

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 423 Drug Prescription by Advanced Registered Nurse Practitioners & Physician Assistants  
**SPONSOR(S):** Pigman and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 1 N	Siples	O'Callaghan
2) Health Care Appropriations Subcommittee		Garner	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Unlike all other states in the U.S., Florida does not allow advanced registered nurse practitioners (ARNPs) to prescribe controlled substances and is one of two states that does not allow physician assistants (PAs) to prescribe controlled substances.

The bill authorizes ARNPs to prescribe, dispense, order, and administer controlled substances, but only to the extent authorized under a supervising physician's protocol. The bill also authorizes PAs to prescribe controlled substances that are not listed on the formulary established by the Council on Physician Assistants, under current supervisory standards. The bill subjects ARNPs and PAs to administrative disciplinary actions, such as fines or license suspensions, for violating standards of practice in law relating to prescribing and dispensing controlled substances. The bill adds specific prohibited acts related to the prescribing of controlled substances, which constitute grounds for denial of license or disciplinary action, into the Nurse Practice Act.

The bill requires ARNPs and PAs who prescribe controlled substances for the treatment of chronic nonmalignant pain to meet certain registration and prescribing requirements, but prevents ARNPs and PAs from prescribing controlled substances in registered pain management clinics.

The bill adds ARNPs and PAs into the definition of "practitioner" in the Florida Comprehensive Drug Abuse Prevention and Control Act (Act) requiring compliance with the prescribing and dispensing requirements and limitations under the Act.

The bill makes several technical and conforming changes and amends several statutes to recognize that an ARNP or a PA may be a prescriber of controlled substances. These include statutes relating to pilot licensure, criminal probation, and the state employees' prescription drug program.

The bill may have an insignificant, negative fiscal impact on the Department of Health, however current existing budget authority is adequate to absorb it. There is no fiscal impact on local governments.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Physician Assistants

##### *Licensure and Regulation*

A physician assistant (PA) is a person who has completed an approved medical training program and is licensed to perform medical services, as delegated by a supervising physician.<sup>1</sup> The licensure of PAs in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs, and the Florida Council on Physician Assistants (Council) regulates the practice of PAs in conjunction with either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. There are currently 7,987 PAs who hold active licenses in Florida.<sup>2</sup>

To be licensed as a PA in Florida, an applicant must demonstrate to the Council that he or she has met the following requirements:

- Satisfactory passage of the proficiency examination administered by the National Commission on Certification of Physician Assistants;
- Completion of an application and remittance of the applicable fees to the DOH;<sup>3</sup>
- Completion of an approved PA training program;
- Submission of a sworn statement of any prior felony convictions;
- Submission of a sworn statement of any revocation or denial of licensure or certification in any state;
- Submission of two letters of recommendation; and
- If the applicant is seeking prescribing authority, a submission of a copy of course transcripts and the course description from a PA training program describing the course content in pharmacotherapy.<sup>4</sup>

Licenses are renewed biennially.<sup>5</sup> At the time of renewal, a PA must demonstrate that he or she has met the continuing medical education requirements of 100 hours and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.<sup>6</sup> If a PA is licensed as a prescribing PA, an additional 10 hours of continuing medical education in the specialty areas of his or her supervising physician must be completed.<sup>7</sup>

##### *Supervision of PAs*

A PA may only practice under the delegated authority of a supervising physician. A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>8</sup> Supervision is defined as responsible supervision and control that requires the easy

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<sup>1</sup> Sections 458.347(2)(e) and 459.022(2)(e), F.S.

<sup>2</sup> Email correspondence with the Department of Health on November 9, 2015. The number of active-licensed PAs include both in-state and out-of-state licensees, as of November 9, 2015.

<sup>3</sup> The application fee is \$100 and the initial license fee is \$200. Applicants must also pay an unlicensed activity fee of \$5. See Rules 64B8-30.019 and 64B15-6.013, F.A.C.

<sup>4</sup> Sections 458.347(7) and 459.022(7), F.S.

<sup>5</sup> For timely renewed licenses, the renewal fee is \$275 and the prescribing registration fee is \$150. Additionally, at the time of renewal, the PA must pay an unlicensed activity fee of \$5. See Rules 64B8-30.019 and 64B15-6.013, F.A.C.

<sup>6</sup> Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

<sup>7</sup> Rules 64B8-30.005(6) and 64B15-6.0035(6), F.A.C.

<sup>8</sup> Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C. The term "scope of practice" refers to those tasks and procedures that the supervising physician is qualified by training or experience to support.

availability or physical presence of the licensed physician for consultation and direction of the PA.<sup>9</sup> A physician may not supervise more than four PAs at any time.<sup>10</sup>

The Board of Medicine and the Osteopathic Board have prescribed by rule what constitutes adequate responsible supervision. Responsible supervision is the ability of a supervising physician to reasonably exercise control and provide direction over the services or tasks performed by the PA.<sup>11</sup> Whether the supervision of the PA is adequate is dependent on the:

- Complexity of the task;
- Risk to the patient;
- Background, training, and skill of the PA;
- Adequacy of the direction in terms of its form;
- Setting in which the tasks are performed;
- Availability of the supervising physician;
- Necessity for immediate attention; and
- Number of other persons that the supervising physician must supervise.<sup>12</sup>

The decision to permit a PA to perform a task or procedure under direct or indirect supervision is made by the supervising physician based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.<sup>13</sup> Direct supervision refers to the physical presence of the supervising physician so that the physician is immediately available to the PA when needed.<sup>14</sup> Indirect supervision refers to the reasonable physical proximity of the supervising physician to the PA or availability by telecommunication.<sup>15</sup>

### *Delegable Tasks*

Rules of both the Board of Medicine and the Osteopathic Board place limitations on a supervising physician's ability to delegate certain tasks. The following tasks are not permitted to be delegated to a PA, except when specifically authorized by statute:

- Prescribing, dispensing, or compounding medicinal drugs; and
- Final diagnosis.<sup>16</sup>

A supervising physician may delegate authority to a PA the authority to:

- Prescribe or dispense any medicinal drug used in the supervising physician's practice;<sup>17</sup>
- Order medicinal drugs for a hospitalized patient of the supervising physician;<sup>18</sup> and
- Administer a medicinal drug under the direction and supervision of the physician.

Currently, PAs are prohibited from prescribing controlled substances, anesthetics, and radiographic contrast materials.<sup>19</sup> However, physicians may delegate the authority to order controlled substances in facilities licensed under ch. 395, F.S.<sup>20</sup>

### *Education of PAs*

<sup>9</sup> Sections 458.347(2)(f) and 459.022(2)(f), F.S.

<sup>10</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>11</sup> Rules 64B8-30.001(3) and 64B15-6.001(3), F.A.C.

<sup>12</sup> *Id.*

<sup>13</sup> Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

<sup>14</sup> Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.

<sup>15</sup> Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.

<sup>16</sup> *Supra* note 12.

<sup>17</sup> Sections 458.347(4)(f)1., F.S., and 459.022(4)(e), F.S., directs the Council to establish a formulary listing the medical drugs that a PA may not prescribe. The formulary in Rules 64B8-30.008 and 64B15-6.0038, F.A.C., prohibits PAs from prescribing controlled substances, as defined in Chapter 893, F.S., general, spinal, or epidural anesthetics, and radiographic contrast materials.

<sup>18</sup> Sections 458.347(4)(g), and 459.022(4)(f), F.S., provides that an order is not a prescription.

<sup>19</sup> Rules 64B8-30.008, F.A.C., and 64B15-6.0038, F.A.C.

<sup>20</sup> Sections 458.347(4)(g), F.S., and 459.022(4)(f), F.S.; the facilities licensed in ch. 395, F.S., include hospitals, ambulatory surgical centers, and mobile surgical facilities.

According to the American Academy of Physician Assistants, all accredited PA educational programs include pharmacology courses, and the average amount of formal classroom instruction in pharmacology is 75 hours.<sup>21</sup> Course topics, include pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage, generally by doctoral-level pharmacologists or clinical pharmacists.<sup>22</sup> Additionally, pharmacology education occurs on all clinical clerkships or rotations.<sup>23</sup>

### Regulation of Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S. (Nurse Practice Act), governs the licensure and regulation of advanced registered nurse practitioners (ARNPs) in Florida. Nurses are licensed by the DOH and are regulated by the Board of Nursing.<sup>24</sup> There are 22,003 actively licensed ARNPs in Florida.<sup>25</sup>

In Florida, an ARNP is a licensed nurse who is certified in advanced or specialized nursing practice and may practice as a certified registered nurse anesthetist, a certified nurse midwife, or a nurse practitioner.<sup>26</sup> Section 464.003(2), F.S., defines “advanced or specialized nursing practice” to include the performance of advanced-level nursing acts approved by the Board of Nursing, which by virtue of postbasic specialized education, training, and experience are appropriately performed by an ARNP.<sup>27</sup>

Florida recognizes three types of ARNPs: nurse anesthetist, certified nurse midwife, and nurse practitioner. The Board of Nursing, created by s. 464.004, F.S., establishes the eligibility criteria for an applicant to be certified as an ARNP and the applicable regulatory standards for ARNP nursing practices.<sup>28</sup> To be certified as an ARNP, the applicant must:

- Have a registered nurse license;
- Have earned, at least, a master’s degree; and
- Submit proof to the Board of Nursing of holding a current national advanced practice certification obtained from a board-approved nursing specialty board.<sup>29</sup>

All ARNPs must carry malpractice insurance or demonstrate proof of financial responsibility.<sup>30</sup> An applicant for certification is required to submit proof of coverage or financial responsibility within sixty days of certification and with each biennial renewal.<sup>31</sup> An ARNP must have professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000, or an unexpired irrevocable letter of credit, which is payable to the ARNP as beneficiary, in the amount of at least \$100,000 per claim with a minimum aggregate availability of at least \$300,000.<sup>32</sup>

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<sup>21</sup> American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications*, Professional Issues – Issue Brief (Dec. 2013), available at <https://www.aapa.org/workarea/downloadasset.aspx?id=2549> (last visited Nov. 19, 2015).

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

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

<sup>24</sup> Pursuant to s. 464.004, F.S., the Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. The Board is comprised of three licensed practical nurses who have practiced for at least four years, seven members who are registered nurses who have practiced for at least 4 years; three Florida residents who have never been licensed as nurses, are not connected to the practice of nursing, and have no financial interest in any health care facility, agency, or insurer; and seven members who are registered nurses who have practiced at least four years. Among the seven members who are registered nurses, there must be at least one must be an ARNP, one nurse educator of an approved program, and one nurse executive.

<sup>25</sup> E-mail correspondence with the Department of Health (Nov. 9, 2015) (on file with committee staff). This number includes all active licenses, including out of state practitioners.

<sup>26</sup> Section 464.003(3), F.S.

<sup>27</sup> Section 464.003(2), F.S.

<sup>28</sup> Section 464.012(2), F.S.

<sup>29</sup> Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C. A nursing specialty board must attest to the competency of nurses in a clinical specialty area, require nurses to take a written examination prior to certification, require nurses to complete a formal program prior to eligibility of examination, maintain program accreditation, and identify standards or scope of practice statements appropriate for each nursing specialty.

<sup>30</sup> Section 456.048, F.S.

<sup>31</sup> Rule 64B9-4.002(5), F.A.C.

<sup>32</sup> *Id.*

## *Supervision of ARNPs*

Pursuant to s. 464.012(3), F.S., ARNPs may only perform nursing practices delineated in an established protocol filed with the Board of Nursing that is filed within 30 days of entering into a supervisory relationship with a physician and upon biennial license renewal.<sup>33</sup> Florida law allows a primary care physician to supervise ARNPs in up to four offices, in addition to the physician's primary practice location.<sup>34</sup> If the physician provides specialty health care services, then only two medical offices, in addition to the physician's primary practice location, may be supervised.

The supervision limitations do not apply in the following facilities:

- Hospitals;
- Colleges of medicine or nursing;
- Nonprofit family-planning clinics;
- Rural and federally qualified health centers;
- Nursing homes;
- Assisted living facilities;
- Student health care centers or school health clinics; and
- Other government facilities.<sup>35</sup>

To ensure appropriate medical care, the number of ARNPs a supervising physician may supervise is limited based on consideration of the following factors:

- Risk to the patient;
- Educational preparation, specialty, and experience in relation to the supervising physician's protocol;
- Complexity and risk of the procedures;
- Practice setting; and
- Availability of the supervising physician or dentist.<sup>36</sup>

### *Delegable Tasks*

Within the framework of a written physician protocol, an ARNP may:

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions;
- Order diagnostic tests and physical and occupational therapy;
- Perform certain acts within his or her specialty;
- Perform medical acts authorized by a joint committee; and
- Perform additional functions determined by rule.<sup>37</sup>

Florida law does not authorize ARNPs to prescribe, independently administer, or dispense controlled substances.<sup>38</sup>

### Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Act) and classifies controlled substances into

<sup>33</sup> Physicians are also required to provide notice of the written protocol and the supervisory relationship to the Board of Medicine or Board of Osteopathic Medicine, respectively. See ss. 458.348 and 459.025, F.S.

<sup>34</sup> Sections 458.348(4) and 459.025(3), F.S.

<sup>35</sup> Sections 458.348(4)(e), and 459.025(3)(e), F.S.

<sup>36</sup> Rule 64B9-4.010, F.A.C.

<sup>37</sup> Section 464.012(3), F.S. Pursuant to s. 464.012(4), F.S., certified registered nurse anesthetists, certified nurse midwives, and certified nurse practitioners are authorized to perform additional acts that are within their specialty and authorized under an established supervisory protocol.

<sup>38</sup> Sections 893.02(21) and 893.05(1), F.S. The definition of practitioner does not include ARNPs.

five categories, known as schedules.<sup>39</sup> The distinguishing factors between the different drug schedules are the “potential for abuse” of the substance and whether there is a currently accepted medical use for the substance. Schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. The Act provides requirements for the prescribing and administering of controlled substances by health care practitioners and proper dispensing by pharmacists and health care practitioners.<sup>40</sup>

### Controlled Substance Prescribing for Nonmalignant Pain in Florida

As of January 1, 2012, every physician, podiatrist, or dentist, who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain,<sup>41</sup> must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.<sup>42</sup> Before prescribing controlled substances for the treatment of chronic nonmalignant pain, a practitioner must:

- Document certain characteristics about the nature of the patient’s pain, success of past treatments, and a history of alcohol and substance abuse;
- Develop a written plan for assessing the patient’s risk for aberrant drug-related behavior and monitor such behavior throughout the course of controlled substance treatment;
- Develop an written individualized treatment plan for each patient stating the objectives that will be used to determine treatment success; and
- Enter into a controlled substance agreement with each patient that must be signed by the patient or their legal representative and by the prescribing practitioner. Such agreements must include:
  - The number and frequency of prescriptions and refills;
  - A statement outlining expectations for patient compliance and reasons for which the drug therapy may be discontinued, such as violation of the agreement; and
  - An agreement that the patient’s chronic nonmalignant pain only be treated by a single treating practitioner unless otherwise authorized and documented in the medical record.<sup>43</sup>

Patients being treated with controlled substances for chronic nonmalignant pain must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.<sup>44</sup> Patients at special risk for drug abuse or diversion may require consultation with or a referral to an addiction medicine physician or a psychiatrist.<sup>45</sup> Anyone with signs or symptoms of substance abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.<sup>46</sup>

### Drug Enforcement Administration

The Drug Enforcement Administration (DEA), housed within the U.S. Department of Justice, enforces the controlled substances laws and regulations of the United States, including preventing and investigating the diversion of controlled pharmaceuticals.<sup>47</sup>

Any health care professional wishing to prescribe controlled substances must apply for a registration number from the DEA. Registration numbers are linked to state licenses and may be suspended or

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<sup>39</sup> See s. 893.03, F.S.

<sup>40</sup> Sections 893.04 and 893.05, F.S.

<sup>41</sup> “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.

<sup>42</sup> Chapter 2011-141, s. 3, Laws of Fla. (creating ss. 456.44, F.S., effective July 1, 2011).

<sup>43</sup> Section 465.44(3), F.S.

<sup>44</sup> Section 465.44(3)(d), F.S.

<sup>45</sup> Section 465.44(3)(e), F.S.

<sup>46</sup> Section 456.44(3)(g), F.S.

<sup>47</sup> Drug Enforcement Administration, *About Us*, available at <http://www.deadiversion.usdoj.gov/Inside.html> (last visited Nov. 15, 2015).

revoked upon any disciplinary action taken against a licensee.<sup>48</sup> The DEA will grant registration numbers to a wide range of health care professionals, including physicians, nurse practitioners, physician assistants, optometrists, dentists, and veterinarians, but such professionals may only prescribe controlled substances as authorized under state law.<sup>49</sup> The DEA provides that a controlled substance prescription may only be issued by a registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice; and
- Registered with the DEA, or exempt from registration (e.g., Public Health Service, Federal Bureau of Prisons, or military practitioners); or
- An qualified agent or employee of a hospital or other institution acting in the normal course of business or employment under the DEA registration number of the hospital or other institution which is registered in lieu of the individual practitioner being registered.<sup>50</sup>

The DEA's Practitioner Manual includes requirements for valid prescriptions. The DEA defines "prescription" as an order for medication which is dispensed to or for an ultimate user, but is not an order for a medication dispensed for immediate administration to the user, such as an order to dispense a drug to a patient in a hospital setting.<sup>51</sup>

### Other States' Controlled Substance Prescriptive Authority for ARNPs and PAs

#### *ARNPs*

An ARNP's ability to prescribe, dispense, or administer controlled substances is dependent on his or her specific state's law. Forty-nine states authorize ARNPs to prescribe controlled substances.<sup>52</sup> Twenty-one states and the District of Columbia allow an ARNP to practice independently, including evaluating, diagnosing, ordering, and interpreting diagnostic tests, and managing treatment, including prescribing medications, of a patient without physician supervision.<sup>53</sup> Twenty-two states specifically prohibit certified registered nurse anesthetists from prescribing controlled substances.<sup>54</sup>

Some states have specific limitations regarding ARNPs prescribing authority for schedule II controlled substances,<sup>55</sup> for example, 7 states authorize ARNPs to prescribe all levels of scheduled drugs, except for schedule II. Some states have specific education requirements for those ARNPs who wish to prescribe schedule II substances or require additional registration for ARNPs to be authorized to prescribe.<sup>56</sup>

#### *PAs*

A PA's ability to prescribe, dispense, or administer controlled substances is dependent on their specific state's law. Forty-eight states authorize PAs to prescribe controlled substances within an agreement with a supervisory physician, with varying limitations on administration, dispensing, and independent prescribing.<sup>57</sup> Of the 48 states, some have specific restrictions on PAs' prescribing authority for

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<sup>48</sup> Registration numbers must be renewed every three years. Drug Enforcement Administration, *Practitioners Manual*, 7(2006), available at [http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract\\_manual012508.pdf](http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf) (last visited Nov. 19, 2015).

<sup>49</sup> *Id.* at 7.

<sup>50</sup> DEA, *Practitioner Manual*, 18.

<sup>51</sup> *Id.*

<sup>52</sup> Drug Enforcement Agency, *Mid-Level Practitioners Authorization by State* (Nov. 10, 2015), available at [http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp\\_by\\_state.pdf](http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf) (last visited Nov. 19, 2015). The Commonwealth of Puerto Rico also prohibits ARNPs from prescribing controlled substances.

<sup>53</sup> Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Iowa, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, Vermont, Washington, and Wyoming allow for independent practice. See American Association of Nurse Practitioners, *State Practice Environment*, available at <https://www.aanp.org/legislation-regulation/state-legislation/state-practice-environment/66-legislation-regulation/state-practice-environment/1380-state-practice-by-type> (last visited Nov. 19, 2015).

<sup>54</sup> American Association of Nurse Anesthetists, AANA Journal, June 2011; 79(3):235, on file with committee staff.

<sup>55</sup> *Supra* note 51.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* Every state, except Florida and Kentucky, has some form of controlled substance prescriptive authority for PAs.

schedule II controlled substances; for example, Texas and Hawaii only authorize PAs to order schedule II controlled substances in an inpatient hospital setting. Some states have medication quantity restrictions on prescriptions for schedule II drugs and some states give PAs' prescriptive authority for all levels of scheduled drugs except for schedule II.<sup>58</sup> Some states also have a formulary determined by the relevant PA licensing board which identifies the controlled substances that PAs are authorized to prescribe.

### **Effect of Proposed Changes**

The bill authorizes PAs licensed under ch. 458, F.S., the Medical Practice Act or under ch. 459, F.S., the Osteopathic Medical Practice Act, and ARNPs certified under part I of ch. 464, F.S., the Nurse Practice Act, to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs.

#### **Physician Assistants**

The bill authorizes PAs to prescribe controlled substances by removing the requirement that the formulary of medicinal drugs that a PA may not prescribe include controlled substances. However, because the formulary is determined by the Council on Physician Assistants pursuant to s. 458.347(4)(f)1., F.S.,<sup>59</sup> the Council may elect to add controlled substances to the formulary, prohibiting PAs from prescribing them.

The bill subjects PAs to administrative disciplinary actions in s. 456.072, F.S., such as fines or license suspensions for violating standards of practice in law relating to prescribing and dispensing controlled substances.<sup>60</sup>

#### **Advanced Registered Nurse Practitioners**

The bill authorizes ARNPs, regulated under s. 464.012(3), F.S., to prescribe, dispense, order, or administer controlled substances, if allowed under a supervising physician's protocol. The bill adds additional acts related to the prescribing of controlled substances into s. 464.018, F.S., which an ARNP is prohibited from performing and which, if performed, constitute grounds for denial of license or disciplinary actions.

Section 456.072(7), F.S., is revised to include disciplinary actions against ARNPs including specific fines and license suspension, which mirror actions against physicians for prescribing or dispensing a controlled substance other than in the course of professional practice or for failing to meet practice standards.

#### **Controlled Substances**

The bill adds PAs and ARNPs to the definition of practitioner in ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act (Act), thus requiring these practitioners to comply with the prescribing and dispensing requirements and limitations under the Act. This definition also requires practitioners to hold a valid federal DEA controlled substance registry number.

The bill amends s. 456.44, F.S., to require a PA or ARNP who prescribes any controlled substance that is listed in schedule II, schedule III, or schedule IV, for the treatment of chronic nonmalignant pain to register himself or herself as a controlled substance prescribing practitioner on his or her practitioner profile maintained by the DOH and to meet other statutory requirements for such registrants.<sup>61</sup> The bill also replaces the terms physician and clinician with registrant throughout this

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<sup>58</sup> *Id.*

<sup>59</sup> Section 459.022(4)(e), F.S., of the Osteopathic Medical Practice Act refers to the formulary in the Medical Practice Act.

<sup>60</sup> Disciplinary sanctions against physicians apply to PAs. Sections 458.347(7)(g) and 459.022(7)(g), F.S., state that the Board of Medicine or the Board of Osteopathic Medicine may impose any penalty authorized under ss. 456.072, 458.332(2), and 459.015(2), F.S., on a PA if the PA or the supervising physician has been found guilty of any prohibited acts.

<sup>61</sup> Currently, PAs do not have practitioner profiles. Practitioner profiles contain information about a practitioner's education, training, and practice and are accessible to the public. If the bill is enacted, the Department will need to develop a profile for PAs.



section of law. The bill specifies that this registration is not required to prescribe medication in a facility licensed under ch. 395, F.S.<sup>62</sup>

The bill amends sections regulating pain-management clinics under the Medical Practice Act and the Osteopathic Medical Practice Act to only authorize physicians licensed under ch. 458, F.S., or ch. 459, F.S., to prescribe controlled substances in a pain-management clinic. Accordingly, PAs and ARNPs are prohibited from prescribing controlled substances in pain-management clinics.

The bill makes several conforming changes to various statutes to recognize the new prescribing authority for PAs and ARNPs.

The bill provides an effective date of July 1, 2016.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 110.12315, F.S., relating to prescription drug program.

**Section 2.** Amends s. 310.071, F.S., relating to deputy pilot certification.

**Section 3.** Amends s. 310.073, F.S., relating to state pilot licensing.

**Section 4.** Amends s. 310.081, F.S., relating to department examination and licensure of state pilots and certification of deputy pilots; vacancies.

**Section 5.** Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.

**Section 6.** Amends s. 456.44, F.S., relating to controlled substance prescribing.

**Section 7.** Amends s. 458.3265, F.S., relating to pain-management clinics.

**Section 8.** Amends s. 458.347, F.S., relating to physician assistants.

**Section 9.** Amends s. 459.0137, F.S., relating to pain-management clinics.

**Section 10.** Amends s. 464.012, relating to certification of advanced registered nurse practitioners; fees; controlled substance prescribing.

**Section 11.** Amends s. 464.018, F.S., relating to disciplinary actions.

**Section 12.** Amends s. 893.02, F.S., relating to definitions.

**Section 13.** Amends s. 948.03, F.S., relating to terms and conditions of probation.

**Section 14.** Reenacts s. 310.071, F.S., relating to deputy pilot certification.

**Section 15.** Reenacts s. 458.331, F.S., relating to ground for discipline; action by the board and department; s. 458.347, F.S., relating to physician assistants; s. 459.022, F.S., relating to physician assistants; and s. 465.0158, relating to nonresident sterile compounding permit.

**Section 16.** Reenacts s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement and s. 466.02751, F.S., relating to establishment of practitioner profile for designation as a controlled substance prescribing practitioner.

**Section 17.** Reenacts s. 458.303, F.S., relating to provisions not applicable to other practitioners; exceptions, etc.; s. 458.347, F.S., relating to physician assistants; s. 458.3475, F.S., relating to anesthesiologist assistants; s. 459.022, F.S., relating to physician assistants; and s. 459.023, F.S., relating to relating to anesthesiologist assistants.

**Section 18.** Reenacts s. 456.041, F.S., relating to practitioner profile; creation; s. 458.348, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; standards; and s. 459.025, F.S., relating to relating to formal supervisory relationships, standing orders, and established protocols; notice; standards.

**Section 19.** Reenacts s. 464.008, F.S., relating to licensure by examination; s. 464.009, F.S., relating to licensure by endorsement; s. 464.018, F.S., relating to disciplinary actions; and s. 464.0205, F.S., relating to retired volunteer nurse certificate.

**Section 20.** Reenacts s. 775.051, F.S., relating to voluntary intoxication; not a defense; evidence not admissible for certain purposes; exceptions.

**Section 21.** Reenacts s. 944.17, F.S., relating to commitments and classification; transfers; s. 948.001, F.S., relating to definitions; and s. 948.101, F.S., relating to terms and conditions of community control.

**Section 22.** Provides an effective date of July 1, 2016.

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<sup>62</sup> The facilities licensed under ch. 395, F.S., include hospitals, ambulatory surgical centers, and mobile surgical facilities.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill may have an insignificant negative fiscal impact on the Department of Health associated with rulemaking, the creation of practitioner profiles for PAs, and workload impacts related to potential additional practitioner complaints and investigations. Current budget authority and revenues are adequate to absorb any additional workload.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Patients may see reduced health care costs and efficiencies in health care delivery as a result of having their health care needs more fully addressed by the PA or ARNP without specific additional involvement of a physician prescribing a needed controlled substance for treatment. Any such impacts are indeterminate.

### **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:**

The Board of Nursing, Board of Medicine, Board of Osteopathic Medicine, the Department of Health, and the Department of Management Services have sufficient rule-making authority to implement the provisions of the bill.

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

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

