HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 941 Department of Health
SPONSOR(S): Health & Human Services Committee, Health Quality Subcommittee; Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Siples	O'Callaghan
2) Health Care Appropriations Subcommittee	11 Y, 0 N	Garner	Pridgeon
3) Health & Human Services Committee	12 Y, 1 N, As CS	Siples	Calamas

SUMMARY ANALYSIS

The bill makes multiple changes to programs overseen by the Department of Health (DOH).

The bill provides alternative eligibility criteria for military members, and their spouses, seeking licensure as a health care practitioner in this state. The bill allows military health care practitioners who are practicing under a military platform, which is a training agreement with a nonmilitary health care provider, to be issued a temporary certificate to practice in this state.

The bill removes the requirement that certain health care practitioners complete pre-licensure courses on HIV/AIDS and medical errors. The bill conforms laws to DOH use of an electronic continuing education (CE) tracking system and eliminates obsolete methods of proving compliance with CE requirements.

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

The bill permits the DOH to contract with a third party to secure patient records abandoned by practitioners due to death or incapacity, and requires boards to obtain the approval of the DOH when appointing a custodian of medical records.

The bill allows certificates for emergency medical technicians (EMTs) and paramedics to remain in an inactive status for up to two renewal periods rather than expiring after 180 days, and exempts out-of-state or military-trained EMTs or paramedics from a certification examination requirement if the EMT or paramedic is nationally certified or registered.

The bill removes a provision that allows individuals with certain felonies, 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. This will prevent individuals who are denied licensure renewal based on one of these offenses from re-applying and obtaining a new license.

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

The bill eliminates the DOH's annual inspections of dispensing practitioners' facilities, but may inspect the facilities as needed.

The bill eliminates a provision that allowed physical therapist assistant programs to be regionally accredited.

The bill requires state-funded biomedical research grant programs to report certain information to the Governor and Legislature. The bill also allows the balance of any appropriation from the General Revenue fund for the Ed and Ethel Moore Alzheimer's Disease Research Program to be carried forward for up to 5 years if such funds have been obligated.

The bill provides a method by which certain health care practitioners may provide expedited partner therapy to the partner of a patient infected with a sexually transmissible disease.

The bill authorizes subregistrars to provide certified copies of certificates of death and prohibits the charging of a fee for a determination of cause of death or certification of cause of death.

The bill may have an insignificant, 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

Florida Biomedical Research Programs

James and Esther King Biomedical Research Program

In 1999, the Legislature created the Florida Biomedical Research Program in the Department of Health (DOH), to support research initiatives that address the health care problems affecting Floridians, such as cancer, cardiovascular disease, stroke, and pulmonary disease.[1] The law also created the Biomedical Research Advisory Council (BRAC) to advise the State Surgeon General on the direction and scope of the state's biomedical research program.[2] The responsibilities of the BRAC include:

- Advising on program priorities, emphases, and overall program budget;
- Participating in periodic program evaluation;
- Assisting in developing guidelines for fairness, neutrality, principles of merit, and quality in the conduct of the program;
- Assisting in developing linkages to nonacademic entities such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials;
- Developing guidelines, criteria, and standards for the solicitation, review, and award of research grants and fellowships; and
- Developing and providing oversight regarding mechanisms for disseminating research results.[3]

At its inception, the program was intended to be supported by funds from the Lawton Chiles Endowment Fund,[4] but an appropriation amount was not specified in statute.[5] Funds appropriated to the program must be used for administrative expensed and to award grants and fellowships for research relating to the prevention, diagnosis, treatment, and cure of diseases related to tobacco use.[6]

In 2001, the Legislature amended the purpose of the program, stating that the intent for the program was to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.[7] In 2013, the Florida Biomedical Research Program was renamed the "James and Esther King Biomedical Research Program" (King Program).[8]

Each fiscal year, $25 million from the revenue deposited into the Health Care Trust Fund pursuant to ss. 210.011(9) and 210.276(7), F.S., is reserved for research of tobacco-related or cancer-related illnesses. Of the revenue deposited in the Health Care Trust Fund, $25 million is transferred to the Biomedical Research Trust Fund within the DOH. Subject to annual appropriations in the General Appropriations Act, $5 million must be appropriated to the King Program.[9]

Bankhead-Coley Program

[1] Chapter 99-167, Laws of Fla.
[2] Section 215.5602(3), F.S. The Biomedical Research Advisory Council consists of 11 members including, the chief executive officer of the Florida Division of the American Cancer Society, the chief executive officer of the Greater Southeast Affiliate of the American Heart Association, the chief executive officer of the American Lung Association of Florida, four members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives.
[3] Section 215.5602(4), F.S.
[4] Section 215.5601(1)(d), F.S.
[5] *Supra* note 1.
[6] Section 215.5602(2), F.S.
[7] Chapter 2001-73, Laws of Fla.
[8] Chapter 2013-50, Laws of Fla.
[9] Section 215.5602(12), F.S.

In 2006, the Legislature created the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) within the DOH. The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer through grant awards. The funds are distributed as grants to researchers seeking cures for cancer, with emphasis given to the efforts that significantly expand cancer research capacity in the state.[10] The goals of the Bankhead-Coley Program are to significantly expand cancer research and treatment in the state by:

- Identifying ways to attract new research talent and attendant national grant-producing researchers to cancer research facilities in this state;
- Implementing a peer-reviewed, competitive process to identify and fund the best proposals to expand cancer research institutes in this state;
- Funding, through available resources, proposals that demonstrate the greatest opportunity to attract federal research grants and private financial support;
- Encouraging the employment of bioinformatics in order to create a cancer informatics infrastructure that enhances information and resource exchange and integration through researchers working in diverse disciplines to facilitate the full spectrum of cancer investigations;
- Facilitating the technical coordination, business development, and support of intellectual property as it relates to the advancement of cancer research;
- Aiding other multidisciplinary, research-support activities;
- Improving research and treatment through greater participation in clinical trials networks; and
- Reducing the impact of cancer on disparate groups.[11]

Each fiscal year, $25 million from the revenue deposited into the Health Care Trust Fund pursuant to ss. 210.011(9) and 210.276(7), F.S., is reserved for research of tobacco-related or cancer-related illnesses. Of the revenue deposited in the Health Care Trust Fund, $25 million is transferred to the Biomedical Research Trust Fund within the DOH. Subject to annual appropriations in the General Appropriations Act, $5 million must be appropriated to the Bankhead-Coley Program.[12]

Ed and Ethel Moore Alzheimer's Disease Research Program

The Florida Legislature created the Ed and Ethel Moore Alzheimer's Disease Research Program (Moore Program) in 2014.[13] The Moore Program is housed in the DOH and is administered by an 11-member board known as the Alzheimer's Disease Research Grant Advisory Board (Alzheimer's Disease Board). The program's purpose is to fund research leading to prevention of, or a cure for, Alzheimer's disease.[14]

The Alzheimer's Disease Board must submit recommendations for funding of research proposals to the State Surgeon General by December 15 of each year. Upon receiving consultation from the Alzheimer's Disease Board, the State Surgeon General is authorized to award grants on the basis of scientific merit. Applications for research funding may be submitted by any university or established research institute in the state, and all qualified investigators in the state must have equal access and opportunity to compete for research funding. The implementation of the program is subject to legislative appropriation. Statute specifies certain types of applications to be considered for funding, including:

- Investigatory-initiated research grants;
- Institutional research grants;
- Pre-doctoral and post-doctoral research fellowships; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.[15]

[10] Section 381.922(1)-(2), F.S.
[11] Section 381.922(2), F.S.
[12] Section 215.5602(12), F.S.
[13] Chapter 2014-163, Laws of Fla.
[14] Section 381.82, F.S.
[15] *Id*.

In 2014, the Legislature appropriated $3,000,000 in general revenue funds to the Moore Program. By default, general revenue appropriations that remain unspent at the end of a fiscal year revert to the state.[16] However, the legislature may supersede this provision by passing a law that specifically authorizes the appropriation to be carried forward. The program awarded eleven grants ranging from $112,500 to $500,000, which fully expended the $3,000,000 appropriation for fiscal year 2014 - 2015.[17]

Biomedical Research Program Reporting

In 2013, the Legislature created new reporting requirements for entities that performs cancer research or care and receive an appropriation from the General Appropriations Act to perform biomedical research or to pay for research-related functions or operations, including entities receiving funds pursuant to the Bankhead-Coley Program and the King Program. The report is required to be submitted to the President of the Senate and the Speaker of the House of Representatives by December 15 of each year and must:[18]

- Describe the general use of the state funds;
- Specify the research, if any, funded by the appropriation;
- Describe any fixed capital outlay project funded by the appropriation, the need for the project, how the project will be utilized, and the timeline for the status of the project, if applicable; and
- Identify any federal or private grants or donations generated as a result of the appropriation or activities funded by the appropriation, if applicable and traceable.[19]

The Alzheimer's Disease Board is required to annually submit a fiscal-year progress report on the research program to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General by February 15. The report must include:

- A list of research projects supported by grants or fellowships awarded under the program;
- A list of recipients of program grants or fellowships;
- A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the program;
- The state ranking and total amount of Alzheimer's disease research funding currently flowing into the state from the National Institute of Health;
- New grants for Alzheimer's disease research which were funded based on research supported by grants or fellowships awarded under the program;
- Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of Alzheimer's disease; and
- Recommendations to further the mission of the program.[20]

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.[21] The MQA works in conjunction with 22 boards and 6 councils to license and regulate 7 types of health care facilities and more than 40 health care

[16] Section 216.301, F.S.
[17] Alzheimer's Disease Research Grant Advisory Board, *Annual Report 2014-2015*, pg. 4, *available a*t http://www.floridahealth.gov/provider-and-partner-resources/adrgab/_documents/annual-report-2014-2015.pdf (last visited February 10, 2016).
[18] *Id*.
[19] *Supra* note 8.
[20] Section 381.82(4), F.S.
[21] 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.

professions.[22] 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.[23] 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.[24]

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.[25] 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.[26]

Federal law authorizes a health care professional employed by the United States Armed Forces to practice his or her health profession in the District of Columbia or any state or territory of the United States if the health care professional has a current license to practice his profession and is performing authorized duties for the Department of Defense.[27] Military health care practitioners practice in private health care settings through the authority of a memorandum of understanding, a training affiliation agreement, or external resourcing sharing agreement entered into between the United States Department of Defense and the private health care entity.[28] One state, Nevada, explicitly authorizes hospitals to enter into such agreements with the military and exempts the military practitioners from Nevada's licensure requirements, if the practitioner meets certain criteria.[29] Currently, under Florida law, a military health care practitioner would have to be licensed in Florida to practice in a private health care setting under such an agreement.

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[22] 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).
[23] Section 456.024, F.S.
[24] Section 456.024(3)(a), F.S.
[25] *See* Department of Health, *Veterans*, *available at* http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html (last visited Jan. 8, 2016).
[26] *Id.*
[27] 10 U.S.C. § 1094.
[28] These military training agreements set forth the parameters under which the military practitioner may practice and may include strict supervision requirements. Such parameters and the degree of control the private health care entity has over the military health care practitioner may determine whether the federal government or the private health care entity is liable when a legal challenge is made. See, for example, *McBee v. United States*, 101 Fed.Appx. 5, 6 (5th Cir.2004), *Banks v. United States*, 623 F.Supp.2d 751 (S.D.Miss.2009), and *Starnes v. U.S.*, 139 F.3d 540, 542 (5th Cir.1998).
[29] NRS 449.2455.

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;[30]
- 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.[31]

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.[32]

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.[33] 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.[34]

Continuing Education Requirements

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.

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;[35] require a licensees to a submit sworn affidavit or statement attesting that he or she has completed the required CE hours,[36] 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.[37] In the initial phase of the system, a licensee was able to check his or her compliance with CE requirements, but the system 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 in order to renew a

[30] 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.
[31] Section 456.0635(2), F.S.
[32] *Id.*
[33] Department of Health, *2016 Agency Legislative Bill Analysis for House Bill 941* (Dec. 15, 2015), on file with the Health Quality Subcommittee.
[34] *Id.*
[35] For example, see s. 457.107, F.S.
[36] For example see ss.458.347(4)(e), 466.0135(6), 466.014, and 466.032(5), F.S.
[37] Chapter 2001-277, Laws of Fla.

license.[38] The DOH's electronic CE system eliminates the need for submission of affidavits, audits, and other methods of proof of completion of CE requirements.

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.

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.[39]

Emergency Medical Technicians and Paramedics

The DOH, Division of Emergency Operations regulates emergency medical technicians (EMTs) and paramedics. "Emergency Medical Technician" is defined under s. 401.23, F.S., to mean a person who is certified by the DOH to perform basic life support.[40] "Paramedic" means a person who is certified by the DOH to perform basic and advanced life support.[41]

The National Emergency Medical Service (EMS) Education Standards define the minimal entry-level educational competencies, clinical behaviors, and judgments that must be met by Emergency Medical Service personnel to meet national practice guidelines.[42] The National EMS Education Standards assume there is a progression in practice from the entry-level Emergency Medical Responder level to the Paramedic level. That is, licensed personnel at each level are responsible for all knowledge, judgments, and behaviors at their level and all levels preceding their level. According to these standards, there are four licensure levels of EMS personnel: Emergency Medical Responder; Emergency Medical Technician; Advanced Emergency Medical Technician; and Paramedic. For example, a paramedic is responsible for the knowledge and performance of skills identified in that specific area, as well as the knowledge and skills for the three preceding levels.[43]

Under Florida law, an applicant for certification or recertification as an EMT or paramedic must:

- Have completed an appropriate training program as follows:
  - For an EMT, an EMT training program approved by the DOH as equivalent to the most recent EMT-Basic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation; or
  - For a paramedic, a paramedic training program approved by the DOH as equivalent to the most recent EMT-Paramedic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation;
- Certify under oath that he or she is not addicted to alcohol or any controlled substance;
- Certify under oath that he or she is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties;
- Within 2 years after program completion have passed an examination developed or required by the DOH;

[38] *Supra* note 34.
[39] Section 381.0034, F.S.
[40] "Basic life support" means the assessment or treatment by a person qualified under this part through the use of techniques described in the EMT-Basic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation and approved by the DOH. The term includes the administration of oxygen and other techniques that have been approved and are performed under conditions specified by rules of the DOH.
[41] "Advanced life support" means assessment or treatment by a person qualified under this part through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards, pursuant to rules of the DOH.
[42] National Highway Traffic Safety Administration, Emergency Medical Services, Educational Standards and NSC: National Emergency Medical Services Education Standards, available at: http://www.ems.gov/EducationStandards.htm (last visited Jan. 19, 2016).
[43] *Id*.

- For an EMT, hold a current American Heart Association cardiopulmonary resuscitation course card or an American Red Cross cardiopulmonary resuscitation course card or its equivalent as defined by DOH rule;
- For a paramedic, hold a certificate of successful course completion in advanced cardiac life support from the American Heart Association or its equivalent as defined by DOH rule;
- Submit the certification fee and the nonrefundable examination fee prescribed in s. 401.34, F.S., which examination fee will be required for each examination administered to an applicant; and
- Submit a completed application to the DOH, which application documents compliance with the certification requirements.[44]

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.[45] 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.[46] CNA certificates are issued for a biennium with an expiration date of May 31.[47]

The Council on Certified Nursing Assistants (Council) was created under the Board of Nursing to assist in the oversight of CNAs.[48] 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.[49] 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.[50]

Historically, the Council met bimonthly in conjunction with the Board of Nursing at a cost of $40,000 per year.[51] 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.[52]

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.[53] Further, it is the intent that no profession operate with a negative cash balance.[54] 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;

[44] Section 401.27, F.S.
[45] *See* s. 464.203, F.S., and Rules 64B9-15.006 and 64B9-15.008, F.A.C.
[46] Section 464.203(7), F.S., and Rule 64B9-15.011, F.A.C.
[47] 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).
[48] Section 464.2085, F.S.
[49] Section 464.2085(2), F.S.
[50] Section 464.2085(1), F.S.
[51] *Supra* note 34.
[52] *Id.*
[53] Section 456.025(1), F.S.
[54] Section 456.025(3), F.S.

- Be adequate to cover all expenses related to that board identified in the DOH's long-range plan;[55]
- 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.[56]

The chairpersons of the boards and councils must meet annually to review the long-range policy plan and the current and proposed fee schedules.[57] 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.[58] 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.[59]

The DOH may adopt rules for advancing funds to a profession operating with a negative cash balance.[60] 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.[61] 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.[62]

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.[63] 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

[55] 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.
[56] *Supra* note 54.
[57] Section 456.025(2), F.S.
[58] Section 456.025(8), F.S.
[59] *Id*.
[60] *Supra* note 54. The last time such a rule was promulgated was in 2008 for licensed midwives; the rule was repealed in 2012 (*See* r. 64B24-3.018, F.A.C.)
[61] Section 456.025(5), F.S.
[62] *Supra* note 34 at 5.
[63] *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.[64]

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.[65] 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.[66]

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.[67] The DOH attempts to secure the records but does not have the resources available to assume control and release the records to the patients.[68]

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.[69] In its annual inspection of the facility, the DOH reviews compliance with requirements related to registration, labeling and storing drugs, recordkeeping, and other safety, quality, and security requirements.[70]

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.[71]

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.[72]

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.[73] The responsibilities of the council

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[64] *Id.*
[65] Section 456.057(20), F.S.
[66] Pursuant to s. 456.057(3), a records custodian is a person who acquires medical records from a record owner, which is a health care practitioner who generates a medical record after examining or administering treatment to a person or obtains such records pursuant to a transfer by a previous record owner.
[67] *Supra* note 34.
[68] *Id*.
[69] Section 465.0276(3), F.S.
[70] 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.
[71] Section 465.0276(1)(b), F.S.
[72] *Supra* note 34 at 8.

include recommending rules to regulate the practice of medical physics, practice standards, and CE requirements.[74]

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.[75] 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 the cost of 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.[76]

Physical Therapist Assistants

A physical therapist assistant (PTA) is an individual duly licensed to perform patient-related activities, including the use of physical agents, under the direction of a physical therapist.[77] To be licensed as a PTA, an applicant must graduate from a school that provides at least a two-year course of study for the preparation of physical therapy assistants.[78] The course must be recognized by the appropriate accrediting agency recognized by the U.S. Department of Education (USDE), including any regional or national institutional accrediting agency recognized by the USDE or the Commission on Accreditation for Physical Therapist Education (CAPTE).

The CAPTE is the only accrediting agency recognized by the USDE and the Council for Higher Education Accreditation.[79] It grants specialized accreditation status to qualified entry-level education programs for physical therapists and physical therapist assistants.[80] Current Medicare regulations require PTAs who treat Medicare patients to be graduate of a CAPTE-approved program.[81] There are approximately 27 CAPTE-accredited PTA programs in Florida.[82]

Death Certifications

Subregistrars

The DOH is charged with maintaining an Office of Vital Statistics under the direction of a State Registrar.[83] The duties of the office include, among other things, procuring the complete registration of all vital records, establishing registration districts, appointing local registrars for each district, and

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[73] 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.
[74] Section 483.901(5), F.S.
[75] *Supra* note 34 at 9. Pursuant to r. 64B16-28.101, F.A.C., pharmacies must be inspected at least once per year. However, during its first year of operation, a pharmacy is inspected at least twice; and any pharmacy with three consecutive annual inspections and no resulting disciplinary action, may be inspected every two years.
[76] *Id.*
[77] Section 486.021, F.S. Patient-related activities performed by a PTA for a board-certified orthopedic physician, psychiatrist, or chiropractor are done so under the general supervision of a physical therapist and does not require onsite supervision. However, such activities performed for podiatrist or dentists must be done under the onsite supervision of the physical therapist.
[78] Section 486.102, F.S.
[79] U.S. Department of Education, *Accreditation in the United States: Specialized Accrediting Agency*, *available at* http://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html#health (last visited February 18, 2016). *See also* Commission on Accreditation in Physical Therapy Education, *What We Do*, *available at* http://www.capteonline.org/WhatWeDo/ (last visited February 18, 2016).
[80] CAPTE, *Welcome to CAPTE*, *available at* http://www.capteonline.org/home.aspx (last visited February 18, 2016).
[81] 42 C.F.R. s. 484.4. There are additional provisions that apply to graduates of foreign PTA programs.
[82] CAPTE, *Master List of Accredited Education Programs for the Physical Therapist Assistant* (Jan. 2016), *available at* http://www.capteonline.org/uploadedFiles/CAPTEorg/State_Boards/MasterListofAccreditedPTAPrograms.pdf (last visited February 18, 2016).
[83] Section 382.003, F.S. The State Registrar is the person specified by state law to direct the operations of the state office of vital records and public health statistics and to oversee vital records registration in the districts. The State Registrar is also furnishes all the necessary forms to local registrars and investigates violations of vital statistic laws. (Florida Department of Health, Bureau of Vital Statistics, *Vital Records Registration Handbook* (Rev. Feb. 2015), *available at* http://www.floridahealth.gov/certificates/certificates/_documents/HB2015v2.pdf (last visited February 18, 2016)).

appointing subregistrars who are authorized to produce and maintain paper death certificates and issue burial transmit permits.[84]

To be appointed as a subregistrar, an individual must be a notary public commissioned in the state of Florida, attend a subregistrar training class, and sign an acceptance form.[85] A subregistrar must be affiliated with a licensed funeral home or direct disposal establishment. If a subregistrar terminates affiliation with the establishment, the appointment is terminated. However, a individual may reapply to be a subregistrar, if he or she becomes affiliated with an approved establishment.

Currently, subregistrars are prohibited from issuing certified copies of death certificates.[86] It is a third degree felony for a person to unlawfully make or counterfeit a death certificate.[87]

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), 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.[88] The Commission is additionally responsible for the creation of medical examiner districts throughout the state.[89] There are currently 24 medical examiner districts.[90]

Each district medical examiner is responsible for conducting investigations, examinations and autopsies and reporting vital statistics to the DOH for the 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.

Section 406.11(1)(a), F.S., sets forth causes and conditions related to the circumstances surrounding the death and requires a determination of the cause 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.

Sections 406.11(1)(b) and (c), F.S., relate to transport and disposal of the decedent's remains and require a determination of the cause of death when a dead body is:

- Brought into the state without proper medical certification; or
- To be cremated, dissected, or buried at sea.

[84] Section 382.003(9), F.S.
[85] DOH, *Vital Records Registration Handbook*, 57.
[86] Pursuant to s. 382.025(4), F.S., only the state registrar and local registrars are authorized to issue certified death certificates.
[87] Section 382.026(2), F.S. A felony in the third degree is punishable by a term of imprisonment not to exceed 5 years and a fine of up to $5,000 (*see* ss.775.082 and 775.083, F.S., respectively).
[88] Section 406.04, F.S.
[89] Section 406.05, F.S.
[90] A map of the medical examiner districts in Florida is available at http://myfloridamedicalexaminer.com/ (last viewed on November 20, 2015).

Under s. 406.11(1) F.S., the district medical examiner is authorized to perform any such examinations, investigations, and autopsies as he or she deems necessary to determine the cause of death. The complexity of the determination of the cause of death, however, can differ greatly depending on whether the investigation is required pursuant to s. 406.11(1)(a), F.S., or s. 406.11(1)(c), F.S.

A determination pursuant to s. 406.11(1)(a), F.S., requires a comprehensive review to determine the cause of a death that occurred under unusual circumstances.[91] Physical inspection of the decedent's remains is typically required.[92] As such, a district medical examiner usually performs autopsies or other necessary physical examinations.[93] A district medical examiner also typically requests and reviews any pertinent documentation related to the person's death.[94]

When a death occurs under ordinary circumstances, the district medical examiner does not perform an autopsy or investigation.[95] The disposition of the remains occurs and no further issues arise. On occasion, issues arise after disposition which raise the question of whether a death actually occurred under ordinary circumstances. In these situations the body is exhumed and the district medical examiner performs a determination of cause of death. This examination cannot occur if the body has been cremated, dissected or buried at sea. Thus, s. 406.11(1)(c), F.S., requires the medical examiner to make a determination of cause of death in situations where there is an irretrievable disposal of the remains.

Determinations of the cause of death performed pursuant to s. 406.11(1)(c), F.S., are generally administrative in nature.[96] The process begins with the funeral director completing the death certificate and forwarding it to the decedent's attending or primary physician for signature.[97] Once the funeral director receives the signed death certificate, he or she forwards it to the district medical examiner for review. Unless the medical examiner identifies an issue on the face of the death certificate, he or she grants approval and the funeral director may proceed with the disposal of the remains.[98] The medical examiner may conduct a more thorough investigation if he or she identifies an issue on the face of the death certificate.[99] For example, if a secondary cause of death is a fractured hip, the medical examiner may request additional information to ensure that it was not related to abuse or neglect. Even in that situation, the investigation is generally less comprehensive than the investigation performed under s. 406.11(1)(a), F.S.

Prior to 2012, the approval process for a death certificate was a slow and arduous paper process.[100] It required the manual entry and the transmittal of information through numerous offices within county and state departments.[101] However, in 2012, Florida's Department of Health automated the process through the Electronic Death Registration System. The electronic transmittal of the information has made the approval process more efficient by reducing reporting time and allows for more timely issuances of death certificates.[102]

Medical Examiner User Fees

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[91] In 2014, 187,944 death certificates were issued. Medical examiners investigation into these deaths consisted of 9,809 autopsies, 5,320 body inspections and 3,291 investigations (body was not viewed). *2014 Annual Report*, Florida Dept. of Law Enforcement (FDLE) Medical Examiners Commission, published August 2015, available at http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Annual-Workload-Reports/2014-Annual-Workload-Final.aspx (last visited February 19, 2016).
[92] *Practice Guidelines for Florida Medical Examiners*, Florida Association of Medical Examiners, 2010.
[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] *Id*.
[97] Section 382.008, F.S. In 2014, there were 187,944 death certificates issued of which 165,419 were issued by physicians. Correspondence from the Florida Department of Health to Florida House of Representatives Health Quality Subcommittee, dated October 21, 2015 (on file with the Health Quality Subcommittee).
[98] Florida Association of Medical Examiners, *supra* footnote 92.
[99] *Id*.
[100] *Electronic Death Registration*, Florida Department of Health. http://www.floridahealth.gov/%5C/certificates/certificates/EDRS/index.html (last visited on February 19, 2016).
[101] *Id*.
[102] *Id*.

District medical examiners and associate medical examiners are entitled to reasonable salary and fees as established by the board of county commissioners.[103] Fees are approved on a county by county basis and may vary within a district.[104] Twenty-two of the 24 medical examiner districts operate their own facilities, of which 19 charge a user fee for cremation approval.[105] The user fees range from no charge in 25 counties[106] to more than $50 in two districts.[107] The estimated revenue from these fees in 2014 was approximately $3.98 million.[108]

Expedited Patient Therapy

When an individual is diagnosed with a sexually transmissible disease (STD),[109] health care practitioner will seek to have the partners of such individuals treated in order to prevent reinfection and further transmission. The standard approach includes a clinical evaluation of the partner in a health care setting, notification by the infected partner, notification by the health care practitioner, or a combination of these methods. According to the CDC, provider-assisted referral, which includes the health care practitioner providing notice to the partner of the STD, counseling, and treatment or referral for treatment, is the best strategy for partner treatment.[110] However, partners of infected patients may not receive timely treatment due to a variety of reasons, such as lack of knowledge or lack of resources.[111]

If an STD is left untreated, it may lead to serious health problems for the infected individual, as well as allow the infected person to pass it to others. Untreated STDs may lead to lead to infertility, ectopic pregnancy, or pelvic inflammatory disease in women and sterility in men, and an increased risk of contracting or spreading HIV, the virus that causes AIDS for both genders.[112] Pregnant women risk spreading the infection to the unborn child. In the late stages of a syphilis infection, an individual may develop paralysis, blindness, and dementia, among other symptoms.

Expedited Patient Therapy (EPT) is a clinical practice in which a health care provider treats the sexual partners of patients diagnosed with an STD by providing prescriptions or medications without first examining the partner.[113] The goal of expedited patient therapy is to get an infected patient's partner notified of the possibility of infection and treatment so that reinfection does not occur. EPT was initially developed to treat and control syphilis, but now it is used as a strategy to treat gonorrhea, chlamydia, and HIV.[114]

The U.S. Centers for Disease Control and Prevention (CDC) has concluded that EPT is a useful partner treatment option, particularly for chlamydia and gonorrhea. In Florida, the rates of infection for STDs appear to be increasing. According to the DOH, in 2003, there were 658 reported cases of

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[103] Section 406.06(3), F.S.
[104] 2016 FDLE Legislative Bill Analysis for HB 315 dated October 7, 2015 (on file with the Florida House of Representatives Health Quality Subcommittee).
[105] *Id*.
[106] As of 2013, District 2 (Franklin, Gadsden, Leon, Liberty, Jefferson, Taylor, and Wakulla), District 8 (Alachua, Baker, Bradford, Gilchrist, Levy, Union, and Dixie), District 14 (Bay, Calhoun, Gulf, Jackson, Washington and Holmes), District 20 (Collier), and District 22 (Charlotte) did not charge medical examiner approval user fees. Additionally, Okaloosa (District 1), Hardee (District 10), and Highland (District 10) did not charge a medical examiner approval user fee.
[107] District 11 (Miami-Dade) and District 17 (Broward). Miami-Dade County charges a fee of $63; Broward County charges a fee of $54.
[108] FDLE, *supra* footnote 104.
[109] A sexually transmissible disease is a bacterial, viral, fungal, or parasitic disease that is determine by rule of the DOH to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest will be served by providing for regulation and treatment. *See* s. 384.23(3), F.S. Pursuant to r. 64D-3.028, F.A.C., sexually transmissible diseases include AIDS, Chancroid, Chlamydia Trachomatis, Gonorrhea, Granuloma Inguinale, Hepatitis A through D, Herpes simplex virus (HSV), HIV Infection, Human papilloma virus (HPV), Lymphogranuloma Venereum (LGV), and Syphilis.
[110] CDC, *Expedited Partner Therapy*, *available at* http://www.cdc.gov/std/ept/ (last visited February 16, 2016).
[111] *Id.*
[112] CDC, *Chlamydia – CDC Fact Sheet* (rev. Jan. 2014), *available at* http://www.cdc.gov/std/chlamydia/chlamydia-factsheet-june-2014.pdf (last visited February 19, 2016); *Gonorrhea –CDC Fact Sheet* (rev. Jan. 2014), *available at* http://www.cdc.gov/std/gonorrhea/gon-factsheet-july-2014.pdf (last visited February 19, 2016), and *Syphilis – CDC Fact Sheet* (rev. Jan. 2014), *available at* http://www.cdc.gov/std/syphilis/syphilis-factsheet-july-2014.pdf (last visited February 19, 2016).
[113] *Id.*
[114] CDC, *Legal Status of Expedited Partner Therapy (EPT)* (rev. June 2015), *available at* http://www.cdc.gov/std/ept/legal/default.htm (last visited February 19, 2016).

infectious syphilis and in 2012, there were 1,375.[115] For gonorrhea, there were 18,974 reported cases in 2003, and 19,551 in 2012.[116] For chlamydia, there were 42,381 reported cases in 2003, and 77,851 in 2012.[117]

One of the ongoing issues with providing EPT is the potential legal liability of the prescribing health care practitioner for harms incurred by the sex partners of the infected patient.[118] However, there have not yet been any cases in which the legal liability of health care practitioners using EPT have been examined. Some states have adopted laws that specifically limits a health care practitioner's liability when the health care practitioner is operating pursuant to an appropriate standard of care.[119]

EPT is a legally permissible intervention in 38 states, its legal status is unclear but potentially allowable in other 8 states, and EPT appears to be prohibited in 4 states, including Florida.[120]

Effect of Proposed Changes

The bill revises the regulation of various health care practitioners and programs under the jurisdiction of the DOH.

Florida Biomedical Research Programs

The bill creates additional reporting requirements for the Biomedical Research Advisory Council (BRAC), which relate to any biomedical research grant awarded under the James and Esther King Biomedical Research Program or the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, or to an appropriation made to an entity performing biomedical research from the General Appropriations Act. Specifically the BRAC must report to the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives, by December 15 each year, the following additional information:

- The status of the research and whether it has concluded;
- The results or expected results of the research;
- The names of principal investigators performing the research;
- The title, citation, and summary of findings of a publication in a peer reviewed journal resulting from the research;
- The status of a patent, if any, generated from the research and an economic analysis of the impact of the resulting patent;
- A list of postsecondary educational institutions involved in the research, a description of each postsecondary educational institution's involvement in the research, and the number of students receiving training or performing research;
- A description of any fixed capital outlay project funded by the appropriation, the need for the project, how the project will be utilized, and the timeline for and status of the project, if applicable; and

[115] DOH, *Reported Cases of Infectious Syphilis 2003-2012*, *available at* http://www.floridahealth.gov/diseases-and-conditions/sexually-transmitted-diseases/std-statistics/_documents/std-ten-syphilis-county.pdf (last visited February 19, 2016).
[116] DOH, *Reported Cases of Gonorrhea 2003-2012*, *available at* http://www.floridahealth.gov/diseases-and-conditions/sexually-transmitted-diseases/std-statistics/_documents/std-ten-gonorrhea-county.pdf (last visited February 19, 2016).
[117] DOH, *Reported Cases of Chlamydia 2003-2012*, *available at* http://www.floridahealth.gov/diseases-and-conditions/sexually-transmitted-diseases/std-statistics/_documents/std-ten-chlamydia-county.pdf (last visited February 19, 2016).
[118] Arizona State University Sandra Day O'Connor College of Law and the CDC, *Legal/Policy Toolkit for Adoption and Implementation of Expedited Partner Therapy* (Jan. 2011), *available at* http://www.cdc.gov/std/ept/legal/ept-toolkit-complete.pdf (last visited February 19, 2016).
[119] *Id* at 6-9. These include provisions such as expressly limiting liability of the prescribing health care practitioner and provisions limiting the liability for pharmacists who opt not to participate in EPT.
[120] *Supra* note 114. Section 465.023(1)(h), F.S., a pharmacist is subject to disciplinary action if the pharmacist dispenses a medication and the pharmacist has reason to believe the prescription is not based on a valid practitioner-patient relationship. Rules 64B8-9.0141(6) and 64B15-14.0081(6), F.A.C., prohibit a physician or physician assistant from issuing a prescription unless there is a documented patient evaluation, including history and physical examination to establish the diagnosis for any legend drug is prescribed and a discussion between the physician or physician assistant and the patient regarding treatment options and the risks and benefits of treatment.

- The identity of state or local government grants or donations generated as a result of the appropriation or activities funded by the appropriation, if applicable and traceable.

The bill also requires the Alzheimer's Disease Research Grant Advisory Board of the Ed and Ethel Moore Alzheimer's Disease Research Program to report the above information annually, by February 15, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General. The bill also allows the balance of any appropriation from the General Revenue fund for the Ed and Ethel Moore Alzheimer's Disease Research Program, which has not been disbursed, but which is obligated by contract or otherwise, to be carried forward for up to 5 years after the initial appropriation. This would prevent the disruption of the funding of biomedical research that has been contractually obligated for more than a fiscal year.

Licensure of Health Care Practitioners

Military and Military Spouse Health Care Practitioners

The bill authorizes the DOH to waive fees and issue a health care practitioner license to an active duty member of the military, who applies 6 months before or after an honorable discharge, in a profession for which licensure is not required in another state.[121] 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 or regional standards organization, if required for licensure in Florida.

The bill also authorizes the DOH to issue a health care practitioner license to the spouse of an active duty military member in a profession that may not require a license in another state and allows the applicant to apply in the same manner as those military members applying for a health care practitioner license within 6 months of an honorable discharge, meaning the military spouse applicant will not be subject to application fees and have a truncated application process. As is required for military applicants, the military spouse applicant who is not licensed in another state must provide evidence of training or experience equivalent to the requirements for licensure in Florida and provide proof of a passing score on the appropriate exam of a national or regional standards organization, if required for licensure in Florida. The bill repeals the law pertaining to temporary licensure of military spouses to conform to the new full-licensure provisions of the bill for military spouses.

The bill allows military health care practitioners who are practicing under a military platform, which is a training agreement with a nonmilitary health care provider, to be issued a temporary certificate from DOH, which authorizes the practitioner to practice in this state for up to 6 months. This would allow military health care practitioners to develop and maintain technical proficiency in their profession.

The bill includes certain safeguards to ensure military health care practitioners applying for a temporary certificate will competently and safely practice in nonmilitary health care settings. An applicant who has been convicted of a felony or misdemeanor related to the practice of a health care profession, who has had a health care provider license revoked or suspended in another jurisdiction, who has failed the Florida licensure examination for his or her profession, or who is under investigation in another jurisdiction for an act that constitutes a violation under a Florida practice act, is ineligible to apply for a temporary certificate. Upon application, the bill requires the military health care practitioner seeking a temporary certificate to:

- Submit proof that he or she will practice pursuant to a military platform;
- Submit a complete application and a nonrefundable application fee not to exceed $50;
- Hold a valid and unencumbered license to practice as a health care professional in another state, the District of Columbia, or a possession or territory of the United States, or is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not

[121] 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 34 at 3.

required for practice in the military and who provides evidence of training and experience substantially equivalent to the requirements for licensure in this state for that profession;
- Attest that he or she is not, at the time of application, the subject of a disciplinary proceeding in another jurisdiction or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Be determined to be competent in the profession for which they are applying for a temporary certificate; and
- Submit a set of fingerprints for a background screening, if required in this state for a profession for which he or she is applying for a temporary certificate.

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.

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 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.

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.[122] Midwives and clinical laboratory personnel must still meet this requirement for licensure.

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.

Emergency Medical Technicians and Paramedics

The bill permits the certificates for emergency medical technicians (EMTs) and paramedics to remain in an inactive status for up to two renewal periods (4 years) rather than expiring after 180 days. Additionally, the bill exempts out-of-state or military-trained EMTs or paramedics from the certification examination required by the DOH if the EMT or paramedic is nationally certified or registered.

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.

[122] *Supra* note 34 at 9.

Historically, the Board met bimonthly, 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.[123]

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

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 the cost of 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.[124]

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.[125]

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:

- 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;

[123] *Supra* note 34 at 8.
[124] *Supra* note 34.
[125] *See* s. 456.069, F.S.

- 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.

Physical Therapist Assistants

The bill repeals a provision that allows physical therapist assistant programs to be regionally accredited by an organization approved by CAPTE and deletes a redundant reference to the U.S. Department of Education. All Florida PTA programs will be standardized and graduates of such programs will meet the standards established for eligibility to provide services to Medicare patients.

Death Certifications

Currently, subregistrars are prohibited from issuing certified copies of death certificates. The bill authorizes subregistrars to issue certified copies of death certificates. The fee charged by the subregistrar may not exceed $5.00 per certified copy, and any fees collected must be deposited into the Planning and Evaluation Trust Fund. The bill directs the DOH to adopt rules for the issuance of certified copies of death certificates by subregistrars.

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. A number of counties have interpreted this provision as authority for their board of county commissioners to authorize their district medical examiner to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. The bill prohibits a fee to be charged for a determination of the cause of death pursuant to s. 406.11, F.S., or for a certification of the cause of death pursuant to s. 382.008, F.S.

Expedited Partner Therapy

The bill permits health care professionals licensed under ch. 458 F.S., or ch. 459, F.S., or certified pursuant to s. 464.012, F.S. to provide expedited partner therapy, if the following conditions are met:

- The patient has a laboratory-confirmed or suspected clinical diagnosis of a sexually transmissible disease (STD);
- The patient indicates that he or she has a partner with whom he or she engaged in sexual activity before the diagnosis of the STD; and
- The patient indicates that his or her partner is unlikely or unable to seek clinical services in a timely manner.

The bill provides that a pharmacist may dispense medication to the partner of a person diagnosed with an STD pursuant to a prescription to treat that person, regardless whether the person has a clinical relationship with the prescribing health care practitioner. The health care practitioner or the pharmacist must check for potential allergic reactions prior to prescribing or dispensing medication pursuant to expedited partner therapy. The bill permits the DOH to adopt rules to implement these provisions.

The bill makes other technical and conforming changes.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5602, F.S., relating to the James and Esther King Biomedical Research Program.
Section 2. Amends s. 381.0043, F.S., relating to the requirement for instruction on HIV and AIDS.
Section 3. Amends s. 381.82, F.S., relating to the Ed and Ethel Moore Alzheimer's Disease Research Program.
Section 4. Amends s. 381.922, F.S., relating to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.
Section 5. Amends s. 382.003, F.S., relating to powers and duties of the department.
Section 6. Amends s. 382.025, F.S., relating to certified copies of vital records; confidentiality; research.
Section 7. Amends s. 382.0255, F.S., relating to fees.
Section 8. Amends s. 384.23, F.S., relating to definitions.
Section 9. Amends s. 384.27, F.S., relating to physical examination and treatment.
Section 10. Amends s. 401.27, F.S., relating to personnel; standards and certification.
Section 11. Amends s. 456.013, F.S., relating to the Department of Health and general licensing provisions.
Section 12. 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 13. Creates s. 456.0241, F.S., relating to temporary certificates for active duty military health care practitioners.
Section 14. Amends s. 456.025, F.S., relating to fees, receipts, and disposition.
Section 15. Creates s. 456.0361, F.S., relating to compliance with continuing education requirements.
Section 16. 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 17. Amends s. 456.0635, F.S., relating to health care fraud; disqualification for license, certificate, or registration.
Section 18. Amends s. 457.107, F.S., relating to renewal of licenses; continuing education.
Section 19. Amends s. 458.347, F.S., relating to physician assistants.
Section 20. Amends s. 463.007, F.S., relating to renewal of license; continuing education.
Section 21. Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirement.
Section 22. Repeals s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants.
Section 23. Amends s. 456.0276, F.S., relating to the dispensing practitioner.
Section 24. Amends s. 466.0135, F.S., relating to continuing education; dentists.
Section 25. Amends s. 466.014, F.S., relating to continuing education; dental hygienists.
Section 26. Amends s. 466.032, F.S., relating to registration.
Section 27. Repeals s. 468.1201, F.S., relating to the requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.
Section 28. Amends s. 483.901, F.S., relating to medical physicists; definitions; licensure.
Section 29. Amends s. 484.047, F.S., relating to renewal of license.
Section 30. Amends s. 486.102, F.S., relating to physical therapist assistant, licensing requirements.
Section 31. Amends s. 486.109, F.S., relating to continuing education.
Section 32. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs; starter packs; permits to distribute.
Section 33. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.
Section 34. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Military Health Care Practitioners

The revenues from health care practitioner licensure fees will be reduced due to the expansion of fee waivers for military spouses applying for licensure. The bill also allows the DOH to assess up to a $50 application fee and renewal fee for temporary certificates for active duty military health care professionals. The DOH has the authority to waive the fee, yet if assessed, the fee revenues generated would support the regulatory expenses of the licenses. Since the implementation of current legislation granting fee waivers for honorably discharged veterans, the department has issued 150 licenses for a total of $55,017 in unrealized revenue. Since implementation of legislation granting temporary licenses for military spouses, the department has issued 112 temporary licenses.[126]

Dispensing Practitioner Facility Inspections

The bill amends the requirement for inspecting a dispensing practitioner's location and instead allows the department to inspect at such times as the department determines it is necessary as a random, unannounced inspection or during the course of an investigation. Each registered dispensing practitioner is assessed a $100 fee at the time of registration and again upon the renewal of their license to cover the cost of inspections. The loss of revenue would be the result of 2,984 dispensing practitioners not being assessed the biannual fee for a calculated total annual loss in revenue of $149,200.[127]

2. Expenditures:

Military Health Care Practitioners

The DOH may experience a recurring increase in workload associated with the expanded eligibility criteria of the military fee waiver for health care professional licensure. The number of qualified applicants who will apply for licensure is indeterminate however, it is anticipated that current resources are adequate to absorb the impact.

Dispensing Practitioner Facility Inspections

The bill is anticipated to have an insignificant, positive fiscal impact on the DOH with the elimination of annual inspections of the facilities of dispensing practitioners. In Fiscal Year 2014-2015, the DOH conducted 7,800 inspections of dispensing practitioner locations at an estimated cost of approximately $75 per inspection with an annual cost savings of $597,706.[128]

Advisory Councils

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.[129]

DOH Record Retention

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,

[126] *Supra* note 34.
[127] E-mail Correspondence with the Department of Health, (January 29, 2016), on file with the Health Care Appropriations Subcommittee.
[128] *Supra* note 34.
[129] *Id*.

incapacitation, or abandonment of medical records. The annual contractual cost is estimated to be $4,020 which current resources are adequate to absorb.[130]

Electronic Continuing Education Tracking System

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.

Reporting Requirements of Biomedical Research Grants

The DOH may incur a negative fiscal impact associated with providing administrative support to the BRAC to comply with the bill's new reporting requirements pertaining to biomedical research grants.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Military Health Care Practitioners

The bill expands fee waivers for military spouses and military health care practitioners who will incur less expense when applying for permanent medical professional licensure.

Active duty military health care professionals may incur an additional cost if the DOH implements a $50 application fee and renewal fee for temporary health care licensure.

HIV and AIDS and Medical Errors Course Requirements

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. The course for these professions costs approximately $135 and the total cost savings to applicants in Fiscal Year 2014-2015 was $145,800 for Clinical Laboratory Personnel, $3,375 for Midwives, and $295,065 for Radiologic Technologists and Radiologist Assistants.[131]

Dispensing Practitioner

A medical practitioner will experience a cost savings due to the bill eliminating the $100 fee assessed at the time of registration and again upon the renewal of the dispensing practitioner license.

Medical Research Grants

The bill allows the Ed and Ethel Moore Alzheimer's Disease Research Program to carry forward unspent general revenue appropriations up to five years allowing research projects to span multiple years. This will enable the department to offer longer grant periods, thus enabling researchers to benefit from having access to allocated grant funds over the course of a five-year period.

D. FISCAL COMMENTS:

Costs of Licensure Regulation

[130] *Id*.
[131] *Supra* note 34.

The bill allows the DOH to waive allocated administration and operational indirect costs for professions that operate in a chronic deficit and reallocate those costs to other solvent professions. The total amount of the deficit is $3,682,993 with deficit professions being dentistry, electrolysis, and midwifery. Current law allows each board or the department to assess and collect a one-time fee from each active status licensee and each inactive status licensee in an amount necessary to eliminate a cash deficit. The boards have imposed four one-time assessments in the past 10 years ranging from $1,306 to $200.[132]

The department's analysis of the fiscal impact of the reallocation of administrative costs included in the bill implements both a one-time assessment combined with an administrative reallocation as a strategy for achieving fiscal solvency. These two solutions implemented simultaneously would result in the following fees and waivers to be assessed.

- Dentistry would assess a fee of $450 and would waive administrative costs of approximately $600,000 for one fiscal year to reach solvency by June 30, 2016, and based on a six year projection remain solvent.

- Electrolysis would assess a fee of $450 and would waive administrative costs of approximately $40,000 for three fiscal years to reach solvency by June 30, 2016, and based on a six-year projection, remain solvent.

- Midwifery would assess a fee of $4,700 to the program's total 206 licensees and would waive administrative costs of approximately $15,000 for all six years to show an increasing trend to solvency.[133]

II. 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

On January 19, 2016, the Health Quality Subcommittee adopted a strike all amendment and an amendment to the strike all amendment. The amendment:

- Required the state-funded biomedical research grant programs to report to the Governor and Legislature about the research being performed, the use of state funds, and the return on the state's investment.

[132] *Id*.
[133] *Supra* note 34.

- Allowed the balance of any appropriation from the General Revenue fund for the Ed and Ethel Moore Alzheimer's Disease Research Program which has not been disbursed, but which is obligated by contract or otherwise, to be carried forward for up to 5 years after the initial appropriation.
- Revised the eligibility criteria for military health care practitioners to receive a license in this state by allowing those who meet equivalent training and education requirements and who have taken a national or regional examination to be qualified.
- Authorized spouses of active duty military members who are health care practitioners to become eligible for expedited licensure and waiver of fees, if they meet certain criteria and repeals temporary licensure provisions for military spouses.
- Allowed military health care practitioners who are practicing under a military platform (training agreement with a nonmilitary health care provider) to be issued a temporary certificate to practice in this state.
- Removed the section pertaining to the impaired practitioner treatment program.
- Permits the certificates for emergency medical technicians (EMTs) and paramedics to remain in an inactive status for up to two renewal periods rather than expiring after 180 days.
- Exempted out of out-of-state or military-trained EMTs or paramedics from the certification examination required by the DOH, if the EMT or paramedic is nationally certified or registered.

On February 17, 2016, the Health and Human Services Committee adopted three amendments to the bill. The amendments:

- Authorized certain healthcare practitioners to provide expedited partner therapy, which allows them to treat the partners of patients diagnose with a sexually transmissible disease by providing prescriptions of medications to the patient to treat the partner.
- Authorized a pharmacist to dispense medication, pursuant to a prescription, for the treatment of a sexually transmissible disease for the partner of the infected patient, regardless of whether the prescribing health care practitioner personally examined the partner.
- Required the pharmacist or health care practitioner to check for potential allergic reactions prior dispensing or providing a medication.
- Authorized the DOH to adopt rules regarding expedited partner therapy.
- Allowed subregistrars to issue certified copies of original certificates of death.
- Prohibited the charging of a fee for a determination of a cause of death or certification of cause of death.
- Removed a provision allowing physical therapist assistant programs to be accredited by regional accreditation agencies recognized by Commission on Accreditation in Physical Therapy Education and a redundant reference to the U.S. Department of Education.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.