



Health Quality Subcommittee

Thursday, March 12, 2015
9:00 AM - 11:00 AM
306 HOB

Steve Crisafulli
Speaker

Cary Pigman
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Thursday, March 12, 2015 09:00 am
End Date and Time: Thursday, March 12, 2015 11:00 am
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 141 Pub. Rec./Impaired Practitioner Consultants by Renuart, Adkins
HB 515 Physical Therapy by Cummings
HB 545 Telehealth by Cummings, Jones, M.
HB 633 Informed Patient Consent by Sullivan
HB 655 Clinical Laboratories by Roberson, K.

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Wednesday, March 11, 2015.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 11, 2015.

NOTICE FINALIZED on 03/10/2015 16:02 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 141 Pub. Rec./Impaired Practitioner Consultants

SPONSOR(S): Renuart

TIED BILLS: IDEN./SIM. BILLS: CS/SB 144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Castagna <i>AK</i>	O'Callaghan <i>MS</i>
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Department of Health (DOH) administers a treatment program for impaired health care practitioners pursuant to s. 456.076, F.S., and the Department of Business and Professional Regulation (DBPR) administers a treatment program for pilots pursuant to s. 310.102, F.S. These treatment programs assist DOH and DBPR in determining whether health care practitioners or other professionals, who have experienced a substance abuse or mental or physical health impairment, are safe to practice their profession. Currently, two different impaired practitioner consultant companies provide such services in Florida.

HB 141 creates a public records exemption for the personal identification and location information of impaired practitioner consultants, the employees of consultants, and the spouses and children of the consultants and employees. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill also provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant negative fiscal impact on DOH and DBPR.

The bill provides that the act will take effect upon becoming a law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption for agency personnel information; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency⁷ or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ An exemption must specifically state the public necessity justifying the exemption¹⁰ and must be tailored to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.²⁰

The OGSR also requires specific questions to be considered during the review process. The questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²¹

In examining an exemption, the OGSR asks the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(a), F.S.

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

Public Records Exemptions

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.²⁴ Examples of public employees covered by these exemptions include: law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt²⁵ from public records requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such employees; and
- Names and locations of schools and day care facilities attended by the children of such employees.

If exempt information is held by an agency that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public records exemption.²⁶

Department of Health- Division of Medical Quality Assurance

The Department of Health's (DOH) Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety and welfare of the public. There are 22 boards and 8 councils under the MQA, and the MQA licenses 7 types of facilities and 200-plus occupations in more than 40 health care professions.²⁷ MQA is responsible for the licensure of health care practitioners and facilities, the enforcement of law and rules governing practitioners and facilities, and providing information and data to the public.²⁸

As part of its enforcement responsibilities, DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant, and legally sufficient, and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.²⁹

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) licenses and regulates businesses and professionals.³⁰ The Division of Professions within DBPR administers 12 professional boards, 5 Department-regulated professions and 1 council.³¹ The Division of Regulation is the enforcement

²⁴ Section 119.071(4)(d), F.S.

²⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

²⁶ Section 119.071(4)(d)3., F.S.

²⁷ Florida Department of Health, *Florida Health Source*, accessible at <http://www.flhealthsource.gov/> (last visited February 20, 2015).

²⁸ *Id.*

²⁹ Section 456.073, F.S.

³⁰ Florida Dep't of Business and Professional Regulation, *Department of Business and Professional Regulation*, available at <http://www.myfloridalicense.com/dbpr/os/os-info.html>

³¹ Florida Dep't of Business and Professional Regulation, Division of Professions, available at <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited March 9, 2015).

authority for the professional boards, professions, and council. It monitors professions and related businesses to ensure that the laws, rules and standards set by Legislature and professional boards are followed.³²

Treatment Programs for Practitioners and Professionals

Impairment can result from the use or misuse of drugs or alcohol, or both, or due to a mental or physical condition that could affect a person's ability to practice with skill and safety.³³ DOH administers a treatment program for impaired health care practitioners³⁴ pursuant to s. 456.076, F.S., and DBPR administers a treatment program for pilots pursuant to s. 310.102, F.S. These treatment programs ensure that licensed health care practitioners and professionals, applicants for licensure, and students enrolled in pre-licensure education programs, who are impaired and may pose a threat to the public if allowed to obtain or retain a license, are evaluated and referred for treatment.

DOH and DBPR contract with impaired practitioner consultants (IPC) to monitor the treatment of an impaired practitioner and coordinate services. DOH and DBPR contract with the Professionals Resource Network (PRN) and DOH also contracts with the Intervention Project for Nurses (IPN). An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.³⁵ An IPC initiates intervention, recommends evaluation, and refers impaired practitioners to approved treatment providers or treatment programs and monitors the progress of impaired practitioners under the direction of consultants. An IPC does not provide medical services.³⁶

A practitioner's participation in a treatment program is voluntary, but it requires him or her to voluntarily withdraw from practice or limit the scope of his or her practice until the practitioner successfully completes the treatment program. By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action if the impairment is the only violation of the licensing statute under which the practitioner is regulated.³⁷

An IPC does not render decisions relating to licensure of a particular practitioner. However, an IPC is required to make recommendations to the relevant practitioner board's probable cause panel, or DOH when there is no board, regarding a practitioner's ability to practice safely.³⁸

According to DOH, there are approximately 2,449 participants enrolled in the programs: 1,461 are served by IPN and 988 are served by PRN.³⁹ According to DBPR, there are 21 veterinarians served by PRN.⁴⁰

Effect of Proposed Changes

The bill expands the public records exemption for agency personnel information to include the identification and location information of a current or former IPC who is retained by an agency, a current or former employee of an IPC whose duties result in a determination of a person's skill and safety to practice, and the spouses and children of both.

³² Florida Dep't of Business and Professional Regulation, Division of Regulation, available at <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited March 9, 2015).

³³ Section 456.076(4)(a), F.S.

³⁴ The Board of Veterinarians, under the Department of Business and Professional Regulation, administers a treatment program for impaired veterinarians pursuant to s. 456.076, F.S. See s. 474.221, F.S.

³⁵ Section 456.076(2)(a), F.S.

³⁶ Section 456.076(2)(c)1., F.S.

³⁷ *Id.*

³⁸ Section 456.076(2)(c)1., F.S.

³⁹ Email correspondence with DOH staff. (on file with committee).

⁴⁰ There are currently no pilots in the impaired practitioner program. Email correspondence with DBPR staff. (on file with committee).

The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of current and former IPCs and their employees;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such IPCs or their employees; and
- The names and locations of schools and day care facilities attended by the children of such IPCs or their employees.

The bill provides that the exemption may be maintained only if the IPC or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. Additionally, the exemption is subject to an existing requirement under s. 119.071(4)(d)3., F.S., that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the bill states that the exemption is needed to protect an IPC, the IPC's employees, and the spouses and children of both, from the risk of physical or emotional harm or of being stalked by a practitioner who has a hostile reaction to a recommendation or conclusion of an IPC or the IPC's employee.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s.119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create a minimal fiscal impact on DOH and DBPR for costs associated with training staff on the new public records exemption, and administrative costs to comply with the new public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of certain personnel of DOH and DBPR. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 141

2015

1 A bill to be entitled

2 An act relating to public records; amending s.
3 119.071, F.S.; creating an exemption from public
4 records requirements for certain identifying and
5 location information of impaired practitioner
6 consultants and their employees retained by the
7 Department of Health or other state agency and the
8 spouses and children of such consultants and
9 employees, under specified circumstances; providing
10 for future legislative review and repeal of the
11 exemption under the Open Government Sunset Review Act;
12 providing a statement of public necessity; providing
13 an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (d) of subsection (4) of section
18 119.071, Florida Statutes, is amended to read:

19 119.071 General exemptions from inspection or copying of
20 public records.—

21 (4) AGENCY PERSONNEL INFORMATION.—

22 (d)1. For purposes of this paragraph, the term "telephone
23 numbers" includes home telephone numbers, personal cellular
24 telephone numbers, personal pager telephone numbers, and
25 telephone numbers associated with personal communications
26 devices.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0141-00

27 2.a.(I) The home addresses, telephone numbers, social
 28 security numbers, dates of birth, and photographs of active or
 29 former sworn or civilian law enforcement personnel, including
 30 correctional and correctional probation officers, personnel of
 31 the Department of Children and Families whose duties include the
 32 investigation of abuse, neglect, exploitation, fraud, theft, or
 33 other criminal activities, personnel of the Department of Health
 34 whose duties are to support the investigation of child abuse or
 35 neglect, and personnel of the Department of Revenue or local
 36 governments whose responsibilities include revenue collection
 37 and enforcement or child support enforcement; the home
 38 addresses, telephone numbers, social security numbers,
 39 photographs, dates of birth, and places of employment of the
 40 spouses and children of such personnel; and the names and
 41 locations of schools and day care facilities attended by the
 42 children of such personnel are exempt from s. 119.07(1).

43 (II) The names of the spouses and children of active or
 44 former sworn or civilian law enforcement personnel and the other
 45 specified agency personnel identified in sub-sub-subparagraph
 46 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 47 State Constitution.

48 (III) Sub-sub-subparagraph (II) is subject to the Open
 49 Government Sunset Review Act in accordance with s. 119.15, and
 50 shall stand repealed on October 2, 2018, unless reviewed and
 51 saved from repeal through reenactment by the Legislature.

52 b. The home addresses, telephone numbers, dates of birth,

53 and photographs of firefighters certified in compliance with s.
54 633.408; the home addresses, telephone numbers, photographs,
55 dates of birth, and places of employment of the spouses and
56 children of such firefighters; and the names and locations of
57 schools and day care facilities attended by the children of such
58 firefighters are exempt from s. 119.07(1).

59 c. The home addresses, dates of birth, and telephone
60 numbers of current or former justices of the Supreme Court,
61 district court of appeal judges, circuit court judges, and
62 county court judges; the home addresses, telephone numbers,
63 dates of birth, and places of employment of the spouses and
64 children of current or former justices and judges; and the names
65 and locations of schools and day care facilities attended by the
66 children of current or former justices and judges are exempt
67 from s. 119.07(1).

68 d.(I) The home addresses, telephone numbers, social
69 security numbers, dates of birth, and photographs of current or
70 former state attorneys, assistant state attorneys, statewide
71 prosecutors, or assistant statewide prosecutors; the home
72 addresses, telephone numbers, social security numbers,
73 photographs, dates of birth, and places of employment of the
74 spouses and children of current or former state attorneys,
75 assistant state attorneys, statewide prosecutors, or assistant
76 statewide prosecutors; and the names and locations of schools
77 and day care facilities attended by the children of current or
78 former state attorneys, assistant state attorneys, statewide

79 prosecutors, or assistant statewide prosecutors are exempt from
 80 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

81 (II) The names of the spouses and children of current or
 82 former state attorneys, assistant state attorneys, statewide
 83 prosecutors, or assistant statewide prosecutors are exempt from
 84 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

85 (III) Sub-sub-subparagraph (II) is subject to the Open
 86 Government Sunset Review Act in accordance with s. 119.15, and
 87 shall stand repealed on October 2, 2018, unless reviewed and
 88 saved from repeal through reenactment by the Legislature.

89 e. The home addresses, dates of birth, and telephone
 90 numbers of general magistrates, special magistrates, judges of
 91 compensation claims, administrative law judges of the Division
 92 of Administrative Hearings, and child support enforcement
 93 hearing officers; the home addresses, telephone numbers, dates
 94 of birth, and places of employment of the spouses and children
 95 of general magistrates, special magistrates, judges of
 96 compensation claims, administrative law judges of the Division
 97 of Administrative Hearings, and child support enforcement
 98 hearing officers; and the names and locations of schools and day
 99 care facilities attended by the children of general magistrates,
 100 special magistrates, judges of compensation claims,
 101 administrative law judges of the Division of Administrative
 102 Hearings, and child support enforcement hearing officers are
 103 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 104 Constitution if the general magistrate, special magistrate,

105 judge of compensation claims, administrative law judge of the
 106 Division of Administrative Hearings, or child support hearing
 107 officer provides a written statement that the general
 108 magistrate, special magistrate, judge of compensation claims,
 109 administrative law judge of the Division of Administrative
 110 Hearings, or child support hearing officer has made reasonable
 111 efforts to protect such information from being accessible
 112 through other means available to the public.

113 f. The home addresses, telephone numbers, dates of birth,
 114 and photographs of current or former human resource, labor
 115 relations, or employee relations directors, assistant directors,
 116 managers, or assistant managers of any local government agency
 117 or water management district whose duties include hiring and
 118 firing employees, labor contract negotiation, administration, or
 119 other personnel-related duties; the names, home addresses,
 120 telephone numbers, dates of birth, and places of employment of
 121 the spouses and children of such personnel; and the names and
 122 locations of schools and day care facilities attended by the
 123 children of such personnel are exempt from s. 119.07(1) and s.
 124 24(a), Art. I of the State Constitution.

125 g. The home addresses, telephone numbers, dates of birth,
 126 and photographs of current or former code enforcement officers;
 127 the names, home addresses, telephone numbers, dates of birth,
 128 and places of employment of the spouses and children of such
 129 personnel; and the names and locations of schools and day care
 130 facilities attended by the children of such personnel are exempt

131 from s. 119.07(1) and s. 24(a), Art. I of the State
 132 Constitution.

133 h. The home addresses, telephone numbers, places of
 134 employment, dates of birth, and photographs of current or former
 135 guardians ad litem, as defined in s. 39.820; the names, home
 136 addresses, telephone numbers, dates of birth, and places of
 137 employment of the spouses and children of such persons; and the
 138 names and locations of schools and day care facilities attended
 139 by the children of such persons are exempt from s. 119.07(1) and
 140 s. 24(a), Art. I of the State Constitution, if the guardian ad
 141 litem provides a written statement that the guardian ad litem
 142 has made reasonable efforts to protect such information from
 143 being accessible through other means available to the public.

144 i. The home addresses, telephone numbers, dates of birth,
 145 and photographs of current or former juvenile probation
 146 officers, juvenile probation supervisors, detention
 147 superintendents, assistant detention superintendents, juvenile
 148 justice detention officers I and II, juvenile justice detention
 149 officer supervisors, juvenile justice residential officers,
 150 juvenile justice residential officer supervisors I and II,
 151 juvenile justice counselors, juvenile justice counselor
 152 supervisors, human services counselor administrators, senior
 153 human services counselor administrators, rehabilitation
 154 therapists, and social services counselors of the Department of
 155 Juvenile Justice; the names, home addresses, telephone numbers,
 156 dates of birth, and places of employment of spouses and children

157 of such personnel; and the names and locations of schools and
 158 day care facilities attended by the children of such personnel
 159 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 160 Constitution.

161 j.(I) The home addresses, telephone numbers, dates of
 162 birth, and photographs of current or former public defenders,
 163 assistant public defenders, criminal conflict and civil regional
 164 counsel, and assistant criminal conflict and civil regional
 165 counsel; the home addresses, telephone numbers, dates of birth,
 166 and places of employment of the spouses and children of such
 167 defenders or counsel; and the names and locations of schools and
 168 day care facilities attended by the children of such defenders
 169 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 170 the State Constitution.

171 (II) The names of the spouses and children of the
 172 specified agency personnel identified in sub-sub-subparagraph
 173 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 174 State Constitution. This sub-sub-subparagraph is subject to the
 175 Open Government Sunset Review Act in accordance with s. 119.15
 176 and shall stand repealed on October 2, 2019, unless reviewed and
 177 saved from repeal through reenactment by the Legislature.

178 k. The home addresses, telephone numbers, and photographs
 179 of current or former investigators or inspectors of the
 180 Department of Business and Professional Regulation; the names,
 181 home addresses, telephone numbers, and places of employment of
 182 the spouses and children of such current or former investigators

183 and inspectors; and the names and locations of schools and day
 184 care facilities attended by the children of such current or
 185 former investigators and inspectors are exempt from s. 119.07(1)
 186 and s. 24(a), Art. I of the State Constitution if the
 187 investigator or inspector has made reasonable efforts to protect
 188 such information from being accessible through other means
 189 available to the public. This sub-subparagraph is subject to the
 190 Open Government Sunset Review Act in accordance with s. 119.15
 191 and shall stand repealed on October 2, 2017, unless reviewed and
 192 saved from repeal through reenactment by the Legislature.

193 1. The home addresses and telephone numbers of county tax
 194 collectors; the names, home addresses, telephone numbers, and
 195 places of employment of the spouses and children of such tax
 196 collectors; and the names and locations of schools and day care
 197 facilities attended by the children of such tax collectors are
 198 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution if the county tax collector has made reasonable
 200 efforts to protect such information from being accessible
 201 through other means available to the public. This sub-
 202 subparagraph is subject to the Open Government Sunset Review Act
 203 in accordance with s. 119.15 and shall stand repealed on October
 204 2, 2017, unless reviewed and saved from repeal through
 205 reenactment by the Legislature.

206 m. The home addresses, telephone numbers, dates of birth,
 207 and photographs of current or former personnel of the Department
 208 of Health whose duties include, or result in, the determination

209 or adjudication of eligibility for social security disability
 210 benefits, the investigation or prosecution of complaints filed
 211 against health care practitioners, or the inspection of health
 212 care practitioners or health care facilities licensed by the
 213 Department of Health; the names, home addresses, telephone
 214 numbers, dates of birth, and places of employment of the spouses
 215 and children of such personnel; and the names and locations of
 216 schools and day care facilities attended by the children of such
 217 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 218 the State Constitution if the personnel have made reasonable
 219 efforts to protect such information from being accessible
 220 through other means available to the public. This sub-
 221 subparagraph is subject to the Open Government Sunset Review Act
 222 in accordance with s. 119.15 and shall stand repealed on October
 223 2, 2019, unless reviewed and saved from repeal through
 224 reenactment by the Legislature.

225 n. The home addresses and telephone numbers of impaired
 226 practitioner consultants and their employees retained by the
 227 Department of Health or other state agency pursuant to s.
 228 456.076; the names, home addresses, telephone numbers, and
 229 places of employment of the spouses and children of such
 230 consultants and their employees; and the names and locations of
 231 schools and day care facilities attended by the children of such
 232 consultants and employees are exempt from s. 119.07(1) and s.
 233 24(a), Art. I of the State Constitution if the consultants or
 234 employees have made reasonable efforts to protect such

235 information from being accessible through other means available
 236 to the public. This sub-subparagraph is subject to the Open
 237 Government Sunset Review Act in accordance with s. 119.15 and
 238 shall stand repealed on October 2, 2020, unless reviewed and
 239 saved from repeal through reenactment by the Legislature.

240 3. An agency that is the custodian of the information
 241 specified in subparagraph 2. and that is not the employer of the
 242 officer, employee, justice, judge, or other person specified in
 243 subparagraph 2. shall maintain the exempt status of that
 244 information only if the officer, employee, justice, judge, other
 245 person, or employing agency of the designated employee submits a
 246 written request for maintenance of the exemption to the
 247 custodial agency.

248 4. The exemptions in this paragraph apply to information
 249 held by an agency before, on, or after the effective date of the
 250 exemption.

251 5. Except as otherwise expressly provided in this
 252 paragraph, this paragraph is subject to the Open Government
 253 Sunset Review Act in accordance with s. 119.15, and shall stand
 254 repealed on October 2, 2017, unless reviewed and saved from
 255 repeal through reenactment by the Legislature.

256
 257 Section 2. The Legislature finds that it is a public
 258 necessity that the home addresses and telephone numbers of an
 259 impaired practitioner consultant and the consultant's employees
 260 retained by the Department of Health or other state agency

261 pursuant to s. 456.076, Florida Statutes; that the names, home
 262 addresses, telephone numbers, and places of employment of the
 263 spouses and children of such consultant and employees; and that
 264 the names and locations of schools and day care facilities
 265 attended by the children of such consultant and employees be
 266 exempt from public records requirements if the consultant or
 267 employees have made reasonable efforts to protect such
 268 information from being accessible through other means available
 269 to the public. The Legislature finds that the release of such
 270 identifying and location information could place the impaired
 271 practitioner consultant, the consultant's employees, and the
 272 spouses and children of the consultant and the consultant's
 273 employees in danger of being physically and emotionally harmed
 274 or being stalked by a disgruntled practitioner who has a hostile
 275 reaction to a recommendation, report, or conclusion provided by
 276 the consultant or the consultant's employees in determining
 277 whether the practitioner is impaired. The Legislature further
 278 finds that the harm that may result from the release of such
 279 identifying and location information outweighs any public
 280 benefit that may be derived from the disclosure of the
 281 information.

282 Section 3. This act shall take effect upon becoming a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Renuart offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 225-277 and insert:

7 n. The home addresses, telephone numbers, dates of birth,
8 and photographs of current or former impaired practitioner
9 consultants who are retained by an agency or current or former
10 employees of an impaired practitioner consultant whose duties
11 result in a determination of a person's skill and safety to
12 practice a licensed profession; the names, home addresses,
13 telephone numbers, dates of birth, and places of employment of
14 the spouses and children of such consultants or their employees;
15 and the names and locations of schools and day care facilities
16 attended by the children of such consultants or employees are
17 exempt from s. 119.07(1) and s. 24(a), Art. I of the State



Amendment No.

18 Constitution if a consultant or employee has made reasonable
19 efforts to protect such information from being accessible
20 through other means available to the public. This sub-
21 paragraph is subject to the Open Government Sunset Review Act
22 in accordance with s. 119.15 and shall stand repealed on October
23 2, 2020, unless reviewed and saved from repeal through
24 reenactment by the Legislature.

25 3. An agency that is the custodian of the information
26 specified in subparagraph 2. and that is not the employer of the
27 officer, employee, justice, judge, or other person specified in
28 subparagraph 2. shall maintain the exempt status of that
29 information only if the officer, employee, justice, judge, other
30 person, or employing agency of the designated employee submits a
31 written request for maintenance of the exemption to the
32 custodial agency.

33 4. The exemptions in this paragraph apply to information
34 held by an agency before, on, or after the effective date of the
35 exemption.

36 5. Except as otherwise expressly provided in this
37 paragraph, this paragraph is subject to the Open Government
38 Sunset Review Act in accordance with s. 119.15, and shall stand
39 repealed on October 2, 2017, unless reviewed and saved from
40 repeal through reenactment by the Legislature.

41 Section 2. The Legislature finds that it is a public
42 necessity that the home addresses, telephone numbers, dates of
43 birth, and photographs of current or former impaired



Amendment No.

44 practitioner consultants who are retained by an agency or
45 current or former employees of an impaired practitioner
46 consultant whose duties result in a determination of a person's
47 skill and safety to practice a licensed profession; that the
48 names, home addresses, telephone numbers, dates of birth, and
49 places of employment of the spouses and children of such
50 consultants or their employees; and that the names and locations
51 of schools and day care facilities attended by the children of
52 such consultants or employees be exempt from public records
53 requirements if the consultant or employee has made reasonable
54 efforts to protect such information from being accessible
55 through other means available to the public. An impaired
56 practitioner consultant assists the state and its regulatory
57 boards in implementing an impaired practitioner treatment
58 program. The consultant provides the necessary resources to
59 evaluate and monitor program compliance of licensees, applicants
60 for licensure, and students enrolled in prelicensure education
61 programs who could be impaired and, as a result, unable to
62 practice with reasonable skill and safety to the public. A
63 person who is referred to the program but who, in the opinion of
64 the consultant, based on treatment and compliance monitoring
65 information, fails to successfully complete its requirements or
66 is an immediate, serious threat to public safety is at risk of
67 failing to obtain or losing the license that is necessary to
68 engage in his or her chosen profession. The Legislature finds
69 that release of identifying and location information could place

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Amendment No.

70 an impaired practitioner consultant or an employee of a
71 consultant whose duties result in a determination of a person's
72 skill and safety to practice a licensed profession, or the
73 spouses and children of such consultants or their employees, in
74 danger of being physically or emotionally harmed or stalked by a
75 person who has a hostile reaction to a recommendation, report,
76 or conclusion provided by a consultant or an employee of a
77 consultant in the determination of whether the practitioner is
78 impaired. The Legislature further

79
80 -----

81 **T I T L E A M E N D M E N T**

82 Remove lines 5-8 and insert:
83 location information of current or former impaired
84 practitioner consultants who are retained by an agency
85 or current or former employees of an impaired
86 practitioner consultant whose duties result in a
87 determination of a person's skill and safety to
88 practice a licensed profession and the spouses and
89 children of such consultants or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515 Physical Therapy
SPONSOR(S): Cummings
TIED BILLS: IDEN./SIM. **BILLS:**

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

SUMMARY ANALYSIS

Physical therapists are regulated under ch. 486, F.S., the Physical Therapy Practice Act (Act), and by the Board of Physical Therapy (Board) under the Department of Health's Division of Medical Quality Assurance. Physical therapy is the assessment, treatment, prevention, and rehabilitation of any disability, injury, disease, or other health condition of a human being with the use of various modalities.

HB 515 amends the definition of "physical therapist" to state that a physical therapist is responsible for managing all aspects of the physical therapy care of a patient and to list services that the physical therapist must provide. The bill also amends the definition of "practice of physical therapy" to include new therapeutic techniques that a physical therapist is authorized to perform.

The bill eliminates the requirement that a physical therapist confer with a practitioner of record if treatment is required beyond 21 days. However, the bill requires consultation with or referral to, a practitioner of record, if a patient's condition is found to be outside the scope of practice of physical therapy, or if the patient fails to improve within a "reasonably expected time frame." The bill retains the current definition of practitioner of record, which includes allopathic or osteopathic physicians, chiropractors, podiatrists, or dentists.

The bill removes a physical therapist's authority to implement a treatment plan provided for a patient by a practitioner of record or by an advanced registered nurse practitioner.

The bill revises the title abbreviation a licensed physical therapist may use in connection with his or her name or place of business to allow D.P.T. to be used. The bill only allows the title "doctor" to be used by a physical therapist who holds a degree of Doctor of Physical Therapy or other doctoral degree, if the public is informed that his or her profession is physical therapy. The bill also deletes redundant language currently associated with title protection for physical therapy assistants.

The bill authorizes the Board to issue advisory opinions regarding the meaning or interpretation of ch. 486, F.S.

The bill has an insignificant negative fiscal impact on the Department of Health and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Physical Therapy in the United States

Physical Therapists (PT) are licensed or certified in all 50 states. State licensure ensures that a PT meets prescribed standards established by relevant state laws and regulatory boards. States utilize the National Physical Therapy Exam (NPTE) which was developed by the Federation of State Boards of Physical Therapy (FSBPT), to determine if a person has met competency standards for the safe provision of nationally accepted physical therapy procedural interventions.¹

The NPTE program provides a common element in the evaluation of candidates so that standards will be comparable from jurisdiction to jurisdiction, and protects the public interest in having only those persons who have the requisite knowledge of physical therapy be licensed to practice physical therapy.² To practice as a PT in the U.S., a person must earn a physical therapy degree from a state approved PT education program, pass a state licensure exam, and comply with other state specific licensure requirements. Currently, all entry-level PT education programs in the United States only offer the Doctor of Physical Therapy (D.P.T.) degree to all new students who enroll.³

Scope of Practice

Physical therapy is provided for individuals of all ages who have or may develop impairments, activity limitations, and participation restrictions related to conditions of the musculoskeletal, neuromuscular, cardiovascular, pulmonary, and/or integumentary⁴ systems. PTs are providers of rehabilitation and habilitation, performance enhancement, and prevention and risk-reduction services.⁵

There is variance among the scope of practice of PTs among the states. The NPTE categories, and the American Physical Therapy Association's (APTA) professional scope of practice guidelines,⁶ provide detailed information about the accepted techniques and procedures performed by PTs. Some examples include:

- Examining individuals with impairment, functional limitation, and disability or other health-related conditions in order to determine a diagnosis, prognosis, and intervention. Tests and measures may include assessment of a wide variety of anatomical and psychological functions such as:
 - Muscular and cardiovascular endurance;
 - Joint mobility, range of motion, body mechanics, and posture;
 - Pain;
 - Self-care and activities of daily living;
 - Sensory ability; and
 - Arousal, attention, and cognition;

¹ American Physical Therapy Association, *Licensure*, available at <http://www.apta.org/Licensure/> (last visited March 9, 2015).

² *Id.*

³ American Physical Therapy Association, *Physical Therapy Education Overview*, available at [http://www.apta.org/For_Pro prospective_Students/PT_Education/Physical_Therapist_\(PT\)_Education_Overview.aspx](http://www.apta.org/For_Pro prospective_Students/PT_Education/Physical_Therapist_(PT)_Education_Overview.aspx) (last visited March 8, 2015).

⁴ Integumentary system is the skin organ.

⁵ American Physical Therapy Association, *The Physical Therapist Scope of Practice*, available at <http://www.apta.org/ScopeOfPractice/> (last visited March 5, 2015).

⁶ *Id.*

- Alleviating impairment, functional limitation, and disabilities by designing, implementing, and modifying therapeutic interventions that include, but are not limited to:
 - Therapeutic exercise;
 - Manual therapy techniques, including mobilization or manipulation;
 - Prescription, application, and, as appropriate, fabrication of devices and equipment (assistive, adaptive, orthotic, protective, supportive, and prosthetic);⁷
 - Airway clearance techniques;⁸
 - Integumentary repair and protection techniques;⁹
 - Electrotherapeutic modalities;¹⁰ and
 - Physical agents.^{11,12}

Referral for Treatment

All 50 states allow a PT to evaluate and treat a patient in some manner without a physician's referral.¹³ However, many states impose restrictions on a patient's direct access to physical therapy services, or only allow for treatment without referral under very limited circumstances. Twenty states, including Florida, have patient treatment time restrictions prior to requiring a referral to another practitioner.¹⁴ These restrictions can cause delays in a PT's services to individuals. Delays in care may result in higher costs, decreased functional outcomes, and frustration to patients seeking physical therapy treatment.¹⁵

PTs are trained to recognize signs and symptoms that are outside the scope of their practice. They are able, and often mandated by state law, to refer patients to other providers who can provide appropriate care for patients' conditions.¹⁶ Evidence from the FSBPT and a leading liability carrier,¹⁷ has shown that there is no increased risk to patients in states that do not mandate referral before the provision of physical therapy services.¹⁸

⁷ Physical therapists help patients apply and adjust devices and equipment such as crutches, wheelchairs, braces, slings, and supplemental oxygen. American Physical Therapy Association, *Minimum Required Skill of Physical Therapist Assistant Graduates*, available at: http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Education/MinimumRequiredSkillsPTAGrads.pdf. (last visited March 9, 2015).

⁸ Airway clearance techniques are used to remove mucus from the lungs to improve lung function. Techniques usually consist of coughing and cough stimulation techniques, breathing exercises, ventilation devices, and postural drainage which requires a patient to move into various postures to drain mucus from different lung parts to be expelled. University of Rochester Medical Center, *Airway Clearance Techniques*, available at <https://www.urmc.rochester.edu/urmcmedia/childrens-hospital/pulmonology/cystic-fibrosis/documents/airwaytechniques.pdf> (last visited March 5, 2015).

⁹ Integumentary or skin repair in physical therapy is most related to wound treatment. Debridement is a common method used to help wounds heal, it requires removing dead skin cells to allow healthy skin underneath to heal. Debridement may require use of sharp tools and some states require a physician's referral for this treatment. McCulloch, Joseph, *The Integumentary System-Repair and Management: An Overview*, available at: <http://web.missouri.edu/~danneckere/pt316/case/wound/integumentaryCE.pdf>. (last visited March 5, 2015).

¹⁰ This type of treatment uses weak electrical currents to induce muscular stimulation. Some specific forms are biofeedback and iontophoresis. National Institutes of Health, Medline Plus, *Iontophoresis*, available at <http://www.nlm.nih.gov/medlineplus/ency/article/007293.htm>, (last visited March 5, 2015).

¹¹ Physical agents is a broad way of referring to hydrotherapy, light agents, heat therapy, and cryotherapy. American Physical Therapy Association, *Guidelines: Defining Physical Therapy in State Practice Acts*, available at http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Practice/DefiningPhysicalTherapyStatePracticeActs.pdf. (last visited March 5, 2015).

¹² *Supra* fn. 5.

¹³ American Physical Therapy Association, *FAQ: Direct Access at the State Level*, available at <http://www.apta.org/StateIssues/DirectAccess/FAQs/> (last visited March 8, 2015).

¹⁴ Federation of State Boards of Physical Therapy, *Jurisdiction Licensure Reference Guide*, available at <https://www.fsbpt.org/FreeResources/RegulatoryResources/LicensureReferenceGuide.aspx>. (last visited March 9, 2015).

¹⁵ *Supra* fn. 13.

¹⁶ American Physical Therapy Association, *Summary of Direct Access Language in State Physical Therapy Practice Acts*, available at <http://www.apta.org/StateIssues/DirectAccess/FAQs/> (last visited March 8, 2015).

¹⁷ The Healthcare Providers Service Organization offers professional liability insurance and risk management information to a wide array of healthcare and counseling professionals. Healthcare Providers Service Organization, *HPSO News*, available at <http://www.hpso.com/> (last visited March 9, 2015).

¹⁸ *Supra* fn. 13.

Physical Therapy Practice in Florida

Physical therapy practitioners are regulated by ch. 486, F.S., the Physical Therapy Practice Act (Act) and the Board of Physical Therapy (Board) under the Department of Health's Division of Medical Quality Assurance.¹⁹

A licensed physical therapist (PT) or a licensed physical therapist assistant (PTA) must practice physical therapy in accordance with the provisions of the Act and the Board rules. Currently, there are 15,751 PTs and 8,652 PTAs who hold active licenses in Florida.²⁰

Licensure

To be licensed as a PT, an applicant must be at least 18 years old; be of good moral character; pay \$180 in fees;²¹ pass the Laws and Rules Examination offered by the FSBPT within 5 years before the date of application for licensure;²² meet the general requirements for licensure of all health care practitioners in ch. 456, F.S.; and meet one of the following requirements:

- Have graduated from an accredited PT training program and have passed the National Physical Therapy Examination (NPTE) for PTs offered by the FSBPT within 5 years before the date of application for licensure;²³
- Have graduated from a PT training program in a foreign country, have had his or her credentials deemed by the Foreign Credentialing Commission on Physical Therapy or other board-approved credentialing agency to be equivalent to those of U.S.-educated PTs and have passed the NPTE for PTs within 5 years before the date of application for licensure;²⁴ or
- Have passed a board-approved examination and holds an active license to practice physical therapy in another state or jurisdiction if the board determines that the standards for licensure in that state or jurisdiction are as high as those of Florida.²⁵

A PT's license is renewed every two years by submitting an application, paying an \$80 renewal fee, and submitting proof of completion of 24 hours of continuing physical therapy education. At least 1 hour of education must be on HIV/AIDS, and 2 hours must be on medical error prevention.²⁶

Scope of Practice

Physical therapy is defined in s. 468.021(11), F.S., as the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities such as: exercise, massage, ultrasound, ice, heat, water, and equipment.²⁷ A PT may use tests of neuromuscular functions as an aid to diagnose and treat various conditions.²⁸ A PT is also authorized to use electromyography, which is a diagnostic procedure used to assess the health of muscles and the nerves that control them.²⁹ A PT's professional responsibilities include:

¹⁹ MQA regulates health care practitioners to ensure the health, safety and welfare of the public. There are 22 boards and 8 councils under the MQA, and the MQA licenses 7 types of facilities and 200-plus occupations in more than 40 health care professions.

²⁰ Email correspondence with Florida Dep't of Health MQA staff on February 20, 2015 (on file with committee staff).

²¹ Section 486.041, F.S., and Rule 64B17-2.001, F.A.C.

²² Rule 64B17-3.002, F.A.C.

²³ *Id.*

²⁴ Rule 64B17-3.001, F.A.C.

²⁵ Rule 64B17-3.003, F.A.C.

²⁶ The fees vary if a PT has an inactive license and is wishing to reactivate their license. Board of Physical Therapy, *Renewal Information*, available at <http://floridasphysicaltherapy.gov/renewals/> (last visited March 8, 2015).

²⁷ Physical therapists often help patients apply and adjust equipment such as crutches, wheelchairs, and braces.

²⁸ Section 486.021 (11), F.S.

²⁹ Specific education and practical training is required before physical therapists may perform electromyography. Rule 64B17-6.003. F.A.C.

- Interpretation of a practitioner's referral;
- Delivery of the initial physical therapy assessment of the patient;
- Identification of and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long and short term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks;
- Direction and supervision of supportive staff in a manner appropriate for the patient's individual needs;
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan; and
- Collaboration with members of the health care team when appropriate.³⁰

A PT must refer a patient to, or consult with, a practitioner of record if a patient's condition is found to be outside the scope of physical therapy. Section 468.021, F.S., limits treatments that PTs may provide or what procedures may be performed for diagnosing a condition. For example, a PT may not use roentgen rays and radium for diagnostic or therapeutic purposes or electricity for surgical purposes, including wound care.³¹ In addition, a PT may not practice chiropractic medicine, including specific spinal manipulation, and must refer a patient with the need for such to a chiropractor licensed under ch. 460, F.S.³² Moreover, a PT is not authorized to implement a plan for a patient being treated in a hospital or an ambulatory surgical center licensed under ch. 395, F.S.³³

A PT is also required to keep written medical records justifying the course of treatment for a patient.³⁴

Treatment Plan and Referral for Treatment

A physical therapy treatment plan establishes the goals and specific remediation techniques that a PT will use in the course of treating a patient.³⁵ In addition to a treatment plan developed by a PT for their own use, s. 468.021(11)(a), F.S., authorizes a PT to implement a treatment plan provided by a practitioner of record or an advanced registered nurse practitioner (ARNP). Section 486.021(11)(a), F.S., provides that a health care practitioner who is an allopathic or osteopathic physician, chiropractor, podiatrist, or dentist, that is actively engaged in practice is eligible to serve as a practitioner of record.

Currently, a PT may implement a treatment plan for a patient without a written order from a practitioner of record if the recommended treatment plan is performed within a 21 day timeframe. If the treatment plan requires treatment beyond 21 days, the condition must be assessed by a practitioner of record who is required to review and sign the treatment plan.³⁶

A PT is not allowed to implement any treatment plan that, in the PT's judgment, is contraindicated. If the treatment plan was requested by a referring practitioner, the PT must immediately notify the referring practitioner that he or she is not going to follow the request and the reasons for such refusal.³⁷

Title Protection

Section 468.081(1), F.S., authorizes a licensed PT to use the words "physical therapist" or "physiotherapist," or the letters "P.T." in connection with his or her name or place of business to denote

³⁰ Rule 64B17-6.001, F.A.C.

³¹ Section 486.021(11)(b), F.S.

³² Section 486.021(11)(c), F.S.

³³ Section 486.021(11)(d), F.S.

³⁴ *Supra* fn. 30.

³⁵ *Id.*

³⁶ This may cause burdensome waiting periods for patients whose treatment plan requires a practitioner's approval for continuance of their physical therapy treatment. Section 486.021(11)(a), F.S.

³⁷ Rule 64B17-6.001, F.A.C.

his or her licensure. False representation of a PT license, or willful misrepresentation or false representation to obtain a PT license, is unlawful. A list of titles and title abbreviations in s. 486.135, F.S., may only be used by a licensed PT.³⁸

Declaratory Statement

A declaratory statement is a means for an agency or regulatory board to resolve a controversy or answer questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency or regulatory board has authority. A petition for a declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's³⁹ particular circumstances.⁴⁰

Effect of Proposed Changes

HB 515 amends ch. 468, F.S., relating to the practice of physical therapy, to require a PT to:

- Perform an initial evaluation of a patient;
- Create a treatment and intervention plan;
- Determine the patient's diagnosis or prognosis;
- Conduct a periodic reevaluation of each patient and related documentation;
- Document each patient visit and the patient's discharge from treatment, including the patient's response to treatment and intervention; and
- Communicate the overall plan of care with the patient or the patient's legally authorized representative.

Scope of Practice

HB 515 amends the definition of "practice of physical therapy" in s. 486.021(11), F.S., to specify the types of clients a physical therapist may examine, evaluate, and test to include clients with:

- Mechanical, physiological, and developmental impairments;
- Functional limitations; or
- Other health and movement related conditions.

The definition of "practice of physical therapy" is also amended to authorize new therapeutic treatment procedures, including:

- Functional training in self-care to assist in completion of daily activities, or work or community reintegration;
- Manual therapy,⁴¹ including soft tissue and joint mobilization or manipulation, with the exception of specific chiropractic manipulation;
- Prescription, application, and assembly of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment;⁴²
- Airway clearance techniques;
- Integumentary protection and repair techniques, including debridement and wound care;

³⁸ Section 468.151, F.S., provides that it is a first degree misdemeanor if a person fraudulently uses the title "physical therapist," "physical therapist assistant," or any other related title without holding a valid license.

³⁹ Section 120.565, F.S., states that any substantially affected person may seek a declaratory statement.

⁴⁰ Rule 28-105.001, F.A.C.

⁴¹ The ambiguous term manual therapy, may allow physical therapy practice to include practices performed by other professions, such as acupuncture.

⁴² The bill authorizes physical therapists to prescribe orthotics or prosthetics for patients, which is currently authorized for other health care professions such as podiatrists, orthotists, and prosthetists.

The bill removes the authority of PTs to use specific modes of treatment in s. 468.021(11), F.S., including the use of radiant energy and ultrasound. However, the bill authorizes PTs to use “mechanical and electrotherapeutic modalities,” which would include the deleted modes of treatment.

The bill also removes the authority for a PT to practice acupuncture, which is currently only allowed upon compliance with the Board of Medicine’s criteria.⁴³

The bill also authorizes PTs to engage in physical injury, disability, and impairment prevention through methods such as maintenance of fitness, health, and wellness in patients. PTs are also authorized to engage in administration, consultation, education, and research.

Treatment Plan and Referral for Treatment

The definition of “physical therapist” in s. 486.021(5), F.S., is amended to require a PT to consult with, or refer to, a practitioner of record, if a patient’s condition is found to be outside the scope of practice of physical therapy, or if a patient fails to improve within a “reasonably expected time frame.” The bill eliminates the requirement that a PT confer with a practitioner of record if treatment is required beyond 21 days. The bill retains the current definition of practitioner of record, which includes allopathic (ch. 458, F.S.) or osteopathic physicians (ch. 459, F.S.), chiropractors (ch. 460, F.S.), podiatrists (ch. 461, F.S.), or dentists (ch. 466, F.S.).

The bill removes a PT’s authority to implement a plan of treatment provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012, F.S.

The bill removes the requirement that a PT refer a patient to a chiropractor licensed under ch. 460, F.S., for specific spinal manipulation. However, the bill prohibits a PT from practicing chiropractic medicine, including spinal manipulation, and, as previously mentioned, requires a PT to refer a patient to a practitioner of record if the patient’s condition is outside the scope of physical therapy.

Title Protection

Florida’s physical therapy educational programs are three-year doctoral programs. The bill revises the title abbreviation a PT may use in connection with his or her name or place of business to allow D.P.T. to be used. However, this bill only allows the title “doctor” to be used by a PT who holds a degree of Doctor of Physical Therapy or other doctoral degree, if the public is informed that his or her profession is physical therapy.

The bill also deletes the prohibition in current law of the use of specific titles and title abbreviations used by PTAs. Specifically the bill deletes the prohibition in current law of the use of:

- Licensed physical therapist assistant;
- Registered physical therapist assistant;
- Physical therapy technician;
- L.P.T.A.;
- R.P.T.A.; and
- P.T.T.

However, PTAs will continue to have title protection because the bill does not affect current law which states that it is unlawful to use any other titles and title abbreviations associated with PTAs if one is not a licensed PTA.⁴⁴

⁴³ The Board of Medicine rule, which authorized a PT to use acupuncture with no penetration of the skin, was repealed in 2012. Rule 64B8-2.003, F.A.C.

⁴⁴ Section s. 468.151, F.S.

Declaratory Statement

The bill authorizes the Board to issue advisory opinions regarding the meaning or interpretation of ch. 486, F.S. This conflicts with the declaratory statement process established in s.120.565, F.S., which is required for regulatory agencies and boards.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Amends s. 486.021, F.S., relating to definitions.

Section 2. Amends s. 486.025, F.S., relating to powers and duties of the Board of Physical Therapy Practice.

Section 3. Amends s. 486.081, F.S., relating to physical therapist; issuance of license without examination to person passing examination of another authorized examining board; fee.

Section 4. Amends s. 486.135, F.S., relating to false representation of licensure, or willful misrepresentation or fraudulent representation to obtain license, unlawful.

Section 5. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH may incur a recurring increase in workload associated with additional practitioner complaints, which current resources are adequate to absorb.⁴⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.

⁴⁵ Florida Department of Health, 2015 Agency Legislative Analysis HB 515, January 30, 2015, (on file with committee staff).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision in the bill which authorizes the Board to issue advisory opinions regarding the meaning or interpretation of ch. 486, F.S., conflicts with the declaratory statement process established in s. 120.565, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to physical therapy; amending s.
 486.021, F.S.; revising the definitions of the terms
 "physical therapist" and "practice of physical
 therapy"; amending s. 486.025, F.S.; authorizing the
 Board of Physical Therapy to issue advisory opinions;
 amending s. 486.081, F.S.; revising the letters a
 licensed physical therapist may use in connection with
 her or his name or place of business; prohibiting a
 physical therapist with specified doctorate degrees
 from using the title "doctor" without informing the
 public of his or her profession as a physical
 therapist; amending s. 486.135, F.S.; revising the
 terms prohibited from use by a person who is not
 licensed as a physical therapist or physical therapist
 assistant; prohibiting a physical therapist with
 specified doctorate degrees from using the title
 "doctor" without informing the public of his or her
 profession as a physical therapist; providing an
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5) and (11) of section 486.021,
 Florida Statutes, are amended to read:

486.021 Definitions.—In this chapter, unless the context

27 otherwise requires, the term:

28 (5) "Physical therapist" means a person who is licensed
 29 and who practices physical therapy in accordance with the
 30 provisions of this chapter. A physical therapist is responsible
 31 for managing all aspects of the physical therapy care of a
 32 patient. A physical therapist shall provide:

33 (a) The initial evaluation, determination of diagnosis,
 34 prognosis, treatment and intervention plan, and documentation of
 35 each patient visit.

36 (b) Periodic reevaluation of each patient and related
 37 documentation.

38 (c) Documentation of a patient's discharge from treatment,
 39 including the patient's response to treatment and intervention.

40 (d) Communication of the overall plan of care with the
 41 patient or the patient's legally authorized representative.

42 (e) Consultation with or referral of the patient to a
 43 practitioner of record if the patient's condition is found to be
 44 outside the scope of physical therapy or fails to improve within
 45 a reasonably expected time frame. For purposes of this
 46 paragraph, a health care practitioner licensed under chapter
 47 458, chapter 459, chapter 460, chapter 461, or chapter 466 and
 48 engaged in active practice is eligible to serve as a
 49 practitioner of record.

50 (11) (a) "Practice of physical therapy" means:

51 1. The examination, evaluation, and testing of patients
 52 and clients with mechanical, physiological, and developmental

53 impairments; functional limitations; disabilities; or other
 54 health and movement-related conditions in order to determine a
 55 diagnosis, prognosis, treatment and intervention plan, and to
 56 reevaluate the ongoing effect of treatment.

57 2. Alleviating impairments, functional limitations, and
 58 disabilities by designing, implementing, and modifying treatment
 59 interventions that may include, but are not limited to,
 60 therapeutic exercise; functional training in self-care and in
 61 home; community or work integration or reintegration; manual
 62 therapy, including soft tissue and joint mobilization or
 63 manipulation, with the exception of specific chiropractic
 64 manipulation; therapeutic massage, prescription, application,
 65 and, as appropriate, fabrication of assistive, adaptive,
 66 orthotic, prosthetic, protective, and supportive devices and
 67 equipment; airway clearance techniques; integumentary protection
 68 and repair techniques; debridement and wound care; physical
 69 agents or modalities; mechanical and electrotherapeutic
 70 modalities; and patient-related instruction.

71 3. Reducing the risk of injury, impairment, functional
 72 limitation, and disability through methods including, but not
 73 limited to, the promotion and maintenance of fitness, health,
 74 and wellness in patients of all ages.

75 4. Engaging in administration, consultation, education,
 76 and research ~~the performance of physical therapy assessments and~~
 77 ~~the treatment of any disability, injury, disease, or other~~
 78 ~~health condition of human beings, or the prevention of such~~

79 ~~disability, injury, disease, or other condition of health, and~~
 80 ~~rehabilitation as related thereto by the use of the physical,~~
 81 ~~chemical, and other properties of air; electricity; exercise;~~
 82 ~~massage; the performance of acupuncture only upon compliance~~
 83 ~~with the criteria set forth by the Board of Medicine, when no~~
 84 ~~penetration of the skin occurs; the use of radiant energy,~~
 85 ~~including ultraviolet, visible, and infrared rays; ultrasound;~~
 86 ~~water; the use of apparatus and equipment in the application of~~
 87 ~~the foregoing or related thereto; the performance of tests of~~
 88 ~~neuromuscular functions as an aid to the diagnosis or treatment~~
 89 ~~of any human condition; or the performance of electromyography~~
 90 ~~as an aid to the diagnosis of any human condition only upon~~
 91 ~~compliance with the criteria set forth by the Board of Medicine.~~

92 ~~(a) A physical therapist may implement a plan of treatment~~
 93 ~~developed by the physical therapist for a patient or provided~~
 94 ~~for a patient by a practitioner of record or by an advanced~~
 95 ~~registered nurse practitioner licensed under s. 464.012. The~~
 96 ~~physical therapist shall refer the patient to or consult with a~~
 97 ~~practitioner of record if the patient's condition is found to be~~
 98 ~~outside the scope of physical therapy. If physical therapy~~
 99 ~~treatment for a patient is required beyond 21 days for a~~
 100 ~~condition not previously assessed by a practitioner of record,~~
 101 ~~the physical therapist shall obtain a practitioner of record who~~
 102 ~~will review and sign the plan. For purposes of this paragraph, a~~
 103 ~~health care practitioner licensed under chapter 458, chapter~~
 104 ~~459, chapter 460, chapter 461, or chapter 466 and engaged in~~

105 ~~active practice is eligible to serve as a practitioner of~~
 106 ~~record.~~

107 (b) The use of roentgen rays and radium for diagnostic and
 108 therapeutic purposes and the use of electricity for surgical
 109 purposes, including cauterization, are not "physical therapy"
 110 for purposes of this chapter.

111 (c) The practice of physical therapy does not authorize a
 112 physical therapy practitioner to practice chiropractic medicine
 113 as defined in chapter 460, including specific spinal
 114 manipulation. ~~For the performance of specific chiropractic~~
 115 ~~spinal manipulation, a physical therapist shall refer the~~
 116 ~~patient to a health care practitioner licensed under chapter~~
 117 ~~460.~~

118 (d) This subsection does not authorize a physical
 119 therapist to implement a plan of treatment for a patient
 120 currently being treated in a facility licensed pursuant to
 121 chapter 395.

122 Section 2. Section 486.025, Florida Statutes, is amended
 123 to read:

124 486.025 Powers and duties of the Board of Physical Therapy
 125 Practice.—The board may administer oaths, summon witnesses, take
 126 testimony in all matters relating to its duties under this
 127 chapter, establish or modify minimum standards of practice, and
 128 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
 129 the provisions of this chapter. The board may issue advisory
 130 opinions upon request regarding the meaning or interpretation of

131 provisions in this chapter. The board may also review the
 132 standing and reputability of any school or college offering
 133 courses in physical therapy and whether the courses of such
 134 school or college in physical therapy meet the standards
 135 established by the appropriate accrediting agency referred to in
 136 s. 486.031(3)(a). In determining the standing and reputability
 137 of any such school and whether the school and courses meet such
 138 standards, the board may investigate and make personal
 139 inspection of the same.

140 Section 3. Subsection (1) of section 486.081, Florida
 141 Statutes, is amended to read:

142 486.081 Physical therapist; issuance of license without
 143 examination to person passing examination of another authorized
 144 examining board; fee.—

145 (1) The board may cause a license to be issued through the
 146 department without examination to any applicant who presents
 147 evidence satisfactory to the board of having passed the American
 148 Registry Examination prior to 1971 or an examination in physical
 149 therapy before a similar lawfully authorized examining board of
 150 another state, the District of Columbia, a territory, or a
 151 foreign country, if the standards for licensure in physical
 152 therapy in such other state, district, territory, or foreign
 153 country are determined by the board to be as high as those of
 154 this state, as established by rules adopted pursuant to this
 155 chapter. Any person who holds a license pursuant to this section
 156 may use the words "physical therapist" or "physiotherapist," or

157 the letters "P.T.~~7~~" or "D.P.T." in connection with her or his
 158 name or place of business to denote her or his licensure
 159 hereunder. A physical therapist who holds a degree of Doctor of
 160 Physical Therapy or other doctoral degree may not use the title
 161 "doctor" without also clearly informing the public of his or her
 162 profession as a physical therapist.

163 Section 4. Subsection (1) of section 486.135, Florida
 164 Statutes, is amended to read:

165 486.135 False representation of licensure, or willful
 166 misrepresentation or fraudulent representation to obtain
 167 license, unlawful.—

168 (1)(a) It is unlawful for any person who is not licensed
 169 under this chapter as a physical therapist, or whose license has
 170 been suspended or revoked, to use in connection with her or his
 171 name or place of business the words "physical therapist,"
 172 "physiotherapist," "physical therapy," "physiotherapy,"
 173 "registered physical therapist," or "licensed physical
 174 therapist"; or the letters "P.T.~~7~~" or "D.P.T." "Ph.T."
 175 "R.P.T." or "L.P.T."; or any other words, letters,
 176 abbreviations, or insignia indicating or implying that she or he
 177 is a physical therapist or to represent herself or himself as a
 178 physical therapist in any other way, orally, in writing, in
 179 print, or by sign, directly or by implication, unless physical
 180 therapy services are provided or supplied by a physical
 181 therapist licensed in accordance with this chapter. A physical
 182 therapist who holds a degree of Doctor of Physical Therapy or

183 other doctoral degree may not use the title "doctor" without
 184 also clearly informing the public of his or her profession as a
 185 physical therapist.

186 (b) It is unlawful for any person who is not licensed
 187 under this chapter as a physical therapist assistant, or whose
 188 license has been suspended or revoked, to use in connection with
 189 her or his name the words "physical therapist assistant,"
 190 ~~"licensed physical therapist assistant," "registered physical~~
 191 ~~therapist assistant," or "physical therapy technician";~~ or the
 192 letters "P.T.A.," ~~"L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any
 193 other words, letters, abbreviations, or insignia indicating or
 194 implying that she or he is a physical therapist assistant or to
 195 represent herself or himself as a physical therapist assistant
 196 in any other way, orally, in writing, in print, or by sign,
 197 directly or by implication.

198 Section 5. This act shall take effect July 1, 2015.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Health Quality
 2 Subcommittee

3 Representative Cummings offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (5) and (11) of section 486.021,
 8 Florida Statutes, are amended to read:

9 486.021 Definitions.—In this chapter, unless the context
 10 otherwise requires, the term:

11 (5) "Physical therapist" means a person who is licensed
 12 and who practices physical therapy in accordance with the
 13 provisions of this chapter. A physical therapist is responsible
 14 for managing all aspects of the physical therapy care of a
 15 patient. A physical therapist shall provide:



Amendment No.

16 (a) The initial evaluation, determination of diagnosis,
17 prognosis, treatment and intervention plan, and documentation of
18 each patient visit.

19 (b) Periodic reevaluation of each patient and related
20 documentation.

21 (c) Documentation of a patient's discharge from treatment,
22 including the patient's response to treatment and intervention.

23 (d) Communication of the overall plan of care with the
24 patient or the patient's legally authorized representative.

25 (e) Consultation with or referral of the patient to a
26 practitioner of record if the patient's condition is found to be
27 outside the scope of physical therapy or fails to improve within
28 a reasonably expected time frame. For purposes of this section,
29 a health care practitioner licensed under chapter 458, chapter
30 459, chapter 460, chapter 461, or chapter 466 and engaged in
31 active practice is eligible to serve as a practitioner of
32 record.

33 (11)(a) "Practice of physical therapy" means:

34 1. Examining, evaluating, and testing patients and clients
35 with mechanical, physiological, and developmental impairments;
36 functional limitations; disabilities; or other health and
37 movement-related conditions in order to determine a diagnosis,
38 prognosis, treatment and intervention plan, and to reevaluate
39 the ongoing effect of treatment.

40 2. Alleviating impairments, functional limitations, and
41 disabilities by designing, implementing, and modifying treatment



Amendment No.

42 interventions that may include, but are not limited to,
43 therapeutic exercise; functional training related to movement
44 and mobility in self-care and in home; community or work
45 integration or reintegration; manual therapy without the use of
46 a filiform needle, including soft tissue and joint mobilization
47 or manipulation, with the exception of specific chiropractic
48 manipulation; therapeutic massage; airway clearance techniques;
49 integumentary protection and repair techniques; debridement and
50 wound care; physical agents or modalities; mechanical and
51 electrotherapeutic modalities; and patient-related instruction.

52 3. Reducing the risk of injury, impairment, functional
53 limitation, and disability through methods including, but not
54 limited to, the promotion and maintenance of fitness, health,
55 and wellness in patients of all ages.

56 4. Engaging in administration, consultation, education,
57 and research.

58 5. Using apparatus and equipment in the application of
59 this subsection. ~~the performance of physical therapy assessments~~
60 ~~and the treatment of any disability, injury, disease, or other~~
61 ~~health condition of human beings, or the prevention of such~~
62 ~~disability, injury, disease, or other condition of health, and~~
63 ~~rehabilitation as related thereto by the use of the physical,~~
64 ~~chemical, and other properties of air; electricity; exercise;~~
65 ~~massage; the performance of acupuncture only upon compliance~~
66 ~~with the criteria set forth by the Board of Medicine, when no~~
67 ~~penetration of the skin occurs; the use of radiant energy,~~

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Amendment No.

68 ~~including ultraviolet, visible, and infrared rays; ultrasound;~~
69 ~~water; the use of apparatus and equipment in the application of~~
70 ~~the foregoing or related thereto; the performance of tests of~~
71 ~~neuromuscular functions as an aid to the diagnosis or treatment~~
72 ~~of any human condition; or the performance of electromyography~~
73 ~~as an aid to the diagnosis of any human condition only upon~~
74 ~~compliance with the criteria set forth by the Board of Medicine.~~

75 (b) ~~(a)~~ A physical therapist may implement a plan of
76 treatment developed by the physical therapist for a patient or
77 provided for a patient by a practitioner of record or by an
78 advanced registered nurse practitioner licensed under s.
79 464.012. ~~The physical therapist shall refer the patient to or~~
80 ~~consult with a practitioner of record if the patient's condition~~
81 ~~is found to be outside the scope of physical therapy. If~~
82 ~~physical therapy treatment for a patient is required beyond 21~~
83 ~~days for a condition not previously assessed by a practitioner~~
84 ~~of record, the physical therapist shall obtain a practitioner of~~
85 ~~record who will review and sign the plan. For purposes of this~~
86 ~~paragraph, a health care practitioner licensed under chapter~~
87 ~~458, chapter 459, chapter 460, chapter 461, or chapter 466 and~~
88 ~~engaged in active practice is eligible to serve as a~~
89 ~~practitioner of record.~~

90 (c) ~~(b)~~ The use of roentgen rays and radium for diagnostic
91 and therapeutic purposes and the use of electricity for surgical
92 purposes, including cauterization, are not "physical therapy"
93 for purposes of this chapter.



Amendment No.

94 ~~(d)(e)~~ The practice of physical therapy does not authorize
95 a physical therapy practitioner to practice chiropractic
96 medicine as defined in chapter 460, including specific spinal
97 manipulation. ~~For the performance of specific chiropractic~~
98 ~~spinal manipulation, a physical therapist shall refer the~~
99 ~~patient to a health care practitioner licensed under chapter~~
100 ~~460.~~

101 ~~(e)(d)~~ This subsection does not authorize a physical
102 therapist to implement a plan of treatment for a patient
103 currently being treated in a facility licensed pursuant to
104 chapter 395.

105 Section 2. Subsection (1) of section 486.081, Florida
106 Statutes, is amended to read:

107 486.081 Physical therapist; issuance of license without
108 examination to person passing examination of another authorized
109 examining board; fee.—

110 (1) The board may cause a license to be issued through the
111 department without examination to any applicant who presents
112 evidence satisfactory to the board of having passed the American
113 Registry Examination prior to 1971 or an examination in physical
114 therapy before a similar lawfully authorized examining board of
115 another state, the District of Columbia, a territory, or a
116 foreign country, if the standards for licensure in physical
117 therapy in such other state, district, territory, or foreign
118 country are determined by the board to be as high as those of
119 this state, as established by rules adopted pursuant to this



Amendment No.

120 chapter. Any person who holds a license pursuant to this section
121 may use the words "physical therapist" or "physiotherapist," or
122 the letters "P.T.," in connection with her or his name or place
123 of business to denote her or his licensure hereunder. Any person
124 who holds a license pursuant this section and has obtained a
125 doctoral degree in physical therapy may use the letters "D.P.T."
126 or "P.T."

127 Section 3. Subsection (1) of section 486.135, Florida
128 Statutes, is amended to read:

129 486.135 False representation of licensure, or willful
130 misrepresentation or fraudulent representation to obtain
131 license, unlawful.—

132 (1)(a) It is unlawful for any person who is not licensed
133 under this chapter as a physical therapist, or whose license has
134 been suspended or revoked, to use in connection with her or his
135 name or place of business the words "physical therapist,"
136 "physiotherapist," "physical therapy," "physiotherapy,"
137 "registered physical therapist," or "licensed physical
138 therapist"; or the letters "P.T.," or "D.P.T." ~~"Ph.T.,"~~
139 ~~"R.P.T.," or "L.P.T."~~; or any other words, letters,
140 abbreviations, or insignia indicating or implying that she or he
141 is a physical therapist or to represent herself or himself as a
142 physical therapist in any other way, orally, in writing, in
143 print, or by sign, directly or by implication, unless physical
144 therapy services are provided or supplied by a physical
145 therapist licensed in accordance with this chapter.



Amendment No.

146 (b) It is unlawful for any person who is not licensed
 147 under this chapter as a physical therapist assistant, or whose
 148 license has been suspended or revoked, to use in connection with
 149 her or his name the words "physical therapist assistant,"
 150 ~~"licensed physical therapist assistant," "registered physical~~
 151 ~~therapist assistant," or "physical therapy technician";~~ or the
 152 letters "P.T.A.," ~~"L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any
 153 other words, letters, abbreviations, or insignia indicating or
 154 implying that she or he is a physical therapist assistant or to
 155 represent herself or himself as a physical therapist assistant
 156 in any other way, orally, in writing, in print, or by sign,
 157 directly or by implication.

158 Section 4. This act shall take effect July 1, 2015

159 -----
 160
 161 **T I T L E A M E N D M E N T**

162 Remove everything before the enacting clause and insert:
 163 An act relating to physical therapy; amending s. 486.021, F.S.;
 164 revising the definitions of the terms "physical therapist" and
 165 "practice of physical therapy"; amending s. 486.081, F.S.;
 166 authorizing a licensed physical therapist who has a doctoral
 167 degree to use certain letters in connection with her or his name
 168 or place of business; amending s. 486.135, F.S.; revising the
 169 terms prohibited from use by a person who is not licensed as a
 170 physical therapist or physical therapist assistant; providing an
 171 effective date.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Hutson offered the following:

Amendment to Amendment (585585) by Representative Cummings

6 Remove lines 27-32 of the amendment and insert:
7 outside the scope of physical therapy. For purposes of this
8 section, a health care practitioner licensed under chapter 458,
9 chapter 459, chapter 460, chapter 461, or chapter 466 and
10 engaged in active practice is eligible to serve as a
11 practitioner of record.

12 (f) Obtain a practitioner of record who will review and
13 sign a plan of treatment when physical therapy treatment for a
14 patient is required beyond 42 days for a condition not
15 previously assessed by a practitioner of record.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 Telehealth
SPONSOR(S): Cummings and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		McElroy <i>LM</i>	O'Callaghan <i>MKS</i>
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 545 creates s. 465.47, F.S., relating to the use of telehealth to provide health care services. The bill authorizes Florida licensed health care professionals to use telehealth to deliver health care services within their respective scopes of practice.

The bill requires a telehealth provider to use the same standard of care currently applicable to health care services provided in-person. Additionally, the telehealth provider is required to conduct an in-person physical examination of the patient prior to providing services through telehealth, unless the telehealth provider conducts a patient evaluation using telehealth that is sufficient to diagnose and treat the patient.

The bill places no service location limitations on health care professionals or patients. Specifically, a patient receiving services through telehealth may be in any location at the time the services are rendered and a telehealth provider may be in any location when providing services through telehealth to a patient.

The bill allows health care providers who are authorized to prescribe a controlled substance to use telehealth to prescribe controlled substances. Health care providers may not use telehealth to prescribe a controlled substance used to treat chronic nonmalignant pain; however, this does not preclude a physician from using telehealth to order a controlled substance for an inpatient admitted to a facility licensed under ch. 395, F.S.

The bill requires a telehealth provider to document the telehealth services rendered in the patient's medical records according to the same standard as that required for in-person services. The bill requires those records to be confidential in accordance with the current confidentiality requirements placed upon health care facilities and health care professionals providing in-person services.

The bill defines telehealth and expressly excludes audio-only telephone calls, e-mail messages, facsimile transmissions, or consultations between health care providers from the definition.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Health Care Professional Shortage

There is currently a physician shortage in the U.S.¹ This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population² and the passage of the Patient Protection and Affordable Care Act.³ Aging populations create a disproportionately higher health care demand.⁴ Additionally, as more individuals qualify for health care benefits, there will necessarily be a greater demand for more health care professionals to provide these services. There are several other factors which will likely increase the demand for a larger health care workforce. These include:⁵

- Shortage of health care professionals being educated, trained and licensed;
- Lack of specialists and health facilities in rural areas;
- Adverse events, injuries and illness at hospitals and physician's offices; and
- Need to improve community and population health.

Florida is not immune to the national problem and is experiencing a health care provider shortage itself. This is evidenced by the fact that for just primary care, dental care and mental health there are 615 federally designated Health Professional Shortage Areas (HPSA) within the state.⁶ It would take 916 primary care⁷, 860 dental care⁸ and 83 mental health⁹ practitioners to eliminate these shortage areas.

Numerous solutions have been proposed to combat the health care professional shortage. These proposals seek to address both the current and future shortages. Long-term proposals include the creation of new scholarships and residency programs for emerging health care providers.¹⁰ These proposals address the shortage in the future by creating new health care professionals. Short-term

¹ For example, as of November 14, 2013, the U.S. Department of Health and Human Services has designated 5,800 Primary Care Health Professional Shortage Area (HPSA) (requiring 7,500 additional primary care physicians to eliminate the shortage), 4,600 Dental HPSAs (requiring 6,600 additional dentists to eliminate the shortage), and 3,700 Mental Health HPSAs (requiring 2,400 additional psychiatrists to eliminate the shortage). This information is available at the U.S. Department of Health and Human Services' Health Resources and Services Administration's website, <http://www.hrsa.gov/shortage/> (last visited on February 28, 2015).

² There will be a significant increase in the U.S. population, estimated to grow 20 percent (to 363 million) between 2008-2030.

³ *Department of Health and Human Services Strategic Plan: Goal 5: Strengthen the Nation's Health and Human Service Infrastructure and Workforce*, U.S. Department of Health and Human Services, <http://www.hhs.gov/secretary/about/goal5.html> (last visited on February 28, 2015).

⁴ One analysis measured current primary care utilization (office visits) and projected the impact of population increases, aging, and insured status changes. The study found that the total number of office visits to primary care physicians will increase from 462 million in 2008 to 565 million in 2025, and (because of aging) the average number of visits will increase from 1.60 to 1.66. The study concluded that the U.S. will require 51,880 additional primary care physicians by 2025. Petterson, Stephen M., et al., "Projecting U.S. Primary Care Physician Workforce Needs: 2010-2025", *Annals of Family Medicine*, vol. 10, No. 6, Nov./Dec. 2012, available at: <http://www.annfamned.org/content/10/6/503.full.pdf+html> (last visited on February 24, 2014).

⁵ *Telemedicine: An Important Force in the Transformation of Healthcare*, Matthew A. Hein, June 25, 2009.

⁶ *Providers & Service Use Indicators*, Kaiser Family Foundation. <http://kff.org/state-category/providers-service-use/access-to-care/> (last visited on 2/27/15).

⁷ *Primary Care Health Professional Shortage Areas (HPSAs)*, Kaiser Family Foundation. <http://kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/> (last visited on February 27, 2015).

⁸ *Dental Care Health Professional Shortage Areas (HPSAs)*, Kaiser Family Foundation. <http://kff.org/other/state-indicator/dental-care-health-professional-shortage-areas-hpsas/> (last visited on February 27, 2015).

⁹ *Mental Health Professional Shortage Areas (HPSAs)*, Kaiser Family Foundation. <http://kff.org/other/state-indicator/mental-health-care-health-professional-shortage-areas-hpsas/> (last visited on February 27, 2015).

¹⁰ U.S. Department of Health and Human Services, *supra* note 3.

proposals include broadening the scope of practice for certain health care professionals¹¹ and more efficient utilization of our existing workforce through the expanded use of telehealth.¹²

Telehealth

There is no universally accepted definition of telehealth. In broad terms telehealth is:

The delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment¹³ and prevention of disease and injuries¹⁴, research and evaluation, and for the continuing education of health care providers, all in the interests of advancing the health of individuals and their communities.¹⁵

More specific definitions vary greatly from country to country, as well as between the numerous states, authorizing the use of telehealth to deliver health care services. In fact, definitions of telehealth occasionally differ between the various professions within a specific state.¹⁶ There are, however, common elements among the varied definitions of telehealth.

Telehealth generally consists of synchronous and/or asynchronous transmittal of information.¹⁷ Synchronous refers to the live¹⁸ transmission of information between patient and provider during the same time period.¹⁹ Asynchronous telehealth is the transfer of data over a period of time, and typically in separate time frames.²⁰ This is commonly referred to as “store and forward”. Definitions of telehealth also commonly contain restrictions related to the location where telehealth may be used. For example, the use of the “hub and spoke” model is a common location restriction. A hub site is the location from which specialty or consultative services originate, i.e., the provider. A spoke site is a remote site where the patient is presented during the telehealth encounter. Under this model, health services may be provided through telehealth only if the patient is located at a designated spoke site and the provider is located at a designated hub site.

Telehealth is a broad term which includes telemedicine and telemonitoring. Telemedicine is focused on the delivery of traditional clinical services, like diagnosis and treatment. Telemonitoring is the process of using audio, video, and other telecommunications and electronic information processing

¹¹ Id.

¹² *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen the Nation's Health and Human Service Infrastructure and Workforce*, U.S. Department of Health and Human Services, <http://www.hhs.gov/secretary/about/goal5.html> (last visited on February 23, 2015).

¹³ The University of Florida's Diabetes Center of Excellence utilizes telehealth to deliver treatment to children with diabetes and other endocrine problems who live in Volusia County. This allows the children to receive specialized treatment without the necessity of traveling from Volusia County to Gainesville. The Florida Department of Health's Children's Medical Services underwrites the program. <https://ufhealth.org/diabetes-center-excellence/telemedicine> (last visited on February 23, 2015).

¹⁴ The University of South Florida has partnered with American Well to provide health care services to the residents of the Villages via telehealth. The goal is to reduce hospital admissions, readmission rates, and pharmacy costs, while maintaining Medicare beneficiaries in their homes rather than long-term care settings. <http://hscweb3.hsc.usf.edu/blog/2012/06/22/usf-health-and-american-well-to-bring-telehealth-to-seniors-living-at-the-villages/> (last visited on February 23, 2015).

¹⁵ *Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series- Volume 2*, Section 1.2, page 9.

¹⁶ *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, February 2015.

¹⁷ The majority of telehealth definitions allow for both synchronous and asynchronous transmittal of information. Some definitions however omit asynchronous from the definition of telehealth.

¹⁸ This is also referred to as “real time” or “interactive” telehealth.

¹⁹ *Telemedicine Nomenclature*, American Telemedicine Association, located at <http://www.americantelemed.org/resources/nomenclature#.VOuc1KNOnCs> (last visited on February 23, 2015). The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.

²⁰ Id. A common example of synchronous telehealth is the transfer of x-rays or MRI images from one health care provider to another health care provider for review in the future.

technologies to monitor the health status of a patient from a distance.²¹ Telehealth more broadly includes non-clinical services, such as patient and professional health-related education, public health and health administration.²²

Telehealth is not a type of health care service but rather is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, primary and specialty care services and health management.²³

Telehealth, in its modern form,²⁴ started in the 1960s in large part driven by the military and space technology sectors.²⁵ Specifically, telehealth was used to remotely monitor physiological measurements of certain military and space program personnel. As this technology became more readily available to the civilian market, telehealth began to be used for linking physicians with patients in remote, rural areas. As advancements were made in telecommunication technology, the use of telehealth became more widespread to include not only rural areas but also urban communities. Due to recent technology advancements and general accessibility, the use of telehealth has spread rapidly and is now becoming integrated into the ongoing operations of hospitals, specialty departments, home health agencies, private physician offices as well as consumer's homes and workplaces.²⁶ In fact, there are currently about 200 telehealth networks, with 3,500 service sites in the U.S.²⁷

Telehealth is used to address several problems in the current health care system. Inadequate access to care is one of the primary obstacles to obtaining quality health care.²⁸ This occurs in both rural areas and urban communities.²⁹ Telehealth reduces the impact of this issue by providing a mechanism to deliver quality health care, irrespective of the location of a patient or a health care professional. Cost is another barrier to obtaining quality health care.³⁰ This includes the cost of travel to and from the health care facility, as well as related loss of wages from work absences. Costs are reduced through telehealth by decreasing the time and distance required to travel to the health care professional. Two more issues addressed through telehealth are the reutilization of health care services and hospital readmission. These often occur due to a lack of proper follow-up care by the patient³¹ or a chronic condition.³² These issues however can potentially be avoided through the use of telehealth and telemonitoring.

Telehealth and Federal Law

Several federal laws and regulations apply to the delivery of health care services through telehealth.

²¹ *Glossary and Acronyms*, U.S. Department of Health and Human Services <http://www.hrsa.gov/ruralhealth/about/telehealth/glossary.html> (last visited February 23, 2015).

²² *Id.*

²³ *What is Telehealth?* U.S. Department of Health and Human Services.

<http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Telehealth/whatistelehealth.html> (last visited March 2, 2015).

²⁴ Historically, telehealth can be traced back to the mid to late 19th century with one of the first published accounts occurring in the early 20th century when electrocardiograph data were transmitted over telephone wires. *Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series- Volume 2*, Section 1.2, page 9.

²⁵ *Telemedicine: Opportunities and Developments in Member States*, *supra* note 14.

²⁶ *What is Telemedicine*, American Telemedicine Association, <http://www.americantelemed.org/learn/what-is-telemedicine#.Uu6eGqNOncs> (last visited on February 23, 2015).

²⁷ *Telemedicine Frequently Asked Questions*, American Telemedicine Association, <http://www.americantelemed.org/learn/what-is-telemedicine/faqs#.Uu5vyaNOncs> (last visited on February 23, 2015).

²⁸ U.S. Department of Health and Human Services, *supra* note 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ Post-surgical examination subsequent to a patient's release from a hospital is a prime example. Specifically, infection can occur without proper follow-up and ultimately leads to a readmission to the hospital.

³² For example, diabetes is a chronic condition which can benefit by treatment through telehealth.

Prescribing Via the Internet

Federal law specifically prohibits prescribing controlled substances via the Internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.³³ However, the Ryan Haight Online Pharmacy Consumer Protection Act,³⁴ signed into law in October 2008, created an exception for the in-person medical evaluation for telehealth practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

Medicare Coverage

Specific telehealth³⁵ services delivered at designated sites are covered under Medicare. The Federal Centers for Medicare and Medicaid Services' regulations require both a distant site and a separate originating site (hub and spoke model) under their definition of telehealth. Asynchronous (store and forward) activities are only reimbursed under Medicare in federal demonstration projects.³⁶ To qualify for Medicare reimbursement, the originating site must be:

- Located in a federally defined rural county;
- Designated rural;³⁷ or
- Identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.³⁸

In addition, an originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;
- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; or
- A community mental health center.³⁹

³³ 21 CFR §829(e)(2).

³⁴ Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

³⁵ Medicare covers a broader set of services using the term telehealth. Medicare defines telehealth as the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance.

³⁶ Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.

³⁷ The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. See 78 FR 74229, 74400-74402, 74812 (December 10, 2013).

³⁸ See 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).

³⁹ See 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

Protection of Personal Health Information

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. Privacy rules were initially issued in 2000 by the U.S. Department of Health and Human Services and later modified in 2002.⁴⁰ These rules address the use and disclosure of an individual's personal health information as well as create standards for information security.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include⁴¹:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

Covered entities are obligated to meet HIPAA's requirements to ensure privacy and confidentiality personal health information, regardless of the method in which the medical service is delivered.

In 2009, the Health Information Technology for Economic Clinical Health (HITECH) Act was enacted as part of American Recovery and Reinvestment Act (ARRA).⁴² The HITECH Act promoted electronic exchange and use of health information by investing \$20 billion in health information technology infrastructure and incentives to encourage doctors and hospitals to use health information technology.⁴³ HITECH was intended to strengthen existing HIPAA security and privacy rules.⁴⁴ It expanded HIPAA to entities not previously covered; specifically, "business associates" now includes Regional Health Information Organizations, and Health Information Exchanges.⁴⁵ Similarly, it made changes to the privacy rule to better protect personal health information held, transferred, or used by covered entities.⁴⁶

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in the electronic exchange of personal health information are subject to HIPAA and HITECH. These federal laws apply to covered entities in Florida, regardless of whether there is an express reference to them in Florida law.

Interstate Medical Licensure Compact

The Federation of State Medical Boards, a non-profit organization representing state medical boards that license and discipline allopathic and osteopathic physicians, has drafted eight consensus principles aimed at addressing the process of licensing and regulating physicians who practice across state lines. Under an interstate compact, the participating state medical boards would retain their licensing and disciplining authority but would share essential information to streamline the process for those physicians who practice across state lines, including telemedicine.⁴⁷ The Interstate Medical Licensure

⁴⁰ *The Privacy Rule*, U.S. Department of Health and Human Services.

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/> (last visited March 2, 2015).

⁴¹ *For Covered Entities and Business Associates*, U.S. Department of Health and Human Services.

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/> (last visited March 2, 2015).

⁴² "Complying with the Health Information Technology for Economic and Clinical Health (HITECH) Act, HIPAA, Security and Privacy, and Electronic Health Records", Deloitte, December 2009, available at https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_lshc_LeadingPracticesandSolutionsforPrivacyandSecurityGuidelines_031710.pdf, (last visited February 23, 2015).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Federation of State Medical Boards, *Interstate Compact for Physician Licensure Moves Forward with Consensus Principles* (October 7, 2013), http://www.fsmb.org/pdf/nr_interstate_compact.pdf (last visited February 23, 2015).

Compact, which would be voluntary on the part of both physicians and states, was released on September 5, 2014.⁴⁸

Telehealth Barriers

There are several barriers which impede the use of telehealth. These barriers include:⁴⁹

- Lack of a standard definition for telehealth;
- Lack of standard regulations for the practice of telehealth;
- Licensure requirements which prohibit cross-state practice; and
- Restrictions on the location where telehealth services may be provided.

Standardized Definition

Lack of a standard definition⁵⁰ presents a barrier to the use of telehealth. As previously noted, there is no universally accepted definition. A health care professional is left to speculate as to whether the service he or she is providing constitutes telehealth. This can have far-reaching consequences which range from a denial of reimbursement for the services provided to an inquiry as to whether the services provided equate to the unlicensed practice of medicine. Florida law does not define telehealth.

Standardized Regulations

The absence of a uniform regulatory structure governing the use of telehealth presents another barrier to its use. Currently, 9 states⁵¹ do not have a statutory structure for the delivery of health care services through telehealth.⁵² This absence places the burden upon individual professionals to determine what is appropriate, and invites health professional licensing boards to fill the regulatory gap. This can lead to an inconsistent regulation of telehealth amongst the varying health care professions and impede the use of telehealth.

For example, a common telehealth regulation is the requirement that a health care professional conduct an in-person examination of the patient prior to providing services via telehealth.⁵³ Many times an exception is expressly contained within the regulation which allows the in-person requirement to be met through telehealth.⁵⁴ This exception however can vary between the differing health care professions in the absence of a uniform regulation. For example, an audiologist may be authorized to conduct the initial evaluation through telehealth while a physical therapist is required to perform an in-person physical examination prior to providing services through telehealth. There may not be any reasonable justification for this disparate treatment.

Licensure

Licensure requirements present one of the greatest barriers to the use of telehealth. States, not the federal government, license and regulate health care professionals.

⁴⁸ Federation of State Medical Boards, *Interstate Medical Licensure Compact Ready for Consideration by States* (September 5, 2014), <http://www.fsmb.org/policy/interstate-model-compact/news> (last visited February 23, 2015).

⁴⁹ *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, February 2015.

⁵⁰ No two states define telehealth exactly alike, although some similarities exist between certain states. *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, February 2015.

⁵¹ This includes Florida.

⁵² *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, February 2015. Even amongst states with telehealth statutory regulations, no two states regulate telehealth in exactly the same manner.

⁵³ *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, February 2015.

⁵⁴ *Id.*

Currently, 35 states prohibit health care professionals from providing health care services unless he or she is licensed in the state where the patient is located.⁵⁵ Most states have exceptions to this requirement, applicable only in certain limited circumstances, which include:⁵⁶

- Physician-to-physician consultations (not between practitioner and patient);
- Educational purposes;
- Residency training;
- U.S. Military;
- Public health services; and
- Medical emergencies (Good Samaritan) or natural disasters.

Additionally, a special telehealth license or certificate, which allows an out-of-state licensed health care professional to provide health care services through telehealth to patients located within that particular state, is currently offered in 9 states.⁵⁷ Four of these states (Montana, Nevada, Tennessee and Texas), however, only offer the telehealth license to board eligible or board certified specialists.

In the absence of an exception or a state regulation authorizing otherwise, it appears that a health care professional will have to be licensed in the state where the patient is located to provide health care services through telehealth. Requiring health care professionals to obtain multiple state licenses to provide health care services through telehealth may be burdensome and may inhibit the use of telehealth across state borders.

Location Restrictions

Generally, there are essentially two types of location restrictions. The first restricts the use of telehealth to certain designated areas within a state. For example, only individuals in areas designated as a rural area or a medically underserved area may be authorized to receive health care services through telehealth.

The second restriction relates to limitations on the specific location where telehealth services may be provided. The most common example of this type of limitation is the hub and spoke model.⁵⁸ Under this model, “hub” refers to the location to where the health care professional must be located while “spoke” refers to the location where the patient must be located.

The two types of restrictions are not mutually exclusive and are commonly used in conjunction. This presents a significant obstacle to access to care by placing arbitrary restrictions on the use of telehealth which inhibits the effectiveness, as well as the use of telehealth to deliver health care services.

Telehealth in Florida

Florida does not have a statutory structure for the delivery of health care services through telehealth. The only two references to telehealth in the Florida Statutes are contained within s. 364.0135, F.S. and s. 381.885, F.S. Section 364.0135, F.S., is related to the promotion of broadband internet services by telecommunication companies and does not define or regulate telehealth in any manner. Section

⁵⁵ Id. This includes Florida.

⁵⁶ *Licensure and Scope of Practice FAQs*, Telehealth Resource Centers, <http://www.telehealthresourcecenter.org/toolbox-module/licensure-and-scope-practice#what-are-the-exceptions-to-state-licensure-require> (last visited on February 23, 2015).

⁵⁷ *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013. These states are AL, LA, MN, MT, NM, NV, OH, TN and TX. Additionally, six states (HI, MD, MS, OR, PA and WA) provide exceptions to their state licensure requirements under limited circumstances, i.e. only for radiology or only for border states, or were not telehealth specific exceptions.

⁵⁸ Florida’s Department of Health’s Children’s Medical Services Program (CMS) currently uses the hub and spoke model to provide services via telehealth to children enrolled in the program.

381.885, F.S., is related to epinephrine auto-injectors and expressly states that consultation for the use of the auto-injector through electronic means does not constitute the practice of telemedicine. Further, the only references to telehealth in the Florida Administrative Code relate to the Board of Medicine, Board of Osteopathic Medicine, and the Child Protection Team Program. The Florida Medicaid program also outlines certain requirements relating to telehealth coverage in its rules.⁵⁹

Florida Board of Medicine

In 2003, the Florida Board of Medicine (Board) adopted Rule 64B8-9.014, F.A.C., "Standards for Telemedicine Prescribing Practice" (Rule).⁶⁰ The Rule sets forth requirements and restrictions for physicians and physician assistants prescribing medications.⁶¹ The Rule also states that telemedicine "shall include, but is not limited to, prescribing legend drugs to patients through the following modes of communication: (a) Internet; (b) Telephone; and (c) Facsimile."⁶² The Rule however fails to fully define telemedicine or regulate its use in any other way. The Board only regulates allopathic physicians, so this rule does not apply to any other profession.⁶³

The Board recently adopted a new rule⁶⁴ setting forth standards for telemedicine.⁶⁵ The new rule defines telemedicine as the practice of medicine by a licensed Florida physician or physician assistant where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications.⁶⁶ The definition could be interpreted to limit the use of telemedicine to physicians and physician assistants; however, the Board does not have the authority to regulate other professions.⁶⁷ The new rule provides that:

- The standard of care is the same as that required for services provided in person;
- A physician-patient relationship may be established through telemedicine;
- A physician or physician assistant is responsible for the quality and safety of the equipment and used to provide services through telemedicine; and
- The same patient confidentiality and record-keeping requirements applicable to in-person services are applicable to services provided through telemedicine.⁶⁸

The new rule however prohibits prescribing controlled substances through telemedicine.⁶⁹ However, the rule does not preclude physicians from ordering controlled substances through the use of telemedicine for patients hospitalized in a facility licensed pursuant to 395, F.S.⁷⁰

Child Protection Teams

The Child Protection Team (CPT) program under Children's Medical Services utilizes a telehealth network to perform child assessments. Rule 64C-8.001(9), F.A.C., relating to the Child Protection Team, defines telemedicine as "the use of telecommunication and information technology to provide

⁵⁹ See Agency for Health Care Administration, Florida Medicaid, "Practitioner Services Coverage and Limitations Handbook," December 2012, pg. 2-119, available at: <http://portal.flmmis.com/FLPublic/HiddenStaticSearchPage/tabid/55/Default.aspx?publicTextSearch=practioners%20services%20handbook> (last visited on February 23, 2015).

⁶⁰ The current telemedicine rules and regulations for the Board of Medicine and the Board of Osteopathic Medicine are virtually identical. Rules 64B8-9.014 and 64B15-14.008, F.A.C.

⁶¹ Rule 64B8-9.014, F.A.C.

⁶² Id.

⁶³ The Board of Osteopathic Medicine rule only applies to osteopathic physicians.

⁶⁴ The Board of Medicine and the Board of Osteopathic Medicine rules for telemedicine are identical.

⁶⁵ Rule 64B8-9.0141, F.A.C., which has an effective date of March 12, 2014.

⁶⁶ Rule 64B8-9.0141, F.A.C.

⁶⁷ The Board of Osteopathic Medicine definition only applies to osteopathic physicians.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

clinical care to individuals at a distance and to transmit the information needed to provide that care.” The CPT is a medically directed multi-disciplinary program that works with local Sheriff’s offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.⁷¹ The CPT patient is seen at a “remote site” and a registered nurse assists with the medical exam. A physician or an advanced registered nurse practitioner is located at the “hub site” and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telehealth technology.⁷²

Florida Medicaid Program

Florida’s Medicaid program reimburses for a limited number of services provided by designated practitioners using telehealth.⁷³ Medicaid limits the use of telehealth to behavioral health, dental, and physician services. Audio only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.⁷⁴

Medicaid services are reimbursable only in the hospital outpatient, inpatient and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.⁷⁵

Under the Medicaid Medical Assistance Program enacted in 2011, the vast majority of Medicaid recipients will be covered through managed care. Newly procured Medicaid contracts contain broader allowance for telehealth. Not only may plans use telehealth for behavioral health, dental, and physician services as before but, upon approval by the Agency for Health Care Administration, may also use telehealth to provide other covered services.⁷⁶ The new contract additionally eliminates numerous prior restrictions related to types of services and the type of providers who may utilize telehealth.⁷⁷

Florida Emergency Trauma Telemedicine Network

Various designated trauma centers participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the Department of Health (DOH), the FETTN facilitates the treatment of

⁷¹ Florida Department of Health, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited February 23, 2015).

⁷² Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013*, <http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf> p.21, (last visited: February 23, 2015).

⁷³ Section 409.919, F.S.; Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.

⁷⁴ *Id.*

⁷⁵ *See* Chapter 2013-150, L.O.F., sec. 1.

⁷⁶ Model Agreement, Attachment II, Exhibit II A, Medicaid Managed Medical Assistance Program, Agency for Health Care Administration, February, 2014, available at http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#mmaplans (last viewed March 1, 2014).

⁷⁷ *Id.*

trauma patients between trauma centers and community or rural hospitals.⁷⁸ The FETTN allows for multiple interface options and currently 7 out of 25 trauma centers are part of the network.⁷⁹ In 2011-12, the seven Level 1 or Level 2 trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksonville, and Orlando Health.⁸⁰

Other Department of Health Initiatives

The DOH utilizes tele-radiology through the Tuberculosis Physician's Network.⁸¹ The ability to read electronic chest X-Rays remotely can lead to a faster diagnosis, treatment and a reduction in the spread of the disease, according to the department. This service is not currently reimbursed by Medicaid.

Effect of Proposed Changes

The bill creates s. 465.47, F.S., relating to the use of telehealth to provide health care services.

"Telehealth" is defined in the bill to mean the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services including, but not limited to, patient assessment, diagnosis, consultation, treatment, monitoring and transfer of medical data, patient and professional health-related education, public health and health administration. Telehealth audio-only telephone calls, e-mail messages, facsimile transmissions, or health care provider consultations. Thus, health care professionals can use telehealth to provide services to patients through both "live" and "store and forward" methods. It also authorizes the use of telemonitoring. The term does not include audio-only telephone calls, e-mail messages, and facsimile transmissions and physician to physician consultations. The definition does not place any additional limitations on the type of technology that can be used in telehealth. However, both HIPAA and HITECH continue to apply to covered entities.

The bill defines "telehealth provider" as any person who provides health care related services using telehealth and who is licensed in Florida as one of the following professionals:⁸²

- Acupuncturist;
- Allopathic physician;
- Osteopathic physician;
- Chiropractor;
- Podiatrist;
- Optometrist;
- Nurse;
- Pharmacist;
- Dentist;
- Midwife;
- Speech therapist;
- Occupational therapist;
- Radiology technician;
- Electrologist;

⁷⁸ Florida Department of Health, 2014 Agency Legislative Bill Analysis of HB 167, on file with the Florida House of Representative's Select Committee on Health Care Workforce Innovation (October 21, 2013).

⁷⁹ *Id.*

⁸⁰ Florida Department of Health, *Long Range Program Plan* (September 28, 2012).

⁸¹ Florida Department of Health, *supra* note 75.

⁸² These are professionals licensed under part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part III, part IV, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

- Orthotist;
- Podiatrist;
- Prosthetist;
- Medical physicist;
- Emergency Medical Technician;
- Paramedic;
- Massage therapist;
- Optician;
- Hearing aid specialist;
- Clinical laboratory personnel;
- Respiratory therapist;
- Physical therapist;
- Psychologist;
- Psychotherapist;
- Dietician/Nutritionist; or
- Athletic trainer.

The bill establishes that the standard of care for telehealth providers is the same as the standard of care for health care practitioners or health care providers providing in-person health care services to patients. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.

The bill provides that a telehealth provider is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient. The bill also allows the evaluation to be performed using telehealth.

The bill provides that a patient receiving telehealth services may be in any location at the time that the telehealth services are rendered and that a telehealth provider may be in any location when providing telehealth services to a patient.

The bill allows health care providers who are authorized to prescribe a controlled substance to use telehealth to prescribe controlled substances. Health care providers may not use telehealth to prescribe a controlled substance used to treat chronic nonmalignant pain; however, this does not preclude a physician from using telehealth to order a controlled substance for an inpatient admitted to a facility licensed under ch. 395, F.S.

The bill requires that a telehealth provider document the telehealth services rendered in the patient's medical records according to the same standard as that required for in-person services. The bill requires that such medical records be kept confidential in accordance with ss. 395.3025(4) and 456.057, F.S. Section 456.057, F.S., relates to all licensed health care professionals while s. 395.3025(4), F.S., relates to all health care facilities licensed under ch. 395 (hospitals, ambulatory surgical centers, and mobile surgical centers). Thus, the same confidentiality requirements placed upon health care facilities and health care practitioners for medical records generated as part of in-person treatment apply to any medical records generated as part of treatment rendered through telehealth.

The bill provides that a non-physician telehealth provider using telehealth and acting within the relevant scope of practice may not be interpreted as practicing medicine without a license.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Creates s. 465.47, F.S., relating to the use of telehealth to provide services.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Due to a scrivener's error, s. 465.47, F.S. should be s. 456.47, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to telehealth; creating s. 465.47,
 3 F.S.; defining the terms "telehealth" and "telehealth
 4 provider"; providing for certain practice standards
 5 for telehealth providers; authorizing telehealth
 6 providers to use telehealth for prescribing controlled
 7 substances, with an exception; providing for the
 8 maintenance and confidentiality of medical records;
 9 providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 465.47, Florida Statutes, is created to read:

465.47 Use of telehealth to provide services.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Telehealth" means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, patient assessment, diagnosis, consultation, treatment, and monitoring; the transfer of medical data; patient and professional health-related education; public health services; and health care administration. The term does not include audio-only telephone calls, e-mail messages, facsimile transmissions, or consultations between a telehealth provider in this state and a provider lawfully licensed in another state

27 when the provider licensed in this state maintains
 28 responsibility for the care of a patient in this state.

29 (b) "Telehealth provider" means any person who provides
 30 health care and related services using telehealth and who is
 31 licensed under chapter 457; chapter 458; chapter 459; chapter
 32 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter
 33 466; chapter 467; part I, part III, part IV, part V, part X,
 34 part XIII, or part XIV of chapter 468; chapter 478; chapter 480;
 35 parts III and IV of chapter 483; chapter 484; chapter 486;
 36 chapter 490; or chapter 491, or who is certified under part III
 37 of chapter 401.

38 (2) PRACTICE STANDARDS.—

39 (a) The standard of care for a telehealth provider
 40 providing medical care to a patient is the same as the standard
 41 of care generally accepted for a health care professional
 42 providing in-person health care services to a patient. If a
 43 telehealth provider conducts a patient evaluation sufficient to
 44 diagnose and treat the patient, the telehealth provider is not
 45 required to research the patient's medical history or conduct a
 46 physical examination of the patient before using telehealth to
 47 provide services to the patient. A telehealth provider may use
 48 telehealth to perform a patient evaluation.

49 (b) A telehealth provider and a patient may be in separate
 50 locations when telehealth is used to provide health care
 51 services to the patient.

52 (c) A nonphysician telehealth provider using telehealth

53 and acting within the relevant scope of practice is not deemed
 54 to be practicing medicine without a license under any provision
 55 of law listed in paragraph (1) (b).

56 (d) A telehealth provider who is otherwise authorized to
 57 prescribe a controlled substance named or described in Schedules
 58 I through IV of s. 893.03 may use telehealth to prescribe the
 59 controlled substance, except that telehealth may not be used to
 60 prescribe a controlled substance to treat chronic nonmalignant
 61 pain as defined in s. 458.3265. This paragraph does not preclude
 62 a physician from using telehealth to order a controlled
 63 substance for an inpatient admitted to a facility licensed under
 64 chapter 395.

65 (3) RECORDS.—A telehealth provider shall document in the
 66 patient's medical record the health care services rendered using
 67 telehealth according to the same standard used for in-person
 68 health care services pursuant to ss. 395.3025(4) and 456.057.

69 Section 2. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 545 (2015)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Cummings offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 456.47, Florida Statutes, is created to
8 read:

9 456.47 Use of telehealth to provide services.-

10 (1) DEFINITIONS.-As used in this section, the term:

11 (a) "Telehealth" means the use of synchronous or
12 asynchronous telecommunications technology by a telehealth
13 provider to provide health care services, including, but not
14 limited to, patient assessment, diagnosis, treatment and
15 monitoring; the transfer of medical data; patient and
16 professional health-related education; public health services;
17 and health care administration. The term does not include audio-

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Amendment No.

18 only telephone calls, e-mail messages, facsimile transmissions,
19 or consultations.

20 (b) "Telehealth provider" means any person who provides
21 health care and related services using telehealth and who is
22 licensed under chapter 457; chapter 458; chapter 459; chapter
23 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter
24 466; chapter 467; part I, part III, part IV, part V, part X,
25 part XIII, or part XIV of chapter 468; chapter 478; chapter 480;
26 parts III and IV of chapter 483; chapter 484; chapter 486;
27 chapter 490; or chapter 491, or who is certified under part III
28 of chapter 401.

29 (2) PRACTICE STANDARDS.—

30 (a) The standard of care for a telehealth provider using
31 telehealth to provide health care services to a patient is the
32 same as the standard of care for a health care professional
33 providing in-person health care services to a patient. A
34 telehealth provider, who conducts a patient evaluation in a
35 manner consistent with the applicable standard of care
36 sufficient to diagnose and treat the patient, is not required to
37 research the patient's medical history or conduct a physical
38 examination of the patient before using telehealth to provide
39 services to the patient. A telehealth provider may use
40 telehealth to perform a patient evaluation.

41 (b) A telehealth provider and a patient may each be in any
42 location when telehealth is used to provide health care services
43 to the patient.

Amendment No.

44 (c) A nonphysician telehealth provider using telehealth
45 and acting within the applicable scope of practice is not deemed
46 to be practicing medicine without a license.

47 (d) A telehealth provider who is otherwise authorized to
48 prescribe a controlled substance listed in Schedules II through
49 V of s. 893.03 may use telehealth to prescribe the controlled
50 substance. Telehealth may not be used to prescribe a controlled
51 substance to treat chronic nonmalignant pain as defined in s.
52 458.3265 and s. 459.0137, except as ordered by a physician for
53 an inpatient admitted to a facility licensed under chapter 395.

54 (3) RECORDS.—A telehealth provider shall document in the
55 patient's medical record the health care services rendered using
56 telehealth according to the same standard used for in-person
57 health care services consistent with ss. 395.3025(4) and
58 456.057.

59 Section 2. Subsection (1) of section 636.003, Florida
60 Statutes, is amended to read:

61 636.202 Definitions.— As used in this part, the term:

62 (1) "Discount medical plan" means a business arrangement
63 or contract in which a person, in exchange for fees, dues,
64 charges, or other consideration, provides access for plan
65 members to providers of medical services and the right to
66 receive medical services from those providers at a discount. The
67 term "discount medical plan" does not include any product
68 regulated under chapter 627, chapter 641, ~~or~~ part I of this
69 chapter, or any telehealth product regulated under s. 456.47.

Amendment No.

70 Section 3. This act shall take effect July 1, 2015.

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T I T L E A M E N D M E N T

75

Remove everything before the enacting clause and insert:

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An act relating to telehealth; creating s. 456.47, F.S.;

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defining the terms "telehealth" and "telehealth provider";

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providing for certain practice standards for telehealth

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providers; authorizing telehealth providers to use telehealth to

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prescribe certain controlled substances; providing recordkeeping

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requirements and standards; amending s. 636.202, F.S.; excluding

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telehealth products from the definition of "discount medical

83

plan"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 633 Informed Patient Consent
SPONSOR(S): Sullivan
TIED BILLS: IDEN./SIM. **BILLS:** SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		McElroy <i>ME</i>	O'Callaghan <i>OC</i>
2) Judiciary Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Section 390.0111, F.S., currently requires a physician performing an abortion, or a referring physician, to obtain written informed consent before the abortion. To obtain informed consent the physician, or referring physician, must orally and in person, inform the woman of the nature and medical risks of having an abortion, the risk of continued pregnancy, and the gestational age of the fetus.

HB 633 requires the physician performing the abortion, or the referring physician, to be present in the same room as the pregnant woman when providing information to obtain informed consent. The bill also requires this information to be provided at least 24 hours before the abortion is performed.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Case Law on Abortion

Right to Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*¹, was decided by the U.S. Supreme Court. Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.² In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.³

The Viability Standard

In *Roe v. Wade*, the U.S. Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.⁴ The Court held that states could not regulate abortions during the first trimester of pregnancy. With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions is permitted during the second trimester. The state's interest in the life of the fetus becomes sufficiently compelling only at the beginning of the third trimester, allowing it to prohibit abortions. Even then, the Court requires states to permit an abortion in circumstances necessary to preserve the health or life of the mother.⁵

The current viability standard is set forth in *Planned Parenthood v. Casey*.⁶ Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the U.S. Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion pre-viability. Thus, while upholding the underlying holding in *Roe*, which authorizes states to "[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]"⁷ the Court determined that the line for this authority should be drawn at "viability," because "..... there may be some medical developments that affect the precise point of viability...but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter."⁸ Furthermore, the Court recognized that "in some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child."⁹

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² *Id.*

³ *Casey*, 505 U.S. 833 (1992).

⁴ *Roe*, 410 U.S. 113 (1973).

⁵ *Id.* at 164-165.

⁶ *Casey*, 505 U.S. 833 (1992).

⁷ *See Roe*, 410 U.S. at 164-65.

⁸ *See Casey*, 505 U.S. at 870.

⁹ *Id.*

Undue Burden

In *Planned Parenthood v. Casey*, the U.S. Supreme Court established the undue burden standard for determining whether a law places an impermissible obstacle to a woman's right to an abortion. The Court held that health regulations which impose undue burdens on the right to abortion are invalid.¹⁰ State regulation imposes an "undue burden" on a woman's decision to have an abortion if it has the purpose or effect of placing a substantial obstacle in the path of the woman who seeks the abortion of a nonviable fetus.¹¹ However, not every law, which makes the right to an abortion more difficult to exercise, is an infringement of that right.¹²

Informed Consent

A state may require informed consent prior to an abortion unless it creates an undue burden. The Court in *Casey* held that a state, in order to promote its profound interest in potential life throughout pregnancy, may enact measures to ensure that the woman's choice to have an abortion is informed.¹³ However, these measures will only be valid as long as the state's purpose is to persuade the woman to choose childbirth over abortion and does not create an undue burden on her right to an abortion.¹⁴

The informed consent requirement at issue in *Casey* required a 24-hour period¹⁵ between the provision of the information deemed necessary for informed consent and the abortion. The Court held that facially the waiting period was a reasonable measure to implement a state's interest in protecting the life of the unborn and does not amount to an undue burden.¹⁶ Whether the waiting period created an undue burden in application was a question of fact. The Court, relying on the district court's findings, acknowledged that the 24-hour requirement would:¹⁷

- Require a woman seeking an abortion to make at least two visits¹⁸ to the doctor. For a woman traveling long distances this could often result in a delay of greater than 24 hours;
- Increase the exposure of women seeking abortions to "the harassment and hostility of anti-abortion protestors demonstrating outside a clinic;"
- Be "particularly burdensome" for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others; and
- Limit a physician's discretion.

¹⁰ Id. at 878.

¹¹ Id. at 877

¹² Id. at 873.

¹³ Id. at 878.

¹⁴ Id.

¹⁵ Currently 26 states have waiting periods of 24 hours or greater. The states are: Alabama (Ala. C. §§ 26-23A-4); Arizona (Ariz. Rev. Stat. § 36-2153); Arkansas (Ark. C. § 20-16-903); Georgia (Ga. C. § 31-9A-3); Idaho (Id. C. §§ 18-604, 609); Indiana (Ind. C. § 16-34-2-1.1); Kansas (Kan. Stat. § 65-6709); Kentucky (Ken. Rev. Stat. § 311.725); Louisiana (Louis. Rev. Stat. § 1299.35.6); Michigan (Mich. Compiled L. § 333.17015); Minnesota (Minn. Stat. § 145.4242); Mississippi (Miss. C. § 41-41-33); Missouri (§§ 188.027, 188.039); Nebraska (Neb. Rev. Stat. § 28-327); North Carolina (N. Car. Gen. Stat. § 90-21.82); North Dakota (N. Dak. C. §§ 14-02.1-02, 1-03); Ohio (Ohio Rev. C. § 2317.56); Oklahoma (Okl. Stat. 63 § 1-738.2); Pennsylvania (Penn. Stat. 18 § 3205); South Carolina (Cod. L. S. Car. § 44-41-330); South Dakota (S. Dak. Cod. L. § 34-23A-10.1); Texas (Tex. Health & Safety C. § 171.012); Utah (Utah Code Ann. 76-7-305); Virginia (Va. C. § 18.2-76); West Virginia (W. Va. C. § 16-21-2); and, Wisconsin (Wis. Stat. § 253.10). However, 4 states have enjoined laws requiring a waiting period before performance or inducement of an abortion—Delaware (*Planned Parenthood of Del. v. Brady* (D. Del. 2003)); Massachusetts (*Planned Parenthood League of Mass. v. Bellotti* (1st Cir. 1981)); Montana; and Tennessee (*Planned Parenthood of Middle Tenn. v. Sundquist* (Tenn. 2000)).

¹⁶ See *Casey*, 505 U.S. at 885.

¹⁷ Id. at 885-886

¹⁸ 10 states currently have waiting period requirements that necessitate two visits to the clinic. Arizona (Ariz. Rev. Stat. § 36-2153); Indiana (Ind. C. § 16-34-2-1.1); Louisiana (Louis. Rev. Stat. § 1299.35.6); Mississippi (Miss. C. § 41-41-33); Missouri (§§ 188.027, 188.039); Ohio (Ohio Rev. C. § 2317.56); Texas (Tex. Health & Safety C. § 171.012); Utah (Utah Code Ann. 76-7-305); Virginia (Va. C. § 18.2-76); and, Wisconsin (Wis. Stat. § 253.10).

The Court found that, although the waiting period has the effect of creating a particular burden by “increasing the cost and risk of delay of abortions,” it does not constitute an undue burden.¹⁹ The Court thus held that a 24-hour waiting period was permissible as it did not create an undue burden facially or in application based upon the record before it.²⁰

The Medical Emergency Exception

In *Doe v. Bolton*, the U.S. Supreme Court was faced with determining, among other things, whether a Georgia statute criminalizing abortions (pre- and post-viability), except when determined to be necessary based upon a physician’s “best clinical judgment,” was unconstitutionally void for vagueness for inadequately warning a physician under what circumstances an abortion could be performed.²¹ In its reasoning, the Court agreed with the district court decision that the exception was not unconstitutionally vague, by recognizing that:

The medical judgment may be exercised in the light of all factors-physical, emotional, psychological, familial, and the woman's age-relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.

This broad interpretation of what constitutes a medical emergency was later tested in *Casey*²², albeit in a different context. One question before the Supreme Court in *Casey* was whether the medical emergency exception to a 24-hour waiting period for an abortion was too narrow in that there were some potentially significant health risks that would not be considered “immediate.”²³ The exception in question provided that a medical emergency is:

That condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.²⁴

In evaluating the more objective standard under which a physician is to determine the existence of a medical emergency, the Court in *Casey* determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman’s right to have an abortion.²⁵

Florida Law on Abortion

Right to Abortion

Florida affords greater privacy rights to its citizens than those provided under the U.S. Constitution. While the federal Constitution traditionally shields enumerated and implied individual liberties from state or federal intrusion, the federal Court has long held that the state constitutions may provide even greater protections.²⁶ In 1980, Florida amended its Constitution to include Article I, s. 23 which creates an express right to privacy:²⁷

¹⁹ *Id.* at 886-887.

²⁰ *Id.*

²¹ *Doe*, 410 U.S. 179 (1973). Other exceptions, such as in cases of rape and when, “[t]he fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect.” *Id.* at 183. See also, *U.S. v. Vuitich*, 402 U.S. 62, 71-72 (1971)(determining that a medical emergency exception to a criminal statute banning abortions would include consideration of the mental health of the pregnant woman).

²² *Casey*, 505 U.S. 833 (1992).

²³ *Id.* at 880.

²⁴ *Id.* at 879.

²⁵ *Id.* at 880.

²⁶ *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).

²⁷ *Id.*

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy and provides greater privacy rights than those implied by the federal Constitution.²⁸

The Florida Supreme Court has recognized Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."²⁹ In *In re T.W.*, the Florida Supreme Court ruled that³⁰:

[P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests... Under our Florida Constitution, the state's interest becomes compelling upon viability... Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child if the mother's health is not in jeopardy.³¹

Abortion Regulation

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.³² An abortion must be performed by a physician³³ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³⁴

Florida law prohibits abortions after viability, as well as during the third trimester, unless a medical exception exists. Section 390.1112(1), F.S., prohibits an abortion from being performed if a physician determines that, in reasonable medical judgment, the fetus has achieved viability. Viability is defined as the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.³⁵ Section 390.0111, F.S., prohibits an abortion from being performed during the third trimester.³⁶ Exceptions to both of these prohibitions exist if:

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or

²⁸ Id at 1191-1192.

²⁹ Id at 1192.

³⁰ Id at 1193

³¹ Id. at 1194.

³² Section 390.011(1), F.S.

³³ Section 390.0111(2), F.S.

³⁴ Section 390.011(8), F.S.

³⁵ Section 390.011(12), F.S.

³⁶ Section 390.011(9), F.S., defines the third trimester to mean the weeks of pregnancy after the 24th week of pregnancy.

- One physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.³⁷

A physician must obtain an informed and voluntary consent for an abortion from a woman before an abortion is performed, unless an emergency exists. Consent is considered voluntary and informed if the physician who is to perform the procedure, orally and in person, informs the woman of the nature and medical risks of an abortion, the risk of continued pregnancy, and the gestational age of the fetus.³⁸ The probable gestational age must be verified by an ultrasound.³⁹ The woman must be offered the opportunity to view the images and hear an explanation of them.⁴⁰ If the woman refuses this right, she must acknowledge the refusal in writing.⁴¹ The woman must acknowledge, in writing and prior to the abortion, that she has been provided with all information consistent with these requirements.⁴²

Anyone who violates laws applicable to an abortion during viability or in the third trimester commits a third degree felony.⁴³ Additionally, any health care practitioner who fails to comply with such laws is subject to disciplinary action under the applicable practice act and under s. 456.072, F.S.⁴⁴

The Agency for Health Care Administration (AHCA) licenses and regulates abortion clinics in the state, pursuant to ch. 390, F.S., and part II of ch. 408, F.S.⁴⁵ All abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion may only be performed in a validly licensed hospital, abortion clinic, or in a physician's office;⁴⁶
- An abortion clinic must be operated by a person with a valid and current license;⁴⁷
- A third trimester abortion may only be performed in a hospital;⁴⁸
- Proper medical care must be given and used for a fetus when an abortion is performed during viability;⁴⁹
- Experimentation on a fetus is prohibited;⁵⁰
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent;⁵¹
- Consent includes verification of the fetal age via ultrasound imaging;⁵²
- Fetal remains are to be disposed of in a sanitary and appropriate manner;⁵³ and

³⁷ Sections 390.0111(1)(a) and (b) and 390.01112(1)(a) and (b), F.S.

³⁸ Section 390.0111(3)(a), F.S. This requirement applies except in the case of a medical emergency.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Section 390.0111(10)(a), F.S.

⁴⁴ Section 390.0111(13), F.S. The Department of Health and its professional boards regulate health care practitioners under ch. 456, F.S., and various individual practice acts. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

⁴⁵ Section 408.802(3) provides for the applicability of the Health Care Licensing Procedures Act to abortion clinics.

⁴⁶ Section 797.03 (1), F.S.

⁴⁷ Section 797.03 (2), F.S.

⁴⁸ Section 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor.

⁴⁹ Section 390.0111(4), F.S.

⁵⁰ Section 390.0111(6), F.S.

⁵¹ Section 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.

⁵² Section 390.0111(3)(a)1.b., F.S.

- Parental notice must be given 48 hours before performing an abortion on a minor,⁵⁴ unless waived by a parent or otherwise ordered by a judge.

In addition, pursuant to s. 390.012, F.S., AHCA must prescribe standards for abortion clinics that include:

- Adequate private space for interviewing, counseling, and medical evaluations;
- Dressing rooms for staff and patients;
- Appropriate lavatory areas;
- Areas for pre-procedure hand-washing;
- Private procedure rooms;
- Adequate lighting and ventilation for procedures;
- Surgical or gynecological examination tables and other fixed equipment;
- Post-procedure recovery rooms that are equipped to meet the patients' needs;
- Emergency exits to accommodate a stretcher or gurney;
- Areas for cleaning and sterilizing instruments;
- Adequate areas for the secure storage of medical records and necessary equipment; and
- Conspicuous display of the clinic's license.⁵⁵

Both the Department of Health (DOH) and AHCA have authority to take licensure action against individuals and clinics that are in violation of statutes or rules.⁵⁶

Florida Abortion Statistics

In 2014, DOH reported that there were 220,138 live births in the state of Florida.⁵⁷ In the same year, AHCA reported that there were 72,073 abortion procedures performed in the state.⁵⁸ Of those performed:⁵⁹

- 65,902 were performed in the first trimester (12 weeks and under);
- 6,171 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).

The majority of the procedures (65,210) were elective.⁶⁰ The remainder of the abortions were performed due to:⁶¹

- Emotional or psychological health of the mother (76);
- Physical health of the mother that was not life endangering (158);
- Life endangering physical condition (69);

⁵³ Section 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.

⁵⁴ Section 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.

⁵⁵ Section 390.012(3)(a)1., F.S. Rules related to abortion are found in ch. 59A-9, F.A.C.

⁵⁶ Section 390.018, F.S.

⁵⁷ Correspondence from the Department of Health to the House of Representatives Health Quality Subcommittee dated February 26, 2015, on file with Health Quality Subcommittee Staff.

⁵⁸ Section 390.0112(1), F.S., currently requires the director of any medical facility in which any pregnancy is terminated to submit a monthly report to AHCA that contains the number of procedures performed, the reason for same, and the period of gestation at the time such procedures were performed.

⁵⁹ Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation for Calendar Year 2014, AHCA, on file with the Health Quality Subcommittee Staff.

⁶⁰ Id.

⁶¹ Id.

- Rape (749);
- Serious fetal genetic defect, deformity, or abnormality (560); and
- Social or economic reasons (5,115).

Effect of Proposed Changes

HB 633 requires the physician performing the abortion, or the referring physician, to be present in the same room as the pregnant woman when providing information to obtain informed consent. The bill also requires this information to be provided at least 24 hours before the termination of abortion is performed.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 390.0111, F.S., relating to termination of pregnancies.

Section 2: Provides for an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The 24-hour waiting period could have an indeterminable negative fiscal impact on women seeking abortions associated with traveling to the clinic on separate occasions.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to informed patient consent; amending
 s. 390.0111, F.S.; revising conditions for the
 voluntary and informed consent to a termination of
 pregnancy; reenacting s. 390.012(3)(d), F.S., relating
 to Agency for Health Care Administration rules
 regarding medical screening and evaluation of abortion
 clinic patients, to incorporate the amendment made by
 this act to s. 390.0111, F.S., in a reference thereto;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section
 390.0111, Florida Statutes, is amended to read:

390.0111 Termination of pregnancies.—

(3) CONSENTS REQUIRED.—A termination of pregnancy may not
 be performed or induced except with the voluntary and informed
 written consent of the pregnant woman or, in the case of a
 mental incompetent, the voluntary and informed written consent
 of her court-appointed guardian.

(a) Except in the case of a medical emergency, consent to
 a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the
 referring physician, has, at a minimum, orally, while physically
present in the same room, and at least 24 hours before the

27 procedure ~~in person~~, informed the woman of:

28 a. The nature and risks of undergoing or not undergoing
 29 the proposed procedure that a reasonable patient would consider
 30 material to making a knowing and willful decision of whether to
 31 terminate a pregnancy.

32 b. The probable gestational age of the fetus, verified by
 33 an ultrasound, at the time the termination of pregnancy is to be
 34 performed.

35 (I) The ultrasound must be performed by the physician who
 36 is to perform the abortion or by a person having documented
 37 evidence that he or she has completed a course in the operation
 38 of ultrasound equipment as prescribed by rule and who is working
 39 in conjunction with the physician.

40 (II) The person performing the ultrasound must offer the
 41 woman the opportunity to view the live ultrasound images and
 42 hear an explanation of them. If the woman accepts the
 43 opportunity to view the images and hear the explanation, a
 44 physician or a registered nurse, licensed practical nurse,
 45 advanced registered nurse practitioner, or physician assistant
 46 working in conjunction with the physician must contemporaneously
 47 review and explain the images to the woman before the woman
 48 gives informed consent to having an abortion procedure
 49 performed.

50 (III) The woman has a right to decline to view and hear
 51 the explanation of the live ultrasound images after she is
 52 informed of her right and offered an opportunity to view the

53 images and hear the explanation. If the woman declines, the
54 woman shall complete a form acknowledging that she was offered
55 an opportunity to view and hear the explanation of the images
56 but that she declined that opportunity. The form must also
57 indicate that the woman's decision was not based on any undue
58 influence from any person to discourage her from viewing the
59 images or hearing the explanation and that she declined of her
60 own free will.

61 (IV) Unless requested by the woman, the person performing
62 the ultrasound may not offer the opportunity to view the images
63 and hear the explanation and the explanation may not be given
64 if, at the time the woman schedules or arrives for her
65 appointment to obtain an abortion, a copy of a restraining
66 order, police report, medical record, or other court order or
67 documentation is presented which provides evidence that the
68 woman is obtaining the abortion because the woman is a victim of
69 rape, incest, domestic violence, or human trafficking or that
70 the woman has been diagnosed as having a condition that, on the
71 basis of a physician's good faith clinical judgment, would
72 create a serious risk of substantial and irreversible impairment
73 of a major bodily function if the woman delayed terminating her
74 pregnancy.

75 c. The medical risks to the woman and fetus of carrying
76 the pregnancy to term.

77 2. Printed materials prepared and provided by the
78 department have been provided to the pregnant woman, if she

79 chooses to view these materials, including:

80 a. A description of the fetus, including a description of
81 the various stages of development.

82 b. A list of entities that offer alternatives to
83 terminating the pregnancy.

84 c. Detailed information on the availability of medical
85 assistance benefits for prenatal care, childbirth, and neonatal
86 care.

87 3. The woman acknowledges in writing, before the
88 termination of pregnancy, that the information required to be
89 provided under this subsection has been provided.

90

91 Nothing in this paragraph is intended to prohibit a physician
92 from providing any additional information which the physician
93 deems material to the woman's informed decision to terminate her
94 pregnancy.

95 Section 2. For the purpose of incorporating the amendment
96 made by this act to section 390.0111, Florida Statutes, in a
97 reference thereto, paragraph (d) of subsection (3) of section
98 390.012, Florida Statutes, is reenacted to read:

99 390.012 Powers of agency; rules; disposal of fetal
100 remains.—

101 (3) For clinics that perform or claim to perform abortions
102 after the first trimester of pregnancy, the agency shall adopt
103 rules pursuant to ss. 120.536(1) and 120.54 to implement the
104 provisions of this chapter, including the following:

105 (d) Rules relating to the medical screening and evaluation
 106 of each abortion clinic patient. At a minimum, these rules shall
 107 require:

108 1. A medical history including reported allergies to
 109 medications, antiseptic solutions, or latex; past surgeries; and
 110 an obstetric and gynecological history.

111 2. A physical examination, including a bimanual
 112 examination estimating uterine size and palpation of the adnexa.

113 3. The appropriate laboratory tests, including:

114 a. Urine or blood tests for pregnancy performed before the
 115 abortion procedure.

116 b. A test for anemia.

117 c. Rh typing, unless reliable written documentation of
 118 blood type is available.

119 d. Other tests as indicated from the physical examination.

120 4. An ultrasound evaluation for all patients. The rules
 121 shall require that if a person who is not a physician performs
 122 an ultrasound examination, that person shall have documented
 123 evidence that he or she has completed a course in the operation
 124 of ultrasound equipment as prescribed in rule. The rules shall
 125 require clinics to be in compliance with s. 390.0111.

126 5. That the physician is responsible for estimating the
 127 gestational age of the fetus based on the ultrasound examination
 128 and obstetric standards in keeping with established standards of
 129 care regarding the estimation of fetal age as defined in rule
 130 and shall write the estimate in the patient's medical history.


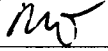
HB 633

2015

131 | The physician shall keep original prints of each ultrasound
132 | examination of a patient in the patient's medical history file.
133 | Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 Clinical Laboratories
SPONSOR(S): Roberson
TIED BILLS: IDEN./SIM. **BILLS:** SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Guzzo 	O'Callaghan 
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A clinical laboratory is a location in which body fluids or tissues are analyzed for purposes of the diagnosis, assessment, or prevention of a medical condition. Clinical laboratories may be free-standing facilities, may be part of a hospital, or may be part of a private practitioner's office. Current law authorizes physicians, chiropractors, podiatrists, naturopaths, optometrists, and dentists to operate their own clinical laboratories, called "exclusive use" laboratories, to exclusively diagnose and treat their own patients.

Clinical laboratories are required to accept and examine human specimens submitted by certain practitioners if the specimen and test are typically performed by the lab.

A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by a practitioner. Clinical laboratories are prohibited from charging different prices for tests based upon the chapter under which a practitioner is licensed.

The bill requires a clinical laboratory to make its services available to specified licensed health care practitioners, instead of requiring the laboratory to accept a human specimen from such practitioners. The bill exempts "exclusive use" laboratories from this requirement. The bill also authorizes clinical laboratories to refuse to perform a service that is not reimbursable or if the entity requesting the service has a history of nonpayment.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clinical Laboratories

Licensure

A clinical laboratory is a location in which body fluids or tissues are analyzed for purposes of the diagnosis, assessment, or prevention of a medical condition.¹ Clinical laboratories are licensed and regulated by the Agency for Health Care Administration (AHCA), pursuant to part I of chapter 483, F.S., and Rule 59A-7, F.A.C. Clinical laboratories may be free-standing facilities, may be part of a hospital, or may be part of a private practitioner's office.² A clinical laboratory license may only be issued to a laboratory to perform procedures and tests that are within the specialties or subspecialties in which the laboratory personnel are qualified to perform.³ There are 3,761 actively licensed clinical laboratories in Florida.⁴ Certain clinical laboratories are exempt from licensure, including clinical laboratories:

- Operated by the federal government;
- Operated and maintained exclusively for research and teaching purposes that do not involve patient or public health services; and
- Performing only "waived tests".⁵

Acceptance, Collection, Identification, and Examination of Specimens

A clinical laboratory may only examine human specimens at the request of a licensed practitioner.⁶ Section 483.181(5), F.S., requires clinical laboratories to accept and examine human specimens submitted by certain practitioners if the specimen and test are typically performed by the laboratory. Specifically, clinical laboratories must accept and examine specimens submitted by a:

- Physician;
- Chiropractor;
- Podiatrist;
- Naturopath;
- Optometrist;
- Dentist; or an
- Advanced registered nurse practitioner (ARNP).⁷

A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by a practitioner. Clinical laboratories are prohibited from charging different prices for tests based upon the chapter under which a practitioner is licensed.

¹ S. 483.041(2), F.S.

² Id.

³ S. 483.091, F.S.

⁴ AHCA, Florida Health Finder.gov, Facility/Provider Search Results, available at

<http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (search conducted March 10, 2015).

⁵ S. 483.031, F.S. Examples of waived tests include dip stick urinalysis or tablet reagent urinalysis, fecal occult blood, urine pregnancy tests, erythrocyte sedimentation rate, and blood glucose tests.

⁶ S. 483.181(1), F.S.

⁷ S. 483.181(5), F.S.

Current law authorizes physicians, chiropractors, podiatrists, naturopaths, optometrists, and dentists to operate their own clinical laboratories, called “exclusive use” laboratories, to exclusively diagnose and treat their own patients.⁸ This, however, does not preclude them from also being required to accept and examine all specimens submitted by certain practitioners pursuant to s. 483.181(5), F.S.

Administrative Fines and Criminal Penalties

A clinical laboratory is subject to a fine, not to exceed \$1,000, to be imposed by AHCA for each violation of any provision of part I of chapter 483, F.S.⁹ The AHCA must consider certain factors in determining the penalty for a violation, including:

- The severity of the violation, including the probability that death or serious harm to the health or safety of any person could occur as a result of the violation;
- Actions taken by the licensee to correct the violation or to remedy complaints; and
- The financial benefit to the licensee of committing or continuing the violation.¹⁰

In addition to the imposition of fines, an individual may be subject to criminal penalties for a violation of any provision of part I of chapter 483, F.S.¹¹ The AHCA must refer an individual who commits a violation to the local law enforcement agency and the individual may be subject to a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083, F.S.¹² Additionally, AHCA may issue and deliver a notice to cease and desist from such act and may impose, by citation, an administrative penalty not to exceed \$5,000 per act.¹³ Each day that unlicensed activity continues after issuance of a notice to cease and desist constitutes a separate act.¹⁴

An application for licensure or re-licensure as a clinical laboratory may be denied or revoked by AHCA for any violation of part I of chapter 483, F.S.¹⁵

Effect of Proposed Changes

The bill requires a clinical laboratory to make its services available to specified licensed health care practitioners, instead of requiring the laboratory to accept a human specimen from such practitioners. The bill exempts “exclusive use” laboratories from this requirement. Specifically, a clinical laboratory must make its services available to a:

- Physician;
- Chiropractor;
- Podiatrist;
- Naturopath;
- Optometrist;
- Dentist; or an
- Advanced registered nurse practitioner.

A clinical laboratory may still be subject to fines, criminal penalties and licensure denial or revocation for a violation of this provision or any provision of part I of chapter 483, F.S.

⁸ S. 483.035(1), F.S.

⁹ S. 483.221(1), F.S.

¹⁰ Id.

¹¹ S. 483.23(1)(a) and (b), F.S.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ S. 408.815(1)(c), F.S.

The bill also authorizes clinical laboratories to refuse to perform a service that is not reimbursable or if the entity requesting the service has a history of nonpayment.

B. SECTION DIRECTORY:

Section 1: Amends s. 483.181, F.S., relating to acceptance, collection, identification, and examination of specimens.

Section 2: Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to clinical laboratories; amending s. 483.181, F.S.; requiring certain licensed clinical laboratories to make their services available to specified licensed practitioners; prohibiting such clinical laboratories from charging different prices for its services based on the type of license a practitioner has; authorizing such clinical laboratories to refuse to perform a service if the service is not reimbursable by the applicable insurer or other payor or if there is a history of nonpayment for services by the requester of the service; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 483.181, Florida Statutes, is amended to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(5) A clinical laboratory licensed under this part, except for a clinical laboratory described in s. 483.035(1), must make its services available to ~~accept a human specimen submitted for examination by~~ a practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, s. 464.012, or chapter 466, and may ~~if the specimen and test are~~

27 ~~the type performed by the clinical laboratory. A clinical~~
 28 ~~laboratory may only refuse a specimen based upon a history of~~
 29 ~~nonpayment for services by the practitioner. A clinical~~
 30 ~~laboratory shall~~ not charge different prices for its services
 31 ~~tests~~ based upon the type of license held by the practitioner
 32 ~~chapter under which a practitioner submitting a specimen for~~
 33 ~~testing is licensed. A clinical laboratory may refuse to perform~~
 34 a service if the service is not reimbursable by the applicable
 35 insurer or other payor or if there is a history of nonpayment
 36 for services by the requester of the service.

37 Section 2. This act shall take effect upon becoming a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Quality
 2 Subcommittee

3 Representative Roberson, K. offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (5) of section 483.181, Florida
8 Statutes, is amended to read:

9 483.181 Acceptance, collection, identification, and
10 examination of specimens.—

11 (5) A clinical laboratory licensed under this part must
 12 make its services available to accept a human specimen submitted
 13 ~~for examination by a practitioner licensed under chapter 458,~~
 14 ~~chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,~~
 15 ~~s. 464.012, or chapter 466, if the specimen and test are the~~
 16 ~~type performed by the clinical laboratory. A clinical laboratory~~
 17 ~~may only refuse a specimen based upon a history of nonpayment~~



Amendment No.

18 | ~~for services by the practitioner.~~ A clinical laboratory shall
19 | not charge different prices for its services ~~tests~~ based upon
20 | the chapter under which a practitioner ~~submitting a specimen for~~
21 | ~~testing~~ is licensed.

22 | Section 2. This act shall take effect upon becoming a law.

23 |
24 | -----

25 | **T I T L E A M E N D M E N T**

26 | Remove everything before the enacting clause and insert:
27 | An act relating to clinical laboratories; amending s. 483.181,
28 | F.S.; requiring clinical laboratories to make their services
29 | available to specified licensed practitioners; prohibiting such
30 | clinical laboratories from charging different prices for its
31 | services based on the type of license a practitioner has; making
32 | a technical change; providing an effective date.