HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941 Licensure of Health Care Professionals
SPONSOR(S): Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:** SB 918

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

SUMMARY ANALYSIS

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

The DOH currently waives fees and issues health care licenses to active duty U.S. military personnel who are within six months of a discharge and allows the DOH to issue temporary licenses to spouses of active duty military personnel who hold health care licenses from other states. The bill authorizes the DOH to extend these same privileges to qualified military personnel and spouses for licensure in professions that do not require licensure in other states. The applicant must provide evidence of training or experience equivalent to that required in Florida, and proof of a passing score on a national standards organization exam, if one is required in Florida for the type of license sought. The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license practice under the indirect supervision of a Florida dentist.

The bill eliminates the requirement that certain health care providers must complete pre-licensure courses on HIV/AIDS and medical errors. The bill does not affect the requirement to complete such courses as a part of an applicable licensure renewal cycle.

The bill amends various statutes to reflect the DOH's integration of an electronic continuing education tracking system with its licensure renewal system. The bill eliminates methods, such as affidavits and audits, to prove compliance with continuing education requirements.

The bill provides a mechanism for the DOH to eliminate a deficit cash balance in the Medical Quality Assurance Trust Fund, associated with a licensed profession, by allowing the DOH to suspend charging the profession for operational and administrative costs, and permitting the DOH to transfer certain unused funds to help eliminate the deficit.

Upon the death, incapacitation, or abandonment of patient records by a health care practitioner, the DOH may be required to secure such records. The bill permits the DOH to contract with a third party to provide such services. The bill also requires boards to obtain the approval of the DOH, when appointing a custodian of medical records.

The bill deletes a provision that allows certain felons, individuals terminated for cause from any state's Medicaid program, or individuals listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities, to obtain a license in Florida. The deletion of this provision will prevent those denied licensure renewal based on one of these offenses from re-applying and obtaining a new license based on the exemption.

The bill defines terms and clarifies responsibilities in the impaired practitioner programs.

The bill repeals the Council on Certified Nursing Assistants and the Advisory Council of Medical Physicists, as these entities are no longer actively meeting and their duties can be fulfilled by other entities within the DOH.

The bill eliminates the annual inspections of dispensing practitioners' facilities. However, the health and safety requirements of the facilities remain unaltered. The DOH retains the ability to inspect the facilities on an as needed basis.

The bill may have an insiginificant, positive impact on the DOH.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Initial Licensure of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.[1] The MQA works in conjunction with 22 boards and six councils to license and regulate 7 types of health care facilities and more than 40 health care professions.[2] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Military Health Care Practitioners

An individual who serves or has served as a health care practitioner in the U.S. Armed Forces, U.S. Reserve Forces, or the National Guard on active duty or has served on active duty with the U.S. Armed Forces as a health care practitioner in the U.S. Public Health Service, is eligible for licensure in Florida.[3] The DOH is required to waive the application fee, licensure fee, and unlicensed fee for such applicants. The applicant will be issued a license to practice in Florida if the applicant submits a completed application, and:

- Receives an honorable discharge within the 6 months before or after submission of the application;
- Holds an active, unencumbered license issued by another state, the District of Columbia, or a U.S. territory or possession, with no disciplinary action taken against it in the 5 years preceding the date of application;
- Attests that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S. Department of Defense for a reason related to the practice of the profession for which he or she is applying;
- Has actively practiced the profession for which he or she is applying for the 3 years preceding the date of application; and
- Submits to a background screening, if required for the profession for which he or she is applying, and does not have any disqualifying offenses.[4]

The DOH offers the Veterans Application for Licensure Online Response System (VALOR) to provide expedited licensing for honorably discharged veterans with an active license in another state.[5] To qualify for VALOR, a veteran must apply for a license six months before or after his or her honorable discharge from the U.S. Armed Forces.[6]

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[1] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.
[2] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2014-2015*, 3, *available at* http://mqawebteam.com/annualreports/1415/#6 (last visited Jan. 8, 2016).
[3] Section 456.024, F.S.
[44] Section 456.024(3)(a), F.S.
[5] *See* Department of Health, *Veterans*, *available at* http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html (last visited Jan. 8, 2016).
[6] *Id.*

Disqualification of Certain Applicants for Licensure

Each board, or the DOH if there is no board, must refuse to admit a candidate to any examination, and refuse to issue a license, certificate, or registration to any applicant, if the candidate, applicant, or principal, officer, agent, managing employee, or affiliated person of an applicant:

- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies;[7]
- Has been terminated for cause from any Medicaid program; or
- Is listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities.[8]

Any of the above-referenced disqualifications do not apply to applicants for initial licensure or certification who were enrolled in a recognized educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012.[9]

Section 456.0635(3), F.S., requires the DOH to refuse to renew the license, certificate, or registration of an applicant that would be disqualified for an initial license based on the disqualification criteria indicated above. However, according to the DOH, when it denies a license renewal pursuant to this section, licensees who meet the exception under s. 456.0635(2), F.S., may reapply and be granted a new license.[10] By utilizing this exception, licensees that would have otherwise been disqualified have been able to regain a license to practice. When the renewal cycle ends, those licensees will once again be denied pursuant to s. 456.0635(3), F.S., but would be eligible to reapply and obtain a license under the exception.[11]

HIV and AIDS Course Requirement

As a requirement for initial licensure, midwives, radiological personnel, clinical laboratory personnel, speech-language pathologists, and audiologists, must complete an education course on HIV and AIDS. If the applicant has not taken the course at the time of licensure and upon an affidavit showing good cause, an applicant may be granted 6 months to complete this requirement.[12]

Medical Errors Course Requirement

Section 456.013(7), F.S., requires that every health care practitioner regulated by the DOH complete an approved 2-hour course relating to the prevention of medical errors as part of the licensure and renewal process.

<u>Continuing Education Requirements</u>

Compliance with continuing education (CE) requirements is a condition of renewal of license for health care practitioners. Boards, or the DOH when there is no board, require each licensee to demonstrate competency by completing CEs during each licensure cycle. The number of required CE hours varies by profession. The requirements for CEs may be found in ch. 456, F.S., professional practice acts, administrative rules, or a combination of these references. Failure to comply with CE requirements may result in disciplinary action against the licensee, in accordance with the disciplinary guidelines established by the applicable board, or the DOH if there is no board.

[7] Section 456.0635(2), F.S., provides a tiered timeframe for these individuals to apply for a license, certificate, or registration, depending on the severity of the crime and length of time elapsed between the crime and the date of application for licensure.
[8] Section 456.0635(2), F.S.
[9] *Id.*
[10] Department of Health, *2016 Agency Legislative Bill Analysis for House Bill 941* (Dec. 15, 2015), on file with the Health Quality Subcommittee.
[11] *Id.* This provision was adopted
[12] Section 381.0034, F.S.

The DOH or boards, when applicable, monitor heath care practitioner's compliance with the CE requirements in a manner required by statute. The statutes vary as to the as to the required method to use. For example, DOH or a board, when applicable, may have to randomly select a licensee to request the submission of CE documentation;[13] require a licensees to a submit sworn affidavit or statement attesting that he or she has completed the required CE hours,[14] or perform an audit. Licensees are responsible for maintaining documentation of the CE courses completed.

In 2001, the Legislature directed the DOH to implement an electronic CE tracking system that was to be integrated into the licensure and renewal systems.[15] In the initial phase of the system, the system allowed licensees to check compliance with CE requirements but did not prevent the renewal of the license if such requirements were not met. The DOH is currently in the second phase of integration, which requires a licensee to have entered and met all CE requirements before his or her license is renewed.[16] The DOH's electronic CE system eliminates the need for submission of affidavits, audits, and other methods of proof of completion of CE requirements.

Impaired Practitioners

The impaired practitioner treatment program was created to provide resources to assist health care practitioners who are impaired as a result of the misuse or abuse of alcohol or drugs, or both, or a mental or physical condition which could affect the practitioners' ability to practice with skill and safety.[17] For professions that do not have programs established within their individual practice act, the DOH is required to designate an approved program by rule.[18] The DOH must retain at least one impaired practitioner consultant who is licensed under the jurisdiction of the MQA and who is a licensed physician or nurse; or an entity that employs a medical director who is a licensed physician, or an executive director who is a licensed nurse.[19]

When the DOH receives a legally sufficient complaint[20] alleging that a licensed practitioner is impaired and no other complaints exist against the practitioner, the complaint is forwarded to the consultant, who assists the DOH in determining if the practitioner is, in fact, impaired. In addition to assisting the DOH in determining the existence of an impairment, the consultant also facilitates and monitors progress in the treatment of the impairment.

The reporting of such impairment is not grounds for discipline, if the licensee:

- Acknowledges the impairment;
- Voluntarily enrolls in an appropriate, approved treatment program;
- Voluntarily withdraws from practice or limits his or her scope of practice, as required by the consultant, until the licensee has successfully completed an approved treatment program; and
- Authorizes the release of medical records, including all records of evaluations, diagnoses, and treatment, to the consultant.

An impaired practitioner may voluntarily withdraw from practice and seek treatment from an approved provider, without a complaint being filed. In such situations, the DOH and the applicable board are not involved in the case.

[13] For example, see s. 457.107, F.S.
[14] For example see ss.458.347(4)(e), 466.0135(6), 466.014, and 466.032(5), F.S.
[15] Chapter 2001-277, Laws of Fla.
[16] *Supra* note 8.
[17] Section 456.076, F.S.
[18] Section 456.076 (1), F.S.
[19] Section 456.075(2), F.S.
[20] A complaint is legally sufficient if it contains ultimate facts that show the occurrence of a violation of a practice act, ch. 456, F.S., or a rule adopted by the DOH or a board. Section 456.073(1), F.S.

The DOH contracts with the Professionals Resource Network and the Intervention Project for Nurses to provide approved treatment programs for impaired practitioners.[21] The Professionals Resource Network and its medical director serve as the consultant to the DOH on matters relating to practitioner impairment.[22]

Currently, s. 456.076, F.S., does not define the terms "approved impaired practitioner programs," "treatment program," or "consultant," and uses the terms interchangeably.

Certified Nursing Assistants

The Board of Nursing regulates certified nursing assistants (CNAs). To be certified as a CNA, an applicant must meet the education and training requirements as established in statute and by rule by the Board of Nursing, and successfully pass a background screening.[23] To maintain certification, a CNA must show proof of having completed in-service training hours, which are the equivalent of CE hours for other health care professions. Currently, a CNA must complete 12 hours of in-service training each calendar year.[24] CNA certificates are issued for a biennium with a May 31st expiration date.[25]

The Council on Certified Nursing Assistants (Council) was created under the Board of Nursing to assist in the oversight of CNAs.[26] The Council's duties include recommending policy and procedures for CNAs, proposing rules to implement training and certification requirements, making recommendations to the Board of Nursing regarding matters related to the certification of CNAs, and addressing concerns and problems of CNAs in order to improve safety in the practice of CNAs.[27] The Council is composed of five members:

- Two registered nurses appointed by the chair of the Board of Nursing;
- A licensed practical nurse appointed by the chair of the Board of Nursing; and
- Two CNAs appointed by the State Surgeon General.[28]

Historically, the Council met every 2 months in conjunction with the Board of Nursing at a cost of $40,000 per year.[29] However, the Council has not held a face-to-face meeting since 2013, and beginning in 2014, the Council meets only by telephone conference call on an as needed basis. The Board of Nursing and the Council support abolishment of the Council.[30]

Costs of Licensure Regulation

It is the intent of the Legislature that the costs associated with regulating health care professions and health care practitioners be borne by the licensees and the licensure applicants.[31] Further, it is the intent that no profession operate with a negative cash balance.[32] The boards, in consultation with the DOH, or the DOH if there is no board, is required to set licensure renewal fees by rule and which must:

- Be based on revenue projections;

[21] DOH, Board of Medicine, *Help Center: Does the Department Have Assistance Programs for Impaired Health Care Professionals*, http://flboardofmedicine.gov/help-center/does-the-department-have-assistance-programs-for-impaired-health-care-professionals/ (last visited Jan. 11, 2016).
[22] *See* Professionals Resource Network, *About Us*, *available at* http://www.flprn.org/about (last visited Jan. 11, 2016).
[23] *See* s. 464.203, F.S., and Rules 64B9-15.006 and 64B9-15.008, F.A.C.
[24] Section 464.203(7), F.S., and Rule 64B9-15.011, F.A.C.
[25] Rule 64B-11.001, F.A.C. *See also* Florida Board of Nursing, *Certified Nursing Assistant (CNA) Renewal Requirements*, *available at* http://floridasnursing.gov/renewals/certified-nursing-assistant/ (last visited Jan. 6, 2016).
[26] Section 464.2085, F.S.
[27] Section 464.2085(2), F.S.
[28] Section 464.2085(1), F.S.
[29] *Supra* note 8.
[30] *Id.*
[31] Section 456.025(1), F.S.
[32] Section 456.025(3), F.S.

- Be adequate to cover all expenses related to that board identified in the DOH's long-range plan;[33]
- Be reasonable, fair, and not serve as a barrier to licensure;
- Be based on potential earnings from working under the scope of the license;
- Be similar to fees imposed on similar licensure types; and
- Not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium.[34]

The chairpersons of the boards and councils must meet annually to review the long-range policy plan and the current and proposed fee schedules.[35] The chairpersons are required to make recommendations for any necessary statutory changes relating to fees and fee caps, which are to be included in the DOH's annual report to the Legislature.

All funds collected by the DOH from fees, fines, or costs awarded to the agency by a court are paid into the Medical Quality Assurance Trust Fund.[36] The DOH is prohibited from expending funds from one profession to pay expenses incurred on behalf of another profession, except that the Board of Nursing may pay for costs incurred in the regulation of CNAs.[37]

The DOH may adopt rules for advancing funds to a profession operating with a negative cash balance.[38] However, the advancement may not exceed two consecutive years and the regulated profession must pay interest at the current rate earned on trust funds used by the DOH to implement ch. 456, F.S. The interest earned is allocated to the various funds in accordance with the allocation of investment earnings. Each board, or the DOH if there is no board, may assess and collect a one-time fee from each active and inactive licensee, in an amount necessary to eliminate a cash deficit in the profession, or if there is no deficit, to maintain the financial integrity of the profession.[39] Only one such assessment may be made in any 4-year period.

According to the DOH, four one-time assessments have been imposed in the past 10 years, for the following professions:

- Electrolysis in fiscal year 2005-2006, in the amount of $1,306;
- Nursing Home Administrators in fiscal year 2005-2006, in the amount of $200;
- Dentistry in fiscal year 2007-2008, in the amount of $250; and
- Midwifery in fiscal year 2008-2009, in the amount of $250.[40]

Three professions operate in a chronic deficit. Each of these professions is at its statutory fee cap, and according to the DOH, the licensure base is not large enough to generate enough revenue to cover expenditures.[41] The professions and the deficit amount under which they operate are:

Profession	Cash Balance	Renewal Fee	Statutory Fee Cap	Total Licenses
Dentistry	$ (2,144,333)	$ 300	$ 300	14,285
Electrologists	$ (638,545)	$ 100	$ 100	1,591
Midwifery	$ (900,155)	$ 500	$ 500	206

[33] Pursuant to s. 456.005, F.S., the long-range policy plan is used to facilitate efficient and cost-effective regulation by evaluating whether the DOH is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation; how and why the various professions are regulated; whether is a need to continue regulation and to what degree; whether or not consumer protection is adequate and how it can be approved; whether there is consistency between the various practice acts; and whether unlicensed activity is adequately enforced.
[34] *Supra* note 29.
[35] Section 456.025(2), F.S.
[36] Section 456.025(8), F.S.
[37] *Id*.
[38] *Supra* note 29.
[39] Section 456.025(5), F.S.
[40] *Supra* note 8 at 5.
[41] *Id.*

If the boards or the DOH were to impose a one-time assessment to eliminate the deficit and result in solvency through FY 19-20, the amount per licensee would be:

- Dentistry - $450 per active/inactive licensee;
- Electrolysis - $900 per active/inactive licensee; and
- Midwifery - $5,500 per active/inactive licensee.[42]

Patient Records

Upon the death or incapacitation of a practitioner or abandonment of medical records by a practitioner, the board, or the DOH if there is no board, may temporarily or permanently appoint a custodian of records.[43] The records custodian is required to comply with all recordkeeping requirements of s. 456.057, F.S., including maintaining the confidentiality of patient records except upon written authorization by the patient or by operation of law.

According to the DOH, 10 times per year or more, patient records are abandoned, mostly due to the death or incarceration of a practitioner, and patients are unable to access their medical records.[44] The DOH attempts to secure the records but does not have the resources available to assume control and release the records to the patients.[45]

Dispensing Practitioner Facility Inspections

The DOH is required to inspect any facility where a dispensing practitioner dispenses medicinal drugs, in the same manner and frequency as it inspects pharmacies, to determine whether the practitioner is in compliance with all applicable statutes and rules.[46] In its annual inspection of the facility, the DOH reviews compliance with the following requirements:[47]

- Proper registration with the board;
- A clean and safe dispensing area;
- Display of a generic drug sign;
- Appropriate labeling of stock medications from a licensed manufacturer;
- Proof that medications were purchased from a Florida licensed wholesaler/distributor;
- No outdated medications in stock;
- Medications requiring refrigeration are appropriately stored;
- Medications dispensed are placed in childproof container;
- Completed prescription medication is labeled properly;
- Presence of all written prescriptions for medication to be dispensed;
- Proof practitioner is advising patients that prescription may be filled on premise or at any pharmacy;
- Use of counterfeit-resistant prescription blanks for all controlled substances;
- Documentation that prescriptions are written with the quantity of the drug prescribed in both text and numerical formats, and dated with the abbreviated month written out on the face of the prescription;
- All labels for dispensed medication include an expiration date;
- Documentation that practitioner is present when dispensing occurs;
- Documentation that practitioner is personally checking prescriptions for accuracy prior to the patient receiving them;
- Proof that patients are received both verbal and printed offers to counsel;

[42] *Id.*
[43] Section 456.057(20), F.S.
[44] *Supra* note 8.
[45] *Id*.
[46] Section 465.0276(3), F.S.
[47] Florida Department of Health, *Inspection Forms*, *available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/inspection-program/inspection-forms.html (last visited Jan. 12, 2016). Click on "Dispensing Practitioners" to view the inspection checklist; the form lists the legal authority for each item.

- Documentation in a patient's record of medical history required for counseling;
- Daily hard copy log of all prescriptions, dated and signed by each practitioner if a computer system is utilized;
- Retrievable pedigree records for medication;
- Documentation that controlled substances are being dispensed in compliance with s. 465.0276, F.S.;
- Documentation that Schedule II or Schedule III controlled substances are being dispensed pursuant to exemptions under s. 465.0276(1)(b), F.S.;
- Documentation of proper reporting to the Prescription Drug Monitoring Program (PDMP) within 7 days of dispensing controlled substances;
- Presence and use of a locking cabinet for controlled substances;
- Controlled substance prescriptions signed and dated by practitioner;
- Controlled substance prescriptions with patient's name and address filled in; and
- Controlled substance prescriptions have the practitioner's name, address and DEA number on them.

Dispensing practitioners may not dispense Schedule II or Schedule III controlled substances, except:

- In the health care system of the Department of Corrections;
- In connection with a surgical procedure and limited to a 14-day supply;
- In an approved clinical trial;
- In a facility, licensed under s. 397.427, F.S., providing medication-assisted treatment for opiate addiction;
- In a hospice facility, licensed under part IV of chapter 400, F.S.[48]

The DOH indicates that during the last two fiscal years, it has conducted 15,062 dispensing practitioner inspections with a passing rate of 99 percent.[49]

Advisory Council of Medical Physicists

The Advisory Council of Medical Physicists (council) is a nine-member board, created in 1997, to advise the DOH in the regulation of the practice of medical physics.[50] The responsibilities of the council include recommending rules to regulate the practice of medical physics, practice standards, and CE requirements.[51]

The council fulfilled its initial statutory requirements in making recommendations for the initial development of rules, practice standards, and CE requirements, and last met in December 1998.[52] The State Surgeon General appointed new members to the council in 2015 and the council met for the first time in 17 years. The DOH estimates that a face-to-face meeting of the council is $3,535 per meeting. The DOH advises that an Advisory Council on Radiation Protection, which includes medical physicists among its members, may be used in lieu of the council for guidance on matters of practice and public safety.[53]

Effect of Proposed Changes

Initial Licensure of Health Care Practitioners

Military Health Care Practitioners

[48] Section 465.0276(1)(b), F.S.
[49] *Supra* note 8 at 8.
[50] Section 483.901(4), F.S. Section 483.901(3)(h), F.S., defines medical physics is a branch of physics associated with the practice of medicine, and includes the fields of diagnostic radiological physics, medical nuclear radiological physics, and medical health physics.
[51] Section 483.901(5), F.S.
[52] *Supra* note 8 at 9.
[53] *Id.*

The bill authorizes the DOH to waive fees and issue a health care license to an active duty member of the military, who applies six months before or after an honorable discharge, in a profession for which licensure is not required in another state.[54] However, the applicant must provide evidence of military training or experience substantially equal to the requirements for licensure in Florida, and proof of a passing score on the appropriate examination of a national standards organization, if required for licensure in Florida.

The bill also authorizes the DOH to issue temporary licenses to the spouses of active duty members of the military in professions that may not require licensure in other states. However, the applicant must provide evidence of training or experience equivalent to the requirements for licensure in Florida, and proof of a passing score on the appropriate exam of a national standards organization, if required for licensure in Florida.

The bill also eliminates a requirement that a military spouse who has been issued a temporary dental license practice under the indirect supervision of a Florida dentist.

Disqualification of Certain Applicants for Licensure

Current law requires the DOH to deny the initial licensure application or renewal application of any health care practitioner who has been convicted of certain felonies or excluded from participating in governmental health programs. The bill deletes a provision that allows certain felons, individuals terminated for cause from any state's Medicaid program, or individuals listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities, to obtain a license in Florida. The deletion of this provision will prevent those denied licensure renewal based on one of these offenses from re-applying and obtaining a new license based on the exemption.

HIV and AIDS Course Requirement

The bill repeals the requirement that radiological personnel, speech-language pathologists, and audiologists complete a course on HIV and AIDS prior to licensure. According to the DOH, this will accelerate the initial licensure process and reduce costs to licensees.[55] Midwives and clinical laboratory personnel must still meet this requirement for licensure.

Medical Errors Course Requirement

The bill eliminates the requirement that health care practitioners complete a 2-hour course on medical errors before a license may be issued; but maintains the requirement for biennial renewal.

Continuing Education Requirements

The bill creates s. 456.0361, F.S., and relocates the requirement that DOH establish an electronic continuing education (CE) tracking system to the newly created section of law. The bill prohibits the DOH from issuing a license renewal if the licensee has not complied with applicable CE requirements. The boards and the DOH may impose additional penalties, as authorized by statute or rule, for noncompliance with CE requirements. The DOH is granted rulemaking authority for implementation of this provision.

The bill simplifies the CE reporting requirements for certain practitioners to conform with the electronic CE tracking system. For acupuncturists, physician assistants, optometrists, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists, the bill eliminates procedures for proving compliance with CE requirements, such as the submission of an affidavit or written statement

[54]According to the DOH, professions not licensed in all states and jurisdictions, but are licensed in Florida, include: respiratory therapists and assistants, clinical laboratory personnel, medical physicists, opticians, athletic trainers, electrologists, nursing home administrators, midwives, orthotists and assistants, prosthetists and assistants, pedorthotists and assistants, orthotic fitters and assistants, certified chiropractic physician assistants, and pharmacy technicians. *Supra* note 8 at 3.
[55] *Supra* note 8 at 9.

attesting to the completion of the required CEs. The bill also eliminates the DOH's authority to request that a licensee produce documentation of his or her CEs.

Impaired Practitioners

The bill clarifies and defines the following terms related to the Impaired Practitioner Treatment Program for health care practitioners:

- "Approved impaired practitioner program" means a program designated by the department to provide services for impaired practitioners through a contract that requires the program to initiate interventions and to recommend evaluations of impaired practitioners, refer impaired practitioners to approved treatment programs or approved treatment providers, and monitor the progress of impaired practitioners during treatment. Approved impaired practitioner programs may not provide medical services.
- "Approved treatment program" means a state-licensed or nationally accredited residential, intensive outpatient, partial hospital, or other treatment program that employs a multidisciplinary team of providers to treat an impaired practitioner based on the impaired practitioner's individual diagnosis and a treatment plan for the impaired practitioner approved by the consultant who referred the impaired practitioner to the treatment program.
- "Approved treatment provider" means a state-licensed or nationally certified individual with experience in the treatment of specific types of impairment who provides treatment to an impaired practitioner based on the impaired practitioner's individual diagnosis and a treatment plan for the impaired practitioner approved by the consultant who referred the impaired practitioner to the treatment provider, or a treatment program employing such individual.
- "Consultant" means an approved impaired practitioner program and the program's medical director. Consultants must receive allegations of a practitioner's impairment, intervene or arrange for an intervention with the practitioner, refer an impaired practitioner to an approved treatment program or an approved treatment provider, monitor and evaluate the progress of treatment of an impaired practitioner, and monitor the continued care provided by an approved treatment program or an approved treatment provider to an impaired practitioner.

The bill also eliminates a provision requiring the consultant to communicate with the State Surgeon General if he or she concludes that an impairment affects the licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare. Such concerns may be addressed in accordance with the disciplinary proceedings provided in ss. 456.073 and 456.074, F.S.

Certified Nursing Assistants

The bill repeals s. 464.2085, F.S., to abolish the Council on Certified Nursing Assistants, under the Board of Nursing. The Council currently meets by telephone conference call, on an as needed basis. Historically, the Board met every two months, in conjunction with Board of Nursing meetings, at an estimated cost of $40,000 per year. According to the DOH, the Board of Nursing, in conjunction with stakeholders, has the knowledge and experience to undertake the promulgation of rules for the CNAs. The Board of Nursing and the Council on Certified Nursing Assistants support this repeal.[56]

The bill also amends the reporting schedule for CE for CNAs from annual to biennial to align the renewal cycle for the profession.

Costs of Regulation

The bill creates a mechanism to eliminate the cash deficit of professions that have operated in a deficit for two or more years and are at their statutory fee cap. The bill allows the DOH to waive allocated administrative and indirect operational costs until such profession has a positive cash balance. Administrative and operational costs include costs associated with:

[56] *Supra* note 8 at 8.

- The director's office;
- System support;
- Communications;
- Central records; and
- Other administrative functions.

The waived costs are to be allocated to the other professions. The bill also authorizes the transfer of unused funds in the deficit profession's unlicensed activity account to help reduce the deficit.

The bill also removes from law:

- The requirement that the chairpersons of the boards and councils meet annually to review the DOH's long-range plan and the current and proposed fee schedules, and make recommendations for any necessary statutory changes relating to fees and fee caps to be included in DOH's annual report to the Legislature;
- The requirement that the DOH set license fees, on behalf of a board that fails to act timely, to cover anticipated deficits and maintain the required cash balance;
- The DOH's rulemaking authority for authorizing advances, with interest, to a profession operating with a negative case balance;
- The prohibition against using funds from the account of a profession to pay for the expenses of another profession; and
- A requirement that the DOH include in its annual report to the Legislature, a condensed report of the revenue and allocated expenses of each profession, along with the DOH's recommendations.

Patient Records

The bill permits the DOH to contract with a third party to become the custodian of medical records in the event of a practitioner's death, incapacitation, or abandonment of the medical records, under the same confidentiality and disclosure requirements imposed on a licensee. The bill requires board-appointed medical records custodians to be approved by the DOH.

Dispensing Practitioner

The bill eliminates the inspection by the DOH of the facilities of a dispensing practitioner. The dispensing practitioner must continue to comply with all applicable statutes and rules. However, a dispensing practitioner will not be subject to an inspection by the DOH within specified timeframes. The DOH retains the authority to inspect the facilities of a dispensing practitioner at such time as the DOH determines it is necessary.[57]

Medical Physicists

The bill abolishes the Advisory Council of Medical Physicists (council), which was created to advise the DOH in the regulation of the practice of medical physics. The council fulfilled its initial statutory duties by making recommendations for the initial development of rules, practice standards, and CE requirements. The State Surgeon General appointed new members to the council in 2015 and council met for the first time in 17 years. The DOH estimates that a face-to-face meeting of the council is $3,535 per meeting. The DOH advises that an Advisory Council on Radiation Protection includes medical physicists among its members and that group may be used for guidance on matters of practice and public safety.[58]

The bill makes other technical and conforming changes.

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

[57] *See* s. 456.069, F.S.
[58] *Supra* note 8.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0043, F.S., relating to the requirement for instruction on HIV and AIDS.
Section 2. Amends s. 456.013, F.S., relating to the Department of Health and general licensing provisions.
Section 3. Amends s. 456.024, F.S., relating to members of the Armed Forces in good standing with administrative boards or the department; spouses; licensure.
Section 4. Amends s. 456.025, F.S., relating to fees, receipts, and disposition.
Section 5. Creates s. 456.0361, F.S., relating to compliance with continuing education requirements.
Section 6. Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished; disclosure of information.
Section 7. Amends s. 456.0635, F.S., relating to health care fraud; disqualification for license, certificate, or registration.
Section 8. Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.
Section 9. Amends s. 457.107, F.S., relating to renewal of licenses; continuing education.
Section 10. Amends s. 458.347, F.S., relating to physician assistants.
Section 11. Amends s. 463.007, F.S., relating to renewal of license; continuing education.
Section 12. Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirement.
Section 13. Repeals s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants.
Section 14. Amends s. 456.0276, F.S., relating to the dispensing practitioner.
Section 15. Amends s. 466.0135, F.S., relating to continuing education; dentists.
Section 16. Amends s. 466.014, F.S., relating to continuing education; dental hygienists.
Section 17. Amends s. 466.032, F.S., relating to registration.
Section 18. Repeals s. 468.1201, F.S., relating to the requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.
Section 19. Amends s. 483.901, F.S., relating to medical physicists; definitions; licensure
Section 20. Amends s. 484.047, F.S., relating to renewal of license.
Section 21. Amends s. 486.109, F.S., relating to continuing education.
Section 22. Amends s. 458.331, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 23. Amends s. 459.015, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 24. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs; starter packs; permits to distribute.
Section 25. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.
Section 26. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DOH may realize costs savings resulting from the elimination of the Council on Certified Nursing Assistants and the Advisory Council of Medical Physicists. The annual cost of face-to-face meetings of the Council on Certified Nursing Assistants is approximately $40,000. The per-meeting cost of the Advisory Council of Medical Physicists is $3,535.

The bill may have an insignificant, positive fiscal impact on the DOH, with the elimination of annual inspections of the facilities of dispensing practitioners. Based on FY 14-15 data, the annual cost of these inspections is $597,706.98.[59]

2. Expenditures:

[59] *Supra* note 8 at 14.

The bill will have an insignificant, negative fiscal impact on the DOH, to pay for annual storage costs for medical records the DOH would have to retain in the event of a practitioner's death, incapacitation, or abandonment. The annual cost is estimated to be $4,020.[60]

The bill may have an insignificant, negative fiscal impact on the DOH, associated with the promulgation of rules to implement its electronic continuing education tracking system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With the elimination of the requirement to complete an HIV/AIDS course and medical errors course prior to licensure, affected licensees may incur less expense when applying for licensure.

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:

The bill grants the DOH authority to promulgate rules to implement the electronic tracking of continuing education requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[60] *Id.*