

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 819 Department of Health  
**SPONSOR(S):** Pigman  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1066

| REFERENCE                                  | ACTION | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|----------|--|
| 1) Health Quality Subcommittee             |        | Castagna | O'Callaghan                              |
| 2) Health Care Appropriations Subcommittee |        |          |  |
| 3) Health & Human Services Committee       |        |          |  |

### SUMMARY ANALYSIS

This bill makes changes to various programs under the Florida Department of Health's (Department) Division of Medical and Quality Assurance (MQA).

This bill amends s. 456.013, F.S., to remove the requirement that medical doctors complete certain continuing education requirements. This bill authorizes the Board of Medicine (Board), through rulemaking, to mandate specific continuing medical education requirements. The Board may allow the fulfillment of continuing education requirements, to the extent allowed in rule, for:

- Continuing medical education courses approved by the American Medical Association;
- Attendance at board meetings in which a licensee is being disciplined;
- Service as a volunteer expert witness in a disciplinary proceeding or service as a member of a probable cause panel;
- Pro bono services to indigent and underserved populations or patients in critical need areas;
- Performing research in critical need areas; or
- Training for advanced professional certification.

This bill allows the Board, or the Department when there is no board, to adopt rules (under certain circumstances) to waive initial application and licensure fees, and renewal of licensure fees, for health care practitioners licensed under ch. 456, F.S. The waiver of renewal fees may not exceed 2 years.

This bill allows the Department to enter into an interagency agreement with the Department of Highway and Safety Motor Vehicles to gain access to current digital photographic images of licensed health care practitioners who live in Florida, which will assist the Department in investigations of health care practitioners or persons conducting unlicensed activities. The bill also facilitates such investigations by authorizing the Department, instead of the Agency for Health Care Administration (AHCA), to access patient records. Additionally, the bill authorizes the Department, instead of AHCA, to operate the medical services complaint toll-free hotline.

In addition to the above, the bill:

- Removes the option of apprenticeship as a pathway to licensure for massage therapists.
- Aligns continuing training requirements for certified nursing assistants' certification renewals with their biennial renewal cycles and abolishes the Council on Certified Nursing Assistants.
- Removes the requirement that the Department send a notification by registered mail to each registered dental laboratory operator within 30 days following the expiration date of the dental laboratory operator's registration.
- Updates the names of certain accrediting bodies for midwifery programs and registered dietitians.

The bill has a negative fiscal impact on state government and the private sector.

This bill provides an effective date of July 1, 2014.

### FULL ANALYSIS

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

**STORAGE NAME:** h0819.HQS

**DATE:** 3/4/2014

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Department of Health, Division of Medical Quality Assurance

Currently, the Division of Medical Quality Assurance (MQA) within the Department of Health (Department) licenses and regulates health care practitioners to preserve the health, safety, and welfare of the public. Working in conjunction with 22 boards and 6 councils, the MQA licenses and regulates 7 types of facilities and 200-plus license types in more than 40 health care professions.<sup>1</sup>

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>2</sup> Boards are responsible for approving or denying applications for licensure, establishing continuing medical education requirements, and are involved in disciplinary hearings. Sections 456.072, 456.073, and 456.074 F.S., provide the authority for a board to take disciplinary action against a licensee. The board can take action for any legally sufficient, written, and signed complaint that is filed before it.<sup>3</sup>

##### *Department Investigations*

The Department has the authority to investigate a complaint. Further, the Department may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida Statute, or an administrative rule of either a board or the Department. However, patient and personnel records may only be issued to the Agency for Health Care Administration for purposes of investigation, prosecution, and disciplinary proceedings against a health care practitioner.<sup>4</sup> Records used to form the basis of an investigation against a health care practitioner, must be made available, upon written request, to the practitioner who is under investigation or prosecution. Otherwise, the patient records are currently protected from public access under s. 456.057(9)(a), F.S.

##### *Licenses and Fees*

A regulatory board issues a license to a health care practitioner after certain statutory and administrative criteria are met. Two licenses are issued to health care practitioners, 1 wallet-sized, and one wall certificate measuring 6 ½ inches by 5 inches.<sup>5</sup> If a provider's license is revoked or issued in error, the licensee must surrender both of these to the Department. Photos of each licensee are kept on file with the Department.

Typical fees associated with obtaining an initial license for a profession within the jurisdiction of the Department include:

- An initial licensing fee.
- An initial application fee.
- An initial unlicensed activity fee of \$5.<sup>6</sup>
- Fees associated with criminal background checks.

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<sup>1</sup> Florida Health Source, Florida Department of Health, *accessible at*: <http://www.flhealthsource.gov/> (Last accessed February 28, 2014).

<sup>2</sup> Section 456.001, F.S.

<sup>3</sup> Section 456.025(3), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of the relevant practice act or any rule adopted by the Department or the relevant board.

<sup>4</sup> Section 395.3025, F.S.

<sup>5</sup> The fee assessed by the Department for a wall certificate may not exceed \$25.

<sup>6</sup> Section 455.2281, F.S., refers to the unlicensed activity fee which funds regulation of licensed professions, including investigations of persons conducting unlicensed health care activities.

Each board, or the Department when there is no board, determines by rule the amount of license fees for each profession it regulates. Fees are allocated to the MQA Trust Fund.<sup>7</sup>

### *MQA Trust Fund*

Funds allocated to the MQA Trust Fund consist of fees and fines related to the licensing of health care professionals. Funds must be used for the purpose of providing administrative support for the regulation of health care professionals and for other such purposes as may be appropriate pursuant to legislative appropriation.<sup>8</sup> Every two years each board or, the Department when there is no board, collects application and additional licensing fees from applicants and renewal fees from current practitioners. As of December 31, 2013, there was \$20,749,755 in the MQA Trust Fund.<sup>9</sup>

### *Certified Nursing Assistants*

To maintain certification, Certified Nursing Assistants (CNA) must show proof of having completed in-service training hours, which are the equivalent of continuing education hours for other health care professions. Currently, a CNA must complete 12 hours of in-service training each calendar year.<sup>10</sup> CNA licenses are issued for a biennium with a May 31st expiration date.

The Council on Certified Nursing Assistants (Council)<sup>11</sup> proposes rules to implement in-service training requirements. The Council is composed of 5 members:

- 2 Registered Nurses appointed by the chair of the Board of Nursing.
- 1 Licensed Practical Nurse appointed by the chair of the Board of Nursing.
- 2 Certified Nursing Assistants appointed by the State Surgeon General.

The Council meets every two months in conjunction with the Board of Nursing. During these meetings the Council makes recommendations to the Department and the Board of Nursing regarding CNA policies and procedures, licensure, and other regulatory issues.<sup>12</sup>

### *Massage Therapist Licensure*

A person may be approved by the Board of Massage Therapy to become an apprentice to study massage under the instruction of a licensed massage therapist, if the person meets the qualifications stated in Rule 64B7-29.002, Florida Administrative Code. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a Department application, pay a \$100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.<sup>13</sup>

Section 480.042, F.S., provides certain licensing examination requirements if the examination is administered by the Department; however in recent years the Department has contracted with national testing vendor, Pearson Vue, to administer the examinations.<sup>14</sup>

### *Dental Laboratory Operators*

According to s. 466.032, F.S., a dental laboratory operator is required to renew his or her dental laboratory operator registration every two years. Renewal notices are sent to the last known address of

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<sup>7</sup> Section 456.025(8), F.S.

<sup>8</sup> Section 20.435(4), F.S.

<sup>9</sup> This amount pertains to the licensed practitioner portion included in the MQA Trust Fund. Summary Expenditures by Functions Report, Florida Department of Health (on file with Health Quality Subcommittee staff).

<sup>10</sup> Section 464.203, F.S.

<sup>11</sup> Section 464.2085(2)(b), F.S.

<sup>12</sup> Council on Certified Nursing Assistants, Florida Board of Nursing, *accessible at*: <http://www.floridasnursing.gov/board-comm/council-of-certified-nursing-assistants/> (Last accessed: March 2, 2014).

<sup>13</sup> Massage Apprentice, Florida Board of Massage Therapy, *accessible at*: <http://www.floridasmassagetherapy.gov/licensing/massage-apprentice/> (Last accessed: February 28, 2014).

<sup>14</sup> Email correspondence with DOH, March 1, 2014 (on file with Health Quality Subcommittee staff).

the dental laboratory operator 120 days prior to the expiration date of the registration. If a dental laboratory operator fails to timely renew his or her dental laboratory operator registration, the operator must be notified by registered mail by the Department. After the Department has provided notice of the failure to timely renew a dental laboratory operator registration, the dental laboratory operator is then given three additional months to renew the registration with no late fee.

During the most recent license renewal period, the Department mailed 281 registered mail return-receipt notices to delinquent dental laboratory operators; 86 were returned as undeliverable. This notification requirement costs the Department over \$2,000 every two years. This process is not required for any other regulated health care professionals.<sup>15</sup>

### *Continuing Medical Education*

Health care practitioners must complete a certain amount of continuing medical education within each licensure renewal cycle to maintain their professional license. Florida law currently requires health care practitioners to complete continuing medical education related to:

- Prevention of medical errors; and<sup>16</sup>
- Human immunodeficiency virus and acquired immune deficiency syndrome.<sup>17</sup>

The Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine require licensees to complete at least 40 hours of continuing education every 2 years. Each of those boards may require additional or specific continuing education requirements by rule.

Section 456.013, F.S., also states that up to 25 percent of continuing medical education hours may be fulfilled through pro bono services to the indigent, underserved populations, or patients in critical need areas. These services must be approved by the applicable board in advance.

### Toll-Free Hotline for Medical Complaints

Currently, a toll-free hotline is available through the AHCA for public reporting of complaints related to treatment and services provided by health care professionals. The total cost for the AHCA call center is \$1,297,836, which includes two contracts in the amount of \$796,278, 9 FTEs dedicated to the call center in the amount of \$483,404, and operational expenses which amount to \$18,154.<sup>18</sup>

### Provisional Licenses for Nursing Home Administrators

The Board of Nursing Home Administrators may establish by rule requirements for issuance of a provisional license. A provisional license is issued by the Board to fill a position of nursing home administrator that unexpectedly becomes vacant due to illness, sudden death of the administrator, or abandonment of the position and is issued for not more than 6 months.<sup>19</sup>

The Department may not issue a provisional license to any applicant who is under investigation in this state or another jurisdiction for certain offenses. The provisional license may be issued to a person who does not meet all of the licensing requirements for a nursing home administrator, but the person must meet other specified criteria set forth in rules adopted by the Board. In the event a nursing home administrator vacates his or her position, the provisional license must be issued to the person who is designated as the responsible person next in command. The Board may set an application fee not to exceed \$500 for a provisional license.<sup>20</sup>

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<sup>15</sup> DOH MQA Analysis, dated July 22, 2014 (on file with Health Quality Subcommittee staff).

<sup>16</sup> Section 456.013, F.S.

<sup>17</sup> Section 456.033, F.S.

<sup>18</sup> Email correspondence with AHCA, March 3, 2014 (on file with Health Quality Subcommittee staff).

<sup>19</sup> Section 468.1735, F.S.

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

## Effect of Proposed Changes

This bill makes changes to various programs under the Florida Department of Health's (Department) Division of Medical and Quality Assurance (MQA).

This bill amends s. 456.013, F.S., to no longer require the Board of Medicine (Board) to require in rule that medical doctors complete a 2-hour course relating to the prevention of medical errors for initial licensure or renewal of licensure. The bill also removes the authority of the Board to adopt rules requiring continuing medical education from s. 456.013, F.S., and instead, places the Board's authority to adopt such rules in s. 458.319, F.S., which is within the Medical Practice Act. In addition to moving the Board's authority in statute, the bill provides additional authority to the Board allowing it to require by rule specific continuing education requirements and authorize in rule the fulfillment of continuing education requirements for:

- Continuing medical education courses approved by the American Medical Association;
- Attendance at board meetings in which a licensee is being disciplined;
- Service as a volunteer expert witness in a disciplinary proceeding or service as a member of a probable cause panel;
- Pro bono services to indigent and underserved populations or patients in critical need areas;
- Performing research in critical need areas; or
- Training for advanced professional certification.

The bill allows, when a health care profession's trust fund balance is in excess of the amount required to cover the costs of regulating that profession, the board or the Department when there is no board, to waive the payment of:

- Initial application and licensure fees received from applicants.
- Renewal fees received from licensed health care practitioners.

The waiver of renewal fees may not exceed 2 years.

This bill allows the Department to enter into an interagency agreement with the Florida Department of Highway and Safety Motor Vehicles (DHSMV) to gain access to current digital photographic records on licensed health care practitioners who live in Florida. This is current practice for other agencies; for example, under s. 322.142, F.S., DHSMV reproduces images for reproduction of licenses issued by the Department of Business and Professional Regulation. These images will assist the Department with identifying persons in investigations.

This bill removes the requirement that the Department issue a wallet-sized identification card and a wall certificate upon the licensure of a health practitioner. The bill also deletes the corresponding fee for the wall certificate, which currently may not exceed \$25.

This bill amends s. 395.3025, F.S., authorizing the Department, instead of the Agency for Health Care Administration (AHCA), to obtain patient records by subpoena for use by a professional board or the Department in its investigation, prosecution, or appeal of disciplinary proceedings of a health care practitioner. This bill also authorizes the Department, instead of AHCA, to operate the medical complaint toll-free hotline.

This bill removes the option of apprenticeship as a pathway to licensure for massage therapists and makes many conforming changes.

This bill aligns necessary in-service training requirements for a Certified Nursing Assistant's license renewal with the established biennial renewal cycle for that practitioner. The bill also repeals s. 464.285, F.S., to abolish the Council on Certified Nursing Assistants.

This bill repeals s.468.1735, F.S., to no longer authorize the Board of Nursing Home Administrators to establish by rule requirements for the issuance of a provisional license for a nursing home administrator.

This bill amends s. 466.032 (2), F.S., to remove the requirement that the Department send a notification by registered mail to each Florida dental laboratory operator who has failed to renew his or her registration.

This bill makes technical and conforming changes to:

- Correct the statutory reference to the authorized midwifery program accrediting body to reflect the acting body, the Council on Higher Education Accreditation and to recognize any future organizations.
- Reflect the acting accrediting body for Registered Dietitians, the Academy of Nutrition and Dietetics.
- Repeal obsolete statutory language in s.480.042, F.S., referring to the Department administering and overseeing an in-state licensure examination for massage therapists.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

**Section 2.** Amends s. 395.3025, F.S., relating to patient and personnel records, copies, and examination.

**Section 3.** Amends s. 456.013, F.S., relating to the Department of Health and general licensing provisions.

**Section 4.** Amends s. 456.025, F.S., relating to fees, receipts, and disposition.

**Section 5.** Amends s. 456.033, F.S., relating to requirement for instruction for certain licensees on HIV and AIDS.

**Section 6.** Amends s. 456.068, F.S., relating to toll-free telephone number for reporting of complaints.

**Section 7.** Amends s. 458.319, F.S., relating to renewal of license.

**Section 8.** Amends s. 464.203, F.S., relating to certified nursing assistants and certification requirement.

**Section 9.** Repeals s. 464.2085, relating to the Council on Certified Nursing Assistants.

**Section 10.** Amends s. 466.032, F.S., relating to registration.

**Section 11.** Amends s. 467.009, F.S., relating to midwifery programs, education and training requirements.

**Section 12.** Repeals s. 468.1735, F.S., relating to provisional licenses.

**Section 13.** Amends s. 468.503, F.S., relating to definitions.

**Section 14.** Amends s. 468.505, F.S., relating to exemptions and exceptions.

**Section 15.** Amends s. 480.033, relating to definitions.

**Section 16.** Amends s. 480.041, F.S., relating to massage therapists, qualifications, licensure, and endorsement.

**Section 17.** Amends s. 480.042, F.S., relating to examinations.

**Section 18.** Amends s. 480.044, F.S., relating to fees and disposition.

**Section 19.** Amends s. 823.05, F.S., relating to places and groups engaged in criminal gang-related activity declared a nuisance; massage establishments engaged in prohibited activity; may be abated and enjoined.

**Section 20.** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The Department and the boards will experience a decrease in revenues when a fee waiver is approved for a specific profession. The fee waiver for a board would not, however, be approved unless the profession's long range projections indicate sufficient cash to absorb the reduction in

revenue. Possible boards or professions that could consider the fee waiver are the Board of Psychology, the Board of Nursing, the Board of Pharmacy, the Board of Orthotists and Prosthetists and the Council of Physicians Assistants.<sup>21</sup>

The State General Revenue fund will experience a decrease in revenues when any board, or the Department when there is no board, elects to implement the fee waiver because the 8% surcharge on revenues collected will be reduced.<sup>22</sup>

2. Expenditures:

The elimination of the specific size for a license will provide the Department flexibility to explore more cost-effective alternatives for printed licenses. The paper for a license is purchased in bulk and currently costs .142 cents per license. The fiscal impact is indeterminate at this time, yet anticipated to result in cost savings for the Department.<sup>23</sup>

The elimination of the Council on Certified Nursing Assistants will result in an annual cost-savings of approximately \$40,700. The current costs associated with the council include council members' per diem of \$50 per day and their travel costs, and the costs for MQA to staff 6 meetings annually.<sup>24</sup>

The elimination of the requirement to notify dental laboratory operators of registration delinquencies by certified mail will save the Department approximately \$2,000 biennially.<sup>25</sup>

The medical complaint hotline will have a negative fiscal impact on the Department. To handle the workload of the hotline, the Department will require 1 FTE, amounting to approximately \$48,530 for the first year of the program.<sup>26</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants and/or licensees of specific professions licensed and regulated by the appropriate board, or the Department when there is no board, will experience cost-savings if the fee waiver is implemented.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

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<sup>21</sup> DOH MQA Analysis, dated July 22, 2014 (on file with Health Quality Subcommittee staff).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

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

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

**B. RULE-MAKING AUTHORITY:**

This bill grants each Board, or the Department when there is no board, specific authority to implement the waiver of initial application fees, initial licensure fees, unlicensed activity fees, or renewal fees for health care professionals.

This bill grants the Board of Medicine specific authority to adopt rules related to continuing medical education requirements.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Authorization provided in lines 285-301 for the Board of Medicine to allow the substitution of continuing medical education for pro bono services to the indigent or underserved populations is redundant as this authorization is currently provided for in s. 456.013(9), F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**