:

- Requires DOH to determine who is responsible for the medical supervision of each special needs shelter;
- Allows the administrative service organization for Healthy Start coalitions to meet by telecommunication;
- Removes requirement that medical examiners certify all deaths within specified categories;
- Requires the Senate President and the House Speaker each to appoint two individuals who are, or were, caregivers of an individual with a rare disease to the Rare Disease Advisory Council; and
- Requires NICA to make retroactive payments to eligible families.

The bill has an insignificant, negative fiscal impact on DOH, which current resources are adequate to absorb, and no fiscal impact on local governments.

The bill was approved by the Governor on April 20, 2022, ch. 2022-71, L.O.F., and will become effective on July 1, 2022.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Targeted Outreach for Pregnant Women

Current Situation

The Targeted Outreach for Pregnant Women Act (TOPWA) supports targeted outreach programs that aim to prevent vertical HIV transmission and other health issues by linking high-risk pregnant women with services that can help them have healthier pregnancies and deliveries and can aid them in ensuring their newborn gets a healthy start.¹ TOPWA programs aim to provide outreach and linkage services to pregnant women who may not seek proper prenatal care, who suffer from substance-use disorders, or who are living with HIV or are at increased risk for HIV acquisition.

In 2021, there were eight funded TOPWA programs in Florida. TOPWA programs provided services to 7,292 women from January 2018 to December 2021. Black women represented 49 percent of enrollees, Hispanic women represented 40 percent, and white women represented 8 percent. Women living with HIV made up just over 9 percent of TOPWA enrollments.²

If a pregnant woman tests positive for HIV, medical interventions like antiretroviral (ARV) medication and delivery by caesarian section can greatly reduce her risk of transmitting the virus to her baby during childbirth. Prevention methods, like avoiding breastfeeding, can reduce her risk of transmitting the virus to her child post childbirth. Providing ARV medication to the newborn also decreases the chances of seroconversion in the event of an HIV-exposed birth. DOH has developed a program, Baby Rpress, which provides a six-week course of ARV medication to HIV-exposed newborns at no cost to the mother. In 2021, this program filled 330 prescriptions to 232 HIV-exposed newborns.³

Many of the women targeted by TOPWA programs would not otherwise receive prenatal care or know their HIV status. In 2020, there were 439 HIV-exposed births in Florida and four reported cases of perinatal HIV transmission. TOPWA programs aim to engage women into care who very likely do not already have knowledge of or access to these interventions. Without these types of interventions, a mother's chances of transmitting HIV to her newborn can be up to 45 percent. With these interventions, the chances of transmission are less than 2 percent.⁴

Effect of Proposed Changes – Targeted Outreach for Pregnant Women

The bill adds pregnant women who are suffering from mental health problems to the list of outreach targets. It also includes mental health services as a linkage option.

The bill revises the duties of DOH's administration of the TOPWA and the information and services DOH provides to the women it serves. The bill requires DOH to encourage high-risk pregnant women to be tested for other sexually transmitted diseases, in addition to HIV, as specified by rule. The bill requires DOH to give pregnant women who have HIV information on the need for ARV medication for their newborn, their medication options, and how to access medication after hospital discharge. The bill removes a reference to a specific type of ARV medication DOH may provide information on and incorporates more general information on ARV medications, allowing for additional options. The bill requires DOH to educate pregnant women who have HIV on the importance of engaging in and continuing HIV care. Lastly, the bill requires DOH to conduct additional follow up for HIV-exposed newborns to ensure final HIV status is known and necessary linkages to care are made.

¹ Department of Health, *Targeted Outreach for Pregnant Women Act*, <http://stlucie.floridahealth.gov/programs-and-services/infectious-disease-services/hiv-aids/topwa.html> (last visited March 14, 2022).

² Email from Gangul Gabadage, Legislative Planning Coordinator, Department of Health, TOPWA Numbers (Jan. 24, 2022).

³ Id.

⁴ Id.

Institutional Accreditation

Current Situation

Accreditation is the recognition from an accrediting agency that an institution maintains a certain level of educational standards. Institutional accreditation normally applies to an entire institution and indicates that each entity of a school contributes to the achievement of the school's objectives. This does not necessarily mean that all parts of the school have the same quality level of education.⁵ Accrediting agencies issue accreditations.⁶ Institutions or programs that request an agency's evaluation and that meet an agency's criteria are then accredited by that agency.⁷ Accrediting agencies are organizations made up of educational professionals that:⁸

- Establish the operating standards for educational or professional institutions and programs;
- Determine if a school meets those standards; and
- Publicly announce their findings through the issuance of accreditations.

While the United States Department of Education (DOE) does not issue accreditations, it does hold accrediting agencies accountable by ensuring that such agencies enforce their accreditation standards effectively. As part of DOE oversight, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit.⁹

The U.S. DOE issued finalized regulations in the Federal Register in October 2019 relating to institutional accrediting agencies.¹⁰ DOE issued a letter of guidance on February 26, 2020, specifying that final regulations omit references to "regional" and "national" accreditation.¹¹ The letter specifies, "[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, became effective January 1, 2021.

However, the education requirements in current Florida law distinguish regional from institutional accrediting agencies for chiropractic medicine, clinical laboratory directors, orthotists and prosthetists, clinical social workers, and marriage and family therapists. This does not align with the federal guidance. DOE's letter of guidance gave notice to states to come into compliance with federal regulations which took effect on July 1, 2020. Alignment with federal guidance is necessary to ensure compliance with federal accreditation standards and to avoid delays in implementation of DOE review of accrediting agency applications and DOE processes for responding to accrediting agency applications.¹²

Effect of Proposed Changes – Institutional Accreditation

⁵ U.S. Department of Homeland Security – Study in the States, *The Basics of School Accreditation*, <https://studyinthestates.dhs.gov/the-basics-of-school-accreditation> (last visited March 14, 2022).

⁶ Id. See also U.S. Department of Education, *Database of Accredited Postsecondary Institutions and Programs*, <https://ope.ed.gov/dapip/#/home> (last visited March 20, 2021).

⁷ U.S. Department of Education, *Database of Accredited Postsecondary Institutions and Programs*, <https://ope.ed.gov/dapip/#/home> (last visited March 14, 2022).

⁸ *Supra*, note 5.

⁹ *Supra*, note 7.

¹⁰ 84 C.F.R. § 58834 (2020). The new regulations delayed implementation of changes to DOE staff's review of accrediting agency applications for initial or renewal of recognition under 34 C.F.R. § 602.32(d) until January 1, 2021. The new regulations also delayed implementation of changes to DOE staff's process for responding to accrediting agency applications and allowing agency responses within 180 days under 34 C.F.R. § 602.32(h) until July 1, 2021.

¹¹ U.S. Department of Education, Re: Final Accreditation and State Authorization Regulations (February 26, 2021) <https://sacsoc.org/app/uploads/2020/03/State-Authorization-Letter-w-Diane-Signature-2.26.19.pdf> (last visited March 14, 2022).

¹² Id.

The bill removes all references to “regional” accreditation in the practice acts for chiropractic medicine, clinical laboratory directors, orthotists and prosthetists, clinical social workers, and marriage and family therapists. The bill replaces the references with “institutional” accreditation throughout. This conforms Florida law to the terminology used in U.S. Department of Education regulations.

Nursing

Current Situation

The Board of Nursing (Board) within DOH, oversees the licensure and regulation of certified nursing assistants (CNA), licensed practical nurses (LPN), registered nurses (RN), and advanced practice registered nurses (APRN). The Board has the authority to adopt rules to implement ch. 464, F.S., which regulates the practice of nursing in this state.¹³ Additionally, the Board is responsible for administratively disciplining a CNA, LPN, RN, and APRN who commits an act prohibited under s. 464.018 or s. 456.072, F.S.

Current law specifies that being found guilty of any offense prohibited by s. 435.04, F.S., or an act of domestic violence, regardless of adjudication, or entering a plea of nolo contendere or guilty to, is ground for denial of a nursing license application or disciplinary action against a nursing licensee.¹⁴ However, entering a guilty plea, or pleading nolo contendere, to these crimes is only grounds for licensure denial if there is a conviction. Other practice acts authorize license denial and discipline for pleading guilty or nolo contendere regardless of adjudication.¹⁵

Effect of Proposed Changes – Nursing

The bill requires DOH to deny a nursing licensure application for, or discipline, a CNA, LPN, RN, or APRN who is found guilty of, or pleads guilty or no contest to an offense prohibited in ch. 435, F.S., or domestic violence under s. 741.28, F.S., rather than only for a conviction.

Midwifery

Current Situation

Chapter 467, F.S., is the practice act for midwifery (Act). DOH licenses and regulates the practice of midwifery in this state. Midwifery is the practice of supervising a normal labor and childbirth, with the informed consent of the parent, advising the parents as to the progress of childbirth, and rendering prenatal and postpartal care.¹⁶ The Council of Licensed Midwifery assists and advises DOH on midwifery, including the development of rules relating to regulatory requirements. These regulations include training requirements, the licensure examination, responsibilities of midwives, emergency care plans, and reports and records to be filed by licensed midwives.¹⁷

Licensure

An individual must graduate from an approved midwifery program and pass a licensure examination to be eligible for licensure as a midwife.¹⁸ A licensed midwife must submit a general emergency care plan to DOH, which addresses consultation with other health care providers, emergency transfer protocols, and access to neonatal intensive care units and obstetrical units or other patient care areas with his or

¹³ Section 464.006, F.S.

¹⁴ Section 464.018(1)(e), F.S.

¹⁵ Examples of other practice acts include allopathic physicians under in s. 458.331(1)(c), F.S., osteopathic physicians in s. 459.015(1)(c), F.S., pharmacists in s. 465.016(1)(f), F.S., and dentists and dental hygienists in s. 466.028(1)(c), F.S.

¹⁶ Section 467.003(8), F.S.

¹⁷ Section 467.004, F.S.

¹⁸ Section 467.011, F.S. Section 467.0125, F.S. DOH no longer administers licensure examinations.

her application for licensure and licensure renewal.¹⁹ A licensed midwife must also submit proof of professional liability coverage of at least \$100,000, with an annual aggregate of at least \$300,000.²⁰

DOH may issue a license by endorsement for midwifery applicants who:²¹

- Holds a valid certificate or diploma from a foreign institution of medicine or from midwifery program in another state provided the requirements for licensure or certification in another country or another state are equivalent to or exceed that which is required for licensing in Florida; or
- Holds a valid certificate or license to practice midwifery in another state provided the requirements for licensure or certification in another state are equivalent to or exceed that which is required for licensing in Florida; and
- Has completed a 4-month prelicensure course conducted by an approved program; and
- Has successfully passed the licensed midwifery examination.

Areas of Critical Need

DOH may also issue a temporary certificate to a midwife who qualifies for licensure by endorsement to practice in areas of critical need.²² Currently, a temporary certificate issued to practice in areas of critical need valid as long as an area for which it's issued remains an area of critical need, but not longer than two years, and the certificate is not renewable.²³ Currently, if the area in which a midwife is practicing ceases to be an area of critical need, DOH must immediately initiate disciplinary action to revoke his or her temporary certificate.²⁴

Midwifery Students

The Act uses the terms “applicant” and “student midwife” interchangeably. It also sets standards for admission, education, and clinical training in the context of student requirements, which, according to DOH, may cause confusion.²⁵ For example, current law requires a student midwife to have a high school diploma or the equivalent to enroll in an education program, but the act does not clearly state that a high school diploma is a requirement for licensure.²⁶

According to DOH, the use of the undefined term “student midwife” has led to unlicensed persons attempting to work with clients and complete clinical requirements without enrolling in or being educated by an approved midwifery program, as well as midwives attempting to serve as preceptors who are not affiliated with an approved midwifery program.²⁷

Midwifery Education Programs

Any accredited or state-licensed institution of higher learning may provide midwifery education and training. Midwifery education programs may apply to DOH to obtain approved program status.²⁸ Approval may be obtained if a program meets requirements for accreditation, faculty, curriculum, and

¹⁹ Section 467.017, F.S.

²⁰ Rule 64B24-7.013, F.A.C. An applicant does not have to submit proof of professional liability insurance if the applicant practices exclusively as an officer, employee, or agent of the federal government, practices only in conjunction with teaching duties at an approved midwifery school that provides such coverage on the applicant's behalf, or who does not practice midwifery in this state and provides proof of such.

²¹ Section 467.0125(1), F.S.

²² Section 467.0125(2), F.S.

²³ Id.

²⁴ Department of Health Agency Analysis of 2022 House Bill 693, (Jan. 7, 2022)

²⁵ Id.

²⁶ Section 467.009, F.S. See also *Supra*, note 24.

²⁷ *Supra*, note 2. In general, health care practitioners do not start seeing clients in a clinical setting until they have completed prerequisite portions of a course of study and are near the end of their educational program.

²⁸ Section 467.205, F.S.

clinical training.²⁹ Current law requires nonpublic educational institutions be accredited by the Commission on Recognition of Postsecondary Accreditation (CRPA) in order to be approved as a midwifery program.³⁰ However, CRPA has been succeeded by the Council for Higher Education Accreditation, which is not recognized in current law.³¹

Currently, the Act does not address midwifery programs which are seeking accreditation and are provisionally approved while awaiting their first graduating class.

Current law allows DOH to place a midwifery educational program on probationary status if it no longer meets required standards; if the program fails to correct these conditions, DOH may rescind its approval.³² However, statutes provide no guidance regarding notification to the program or length of time a school may remain in probationary status. Additionally, the circumstances under which DOH may rescind the approval of a midwifery education program under the Act is unclear as it does not provide a definitive timeline for a non-compliant program to come back into compliance before DOH may rescind its approval. Current law allows a non-compliant program to correct itself “within a specified period of time”³³; however, no timeline is provided in statute or rule.

Effect of Proposed Changes – Midwifery

Licensure

The bill prohibits endorsement without a license or certification in another state, territory or jurisdiction and creates a pathway to licensure by examination for applicants who have completed education equivalent to or exceeds that which is required for licensing in Florida in a state, territory, or jurisdiction that does not license midwives. These revisions do not change what is actually required to qualify for a midwifery license, but instead help applicants better understand those requirements.³⁴

The bill allows midwifery programs to be provisionally approved for five years. This change conforms to the five-year period that such programs can be provisionally licensed by the U.S. Department of Education’s Commission for Independent Education when seeking accreditation status. DOH will be able to give provisional approval to a new program which has met all requirements except for showing their students have an 80% passage rate on the national exam. Programs provisionally approved will have five years to demonstrate the required exam approval rate after they are preliminarily approved. This time period allows completion of the three-year education program for at least one cohort of students, and for those students to take the exam before the Department tries to determine the passing rate.³⁵

The bill removes obsolete references to DOH-issued exam for midwifery licensure as DOH no longer administers licensure examinations.

Areas of Critical Need

When a practice area is no longer designated as an area of critical need, the bill requires a certified midwife who practices in an area of critical need to relinquish his or her certificate within 30 days, or move his or her practice to another area of critical need, rather than being immediately subject to disciplinary action. Only if the midwife holding the temporary certificate fails to act within those thirty days will DOH initiate disciplinary action to revoke the certificate.³⁶

²⁹ Rule 64B24-4.002, F.A.C.

³⁰ Section 467.009(8), F.S.

³¹ *Supra*, note 24.

³² Section 467.205, F.S.

³³ *Id.*

³⁴ *Supra*, note 24.

³⁵ *Id.*

³⁶ *Supra*, note 24.

Midwifery Students

The bill prohibits a preceptor from supervising a midwifery student unless the student has been enrolled in an approved midwifery program. This means that an individual cannot begin their clinical practice before enrolling in an approved midwifery program and will explicitly conform midwifery training with the requirements of other medical professions, with students having to complete the majority of their classroom training before working with patients in a clinical setting.

Midwifery Education Programs

The bill updates the accreditation requirement for private educational institutions by replacing the defunct Commission on Recognition of Postsecondary Accreditation with the Council for Higher Education Accreditation or provisional licensing by the Commission for Independent Education. The bill also allows DOH to approve midwifery programs at private educational institutions which are accredited by an agency recognized and approved by the U.S. Department of Education.

The bill authorizes DOH to grant provisional approval of a new midwifery education program which is seeking accreditation for up to 5 years.

Lastly, the bill authorizes DOH to place a midwifery program on probationary status for up to 3 years if such program fails to maintain the requirements of an approved program or has lost accreditation. If a program in probationary status fails to come into compliance with the requirements of an approved program or does not regain its accreditation, DOH may rescind the program's approval.

Orthotists and Prosthetists

Current Situation

The Board of Orthotists and Prosthetists oversees licensure and regulation of orthotists³⁷ and prosthetists.³⁸ 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.³⁹ The board must verify that an applicant for licensure examination meets the following requirements:⁴⁰

- 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.

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

³⁷ 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.)

³⁸ A 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.)

³⁹ 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.)

⁴⁰ Section 468.803(2), F.S.

correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁴¹ 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.⁴²

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.⁴³ Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.⁴⁴

Effect of Proposed Changes – Orthotists and Prosthetists

The bill removes obsolete references to form and fee requirements for background screening of orthotists, prosthetists, and pedorthists which are no longer collected by DOH.

Psychologists

Current Situation

The Board of Psychology oversees the licensure and regulation of psychologists.⁴⁵ To receive a license to practice psychology, an individual must:⁴⁶

- Meet one of the following educational requirements:
 - Received a doctoral-level psychological education from an institution that had institutional accreditation from an agency recognized by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada, and had programmatic accreditation from the American Psychological Association (APA);⁴⁷ or
 - Received the equivalent of a doctoral-level education from a program at a school or university located outside of the United States, 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.
- Complete 2 years or 4,000 hours of supervised experience;
- Pass the Examination for Professional Practice in Psychology;⁴⁸ and
- Pass an examination on Florida laws and rules.

Applicants for licensure by endorsement must:⁴⁹

- Be a diplomate in good standing with the American Board of Professional Psychology;
- Hold a doctoral degree in psychology with at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the U.S. within the 25 years preceding the date of application.

⁴¹ 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 March 14, 2022).

⁴² Section 435.04, F.S.

⁴³ Section 435.05(1)(a), F.S.

⁴⁴ Sections 435.03(1) and 435.04(1)(a), F.S.

⁴⁵ Section 490.004, F.S.

⁴⁶ Section 490.005(1), F.S.

⁴⁷ Section 490.003(3), F.S., defines doctoral-level education as a Psy.D, an Ed.D., or a Ph.D in psychology.

⁴⁸ Rule 64B19-11.001, F.A.C.

⁴⁹ Section 490.006, F.S.

The 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.⁵⁰ To be licensed as a psychologist in this state, an applicant with a Doctoral degree must have received that degree from a program accredited by the APA. Lack of APA accreditation is grounds for licensure denial under the licensure by endorsement method.⁵¹

Effect of Proposed Changes – Psychologists

The bill allows a psychologist applying by endorsement to obtain a license regardless of whether the doctoral program was APA accredited. This will allow applicants who did not graduate from an APA accredited program to be licensed by endorsement while maintaining the needed accreditation and educational standards for licensure by examination.⁵²

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

Current Situation

Clinical Social Workers

To be licensed as a clinical social worker, an applicant must meet educational requirements, complete at least two years of postgraduate or postmaster's clinical practice supervised by a licensed practitioner, and pass a theory and practice examination.⁵³ Current board rule requires licensure applicants to pass the board-approved examination from the Association of Social Work Boards.⁵⁴ This conflicts with current law, which requires applicants to pass an exam administered by DOH.⁵⁵ However, DOH no longer administers licensure examinations.

Marriage and Family Therapists

Marriage and family therapy incorporates 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.⁵⁶ An applicant seeking licensure as a mental health counselor must:⁵⁷

- Possess a master's degree from:
 - An institution of higher learning accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation (CRPA); and
 - A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education; or
 - A Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and board-approved graduate courses.⁵⁸

⁵⁰ American Psychological Association, *Understanding APA Accreditation*, <http://www.apa.org/ed/accreditation/about/index.aspx> (last visited March 14, 2022).

⁵¹ *Supra*, note 24

⁵² *Id.*

⁵³ Section 491.005, F.S.

⁵⁴ Rule 64B4-3.003(2)(a), F.A.C.

⁵⁵ Section 491.005(1)(d)

⁵⁶ American Association for Marriage and Family Therapy, *About Marriage and Family Therapists*, https://www.aamft.org/About_AAMFT/About_Marriage_and_Family_Therapists.aspx (last visited March 14, 2022).

⁵⁷ 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.)

⁵⁸ Ch. 2020-133, Laws of Fla, required applicants for licensure as a marriage and family therapist to graduate from an accredited program or an accredited Florida university program.

- 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
- Demonstrate knowledge of laws and rules governing the practice.

Current law requires licensure applicants to hold a master's degree from an institution of higher learning accredited by a regional accrediting body recognized by the CRPA. The CRPA has been succeeded by the Council for Higher Education Accreditation, which is not recognized in current law. Additionally, current board rule requires licensure applicants to pass the board-approved examination developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board.⁵⁹ This conflicts with current law, which requires applicants to pass an exam administered by DOH.⁶⁰ However, DOH no longer administers licensure examinations.

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 (COAMFTE) and the Council for the Accreditation of Counseling and Related Educational Programs (CACREP) that establish the minimum standards to meet the requirements to practice the profession.⁶¹

Additionally, current board rule requires licensure applicants to pass the board-approved examination developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board.⁶² This conflicts with current law, which requires applicants to pass an exam administered by DOH.⁶³ However, DOH no longer administers licensure examinations.

Legislation in 2020 revised licensure requirements for marriage and family therapists.⁶⁴ Beginning on July 1, 2020, applicants for licensure must possess a master's degree from an a program accredited by COAMFTE or from a Florida university program accredited by CACREP and board-approved graduate courses.⁶⁵ However, a window of time was not granted for education programs which were unaccredited at the time to apply for and obtain such accreditation, meaning students who graduate on or after July 1, 2020, from such programs do not meet the accreditation qualifications for licensure in Florida.⁶⁶ Currently, six universities in Florida have a marriage and family therapy program that is not accredited by either COAMFTE or CACREP.⁶⁷

Mental Health Counselors

A mental health counselor is an individual who 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

⁵⁹ Rule 64B4-3.003(2)(c), F.A.C.

⁶⁰ Section 491.005(3)(d), F.S.

⁶¹ See Commission on Accreditation for Marriage and Family Therapy Education, *What Are the Benefits of COAMFTE Accreditation*, https://www.coamfte.org/COAMFTE/Accreditation/About_Accreditation.aspx (last visited March 14, 2022), and Council for the Accreditation of Counseling and Related Educational Programs, *About CACREP*, <https://www.cacrep.org/about-cacrep/> (last visited March 14, 2022).

⁶² Rule 64B4-3.003(2)(c), F.A.C.

⁶³ Section 491.005(3)(d), F.S.

⁶⁴ S. 491.005, F.S. (2020) and ch. 2020-133, L.O.F.

⁶⁵ Section 491.005, F.S. (2020).

⁶⁶ *Supra*, note 56.

⁶⁷ Email from Andrew Love, Director of Legislative Planning, Department of Health, MFT Follow-up, (July 27, 2021) (on file with the Health and Human Services Committee). The universities are Carlos Albizu, Jacksonville University, Palm Beach Atlantic University, St. Thomas University, University of Miami, and University of Phoenix.

development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.⁶⁸ To qualify for licensure as a mental health counselor, an individual must:⁶⁹

- Have a master's degree from a mental health counseling program accredited by CACREP, or a program related to the practice of mental health counseling that includes coursework and a 700-hour practicum, internship, or fieldwork of which at least 280 hours must be in direct client services;
- 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.⁷⁰

Current board rule requires licensure applicants to pass the board-approved examination from the National Clinical Mental Health Counseling Examination.⁷¹ This conflicts with current law, which requires applicants to pass an exam administered by DOH.⁷² However, DOH no longer administers licensure examinations.

The same 2020 legislation also revised licensure requirements for mental health counselors. Beginning July 1, 2025, applicants for licensure as a mental health counselor must hold a master's degree from a program accredited by CACREP.⁷³ The CACREP accreditation standards require 60 credits of specified educational content and a 700-hour practicum requiring face-to-face psychotherapy.⁷⁴ Currently, 16 universities in this state are accredited by CACREP.⁷⁵ The University of West Florida's (UWF) mental health counselor program is the only program accredited by the Masters in Psychology and Counseling Accreditation Council in this state.⁷⁶ Thus, beginning in 2025, UWF's current accreditation for its mental health counselor program will not be sufficient for graduates to meet licensure requirements in this state.

Effect of the Bill – Marriage and Family Therapy and Mental Health Counseling

Clinical Social Workers

The bill removes references to obsolete DOH-issued licensure exams for clinical social workers, aligning statute with Board rule.

Marriage and Family Therapists

The bill restructures current law to clarify educational options required for licensure, aligning with Board interpretation.

The bill allows DOH to continue to issue licenses to graduates of otherwise qualified Florida marriage and family therapy programs until July 1, 2027, while the six programs seek accreditation.

⁶⁸ Sections 491.003(6) and (9), F.S.

⁶⁹ Section 491.005(4), F.S.

⁷⁰ Section 491.005(4), F.S., and r. 64B4-3.0035, F.A.C.

⁷¹ Rule 64B4-3.003(2)(b), F.A.C.

⁷² Section 491.005(4)(d), F.S.

⁷³ Section 491.005(4)(b), F.S. and ch. 2020-133, L.O.F.

⁷⁴ *Supra*, note 56.

⁷⁵ Council for Accreditation for Counseling and Related Educational Programs, *Find a Program*, <https://www.cacrep.org/directory/> (last visited March 7, 2022).

⁷⁶ Masters in Psychology and Counseling Accreditation Council, *Accredited Programs*, <http://mpcacaccreditation.org/accredited-programs/> (last visited March 7, 2022).

The bill also updates the accreditation requirement for institutions of higher education by replacing the defunct Commission on Recognition of Postsecondary Accreditation with the Council for Higher Education Accreditation.

Mental Health Counselors

The bill adds the Masters in Psychology and Counseling Accreditation Council, or an equivalent body, as an authorized accrediting body for mental health counselor education programs beginning on July 1, 2025. This will allow UWF to continue to graduate students who are eligible for licensure in this state.

Florida Birth-Related Neurological Injury Compensation Association

Current Situation

Florida Birth-Related Neurological Injury Compensation Plan

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was created by the Legislature to manage both rising medical malpractice costs and diminishing availability of liability insurance by creating a hybrid no-fault and tort medical liability system.⁷⁷ The Plan was created to pay for the care of infants born with certain neurological injuries and is available to eligible families without the need for litigation. By eliminating costly legal proceedings, the Plan aims to ensure that birth-injured infants receive the care they need while reducing the financial burden on both medical providers and families.

⁷⁷ Id.

Florida Birth-Related Neurological Injury Compensation Association

In 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA) to manage the Plan.⁷⁸ NICA is an independent association. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on NICA's board are appointed by the Chief Financial Officer.

Annually, NICA must furnish audited financial reports to any Plan participant upon request, OIR and the Joint Legislative Auditing Committee.⁷⁹ The reports must be prepared in accordance with accepted accounting procedures. OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.⁸⁰

Eligibility

An administrative law judge (ALJ) within the Florida Division of Administrative Hearings⁸¹ hears all claims under the Plan and determines whether a claim is compensable.⁸² To qualify, there must have been a birth injury to the brain or spinal cord of a live infant in which:⁸³

- The birth occurred in a hospital;
- The infant weighed 2500g at birth for single gestation or 2000g for multiple gestation at birth;
- There was oxygen deprivation or mechanical injury;
- The injury occurring during labor, delivery or resuscitation efforts in the immediate post delivery period;
- The infant experienced permanent and substantial mental and physical impairment;
- The injury was not caused by genetic or congenital abnormality; and
- The physician is participating in the Plan.

A participating physician under the Plan is a licensed Florida physician who either practices obstetrics or performs obstetrical services on a full or part-time basis and pays a yearly NICA assessment.⁸⁴ If the physician did not pay his or her assessment for the year in which the injury occurred, there is no NICA coverage. Hospitals that allow doctors who do not participate in NICA to deliver babies are subject to multi-million dollar catastrophic injury lawsuits despite having paid into the NICA fund.⁸⁵

Benefits

Once an ALJ determines a child is eligible under the Plan, the child is covered for life, and no other compensation from a medical malpractice lawsuit or settlement is available.⁸⁶ Instead, there are lifetime benefits and care available through the Plan, which include actual expenses for:⁸⁷

- Medical and hospital services;
- Rehabilitation, therapy, and training;
- Family residential or custodial care;
- Professional residential and custodial care;
- Medications;

⁷⁸ Section 766.315, F.S. and ch. 88-1, s. 74, Laws of Fla.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ S. 766.302, F.S. The Division of Administrative Hearings is housed within the Florida Department of Management Services.

⁸² S. 766.304, F.S.

⁸³ S. 766.302(2), F.S.

⁸⁴ S. 766.314, F.S.

⁸⁵ S. 766.302(7), F.S.

⁸⁶ *Id.*

⁸⁷ S. 766.31, F.S.

- Special equipment and facilities; and
- Related travel expenses.

The Plan may also provide:⁸⁸

- A one-time cash award, not to exceed \$250,000, to the infant's parents or guardians;
- A \$50,000 death benefit for the infant;⁸⁹ and
- Compensation for reasonable expenses incurred for filing the claim, including attorney's fees.

Certain parents and legal guardians are entitled to a retroactive payment:⁹⁰

- A parent or legal guardian who received an award prior to January 1, 2021, and whose child:
 - Currently receives benefits under the Plan must receive a payment sufficient to bring the total award to \$250,000; or
 - Died since the inception of the Plan must receive a payment sufficient to bring the total death benefit to \$50,000.

Physician and Hospital Assessments

The Plan is funded by a combination of physician fees and hospital assessments. All licensed Florida physicians pay a mandatory fee of \$250, regardless of specialty, upon initial licensure.⁹¹ A participating physician⁹² is required to pay a \$5,000 fee each year for coverage which runs January 1 through December 31.⁹³ Hospitals pay \$50 for each live birth during the previous calendar year. Certain exemptions apply to all of these categories, including resident physicians, retired physicians, government physicians, and physicians employed full time by state-owned mental health or developmental services facilities.⁹⁴

Initial assessments are collected by DOH though current law states initial assessments are to be collected by the Department of Business and Professional Regulation (DBPR), though the Legislature moved the regulatory authority of health care practitioners to DOH in the early 2000's, where it remains.⁹⁵

Between July 2018 and June 2020, NICA's audited financial statements showed a total of \$54,755,762 in assessments was collected.⁹⁶ However, a 2021 Auditor General report showed an increase in delinquent assessments between 2016 and 2021, totaling \$14.4 million.

⁸⁸ S. 766.31(1)(c), F.S.

⁸⁹ S. 766.31(1)(b)2., F.S.

⁹⁰ S. 766.31(1)(d)1.b., F.S.

⁹¹ Section 766.314, F.S.

⁹² A "participating physician" is a physician licensed in this state who practices obstetrics or performs obstetrical services, either full time or part time, and has paid the assessment required for participation in the plan for the year in which an injury occurred. This term also includes physicians licensed in this state who were exempted from the required payment to participate in the plan at the time of an injury. Any physician who practices medicine as an officer, employee, or agent of the Federal Government is not considered a participating physician. See s. 766.302(7), F.S.

⁹³ *Supra*, note 91

⁹⁴ *Id.*

⁹⁵ Section 766.314, F.S. The Department of Business and Professional Regulation previously licensed health care practitioners in Florida when NICA was created. The Legislature later moved this responsibility to the Division of Medical Quality Assurance within DOH in 2000.

⁹⁶ *Florida Birth-Related Neurological Injury Compensation Association*, State of Florida Auditor General – Operational Audit, August 2021.

Active Non-Participating Physician Assessments Paid and Delinquent, 2016 – 2021⁹⁷

Assessment Year	Assessments Paid ^a		Delinquent Assessments		Total Assessment Amount	Delinquent Assessments as Percentage of Total Assessment Amount
	Amount	Number of Physicians	Amount	Number of Physicians		
2021	\$13,791,926	56,362	\$ 4,836,553	19,242	\$ 18,628,479	26%
2020	16,035,537	64,372	3,118,420	12,043	19,153,957	16%
2019	16,209,715	65,209	2,291,303	8,336	18,501,018	12%
2018	16,132,917	64,487	1,765,173	6,123	17,898,090	10%
2017	16,159,869	64,043	1,356,025	4,506	17,515,894	8%
2016	14,486,458	58,316	999,719	3,215	15,486,177	6%
Totals	<u>\$92,816,422</u>	<u>372,789</u>	<u>\$14,367,193</u>	<u>53,465</u>	<u>\$107,183,615</u>	<u>13%</u>

^a Includes late payments and pre-payment amounts applicable to the assessment year.

NICA is authorized to enforce collection of unpaid assessments by filing suit in county court and may recover attorney fees, costs and interest related if it obtains a final judgment.⁹⁸ DOH is prohibited from renewing a physician’s license if NICA notifies DOH that the physician has unpaid assessments and that there is an unsatisfied final judgment against the physician.⁹⁹ Under current law, the physician has no obligation to demonstrate compliance with the assessment law to maintain licensure; rather the burden is on NICA to demonstrate lack of compliance.

Effect of the Bill – Physician and Hospital Assessments

The bill addresses unpaid assessments by requiring allopathic and osteopathic physicians to provide proof of payment of NICA assessments as a condition of licensure. This may potentially increase timely payment of the assessment and reduce the need for NICA to seek judicial remedy for unpaid assessments. The bill also requires NICA to notify DOH and applicable boards of any unpaid final judgment within seven days of the final judgement.

Additionally, the bill eliminates the requirement that the child must currently be receiving benefits under the Plan to receive a retroactive payment. This means that more parents or legal guardians may qualify for retroactive payment. The Plan must make additional retroactive payments to eligible parents or legal guardians in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022.

The bill also updates references from DBPR to DOH throughout.

Medical Marijuana Testing

Current Situation

⁹⁷ Id.
⁹⁸ Section 766.314(6)(b), F.S.
⁹⁹ Id.

Presently, processed marijuana products must be tested for contaminants that are harmful for human consumption and to ensure that products meet the THC and CBD potency requirements.¹⁰⁰ DOH must adopt rules determining what contaminants must be tested for and at what levels such contaminants are unsafe for human consumption, as well as rules for the treatment of marijuana products that fail the safety and potency requirements.¹⁰¹

Current law authorizes DOH to select random samples of edible products available for purchase for testing to determine whether the THC and CBD potency level on the label is accurate and whether the edible is safe for human consumption. DOH does not have express authority to sample all other types of medical marijuana or medical marijuana delivery devices. Additionally, current law does not provide an exception to criminal law to allow DOH, and its employees acting within the scope of their employment, to acquire, possess, test, transport, and lawfully dispose of marijuana.

A medical marijuana treatment center (MMTC) must recall all edibles that fail to meet safety and potency requirements.¹⁰² DOH does not have express authority to require MMTCs to recall other types of medical marijuana or medical marijuana delivery devices that fail to meet safety and potency requirements.

Each MMTC is required to contract with a certified marijuana testing laboratory (CMTL) to test processed marijuana before it is dispensed.¹⁰³ Testing results must indicate that the low-THC cannabis meets the statutory definition; THC potency meets statutory requirements; THC and CBD are labeled accurately; and the marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption.¹⁰⁴

Effect of the Bill – Medical Marijuana Testing

The bill requires MMTCs to test all forms of its marijuana, not only processed marijuana, to ensure that it meets safety and potency requirements before it is dispensed. The bill requires MMTCs to recall all forms of marijuana that fail to meet the safety and potency requirements, rather than only edibles.

The bill authorizes DOH to select available samples of all forms of marijuana available in a medical marijuana treatment center for testing to determine that the marijuana is safe for human consumption and that the THC and CBD potency level on the label is accurate or to verify medical marijuana testing laboratory results. The bill requires DOH to establish marijuana potency variations of no greater than 15 percent. The bill requires MMTCs to recall all forms of medical marijuana and marijuana delivery devices that fail to meet safety and potency requirements. However, the bill prohibits DOH from issuing a recall for marijuana product potency prior to it adopting its potency variation rule.

The bill authorizes DOH to sample marijuana delivery devices from a marijuana treatment center to determine that the marijuana delivery device is safe for use by qualified patients. The bill also permits DOH, including employees acting within the scope of their employment, to acquire, possess, test, transport, and lawfully dispose of marijuana.

Medical Marijuana Treatment Center Licensing

Current Situation

Florida's medical marijuana program is a vertically integrated and requires DOH to license MMTCs to cultivate, process, transport and dispense marijuana or marijuana delivery devices for medical use to

¹⁰⁰ Section 381.986(8)(e)11.d., F.S.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

qualified patients. Current law requires DOH to issue one license to a class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation*.¹⁰⁵ DOH has set the application window for this license for March 21, 2022 – March 25, 2022.¹⁰⁶ Each applicant must submit a non-refundable application of \$146,000.¹⁰⁷ Class members may also apply for any other available MMTC licenses but will have to pay an additional application fee.

Effect of the Bill – Medical Marijuana Licensing

The bill allows a qualified applicant for the MMTC license reserved for a class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation*, who fails to obtain such license, to transfer its initial application fee to one subsequent application for licensure as an MMTC.

Special Needs Shelters

Current Situation

Special needs shelters ensure persons with special needs have a safe and secure location during an emergency or disaster. In 2000, the Legislature established a system to recruit health care practitioners to staff special needs shelters in times of emergencies or disasters, and required DOH to be the lead agency for these responsibilities.¹⁰⁸

Current law establishes the DOH Division of Children’s Medical Services (CMS) as the lead for the coordination of local medical and health care providers to develop a plan for the staffing and medical management of pediatric special needs shelters and to participate in local decision-making regarding the medical supervision of special needs shelters.¹⁰⁹ The CMS workforce consists of local health care practitioners with specialized training and experience in the provision of services for children with special needs.¹¹⁰ However, through a series of program and organizational changes toward more effective operation and costs, the CMS workforce has been reduced by more than 70% since 2018.¹¹¹ According to DOH, due to this change in workforce, CMS can no longer support the charges of the statute.¹¹²

Effect of the Bill – Special Needs Shelters

The bill designates DOH, rather than CMS specifically, as the lead for the coordination of local medical and health care providers in developing a plan for the staffing and medical management of pediatric special needs shelters. This gives DOH the flexibility to determine what department, office, or unit will perform this function. Additionally, the bill requires DOH to determine who is responsible for the medical supervision of each special needs shelter.

Medical Examiners – Death Certificates

Current Situation

¹⁰⁵ Section 381.986 (8)(a)2.a., F.S. *Pigford v. Glickman* and *In Re Black Farmers* were class action suits against the United States Department of Agriculture related to racial discrimination against African-American farmers in USDA’s allocation of farm loans and assistance between 1981 and 1996.

¹⁰⁶ Fla. Admin. Code R. 64ER21-19.

¹⁰⁷ Fla. Admin. Code R. 64ER21-16.

¹⁰⁸ Ch. 2000-140, L.O.F. See also *supra*, note 24.

¹⁰⁹ Section 381.0303, F.S.

¹¹⁰ *Supra*, note 24.

¹¹¹ *Id.*

¹¹² *Id.*

Florida medical examiners are local district officers appointed by the Governor¹¹³ to one of 25 medical examiner districts¹¹⁴ under ch. 406, F.S. Medical examiners are governed by the Medical Examiners Commission (Commission), which is administratively housed within the Florida Department of Law Enforcement.¹¹⁵ The Commission has authority to investigate and suspend medical examiners for violations of ch. 406, F.S.¹¹⁶

Current law requires district medical examiners to determine the cause of death in certain circumstances, and to make any investigations, examinations, and autopsies necessary to make that determination, for the following deaths and circumstances:¹¹⁷

- Of criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease, injury, or toxic agent resulting from employment;
- When a dead body is brought into the state without proper medical certification; or
- When a body is to be cremated, dissected, or buried at sea.

In 2021, the Legislature provided that the obligation to determine the cause of death under certain circumstances includes certifying the death, as well, representing an overall workload increase.¹¹⁸ This requires review of all records related to the case instead of reviewing only the death certificate signed by the attending physician.

Effect of the Bill – Medical Examiners – Death Certificates

The bill removes the requirement that medical examiners certify all deaths within the specified categories, restoring prior law requiring them to merely determine the cause of death in those cases.

¹¹³ Section 406.02, F.S.

¹¹⁴ The Commission establishes the districts by rule. See, ch. 11G-5.002, F.A.C. Medical examiner district boundaries usually align with the 20 court circuits, with some variations. Fla. Dept. Law Enforcement, Medical Examiners Commission, Coverage Map: Medical Examiner Districts, available at <https://www.fdle.state.fl.us/MEC/Maps/Documents/Coverage-Map.aspx> (last viewed March 14, 2022).

¹¹⁵ Section 406.02, F.S. Commission members include two active medical examiners, a funeral director, a state attorney, a public defender, a sheriff, a county commissioner, the Attorney General (or designee) and the State Surgeon General (or designee).

¹¹⁶ Sections 406.06 and 406.075, F.S.

¹¹⁷ Section 406.11, F.S.

¹¹⁸ Ch. 2021-8, L.O.F.

Healthy Start MomCare Network

Current Situation

Healthy Start is a statewide program that provides health education and care coordination to pregnant women and families of children under age 3 to reduce risk factors associated with preterm birth, low birth weight, infant mortality and poor developmental outcomes.¹¹⁹ The 33 local Healthy Start Coalitions coordinate the statewide program, under contract with DOH,¹²⁰ as part of the maternal and child health program established by s. 383.011.

In 2011, the Legislature reorganized the state Medicaid program as a comprehensive, integrated managed care model.¹²¹ As part of this reform, the Legislature established the MomCare Network to enhance and expand Healthy Start services for Medicaid infants and pregnant women.¹²² The Legislature directed AHCA to contract with an administrative services organization representing all Healthy Start Coalitions to administer the MomCare Network, to improve coordination of the Healthy Start counseling, education, risk-reduction and case management services with the managed care plans.¹²³ Each Medicaid managed care plan must enter into an agreement with local Healthy Start Coalitions to coordinate with the program, as part of required programs and procedures to improve pregnancy outcomes and infant health.¹²⁴ AHCA is required to evaluate the impact of the MomCare Network by monitoring each managed care plan's performance on specific measures to determine the adequacy, timeliness, and quality of services for pregnant women and infants.¹²⁵

MomCare Network Board Meetings

Florida's Government in the Sunshine Law requires meetings of "any collegial public body" to be open and noticed to the public.¹²⁶ While the Sunshine Law applies exclusively to governmental bodies and not to private entities,¹²⁷ it does apply to a private entity to which a public entity has delegated a public purpose.¹²⁸

The Sunshine Law, as interpreted by the Attorney General, requires a public entity, or a private entity delegated public tasks, to conduct meetings for which a quorum is required in person: such an entity may only conduct meetings by teleconference or other technological means if either a statute permits a quorum to be present by other means, or the in-person quorum requirement is lawfully suspended during a state of emergency.¹²⁹

¹¹⁹ Department of Health, *Healthy Start*, <http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/index.html> (last visited March 14, 2022).

¹²⁰ Florida Association of Healthy Start Coalitions, *Healthy Start Health Plan Contact List*, <https://www.healthystartflorida.com/wp-content/uploads/2021/01/HS-CONNECT-REFERRAL-AND-COORDINATION-CONTACT-INFORMATION-Update-12-2-20.pdf> (last visited March 14, 2022).

¹²¹ Ch. 2011-134, L.O.F.; Part IV, Ch. 409, F.S.

¹²² S. 409.975(4), F.S. Healthy Start Coalitions provided Medicaid reimbursable services prior to these Medicaid changes; the MomCare Network integrates those services into the overall managed care environment. See, DOH, *Healthy Start Standards and Guidelines*, <http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/documents/chapter-1-the-healthy-start-system-2008.pdf> (last visited March 14, 2022).

¹²³ Ss. 409.906, 409.975(4)(a), F.S.

¹²⁴ S. 409.975(4)(b), F.S. The Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the services provided by Medicaid managed care plans and Healthy Start Coalitions for program overlap and possible duplication of services. OPPAGA found that, while some contracted services appear similar, the agreements between the plans and the Healthy Start coalitions clearly delineate who provides which services. These agreements show overlap in only two areas: care coordination and data sharing, which are appropriate joint duties. OPPAGA, *Review of Services Provided to Medicaid-Eligible Pregnant Women, Infants and Children by Florida Healthy Start and Medicaid Managed Care Plans*, Report 21-08 (Dec. 2021), <https://oppaga.fl.gov/Products/ReportDetail?rn=21-08> (last visited March 23, 2022).

¹²⁵ S. 409.975(4)(a), F.S.

¹²⁶ S. 286.011(1), F.S.; Art. 1, s. 24(b), Fla. Const.

¹²⁷ *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 177 (Fla. 1st DCA 2017).

¹²⁸ *Id.* at 180.

¹²⁹ Florida Attorney General, *Advisory Legal Opinion AGO 2020-03 – Public meeting quorums using technology*, March 19, 2020.

The MomCare Network appears to be subject to the Sunshine Law, as the Medicaid law delegates (through AHCA) certain essential AHCA functions to it, including the administration of state and federal funding for Healthy Start services for Medicaid enrollees. Further, the MomCare program is established by statute, and its sole source of funding is public funds.

Current law does not authorize the MomCare Network board to meet via telecommunication to conduct authorized business. This may be inefficient for the board, whose members are located around the state.

Effect of the Bill – Healthy Start MomCare Network

The bill authorizes the MomCare Network board to meet by telecommunication, provided proper public notice is given with reasonable access to meetings. This creates an exception to the Sunshine Law, which requires in-person meetings for private entities delegated a public function.

Rare Diseases Advisory Council

Current Situation

In 2021, the Legislature created the Rare Diseases Advisory Council (Council) adjunct to DOH.¹³⁰ The purpose of the Council is to provide recommendations on ways to improve health outcomes for individuals with rare diseases affecting fewer than 200,000 people in the United States. The Council must:

- Consult with experts on rare diseases and solicit public comment to assist in developing recommendations on improving the treatment of rare diseases in this state.
- Develop recommended strategies for academic research institutions in this state to facilitate continued research on rare diseases.
- Develop recommended strategies for health care providers to be informed on how to more efficiently recognize and diagnose rare diseases in order to effectively treat patients. The advisory council shall provide such strategies to DOH for publication on the department's website.
- Provide written input and feedback to DOH, the Medicaid program, and other state agencies on specified matters.

There are 22 members of the Council which are appointed by the Governor, the President of the Senate (President), and the Speaker of the Florida House of Representatives (Speaker). Currently, the President and the Speaker each appoint one member to the Council who is a caregiver of an individual with a rare disease.

Effect of the Bill – Rare Diseases Advisory Council

The bill requires the President and the Speaker each to each appoint two individuals who were previously caregivers, rather than only current caregivers, to the Rare Disease Advisory Council, bringing the council membership to 24.

Finally, the bill makes various conforming changes.

The bill provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹³⁰ Ch. 2021-122, L.O.F.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH may experience an increase in workload to conduct rulemaking and updating online application websites to implement the provisions of the bill, the impact of which can be absorbed within current resources.¹³¹

DOH may also experience an increase in expenditures relating to medical marijuana sampling and testing, the impact of which can be absorbed within current resources.¹³²

NICA may experience an increase in expenditures relating to additional retroactive payments to eligible parents or legal guardians. NICA may also experience a nominal decrease in expenditures related to collection of unpaid assessments that were not otherwise recoverable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹³¹ *Supra*, note 24.

¹³² *Id.*