

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Health & Human Services Committee; Health Care Appropriations Subcommittee; Health Quality Subcommittee; Pigman

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 1 N, As CS	Castagna	O'Callaghan
2) Health Care Appropriations Subcommittee	11 Y, 0 N, As CS	Pridgeon	Pridgeon
3) Health & Human Services Committee	18 Y, 0 N, As CS	Castagna	Calamas

### SUMMARY ANALYSIS

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

This bill authorizes the Board of Medicine (Board), through rulemaking, to allow the fulfillment of continuing education requirements. This bill allows a board, or the Department when there is no board, to adopt rules (under certain circumstances) to waive initial application and licensure fees, and licensure renewal fees, for health care practitioners licensed under ch. 456, F.S.

This bill allows the Department to enter into an interagency agreement with the Department of Highway and Safety Motor Vehicles to access current digital photographic images of licensed health care practitioners to assist the Department with practitioner or unlicensed practice investigations. It also updates the law to authorize the Department, instead of the Agency for Health Care Administration, to access patient records for such investigations, and requires the rates for reproduction of medical records to be the same regardless of format or medium.

The bill continues sovereign immunity protections under s.766.115, F.S., for health care providers providing services during a 30-day transition period after a patient has been determined to be ineligible for a health care provider's volunteer services.

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

- Removes the option of apprenticeship as a pathway to licensure for massage therapists.
- Aligns continuing training requirements for certified nursing assistants' certification renewals with their biennial renewal cycles and abolishes the Council on Certified Nursing Assistants.
- Removes the requirement that the Department send a notification by registered mail to each registered dental laboratory operator within 30 days following the expiration date of the dental laboratory operator's registration.
- Updates the names of certain accrediting bodies for midwifery programs and registered dietitians.
- Revises the membership structure for the Board of Nursing Home Administrators and allows for those with a master's degree in health care services or an equivalent field to take the license examination regardless of the bachelor's degree earned.

The bill limits the amount that the public may be charged for a medical examiner to determine a cause of death.

The bill modifies HIV testing requirements to differentiate by setting. The bill updates the law to reflect advances in HIV testing. The bill revises the HIV testing requirement for health care settings to no longer require informed consent from the HIV test subject and establishes new notification requirements.

The bill has an insignificant positive fiscal impact on the Department of Health and a significant, negative impact on local governments.

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

### FULL ANALYSIS

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

**STORAGE NAME:** h0819e.HHSC

**DATE:** 4/4/2014

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

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

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

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>2</sup> Boards are responsible for approving or denying applications for licensure, establishing continuing medical education requirements, and are involved in disciplinary hearings. Sections 456.072, 456.073, and 456.074 F.S., provide the authority for a board to take disciplinary action against a licensee. The board can take action for any legally sufficient, written, and signed complaint that is filed before it.<sup>3</sup> Not every profession is governed by a board.

##### *Department Investigations*

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

##### *Licenses and Fees*

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

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

- An initial licensing fee;
- An initial application fee;
- An initial unlicensed activity fee of \$5; and<sup>7</sup>
- Fees associated with criminal background checks.

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

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

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

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

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

<sup>6</sup> Section 456.013(2), F.S.

<sup>7</sup> Section 455.2281, F.S., refers to the unlicensed activity fee which funds regulation of licensed professions, including investigations of persons conducting unlicensed health care activities.

Each board, or the Department when there is no board, determines by rule the amount of license fees for each profession it regulates. Fees are allocated to the MQA Trust Fund.<sup>8</sup>

### *MQA Trust Fund*

Funds allocated to the MQA Trust Fund consist of fees and fines related to the licensing of health care professionals. Funds must be used for the purpose of providing administrative support for the regulation of health care professionals and for other such purposes as may be appropriate pursuant to legislative appropriation.<sup>9</sup> Every 2 years each board, or the Department when there is no board, collects applications and additional licensing fees from applicants and renewal fees from current practitioners. Since Fiscal Year 2008-2009, the cost of regulating health care practitioners has averaged \$63,198,327 annually, and the MQA has collected an average of \$72,035,217 in revenue annually.<sup>10</sup> As of December 31, 2013, there was \$20,749,755 in the MQA Trust Fund.<sup>11</sup>

### *Medical Assistants*

Under Section 458.3485, F.S., “medical assistant” is defined as a professional multiskilled person dedicated to assisting in all aspects of medical practice under the direct supervision and responsibility of a physician, assisting with patient care management, administrative and clinical procedures, and managerial and supervisory functions. Under the direct supervision and responsibility of a licensed physician, medical assistants may undertake the following clinical procedures:<sup>12</sup>

- Performing aseptic procedures;
- Taking vital signs;
- Preparing patients for the physician’s care;
- Performing venipunctures and nonintravenous injections;
- Observing and reporting patients’ signs or symptoms;
- Administering basic first aid;
- Assisting with patient examinations or treatments;
- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administering medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures including all general administrative duties required by the physician; and
- Performing dialysis procedures, including home dialysis.

Florida law does not require certification as a condition to be employed as a medical assistant; however, holding a certificate from an accredited certification program is typically preferred by employers.<sup>13</sup> There are currently 14 schools in Florida with accredited medical assistant certification programs.<sup>14</sup> Section 458.3485, F.S., states that a medical assistant may be certified by the American Association of Medical Assistants or as a registered medical assistant by a professional association named the American Medical Technologists. This provision is permissive, and does not exclude certification by other entities, and so appears to be unnecessary. Currently, there are other accredited agencies that certify medical assistants who are not listed in Florida law.

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

<sup>9</sup> Section 20.435(4), F.S.

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

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

<sup>12</sup> Section 458.3485, F.S.

<sup>13</sup> Medical Assistant, American Medical Technologists, *accessible at*: <http://www.americanmedtech.org/Certification/MedicalAssistant.aspx> (last accessed April 3, 2014).

<sup>14</sup> CAAHEP Accredited Program Search, Commission on Accreditation of Allied Health Education Programs, *accessible at*: <http://www.caahep.org/find-an-accredited-program/> (last accessed April 3, 2014).

## *Certified Nursing Assistants*

To maintain certification, Certified Nursing Assistants (CNAs) must show proof of having completed in-service training hours, which are the equivalent of continuing education hours for other health care professions. Currently, a CNA must complete 12 hours of in-service training each calendar year.<sup>15</sup> CNA certificates are issued for a biennium with a May 31st expiration date.

The Council on Certified Nursing Assistants (Council)<sup>16</sup> proposes rules to implement in-service training requirements. The Council meets every 2 months in conjunction with the Board of Nursing. During these meetings the Council makes recommendations to the Department and the Board of Nursing regarding CNA policies and procedures, licensure, and other regulatory issues.<sup>17</sup> The Council is composed of 5 members:

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

## *Massage Therapist Licensure*

Section 480.033, F.S., defines “apprentice” as a person approved by the Board of Massage Therapy to study massage under the instruction of a licensed massage therapist. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a Department application, pay a \$100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.<sup>18</sup> For a 10-year period ending on June 21, 2013, the Board of Massage Therapy has received 300 applications for apprenticeship. Of those 300 applicants, only 8 have obtained full licensure as a massage therapist.<sup>19</sup>

Section 480.042, F.S., authorizes the Department, in accordance with rules established by the Board of Massage Therapy, to administer examinations for persons who apply for massage therapy licensure. The Department contracts with a national testing vendor, Pearson Vue, to administer the examinations.<sup>20</sup>

## *Dental Laboratory Operators*

According to s. 466.032, F.S., a dental laboratory operator is required to renew his or her dental laboratory operator registration every 2 years. Renewal notices are sent to the last known address of the dental laboratory operator 120 days prior to the expiration date of the registration. If a dental laboratory operator fails to timely renew his or her dental laboratory operator registration, the operator must be notified by registered mail by the Department. After the Department has provided notice of the failure to timely renew a dental laboratory operator registration, the dental laboratory operator is then given 3 additional months to renew the registration with no late fee.

During the most recent license renewal period, the Department mailed 281 registered mail return-receipt notices to delinquent dental laboratory operators; 86 were returned as undeliverable. This notification requirement costs the Department over \$2,000 every two years. This process is not required for any other regulated health care professionals.<sup>21</sup>

## *Nursing Home Administrators*

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<sup>15</sup> Section 464.203, F.S.

<sup>16</sup> Section 464.2085(2)(b), F.S.

<sup>17</sup> Council on Certified Nursing Assistants, Florida Board of Nursing, *accessible at*: <http://www.floridasnursing.gov/board-comm/council-of-certified-nursing-assistants/> (Last accessed: March 2, 2014).

<sup>18</sup> Rule 64B7-29.002, F.A.C.

<sup>19</sup> *Supra fn. 10*

<sup>20</sup> Email correspondence with DOH, March 1, 2014 (on file with Health Quality Subcommittee staff).

<sup>21</sup> DOH MQA Analysis, dated July 22, 2013 (on file with Health Quality Subcommittee staff).

The Board of Nursing Home Administrators, within the Department, licenses and regulates nursing home administrators. The board is comprised of 7 members appointed by the Governor and confirmed by the Senate. The board members serve 4-year terms, or for the remainder of an unexpired vacancy.<sup>22</sup> The membership of the board consists of:

- 3 licensed nursing home administrators;
- 2 health care practitioners; and,
- 2 laypersons who have never been members of any health care profession.<sup>23</sup>

Any person who wishes to be a nursing home administrator must take a licensure examination. To be eligible for examination, a person must hold a bachelor's degree majoring in health care administration, health services administration, or an equivalent major.<sup>24</sup>

The Board of Nursing Home Administrators may establish by rule requirements for issuance of a provisional license. A provisional license is issued by the board to fill a nursing home administrator position that unexpectedly becomes vacant due to illness, sudden death of the administrator, or abandonment of the position and is issued for not more than 6 months.<sup>25</sup>

The last nursing home administrator provisional license issued by the Board of Nursing Home Administrators was in December 2007. The board repealed Rule 64B10-11.011, F.A.C., Provisional License, in May 2010, because provisional licenses were no longer necessary for the regulation of the profession.<sup>26</sup>

### *Sovereign Immunity*

The Florida Constitution grants "absolute sovereign immunity for the state and its agencies absent waiver by legislative enactment or constitutional amendment."<sup>27</sup> The state has waived its sovereign immunity in tort actions and the state may be liable to the same extent as a private individual under like circumstances.<sup>28</sup> However, the Legislature has capped damages in suits against the state.<sup>29</sup> The current cap on damages is \$200,000 per person and \$300,000 per incident.<sup>30</sup>

The Access to Health Care Act (Act)<sup>31</sup> was enacted to provide sovereign immunity to health care professionals who contract with the state to provide free medical care for indigent residents.<sup>32</sup> The contract must be for "volunteer, uncompensated services" for the benefit of low-income recipients.<sup>33</sup> The individual accepting services through this contracted provider may not have medical coverage for the illness, injury, or condition in which medical care is sought.<sup>34</sup>

To be protected, the governmental contractor must not accept compensation and must provide written notice to each patient or the patient's legal representative, which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.<sup>35</sup> A provider's government contractor must not receive compensation for any services provided under the contract and "must not bill or accept compensation from the recipient, or any public or private third-

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<sup>22</sup> Section 468.1665, F.S.

<sup>23</sup> At least 1 member of the Board of Nursing Home Administrators must be 60 years of age or older.

<sup>24</sup> Section 468.1695, F.S.

<sup>25</sup> Section 468.1735, F.S.

<sup>26</sup> *Supra fn 10.*

<sup>27</sup> *Cir. Ct. of the Twelfth Jud. Cir. v. Dep't of Natural Resources*, 339 So.2d 1113, 1114 (Fla. 1976).

<sup>28</sup> Section 768.28(1), F.S.

<sup>29</sup> Section 768.28(5), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 766.1115, F.S.

<sup>32</sup> Section 766.1115(2), F.S..

<sup>33</sup> Section 766.1115(3)(a), F.S.

<sup>34</sup> Rule 64I-2.002, F.A.C.

<sup>35</sup> Section 766.1115(5), F.S.

party payer, for the specific services provided to the low-income recipients covered by the contract.”<sup>36</sup> Additionally, the health care provider may not subcontract for the provision of services under the Act.<sup>37</sup>

In 2012-2013 there were a total of 13,543 licensed health care providers who were contractual agents providing uncompensated services under the Act. Total goods and services provided by all contractual agents for uncompensated care totaled approximately \$294,427,678 in 2013.<sup>38</sup>

### *Continuing Medical Education*

Section 456.013, F.S., establishes continuing education requirements for many health care practitioners,<sup>39</sup> including allopathic physicians which are governed by ch. 458, F.S. Rule 64B8-13.005, F.A.C., Continuing Education for Biennial Renewal, requires physicians licensed under ch. 458, F.S., to complete 40 hours of continuing medical education courses approved by the Board in the 24 months preceding each biennial renewal period as established by the Department.

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

### Human Immunodeficiency Virus

Human Immunodeficiency Virus (HIV) is an immune system debilitating virus that can lead to fatal acquired immunodeficiency syndrome (AIDS). HIV affects specific cells of the immune system and over time the virus can destroy so many of these cells that the body cannot fight off infections and disease. Data from 2009 indicates that of the estimated 1.1 million adults in the United States who are infected with the virus, 18% were unaware of their infection.<sup>40</sup> There is no cure for HIV, yet with proper medical care, HIV can be controlled. Untreated, HIV is almost always fatal.<sup>41</sup>

### *Florida HIV Testing*

HIV testing is essential for improving the health of people living with HIV and reducing new HIV infections. It is recommended that testing occur as part of a routine healthcare visit. This is especially important for people who may not consider themselves at risk for HIV.<sup>42</sup> HIV testing is recommended for people ages 15 to 65 and pregnant women, including those in labor who have not been tested and whose HIV status is unknown.<sup>43</sup>

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<sup>36</sup> Section 766.1115(3)(a), F.S.

<sup>37</sup> Section 766.1115(4), F.S.

<sup>38</sup> *Volunteer Health Services Annual Report*, Florida Department of Health, January 2014, accessible at: <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html> (last visited February 18, 2014).

<sup>39</sup> Section 456.001(4), F.S., defines “health care practitioner” to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S., (psychotherapy).

<sup>40</sup> “HIV in the United States: At a Glance,” accessible at: <http://www.cdc.gov/hiv/statistics/basics/ata glance.html> (last accessed March 20, 2014).

<sup>41</sup> “About HIV/AIDS,” Centers for Disease Control and Prevention, accessible at: <http://www.cdc.gov/hiv/basics/whatishiv.html#panel0> (last accessed March 19, 2014).

<sup>42</sup> In Florida, only 48% of adults under 65 reported having ever been tested for HIV. Department of Health, Florida Charts, accessible at: <http://www.floridacharts.com/charts/Brfss/DataViewer.aspx?bid=29> (last accessed March 20, 2014).

<sup>43</sup> “Screening for HIV, Current Recommendations,” U.S. Preventative Services Task Force, April 2013, accessible at: <http://www.uspreventiveservicestaskforce.org/uspstf/uspshivi.htm> (last accessed March 20, 2014).

Section 381.004, F.S., which governs HIV testing in Florida and requires certain procedures to be followed when tests are given, was enacted to create an environment in Florida in which people will agree to or seek out HIV testing because they are sufficiently informed about HIV infection and assured about the privacy of a decision to be tested.<sup>44</sup> To promote informed patient decision-making, s. 381.004, F.S., prohibits HIV testing without a person's knowledge and consent, except under certain defined circumstances,<sup>45</sup> and gives the patient special rights to control who learns of the HIV test results.<sup>46</sup>

As stated in s. 381.004(2)(a), F.S., informed consent<sup>47</sup> must be obtained by all persons receiving an HIV test. Consent must be in writing unless it is documented in the person's medical record that they have been educated about the test and given consent to be tested. The right to confidential treatment of information identifying the subject of the test and the results must then be explained to the test subject.<sup>48</sup> The subject of the test must be informed that a positive HIV test result will be reported to the local Department of Health county health department (CHD) with enough information to identify the test subject.<sup>49</sup> The test subject must also be informed about the location of local sites at which anonymous testing<sup>50</sup> is available.<sup>51</sup>

The Department has developed a comprehensive program for preventing the spread of HIV/AIDS with many testing options available throughout the state in a variety of settings. CHDs<sup>52</sup> are the primary outlet for state sponsored HIV programs and in addition to testing services, CHDs provide prevention outreach and education free to the public.

## Florida Death Certificates

### *The Department of Health, Bureau of Vital Statistics*

Vital statistics consists of official records of birth, death, fetal death, marriage, and dissolution of marriage. These records are essential for just administration of our law and for the protection of individual rights. In addition, the statistical data from these records are of great value to public health and other agencies.<sup>53</sup> Prior to 2012, the approval process for a death certificate was a slow and arduous paper process. It required the manual entry and the transmittal of information through numerous offices within county and state departments. However, in 2012, the Department automated the process through the Electronic Death Registration System. The electronic transmittal of the

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<sup>44</sup> "Florida's Omnibus AIDS Act," Jack P Hartog, Department of Health, *accessible at*: [www.floridahealth.gov/diseases.../Omnibus-booklet-update-2013.pdf](http://www.floridahealth.gov/diseases.../Omnibus-booklet-update-2013.pdf) (last accessed March 21, 2014).

<sup>45</sup> Section 381.004(2)(h), F.S., lists the exceptions to the requirement to obtain informed consent, including: when a person is tested for sexually transmitted diseases, when blood, plasma, or other human fluids or tissues are donated, when a determination for appropriate emergency medical care or treatment is required, during an autopsy, when testing pregnant women, when a defendant is charged with sexual battery and is consented to by the defendant, pursuant to court order, or for certain research purposes.

<sup>46</sup> *Supra* fn. 7.

<sup>47</sup> Informed consent is a process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions. Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, Centers for Disease Control and Prevention, September 22, 2006, *accessible at*: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm> (last accessed March 19, 2014).

<sup>48</sup> Under limited circumstances, test results may be released to certain persons, entities, or the Agency for Health Care Administration pursuant to s. 395.3025, F.S.

<sup>49</sup> HIV is a notifiable disease and positive test results must be reported to the Department of Health to effectively monitor disease trends, assess effectiveness of prevention and control measures, identify populations at a higher risk, and develop public health policies. NNDSS Home, Centers for Disease Control, *accessible at*: <http://wwwn.cdc.gov/nndss/> (last accessed March 20, 2014).

<sup>50</sup> Anonymous testing is available at some testing sites and does not require test subject to identify themselves. When a person takes an anonymous HIV test, they are given a unique identifier that allows only them to access their test results. Centers for Disease Control and Prevention, Testing, *accessible at*: <http://www.cdc.gov/actagainststids/basics/testing.html> (last accessed March 20, 2014).

<sup>51</sup> Section 381.004(2)(a), F.S.

<sup>52</sup> County Health Departments are the local sector of the Department of Health, providing public health services in all 67 Florida counties. Their core functions are infectious disease prevention and control, basic family health services, and environmental health services. County Health Departments, Department of Health, *accessible at*: <http://www.floridahealth.gov/public-health-in-your-life/county-health-departments/index.html> (last accessed March 20, 2014).

<sup>53</sup> Certificates, Florida Department of Health, *accessible at*: <http://www.floridahealth.gov/%5C/certificates-and-registries/certificates/index.html> (last accessed April 3, 2014).

information has made the approval process more efficient by reducing reporting time and allows for more timely issuances of death certificates.

### *Medical Examiners*

The Medical Examiners Act (Act), ch. 406, F.S., establishes minimum and uniform requirements for statewide medical examiner services. The Act created the Medical Examiners Commission (Commission) which is composed of seven persons appointed by the Governor, the Attorney General and the State Surgeon General. The Commission is responsible for establishing, by rule, minimum and uniform standards of excellence, performance of duties, and maintenance of records requirements for medical examiners.<sup>54</sup> The Commission is additionally responsible for the creation of medical examiner districts throughout the state.<sup>55</sup> There are currently 24 medical examiner districts.<sup>56</sup>

Each district medical examiner is responsible for conducting investigations, examinations and autopsies and reporting vital statistics to the Department of Health for their district. Section 382.011, F.S. currently requires that any case of death or fetal death due to causes or conditions listed in s. 406.11, F.S., be referred to the district medical examiner for investigation and determination of the cause of death.<sup>57</sup> Section 406.11(1)(b), F.S., requires a medical examiner to perform a determination of the cause of death when the deceased are brought into the state without proper medical certification. Finally, pursuant to s. 406.11(1)(c), F.S., a medical examiner must perform a determination of the cause of death when a body is to be cremated, dissected, or buried at sea.

Pursuant to s. 406.06(3), F.S., district medical examiners and associate medical examiners are entitled to compensation and such reasonable salary and fees as are established by the board of county commissioners. This provision has been interpreted by some counties and district medical examiners as allowing a fee for performing determinations of deaths pursuant to s. 406.11, F.S. Specifically, 19 of the 24 medical examiner districts currently charge a fee for the determination of the cause of death when a body is to be cremated, dissected, or buried at sea.<sup>58</sup> This fee is charged to the direct disposal establishment<sup>59</sup> licensed under ch. 497, F.S. (i.e. a funeral home or crematorium), which may pass the expense on to the members of the public. These fees range from no charge in 24 counties to \$63 per approval in Miami-Dade County. The estimated revenue from these fees in 2012 was approximately \$3.93 million.<sup>60</sup>

## **Effect of Proposed Changes**

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

#### *Department Investigations*

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

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<sup>54</sup> Section 406.04, F.S.

<sup>55</sup> Section 406.05, F.S.

<sup>56</sup> A map of the medical examiner districts in Florida is available at <http://myfloridamedicalexaminer.com/> (on file with Health and Human Services staff).

<sup>57</sup> Section 406.11(1)(a), F.S., requires the medical examiner to determine the cause of death when any person dies in the state of: criminal violence; by accident; by suicide; suddenly, when in apparent good health; unattended by a practicing physician or other recognized practitioner; in any prison or penal institution; in police custody; in any suspicious or unusual circumstance; by criminal abortion; by poison; by disease constituting a threat to public health; or by disease, injury, or toxic agent resulting from employment.

<sup>58</sup> These are determinations made pursuant to s. 406.11(1)(c), F.S.

<sup>59</sup> "Direct disposal establishment" means a facility licensed under ch. 497, F.S., where a direct disposer practices direct disposition.

"Final disposition" means the final disposal of a dead human body. See s. 497.005(25) and (32), F.S.

<sup>60</sup> Florida Department of Law Enforcement 2014 Legislative Bill Analysis for HB 301, dated January 29, 2014 (on file with the Health Quality Subcommittee).

Department of Business and Professional Regulation. These images will assist the Department with identifying persons in investigations.

This bill amends s. 395.3025, F.S., authorizing the Department, instead of AHCA, to obtain patient records by subpoena for use by a professional board or the Department in its investigation, prosecution, or appeal of disciplinary proceedings of a health care practitioner.

This bill amends s. 456.057, F.S., to require the rates charged by a health care practitioner or medical records owner for reproduction of written or typed records to be the same regardless of format or medium.

#### *Licenses and Fees*

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

This bill allows, the board, or the Department when there is no board, to waive the payment of initial application and licensure fees received from applicants and renewal fees received from licensed health care practitioners. This is permitted when a health care profession's trust fund balance is in excess of the amount required to cover the costs of regulating that profession. The waiver of renewal fees may not exceed 2 years.

#### *Medical Assistants*

This bill deletes permissive language allowing medical assistants to be certified by specific entities. This clarifies that medical assistants may be certified by any applicable entity.

#### *Certified Nursing Assistants*

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

#### *Massage Therapist Licensure*

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

#### *Dental Laboratory Operators*

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

#### *Nursing Home Administrators*

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

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

## *Sovereign Immunity*

This bill allows for continuation of sovereign immunity protections under the Access to Health Care Act for health care providers providing services during a 30-day transition period after a patient has been determined to be ineligible for a health care provider's volunteer services.

## *Continuing Medical Education*

This bill also removes the authority of the Board to adopt rules requiring continuing medical education from s. 456.013, F.S., and instead, places the Board's authority to adopt such rules in s. 458.319, F.S., which is within the Medical Practice Act. In addition to moving the Board's authority in statute, the bill provides additional authority to the Board allowing it to require by rule specific continuing education requirements and authorize in rule the fulfillment of continuing education requirements for:

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

## HIV Testing

This bill provides a definition for health care setting and nonhealth care setting to differentiate between the two for the purpose of HIV testing.

"Health care setting" is defined in the bill as a setting devoted to both the diagnosis and care of persons, such as:

- County health department clinics,
- Hospital emergency departments,
- Urgent care clinics,
- Substance abuse treatment clinics,
- Primary care settings,
- Community clinics,
- Mobile medical clinics, and
- Correctional health care facilities.

This bill changes the current requirement for informed consent for HIV testing performed in a health care setting by requiring a test subject to be notified that the test is planned and receive information on the HIV test. The test subject must also be informed that they have the right to decline the test. The explanation of the right to confidential treatment of information identifying the test subject and the results of the test as provided in current law<sup>61</sup> is retained. It must be documented in the test subject's medical record if the test was declined.

Currently, only those health care providers who order an HIV test are required to obtain informed consent. This bill allows persons other than health care providers to provide the above mentioned information to test subjects.

"Nonhealth care setting" is defined in the bill as a site that conducts HIV testing for the sole purpose of identifying HIV infection. Such settings do not provide medical treatment but may include:

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<sup>61</sup> Section 381.004 (2)(e), F.S.  
**STORAGE NAME:** h0819e.HHSC  
**DATE:** 4/4/2014

- Community-based organizations,
- Outreach settings,
- County health department HIV testing programs, and
- Mobile vans.

This bill clarifies that informed consent must remain a requirement for testing performed in nonhealth care settings.

#### *County Health Departments*

For purposes of HIV testing, CHDs will operate as both health care and nonhealth care settings. If a person is to be tested at a CHD, or a CHD sponsored outreach event, for HIV testing only, the testing will be conducted following nonhealth care setting testing requirements. If a person is being seen at a CHD clinic, such as an STD or family planning clinic, the provider must meet health care setting notification requirements.

#### *Confidentiality*

For both health care and nonhealth care settings, the test subject must be informed that a positive HIV test result will be reported to the local CHD with sufficient information to identify the test subject. The subject must also be informed of the availability of sites at which anonymous testing is performed and requires CHDs to maintain a list of those sites. The sites' locations, telephone numbers, and hours of operation must be kept on file. All of these requirements exist in current law, but this bill ensures these requirements apply to both health care and nonhealth care settings.

This bill authorizes hospitals licensed under chapter 395, F.S., to release HIV test results, as is currently authorized, if the hospital notifies the patient of the confidentiality protections for HIV test results included in medical records. This bill conforms this requirement to the notification requirements in the bill related to health care setting HIV testing.

This bill updates the definition of "preliminary HIV tests" to reflect advances in HIV testing and deletes obsolete language related to

#### Florida Death Certificates

This bill prohibits district medical examiners and counties from charging a member of the public, or any person licensed under ch. 497, F.S. (a funeral home or crematorium), a fee for any determination of death performed pursuant to s. 406.11, F.S. However, a county, by resolution or ordinance of the board of county commissioners, may charge a medical examiner approval fee not to exceed \$50 when a body is to be cremated, buried at sea, or dissected.

This bill makes technical changes to:

- Correct the statutory reference to the authorized midwifery program accrediting body to update the name (the Council of Higher Education Accreditation), and to recognize any future organizations.
- Correct the statutory reference to the accrediting body for registered dietitians, to update the name (the Academy of Nutrition and Dietetics).<sup>62</sup>

## B. SECTION DIRECTORY:

<sup>62</sup>In January 2012 the American Dietetic Association changed its name to the Academy of Nutrition and Dietetics. "New Name, Same Commitment to Public's Nutritional Health: American Dietetic Association Becomes Academy of Nutrition and Dietetics," Academy of Nutrition and Dietetics, accessible at: [http://www.eatright.org/Media/content.aspx?id=6442465361#\\_Uzmt6mwpDcs](http://www.eatright.org/Media/content.aspx?id=6442465361#_Uzmt6mwpDcs) (last accessed March 31, 2014). To practice as a dietitian in Florida a person must be licensed; being a registered dietitian by the Academy of Nutrition and Dietetics is an acceptable pathway to licensure. Email correspondence with DOH, March 31, 2014 (on file with Health and Human Services Committee staff).

- Section 1.** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.
- Section 2.** Amends s. 381.004, F.S., relating to HIV testing.
- Section 3.** Amends s. 382.011, F.S., relating to medical examiner determination of cause of death.
- Section 4.** Amends s. 395.3025, F.S., relating to patient and personnel records, copies, and examination.
- Section 5.** Amends s. 456.013, F.S., relating to the Department of Health and general licensing provisions.
- Section 6.** Amends s. 456.025, F.S., relating to fees, receipts, and disposition.
- Section 7.** Amends s. 456.032, F.S., relating to Hepatitis B or HIV carriers
- Section 8.** Amends s. 456.057, F.S., relating to ownership and control of patient records, report of copies of records to be furnished; disclosure of information.
- Section 9.** Amends s. 458.319, F.S., relating to renewal of license.
- Section 10.** Amends s. 458.3485, F.S., relating to medical assistants.
- Section 11.** Amends s. 464.203, F.S., relating to certified nursing assistants and certification requirement.
- Section 12.** Repeals s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants.
- Section 13.** Amends s. 466.032, F.S., relating to registration.
- Section 14.** Amends s. 467.009, F.S., relating to midwifery programs, education and training requirements.
- Section 15.** Amends s. 468.1665, F.S., relating to the Board of Nursing Home Administrators.
- Section 16.** Amends s. 468.1695, F.S., relating to licensure by examination.
- Section 17.** Repeals s. 468.1735, F.S., relating to provisional licenses.
- Section 18.** Amends s. 468.503, F.S., relating to definitions.
- Section 19.** Amends s. 468.505, F.S., relating to exemptions and exceptions.
- Section 20.** Amends s. 480.033, F.S., relating to definitions.
- Section 21.** Amends s. 480.041, F.S., relating to massage therapists, qualifications, licensure, and endorsement.
- Section 22.** Amends s. 480.042, F.S., relating to examinations.
- Section 23.** Amends s. 480.044, F.S., relating to fees and disposition.
- Section 24.** Amends s. 766.1115, F.S., relating to health care providers; creation of agency relationship with governmental contractors.
- Section 25.** Amends s. 823.05, F.S., relating to places and groups engaged in criminal gang-related activity declared a nuisance; massage establishments engaged in prohibited activity; may be abated and enjoined.
- Section 26.** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

The State General Revenue Fund may experience a minimal decrease in revenues when any board, or the Department when there is no board, elects to implement the fee waiver due to the 8% surcharge on revenues collected being reduced.<sup>63</sup> This is not expected to be significant.

#### 2. Expenditures:

The elimination of the specific size for a license will provide the Department flexibility to explore more cost-effective alternatives for printed licenses. The paper for a license is purchased in bulk

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<sup>63</sup> *Supra* fn 21.

and currently costs .142 cents per license. The fiscal impact is indeterminate at this time, yet anticipated to result in cost savings for the Department.<sup>64</sup>

The elimination of the Council on Certified Nursing Assistants will result in an annual cost-savings of approximately \$40,700. The current costs associated with the council include council members' per diem of \$50 per day and their travel costs, and the costs for MQA to staff 6 meetings annually.<sup>65</sup>

The elimination of the requirement to notify dental laboratory operators of registration delinquencies by certified mail will save the Department approximately \$2,000 biennially.<sup>66</sup>

The \$50 limit on fees per medical examiner determination of death performed results in an indeterminate fiscal impact to counties as there is a broad discrepancy in the fees currently charged (fees range from no charge to \$63 per medical examiner determination of death performed), and there does not seem to be a correlation between the fees charged to services being provided by the medical examiner.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

Currently 19 of the 24 medical examiner districts, which represents 42 counties, charge fees for any determination of the cause of death performed pursuant to s. 406.11(1)(c), F.S. The fees vary from district to district. The bill limits these fees to \$50. The estimated revenue from these fees in 2012 was approximately \$3.93 million.<sup>67</sup>

The bill will have an insignificant, negative fiscal impact on Broward County. Broward currently charges \$54 per each medical examiner determination of death performed; the \$50 fee limit will result in approximately \$30,000 in revenue loss.

The bill will have a significant, negative fiscal impact on Miami-Dade County. Miami-Dade County currently charges \$63 per each medical examiner determination of death performed; the \$50 fee limit will result in approximately \$100,000 in revenue loss.

### 2. Expenditures:

None.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

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

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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

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

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

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

On April 3, 2014, the Health and Human Services Committee adopted a strike-all amendment and an amendment to the amendment and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Reinstates current law, which requires medical doctors and other health care professionals to complete a continuing education course on the prevention of medical errors, as a condition of licensure or licensure renewal.
- Reinstates current law, which requires medical doctors and other health care professionals to complete a continuing education course on HIV/AIDS for biennial licensure renewal.
- Requires the rates charged by a health care practitioner or medical records owner for reproduction of written or typed records to be the same regardless of format or medium.

- Removes redundant rulemaking authority for the Board of Medicine to allow medical doctors to fulfill continuing education requirements with certain pro bono services. This continuing education option is also currently addressed in s. 456.013(9), F.S.
- Removes discretionary language expressly naming two entities who may certify medical assistants.
- Corrects the name of the Council of Higher Education Accreditation.
- Continues sovereign immunity protections for health care providers providing services during a 30-day transition period after a patient has been determined to be ineligible for a health care provider's volunteer services.
- Defines "health care setting" and a "nonhealth care setting" for the purpose of differentiating HIV testing requirements in each setting. (Notification is required for health care settings and informed consent is required for nonhealth care settings.)
- Updates the definition of "preliminary HIV test" to reflect advances in HIV testing.
- Allow persons other than health care providers to offer information about HIV tests and notify patients of certain required testing information.
- Limits the amount that the public may be charged for medical examiner services to determine a cause of death to \$50.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.