

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 819 Department of Health

SPONSOR(S): Health Care Appropriations Subcommittee; Health Quality Subcommittee; Pigman

TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 1 N, As CS	Castagna	O'Callaghan
2) Health Care Appropriations Subcommittee	11 Y, 0 N, As CS	Pridgeon	Pridgeon
3) Health & Human Services Committee		Castagna	Calamas

SUMMARY ANALYSIS

This bill makes various changes to laws governing health care practitioners regulated by the Department of Health (Department).

This bill removes the requirement that medical doctors complete certain continuing education requirements, but authorizes the Board of Medicine (Board), through rulemaking, to mandate specific continuing medical education requirements. Also, the Board may, by rule, allow 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.

This bill allows a board, or the Department when there is no board, to adopt rules (under certain circumstances) to waive initial application and licensure fees, and licensure renewal 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 access current digital photographic images of licensed health care practitioners to assist the Department with practitioner or unlicensed practice investigations. It also updates the law to authorize the Department, instead of the Agency for Health Care Administration, to access patient records for such investigations.

In addition, the bill makes practitioner-specific changes. It:

- 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.
- Revises the membership structure for the Board of Nursing Home Administrators and allows for those with a master's degree in health care services or an equivalent field to take the examination to be a licensed nursing home administrator regardless of the type of bachelor's degree earned.

The bill has an insignificant positive fiscal impact on the Department of Health.

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: h0819d.HHSC

DATE: 4/1/2014

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.¹

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.² 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.³ Not every profession is governed by a board.

Department Investigations

The Department has the authority to investigate a complaint against a health care professional. 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 (AHCA) for purposes of investigation, prosecution, and disciplinary proceedings against a health care practitioner.⁴ 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 certificate⁵ measuring 6 ½ inches by 5 inches.⁶ 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;and,⁷
- Fees associated with criminal background checks.

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

² Section 456.001, F.S.

³ 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.

⁴ Section 395.3025, F.S. This appears to be caused by a failure to update this section of law when MQA was moved from AHCA to the Department in 1999.

⁵ The fee assessed by the Department for a wall certificate may not exceed \$25. Section 456.025(4), F.S.

⁶ Section 456.013(2), F.S.

⁷ 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.⁸

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.⁹ Every 2 years each board, or the Department when there is no board, collects applications and additional licensing fees from applicants and renewal fees from current practitioners. Since Fiscal Year 2008-2009, the cost of regulating health care practitioners has averaged \$63,198,327 annually, and the MQA has collected an average of \$72,035,217 in revenue annually.¹⁰ As of December 31, 2013, there was \$20,749,755 in the MQA Trust Fund.¹¹

Certified Nursing Assistants

To maintain certification, Certified Nursing Assistants (CNAs) 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.¹² CNA certificates are issued for a biennium with a May 31st expiration date.

The Council on Certified Nursing Assistants (Council)¹³ proposes rules to implement in-service training requirements. The Council meets every 2 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.¹⁴ 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; and,
- 2 Certified Nursing Assistants appointed by the State Surgeon General.

Massage Therapist Licensure

Section 480.033, F.S., defines “apprentice” as a person approved by the Board of Massage Therapy to study massage under the instruction of a licensed massage therapist. 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.¹⁵ For a 10-year period ending on June 21, 2013, the Board of Massage Therapy has received 300 applications for apprenticeship. Of those 300 applicants, only 8 have obtained full licensure as a massage therapist.¹⁶

Section 480.042, F.S., authorizes the Department, in accordance with rules established by the Board of Massage Therapy, to administer examinations for persons who apply for massage therapy licensure.

⁸ Section 456.025(8), F.S.

⁹ Section 20.435(4), F.S.

¹⁰ DOH Analysis of HB 819, dated March 17, 2014 (on file with Health and Human Services Committee staff).

¹¹ This amount pertains to the licensed practitioner portion of the MQA Trust Fund. The MQA Trust Fund also contains funds used for investigating unlicensed activities. Summary Expenditures by Functions Report, Florida Department of Health (on file with Health Quality Subcommittee staff).

¹² Section 464.203, F.S.

¹³ Section 464.2085(2)(b), F.S.

¹⁴ 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).

¹⁵ Rule 64B7-29.002, F.A.C.

¹⁶ *Supra fn. 10*

The Department contracts with a national testing vendor, Pearson Vue, to administer the examinations.¹⁷

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 2 years. Renewal notices are sent to the last known address of 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 3 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.¹⁸

Nursing Home Administrators

The Board of Nursing Home Administrators, within the Department, licenses and regulates nursing home administrators. The board is comprised of 7 members appointed by the Governor and confirmed by the Senate. The board members serve 4-year terms, or for the remainder of an unexpired vacancy.¹⁹ The membership of the board consists of:

- 3 licensed nursing home administrators;
- 2 health care practitioners; and,
- 2 laypersons who have never been members of any health care profession.²⁰

Any person who wishes to be a nursing home administrator must take a licensure examination. To be eligible for examination, a person must hold a bachelor's degree majoring in health care administration, health services administration, or an equivalent major.²¹

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 nursing home administrator position 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.²²

The last nursing home administrator provisional license issued by the Board of Nursing Home Administrators was in December 2007. The board repealed Rule 64B10-11.011, F.A.C., Provisional License, in May 2010, because provisional licenses were no longer necessary for the regulation of the profession.²³

Continuing Medical Education

Section 456.013, F.S., establishes continuing education requirements for many health care practitioners,²⁴ including allopathic physicians which are governed by ch. 458, F.S. Rule 64B8-13.005,

¹⁷ Email correspondence with DOH, March 1, 2014 (on file with Health Quality Subcommittee staff).

¹⁸ DOH MQA Analysis, dated July 22, 2013 (on file with Health Quality Subcommittee staff).

¹⁹ Section 468.1665, F.S.

²⁰ At least 1 member of the Board of Nursing Home Administrators must be 60 years of age or older.

²¹ Section 468.1695, F.S.

²² Section 468.1735, F.S.

²³ *Supra* fn 10.

²⁴ Section 456.001(4), F.S., defines "health care practitioner" to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing);

F.A.C., Continuing Education for Biennial Renewal, requires physicians licensed under ch. 458, F.S., to complete 40 hours of continuing medical education courses approved by the Board in the 24 months preceding each biennial renewal period as established by the Department.

Section 456.013(7), F.S., requires health care professionals, including medical doctors, to complete 2 hours of continuing education relating to the prevention of medical errors. Similarly, s. 456.033, F.S., requires many health care professionals to complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome.²⁵ In addition, up to 5 hours, per biennium, of continuing education credit may be fulfilled by performing pro bono medical services to the indigent, underserved populations or patients in critical need areas.²⁶

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.

Effect of Proposed Changes

Department of Health, Division of Medical Quality Assurance

Department Investigations

This bill allows the Department to enter into an interagency agreement with the Florida Department of Highway and Safety Motor Vehicles (DHSMV) to access current digital photographic records of 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 amends s. 395.3025, F.S., authorizing the Department, instead of 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.

Licenses and Fees

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.

The bill allows, the board, or the Department when there is no board, to waive the payment of initial application and licensure fees received from applicants and renewal fees received from licensed health care practitioners. This is permitted 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 waiver of renewal fees may not exceed 2 years.

ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S., (psychotherapy).

²⁵ Practitioners licensed or certified under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (allopathic medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 463, F.S., (optometry); part I of ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S. (dentistry and dental hygiene); parts II, III, V, and X of ch. 468, F.S., (nursing home administration; occupational therapy; respiratory therapy; and dietetics and nutrition); are required to complete a course on HIV/AIDS no later than first renewal of license. Section 456.033, F.S.

²⁶ Rule 64B8-13.005, F.A.C., Continuing Education for Biennial Renewal.

Certified Nursing Assistants

This bill aligns current 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.

Massage Therapist Licensure

This bill removes the option of apprenticeship as a pathway to licensure for massage therapists. This bill also repeals obsolete statutory language in s. 480.042, F.S., referring to the Department administering and overseeing an in-state licensure examination for massage therapists.

Dental Laboratory Operators

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.

Nursing Home Administrators

This bill revises s. 468.1695, F.S., to allow those with a master's degree in health care administration, health services administration, or an equivalent major to be eligible to take the nursing home administrator licensure examination, regardless of the type of bachelor's degree they earned. The bill also revises the membership of the Board of Nursing Home Administrators to allow nursing home administrators to represent a majority of members on the board.

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, and thereby eliminates provisional licenses for nursing home administrators.

Continuing Medical Education

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. This bill also amends s. 456.033, F.S., to no longer require the Board to require in rule that medical doctors complete a course relating to HIV and AIDS no later than first renewal of license. 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.

This bill makes technical changes to:

- Correct the statutory reference to the authorized midwifery program accrediting body to update the name (the Council on Higher Education Accreditation), and to recognize any future organizations.

- Correct the statutory reference to the accrediting body for registered dietitians, to update the name (the Academy of Nutrition and Dietetics).²⁷

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. 458.319, F.S., relating to renewal of license.
- Section 7.** Amends s. 464.203, F.S., relating to certified nursing assistants and certification requirement.
- Section 8.** Repeals s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants.
- Section 9.** Amends s. 466.032, F.S., relating to registration.
- Section 10.** Amends s. 467.009, F.S., relating to midwifery programs, education and training requirements.
- Section 11.** Amends s. 468.1665, F.S., relating to the Board of Nursing Home Administrators.
- Section 12.** Amends s. 468.1695, F.S., relating to licensure by examination.
- Section 13.** Repeals s. 468.1735, F.S., relating to provisional licenses.
- Section 14.** Amends s. 468.503, F.S., relating to definitions.
- Section 15.** Amends s. 468.505, F.S., relating to exemptions and exceptions.
- Section 16.** Amends s. 480.033, F.S., relating to definitions.
- Section 17.** Amends s. 480.041, F.S., relating to massage therapists, qualifications, licensure, and endorsement.
- Section 18.** Amends s. 480.042, F.S., relating to examinations.
- Section 19.** Amends s. 480.044, F.S., relating to fees and disposition.
- Section 20.** 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 21.** 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 be approved unless the profession's long range projections indicate sufficient cash to absorb the reduction in revenue.

The State General Revenue Fund may experience a minimal decrease in revenues when any board, or the Department when there is no board, elects to implement the fee waiver due to the 8% surcharge on revenues collected being reduced.²⁸ This is not expected to be significant.

²⁷In January 2012 the American Dietetic Association changed its name to the Academy of Nutrition and Dietetics. "New Name, Same Commitment to Public's Nutritional Health: American Dietetic Association Becomes Academy of Nutrition and Dietetics," Academy of Nutrition and Dietetics, *accessible at*: <http://www.eatright.org/Media/content.aspx?id=6442465361#Uzmt6mwpDcs> (last accessed March 31, 2014). To practice as a dietitian in Florida a person must be licensed; being a registered dietitian by the Academy of Nutrition and Dietetics is an acceptable pathway to licensure. Email correspondence with DOH, March 31, 2014 (on file with Health and Human Services Committee staff).

²⁸*Supra* fn 10.

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.²⁹

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.³⁰

The elimination of the requirement to notify dental laboratory operators of registration delinquencies by certified mail will save the Department approximately \$2,000 biennially.³¹

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.

B. RULE-MAKING AUTHORITY:

This bill grants each board, or the Department when there is no board, specific authority to adopt rules to waive 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:

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

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.

The accrediting body for midwifery programs is the Council “for” Education Accreditation not the Council “on” Education Accreditation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Health Quality Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Removed the section of the bill that transfers the medical complaint hotline from the Agency for Health Care Administration to the Department.
- Revised the membership of the Board of Nursing Home Administrators to consist as follows:
 - 4 registered nursing home administrators.
 - 1 health care practitioner.
 - 2 laypersons who have never been members of any health care profession.
- Permitted those with a master’s degree in health care administration or equivalent major, to be eligible to take the nursing home administrator licensure examination, regardless of the type of bachelor’s degree they earned.
- Revised the requirement for an inter-facility transfer in an ambulance to include those patients who are:
 - Bed confined.
 - Require the administration of medical oxygen.

On March 18, 2014, the Health Care Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Removed the section of the bill that revised the requirement for an inter-facility transfer in an ambulance to include those patients who are:
 - Bed confined.
 - Require the administration of medical oxygen.

The analysis is drafted to the committee substitute as passed by the Health Care Appropriations Subcommittee.