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# Health Quality Subcommittee

**Tuesday, November 17, 2015  
10:00 AM - 11:00 AM  
306 HOB**

**Steve Crisafulli  
Speaker**

**Cary Pigman  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health Quality Subcommittee

**Start Date and Time:** Tuesday, November 17, 2015 10:00 am  
**End Date and Time:** Tuesday, November 17, 2015 11:00 am  
**Location:** 306 HOB  
**Duration:** 1.00 hrs

**Consideration of the following bill(s):**

HB 313 Prescription Drug Monitoring Program by Pilon  
HB 325 Involuntary Examinations under the Baker Act by Campbell, Plasencia  
HB 373 Mental Health Counseling Interns by Burgess  
HB 375 Physician Assistants by Steube

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, November 16, 2015.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, November 16, 2015.

**NOTICE FINALIZED on 11/10/2015 3:53PM by Iseminger.Bobbye**





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 313 Prescription Drug Monitoring Program

**SPONSOR(S):** Pilon

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

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

### SUMMARY ANALYSIS

Chapter 2009-197, Laws of Fla., established the Prescription Drug Monitoring Program (PDMP) within the Department of Health in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/ database to monitor the prescribing and dispensing of certain controlled substances. Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed. Dispensers must report the dispensing of a specified controlled substance to the PDMP database within seven days of dispensing the controlled substance. However, in certain instances, health care practitioners are exempt from the PDMP reporting requirements. Specifically, the following acts are not required to be reported:

- A health care practitioner administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
- A practitioner administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

HB 313 adds an exemption for a rehabilitative hospital, an assisted living facility, or a nursing home dispensing a controlled substance to a patient if the patient was transferred to the facility after surgery and the patient's physician directly ordered an advanced registered nurse practitioner at the hospital, facility, or nursing home to provide the dosage of the controlled substance.

The bill has an insignificant, negative fiscal impact on state government and no fiscal impact local government.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Fla., established the Prescription Drug Monitoring Program (PDMP) within the Department of Health (DOH) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.<sup>1</sup> The PDMP database became operational on September 1, 2011, when it began receiving prescription data, retroactive to December 1, 2010, from pharmacies and dispensing practitioners.<sup>2</sup>

##### *PDMP Reporting Requirements*

Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database.<sup>3</sup> The following information is submitted for inclusion in the PDMP database:

- The name of the prescribing practitioner, the practitioner's federal Drug Enforcement Administration (DEA) registration number, the practitioner's National Provider Identification (NPI) or other appropriate identifier, and the date of the prescription.
- The date the prescription was filled and the method of payment, such as cash by an individual, insurance coverage through a third party, or Medicaid payment.
- The full name, address, and date of birth of the person for whom the prescription was written.
- The name, national drug code, quantity, and strength of the controlled substance dispensed.
- The full name, federal DEA registration number, and address of the pharmacy, other location, or other practitioner from which the controlled substance was dispensed.
- The name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification (NPI).
- Other appropriate identifying information as determined by DOH rule.

Dispensers must report the dispensing of a specified controlled substance to the PDMP database within seven days of dispensing the controlled substance.<sup>4</sup> By the end of February 2014, more than 90 percent of pharmacies required to report data to the PDMP had uploaded information into the system within the seven-day statutory limit.<sup>5</sup> By that same time, over 100 million dispensing records had been reported to the PDMP by more than 6,100 dispensers since the program became operational.<sup>6</sup>

##### *Exemptions from PDMP Reporting Requirements*

In certain instances, health care practitioners are exempt from reporting the dispensing or administering of controlled substances. Specifically, the following acts are not required to be reported:

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<sup>1</sup> S. 893.055(2)(a), F.S.

<sup>2</sup> Florida Department of Health, *Overview and Status Update of the PDMP*, PowerPoint presentation before Health Quality Subcommittee, Sept. 24, 2013, page 3 (on file with Health Quality Subcommittee staff).

<sup>3</sup> S. 893.055(3)(a)-(c), F.S.; controlled substances listed in Schedule II, III, or IV can be found in s. 893.03(2)-(4), F.S.

<sup>4</sup> S. 893.055(4), F.S.

<sup>5</sup> Florida Department of Health, *Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE)*, 2013-2014 Prescription Drug Monitoring Program Annual Report, December 1, 2014, available at [www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2013-2014pdmp-annual-report.pdf](http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2013-2014pdmp-annual-report.pdf) (last visited November 13, 2015).

<sup>6</sup> Memorandum from Rebecca Poston, Program Manager for PDMP, and Bob MacDonald, Executive Director, The Florida PDMP Foundation, Inc., to Marco Paredes, Director of Legislative Planning, Florida Department of Health, February 6, 2014, page 1 (responding to request for updated information from Health Quality Subcommittee staff, on file with Health Quality Subcommittee staff).

- A health care practitioner administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
- A practitioner administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

#### *Access to PDMP Database*

Direct access to the PDMP database is presently limited by law<sup>7</sup> to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.<sup>8</sup> Pharmacists have the highest utilization rate at 89.4 percent, and have queried the database 6,026,091 times and 71 percent of all prescribers registered to use the database have queried 4,593,400 times; overall, 80 percent or 21,994 registered prescribers and dispensers have queried the database 10,619,491 times.<sup>9</sup>

In Florida, indirect access to the PDMP database is provided to:

- DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases involving prescribed controlled substances;
- A law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient, for the purpose of verifying the accuracy of database information.<sup>10</sup>

Entities with indirect access to the PDMP database may request information from the PDMP program manager that is confidential and exempt from public disclosure under s. 893.0551, F.S.

#### *Public Records Exemption for Information in the PDMP Database*

Section 893.0551, F.S.,<sup>11</sup> provides an exemption from public records for personal information of a patient and certain information concerning health care professionals outlined in the statute.<sup>12</sup> The statute makes confidential and exempt identifying information, including, but not limited to, the name, address, telephone number, insurance plan number, government-issued identification number, provider number, Drug Enforcement Administration number, or any other unique identifying number of a patient, patient's agent, health care practitioner or practitioner as defined in s. 893.055, F.S., or an employee of

<sup>7</sup> S. 893.055(7)(b), F.S.

<sup>8</sup> Health care practitioners began accessing the PDMP database on October 17, 2011. Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), 2012-2013 Prescription Drug Monitoring Program Annual Report, December 1, 2013, available at [www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf](http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf) (last visited November 13, 2015).

<sup>9</sup> *Supra*, note 5.

<sup>10</sup> S. 893.055(7)(c)1.-4., F.S.

<sup>11</sup> The public records exemption was established in 2009 in conjunction with the PDMP. See s. 1, ch. 2009-197, Laws of Fla. Additionally, the public records exemption was reauthorized in 2014. See s. 1 ch. 2014-156, Laws of Fla.

<sup>12</sup> S. 893.0551(2)(a)-(h), F.S.

the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy, which is contained in the PDMP database.

DOH is required to disclose the confidential and exempt information to the specified entities after verifying that entity's request for the information is legitimate. Any agency that obtains information pursuant to s. 893.0551, F.S., must maintain the confidential and exempt status of that information.<sup>13</sup>

### **Effect of Proposed Changes**

HB 313 adds a reporting exemption for a rehabilitative hospital, an assisted living facility, or a nursing home dispensing a controlled substance to a patient if the patient was transferred to the facility after surgery and the patient's physician directly ordered an advanced registered nurse practitioner at the facility or nursing home to provide the dosage of the controlled substance.

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

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 893.055, F.S., relating to prescription drug monitoring program.

**Section 2:** Provides an effective date.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### **D. FISCAL COMMENTS:**

None.

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<sup>13</sup> S. 893.0551(5), F.S. However, a law enforcement agency with lawful access to such information is permitted to disclose confidential and exempt information received from the DOH to a criminal justice agency as part of an active investigation of a specific violation of law. S. 893.0551(4).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

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



1                   A bill to be entitled  
 2           An act relating to the prescription drug monitoring  
 3           program; amending s. 893.055, F.S.; providing that  
 4           certain postsurgical administrations of controlled  
 5           substances in specified facilities are not required to  
 6           be reported to the prescription drug monitoring  
 7           program; providing an effective date.

8

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

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11           Section 1. Paragraph (g) is added to subsection (5) of  
 12           section 893.055, Florida Statutes, to read:

13           893.055 Prescription drug monitoring program.—

14           (5) When the following acts of dispensing or administering  
 15           occur, the following are exempt from reporting under this  
 16           section for that specific act of dispensing or administration:

17           (g) A rehabilitative hospital, assisted living facility,  
 18           or nursing home dispensing a certain dosage of a controlled  
 19           substance, as needed, to a patient if the patient was  
 20           transferred to the facility after surgery and the patient's  
 21           physician directly ordered an advanced registered nurse  
 22           practitioner at the facility or nursing home to provide the  
 23           dosage of the controlled substance, as needed.

24           Section 2. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment (with title amendment)**

6 Remove lines 19-23 and insert:  
7 substance, as needed, to a patient as ordered by the patient's  
8 treating physician.

10 -----  
11 **T I T L E A M E N D M E N T**

12 Remove line 4 and insert:  
13 certain acts of dispensing of controlled



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 325 Involuntary Examinations under the Baker Act  
**SPONSOR(S):** Campbell and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples <i>JP</i>	O'Callaghan <i>MO</i>
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary examinations of individuals suspected of having a mental illness, and establishes procedures for the court, law enforcement, and the medical community to initiate such examinations.

More specifically, the Baker Act authorizes the involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to himself or herself or others. Involuntary examination may be initiated by courts, law enforcement officers, physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers.

The bill adds advanced registered nurse practitioners and physician assistants to the list of medical professionals who may execute a certificate for involuntary examination of a person under the Baker Act.

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

The bill provide as effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.<sup>1</sup> Part I of ch. 394, F.S., provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this law through receiving facilities that provide for the examination of persons with evidence of mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act.<sup>2</sup> Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>3</sup>

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:<sup>4</sup>

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- The person is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

A circuit court or a law enforcement officer may initiate an involuntary examination.<sup>5</sup> A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10(1), F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

Additionally, the following professional, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:<sup>6</sup>

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure.
- A psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master’s degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric

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<sup>1</sup> Chapter 71-131, s. 1, Laws of Fla.

<sup>2</sup> Section 394.455(26), F.S.

<sup>3</sup> Section 394.455(32), F.S.

<sup>4</sup> Section 394.463(1), F.S.

<sup>5</sup> Section 394.463(2)(a)1.-2., F.S.

<sup>6</sup> Section 394.463(2)(a)3., F.S.

mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.

- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

In 2014, there were 181,471 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.18 percent), followed closely by mental health professionals (47.86 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.96 percent).<sup>7</sup>

### Physician Assistants

The licensure of physician assistants (PAs) in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.<sup>8</sup> PAs are also regulated by either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.<sup>9</sup> There are 7,987 PAs who hold active licenses in Florida.<sup>10</sup>

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.<sup>11</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>12</sup> The supervising physician is responsible and liable for any and all acts of the PA and may not supervise more than four PAs at any time.<sup>13</sup>

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>14</sup>

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;<sup>15</sup>
- Completion of an approved PA training program;
- A sworn statement of any prior felony convictions;
- A sworn statement of any previous revocation or denial of licensure in any state;
- Two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.

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<sup>7</sup> Christy, Annette & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: Summary of 2014 Data*, available at <http://bakeract.fmhi.usf.edu/index.html> (last visited Nov. 5, 2015).

<sup>8</sup> The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)

<sup>9</sup> Sections 458.347(12) and 459.022(12), F.S.

<sup>10</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed PAs include both in-state and out-of-state licensees, as of November 9, 2015.

<sup>11</sup> Sections 458.347(2)(f) and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

<sup>12</sup> Rules 64B8-30.012 and 64B15-6.010, F.A.C.

<sup>13</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>14</sup> Sections 458.347(7) and 459.022(7), F.S.

<sup>15</sup> The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited Nov. 5, 2015).

Licenses are renewed biennially.<sup>16</sup> At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.<sup>17</sup>

In 2008, Attorney General Bill McCollum issued an opinion stating:

A physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.<sup>18</sup>

However, PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

### Advanced Registered Nurse Practitioners

The licensure and regulation of nurses in this state is governed by part I of ch. 464, F.S. Nurses are licensed by the DOH and are regulated by the Board of Nursing. Licensure requirements to practice nursing include completion of education requirements, demonstration of passage of an examination approved by the DOH, acceptable results of a criminal background screening, and payment of applicable fees.<sup>19</sup>

A nurse who holds a current license to practice professional nursing may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP), under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Satisfactory completion of a formal postbasic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>20</sup> All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.<sup>21</sup> ARNPs may carry out treatments as specified in statute, including:<sup>22</sup>

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.<sup>23</sup>

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<sup>16</sup> For timely renewed licenses, the renewal fee is \$280 and the prescribing registration is \$150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. See <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited Nov. 5, 2015).

<sup>17</sup> Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

<sup>18</sup> Op. Att'y Gen. Fla. 08-31 (2008), available at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited Nov. 5, 2015).

<sup>19</sup> Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

<sup>20</sup> Section 464.012(2), F.S.

<sup>21</sup> Section 464.012(3), F.S.

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

<sup>23</sup> Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.<sup>24</sup> Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>25</sup>

There are 22,003 ARNPs who hold active licenses in Florida.<sup>26</sup>

### **Effect of Proposed Changes**

The bill authorizes a PA or an ARNP to execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under current law, only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may issue such a certificate.

The bill defines a "physician assistant" as a person who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician. The bill defines an "advanced registered nurse practitioner" as a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing, as defined in s. 464.003, F.S.

The bill makes necessary conforming changes due to the statutory changes made by the bill.

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

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.464, F.S., relating to involuntary examination.

**Section 2:** Amends s. 394.455, F.S., relating to definitions.

**Section 3:** Amends s. 394.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 4:** Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.

**Section 5:** Amends s. 394.496, F.S., relating to service planning.

**Section 6:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 7:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.

**Section 8:** Amends s. 744.704, F.S., relating to powers and duties.

**Section 9:** Provides an effective date of July 1, 2016.

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

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

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

None.

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<sup>24</sup> Section 464.012(4), F.S.

<sup>25</sup> Section 464.012(4)(c)1., F.S.

<sup>26</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed ARNPs include both in-state and out-of-state licensees, as of November 9, 2015.



2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 2 of the bill, the definition of "physician assistant" refers to standards for training programs for physician assistant approved by "the boards," but does not define what board or boards will be approving the standards for training programs for a physician assistant. The definition matches the definition of PA in ss. 458.347(2)(e) and 459.022(2)(e), F.S. If the intent of the bill is to use the same definition, as used in ss. 458.347(2)(e) and 459.022(2)(e), F.S., the bill should cross-reference that definition.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness; amending s. 394.455, F.S.; providing definitions; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent

27 of the court, shall take the person into custody and deliver him  
 28 or her to the nearest receiving facility for involuntary  
 29 examination. The order of the court shall be made a part of the  
 30 patient's clinical record. No fee shall be charged for the  
 31 filing of an order under this subsection. Any receiving facility  
 32 accepting the patient based on this order must send a copy of  
 33 the order to the Agency for Health Care Administration on the  
 34 next working day. The order shall be valid only until executed  
 35 or, if not executed, for the period specified in the order  
 36 itself. If no time limit is specified in the order, the order  
 37 shall be valid for 7 days after the date that the order was  
 38 signed.

39 2. A law enforcement officer shall take a person who  
 40 appears to meet the criteria for involuntary examination into  
 41 custody and deliver the person or have him or her delivered to  
 42 the nearest receiving facility for examination. The officer  
 43 shall execute a written report detailing the circumstances under  
 44 which the person was taken into custody, and the report shall be  
 45 made a part of the patient's clinical record. Any receiving  
 46 facility accepting the patient based on this report must send a  
 47 copy of the report to the Agency for Health Care Administration  
 48 on the next working day.

49 3. A physician, physician assistant, clinical  
 50 psychologist, psychiatric nurse, mental health counselor,  
 51 marriage and family therapist, ~~or~~ clinical social worker, or  
 52 advanced registered nurse practitioner may execute a certificate

53 | stating that he or she has examined a person within the  
 54 | preceding 48 hours and finds that the person appears to meet the  
 55 | criteria for involuntary examination and stating the  
 56 | observations upon which that conclusion is based. If other less  
 57 | restrictive means are not available, such as voluntary  
 58 | appearance for outpatient evaluation, a law enforcement officer  
 59 | shall take the person named in the certificate into custody and  
 60 | deliver him or her to the nearest receiving facility for  
 61 | involuntary examination. The law enforcement officer shall  
 62 | execute a written report detailing the circumstances under which  
 63 | the person was taken into custody. The report and certificate  
 64 | shall be made a part of the patient's clinical record. Any  
 65 | receiving facility accepting the patient based on this  
 66 | certificate must send a copy of the certificate to the Agency  
 67 | for Health Care Administration on the next working day.

68 | Section 2. Subsections (2) through (21) of section  
 69 | 394.455, Florida Statutes, are renumbered as subsections (3)  
 70 | through (22), respectively, present subsections (22) through  
 71 | (38) are renumbered as subsections (24) through (40),  
 72 | respectively, and new subsections (2) and (23) are added to that  
 73 | section, to read:

74 | 394.455 Definitions.—As used in this part, unless the  
 75 | context clearly requires otherwise, the term:

76 | (2) "Physician assistant" means a person who is a graduate  
 77 | of an approved program or its equivalent or meets standards  
 78 | approved by the boards and is licensed to perform medical

79 services delegated by the supervising physician.

80 (23) "Advanced registered nurse practitioner" means a  
 81 person licensed in this state to practice professional nursing  
 82 and certified in advanced or specialized nursing practice, as  
 83 defined in s. 464.003.

84 Section 3. Paragraph (a) of subsection (3) of section  
 85 39.407, Florida Statutes, is amended to read:

86 39.407 Medical, psychiatric, and psychological examination  
 87 and treatment of child; physical, mental, or substance abuse  
 88 examination of person with or requesting child custody.-

89 (3)(a)1. Except as otherwise provided in subparagraph  
 90 (b)1. or paragraph (e), before the department provides  
 91 psychotropic medications to a child in its custody, the  
 92 prescribing physician shall attempt to obtain express and  
 93 informed consent, as defined in s. 394.455(10) ~~394.455(9)~~ and as  
 94 described in s. 394.459(3)(a), from the child's parent or legal  
 95 guardian. The department must take steps necessary to facilitate  
 96 the inclusion of the parent in the child's consultation with the  
 97 physician. However, if the parental rights of the parent have  
 98 been terminated, the parent's location or identity is unknown or  
 99 cannot reasonably be ascertained, or the parent declines to give  
 100 express and informed consent, the department may, after  
 101 consultation with the prescribing physician, seek court  
 102 authorization to provide the psychotropic medications to the  
 103 child. Unless parental rights have been terminated and if it is  
 104 possible to do so, the department shall continue to involve the

105 parent in the decisionmaking process regarding the provision of  
 106 psychotropic medications. If, at any time, a parent whose  
 107 parental rights have not been terminated provides express and  
 108 informed consent to the provision of a psychotropic medication,  
 109 the requirements of this section that the department seek court  
 110 authorization do not apply to that medication until such time as  
 111 the parent no longer consents.

112 2. Any time the department seeks a medical evaluation to  
 113 determine the need to initiate or continue a psychotropic  
 114 medication for a child, the department must provide to the  
 115 evaluating physician all pertinent medical information known to  
 116 the department concerning that child.

117 Section 4. Paragraphs (a) and (c) of subsection (3) of  
 118 section 394.495, Florida Statutes, are amended to read:

119 394.495 Child and adolescent mental health system of care;  
 120 programs and services.—

121 (3) Assessments must be performed by:

122 (a) A professional as defined in s. 394.455(3), (5), (22),  
 123 (25), or (26) ~~394.455(2), (4), (21), (23), or (24)~~;

124 (c) A person who is under the direct supervision of a  
 125 professional as defined in s. 394.455(3), (5), (22), (25), or  
 126 (26) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional  
 127 licensed under chapter 491.

128 Section 5. Subsection (5) of section 394.496, Florida  
 129 Statutes, is amended to read:

130 394.496 Service planning.—

131 (5) A professional as defined in s. 394.455(3), (5), (22),  
 132 (25), or (26) ~~394.455(2), (4), (21), (23), or (24)~~ or a  
 133 professional licensed under chapter 491 must be included among  
 134 those persons developing the services plan.

135 Section 6. Subsection (6) of section 394.9085, Florida  
 136 Statutes, is amended to read:

137 394.9085 Behavioral provider liability.—

138 (6) For purposes of this section, the terms  
 139 "detoxification services," "addictions receiving facility," and  
 140 "receiving facility" have the same meanings as those provided in  
 141 ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28)  
 142 ~~394.455(26)~~, respectively.

143 Section 7. Paragraph (b) of subsection (1) of section  
 144 409.972, Florida Statutes, is amended to read:

145 409.972 Mandatory and voluntary enrollment.—

146 (1) The following Medicaid-eligible persons are exempt  
 147 from mandatory managed care enrollment required by s. 409.965,  
 148 and may voluntarily choose to participate in the managed medical  
 149 assistance program:

150 (b) Medicaid recipients residing in residential commitment  
 151 facilities operated through the Department of Juvenile Justice  
 152 or mental health treatment facilities as defined by s.  
 153 394.455(34) ~~394.455(32)~~.

154 Section 8. Subsection (7) of section 744.704, Florida  
 155 Statutes, is amended to read:

156 744.704 Powers and duties.—

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157 (7) A public guardian shall not commit a ward to a mental  
 158 health treatment facility, as defined in s. 394.455(34)  
 159 ~~394.455(32)~~, without an involuntary placement proceeding as  
 160 provided by law.

161 Section 9. This act shall take effect July 1, 2016.





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)

ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)

ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)

FAILED TO ADOPT \_\_\_\_\_ (Y/N)

WITHDRAWN  (Y/N)

OTHER *Prior to consideration*

1 Committee/Subcommittee hearing bill: Health Quality  
2 Subcommittee

3 Representative Campbell offered the following:

4

5 **Amendment**

6 Remove lines 76-79 and insert:

7 (2) "Physician assistant" has the same meaning as defined  
8 in s. 458.347(2)(e).



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**



Remove lines 76-79 and insert:

7 (2) "Physician assistant" has the same meaning as defined  
 8 in s. 458.347(2)(e) or s. 459.022(2)(e).



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 373 Mental Health Counseling Interns  
**SPONSOR(S):** Burgess, Jr.  
**TIED BILLS:** IDEN./SIM. BILLS:

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

The bill revises the requirements for registration as an intern in the fields of clinical social work, marriage and family therapy, and mental health counseling. The bill limits the length of time an intern may practice in one of these fields without obtaining full licensure.

The bill provides that an individual, who is registered to practice as an intern, must remain under supervision for clinical hours to count toward full licensure. When a registered intern is providing services in a private practice setting, the bill requires a licensed mental health professional to be on the premises. The bill provides that a registration issued on or before April 1, 2016, may not be renewed or reissued and expires March 31, 2021. Any registration issued after April 1, 2016, is valid for 5 years. The bill allows a subsequent intern registration only if the candidate passes a theory and practice examination.

The bill prohibits an individual who has held a provisional license to practice as a clinical social worker, marriage and family therapist, or mental health counselor from applying for intern registration in the same profession.

The bill deletes obsolete language and makes technical changes to the structure of existing law to clarify language.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the board) is located within the Department of Health (DOH), and is responsible for the implementation and enforcement of rules that regulate the practice of clinical social work, marriage and family therapy, and mental health counseling pursuant to ch. 491, F.S. The board is composed of nine members appointed by the Governor and confirmed by the Senate.<sup>1</sup> Presently, the board regulates:

- 9,246 licensed clinical social workers;
- 1,866 marriage and family therapists; and
- 10,018 mental health counselors in the state.<sup>2</sup>

##### Scope of Practice

##### *Clinical Social Work*

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior to prevent and treat undesired behavior and enhance mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral, sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. Clinical social work incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.<sup>3</sup>

##### *Marriage and Family Therapy*

The practice of marriage and family therapy uses scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems. The practice is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and technique. The practice of marriage and family therapy include methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. Marriage and family therapy incorporates marriage and family therapy, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.<sup>4</sup>

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<sup>1</sup> Section 491.004(1), F.S.

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

<sup>3</sup> Section 491.003(7), F.S.

<sup>4</sup> Section 491.003(8), F.S.

## *Mental Health Counseling*

The practice of mental health counseling uses scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behaviors and enhancing mental health and human development. The practice is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature that are used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunctions, alcoholism, and substance abuse. Mental health counseling incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.<sup>5</sup>

### Internship

To be licensed as a clinical social worker, marriage and family therapist, or mental health counselor, an applicant must meet educational requirements, complete at least 2 years of postgraduate or postmaster's clinical practice supervised by a licensed practitioner, and pass a theory and practice examination.<sup>6</sup> During the time in which an applicant is completing the required supervised clinical experience or internship, he or she must register with the DOH as an intern.<sup>7</sup> The supervised clinical experience may be met by providing at least 1,500 hours of face-to-face psychotherapy with clients, which may not be accrued in less than 100 weeks.<sup>8</sup>

An applicant seeking registration as an intern must:<sup>9</sup>

- Submit a completed application form and the nonrefundable fee to the DOH;
- Complete education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

A registered intern may renew his or her registration every biennium, with no limit to the number of times it may be renewed.<sup>10</sup> Currently, there are 3,949 clinical social work interns; 1,039 marriage and family therapy interns; and 4,966 registered mental health counselor interns. Of this total, more than 700 interns have continued to renew their intern registration for more than 10 years, and 150 of them have been renewing their registrations since the inception of this law in 1998.<sup>11</sup>

Recent disciplinary cases have shown that those interns who have held intern registrations for many years are no longer practicing under supervision as is required by law. The DOH has received increasing numbers of complaints against registered interns for various infractions including filing false reports, failing to meet minimum standards, boundary violations, sexual misconduct, Medicaid fraud, false advertising, etc. To date, the DOH has received 173 complaints against clinical social work interns, 72 complaints against marriage and family therapy interns, and 306 complaints against mental

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<sup>5</sup> Section 491.003(9), F.S.

<sup>6</sup> Section 491.005, F.S. A procedure for licensure by endorsement is provided in s. 491.006, F.S.

<sup>7</sup> Section 491.0045, F.S.

<sup>8</sup> Rule 64B4-2.001, F.A.C.

<sup>9</sup> Section 491.0045(2), F.S.

<sup>10</sup> Department of Health, *House Bill 373 Bill Analysis* (Oct. 20, 2015) (on file with House Health Quality Subcommittee). The registration renewal fee is \$80.00 for a two-year period.

<sup>11</sup> *Id.*

health counselor interns. Of these, 74 complaints have resulted in disciplinary actions and 4 of these were recent emergency restriction orders signed by the Surgeon General.<sup>12</sup>

### Provisional license

A provisional license allows an individual applying for licensure by examination or licensure by endorsement, who has satisfied the clinical experience requirements, to practice under supervision while meeting additional coursework or examination requirements for licensure.<sup>13</sup> Individuals must meet minimum coursework requirements and possess the respective graduate degree.<sup>14</sup> A provisional license is valid for 24 months, after which it may not be renewed or reissued.<sup>15</sup> There are 53 provisionally licensed clinical social workers, 25 provisionally licensed marriage and family therapists, and 152 provisionally licensed mental health counselors.<sup>16</sup> The board has accepted applications for intern registrations from practitioners whose provisional licenses have expired. Currently, there is no prohibition against a provisional licensee applying for an intern registration.<sup>17</sup>

### **Effect of Proposed Changes**

The bill provides that a person, who is registered to practice as an intern, must remain under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor for clinical hours to count toward full licensure. Additionally, this bill limits the time period for registered internship to 5 years (60 months) from the date the intern registration is issued and provides that a registration may not be renewed or reissued. Any intern registration issued on or before April 1, 2016, will expire on March 31, 2021. Registrations issued after April 1, 2016, expire 60 months after the date of issue and may only be renewed if the candidate has passed the theory and practice examination required for full licensure.

Under current law, an intern may perform work on or off the premises of the supervising mental health professional provided the off-premises work is not the independent private practice of unlicensed health services on the premises at the same time the intern is providing services. The bill clarifies that a licensed clinical social worker, marriage and family therapist, or mental health counselor is required to be on the premises when a registered intern provides clinical services in a private practice setting.

The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession. Under current law, there is no such provision, thus allowing individuals to lengthen the time period to practice in the fields of clinical social work, marriage and family therapy, and mental health counseling without obtaining full licensure.

The bill deletes obsolete language and makes technical grammatical and conforming changes.

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

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 491.0045, F.S., relating to intern registration and requirements.

**Section 2.** Amends s. 491.005, F.S., relating to licensure by examination.

**Section 3.** Provides an effective date of July 1, 2016.

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

<sup>13</sup> Section 491.0046(1), F.S., and Rule 64B4-3.0075, F.A.C.

<sup>14</sup> Section 491.0046(2), F.S.

<sup>15</sup> Section 491.0046(4), F.S.

<sup>16</sup> *Supra* note 10.

<sup>17</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The DOH will experience a decrease in revenues due to the elimination of the biennial renewal fee for interns. However, with internships limited to a 5-year duration, it is anticipated that interns will apply for full licensure which will offset the decrease in the intern renewal revenue.<sup>18</sup>

#### 2. Expenditures:

The DOH will need to update its licensure system to accommodate the 5-year registration period for internships. The DOH advises its current resources are sufficient to absorb the costs associated with the update.<sup>19</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Interns of clinical social work, marriage and family therapy, and mental health counseling will no longer have to pay the biennial renewal fee, yet will be required to pay initial fees and renewal for full licensure after 5 years of internship to continue to practice in these professions.<sup>20</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The DOH has sufficient rule-making authority to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



On lines 72-75, the dates provided in the bill requires application of the bill's provisions prior to the bill's effective date.

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

1                                   A bill to be entitled  
 2           An act relating to mental health counseling interns;  
 3           amending s. 491.0045, F.S.; revising mental health  
 4           intern registration requirements; revising  
 5           requirements for supervision of registered interns;  
 6           deleting specified education and experience  
 7           requirements; establishing a validity period and  
 8           providing for expiration of intern registrations;  
 9           amending s. 491.005, F.S.; requiring a licensed mental  
 10          health professional to be on the premises when a  
 11          registered intern provides services in clinical social  
 12          work, marriage and family therapy, and mental health  
 13          counseling; deleting a clinical experience requirement  
 14          for such registered interns; deleting a provision  
 15          requiring that certain registered interns meet  
 16          educational requirements for licensure; providing an  
 17          effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Section 491.0045, Florida Statutes, is amended  
 22   to read:

23           491.0045 Intern registration; requirements.—

24           (1) ~~Effective January 1, 1998,~~ An individual who has not  
 25   satisfied ~~intends to practice in Florida to satisfy~~ the  
 26   postgraduate or post-master's level experience requirements, as

27 specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register  
 28 as an intern in the profession for which he or she is seeking  
 29 licensure before ~~prior to~~ commencing the post-master's  
 30 experience requirement or an individual who intends to satisfy  
 31 part of the required graduate-level practicum, internship, or  
 32 field experience, outside the academic arena for any profession,  
 33 and must register as an intern in the profession for which he or  
 34 she is seeking licensure before ~~prior to~~ commencing the  
 35 practicum, internship, or field experience.

36 (2) The department shall register as a clinical social  
 37 worker intern, marriage and family therapist intern, or mental  
 38 health counselor intern each applicant who the board certifies  
 39 has:

40 (a) Completed the application form and remitted a  
 41 nonrefundable application fee not to exceed \$200, as set by  
 42 board rule;

43 (b)1. Completed the education requirements as specified in  
 44 s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which  
 45 he or she is applying for licensure, if needed; and

46 2. Submitted an acceptable supervision plan, as determined  
 47 by the board, for meeting the practicum, internship, or field  
 48 work required for licensure that was not satisfied in his or her  
 49 graduate program.

50 (c) Identified a qualified supervisor.

51 (3) An individual registered under this section must  
 52 remain under supervision while practicing under registered

53 ~~intern status until he or she is in receipt of a license or a~~  
 54 ~~letter from the department stating that he or she is licensed to~~  
 55 ~~practice the profession for which he or she applied.~~

56 ~~(4) An individual who has applied for intern registration~~  
 57 ~~on or before December 31, 2001, and has satisfied the education~~  
 58 ~~requirements of s. 491.005 that are in effect through December~~  
 59 ~~31, 2000, will have met the educational requirements for~~  
 60 ~~licensure for the profession for which he or she has applied.~~

61 ~~(4)(5) Individuals who have commenced the experience~~  
 62 ~~requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c)~~  
 63 ~~but failed to register as required by subsection (1) shall~~  
 64 ~~register with the department before January 1, 2000. Individuals~~  
 65 ~~who fail to comply with this section may ~~subsection shall~~ not be~~  
 66 ~~granted a license under this chapter, and any time spent by the~~  
 67 ~~individual completing the experience requirement as specified in~~  
 68 ~~s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering~~  
 69 ~~as an intern does ~~shall~~ not count toward completion of the ~~such~~~~  
 70 ~~requirement.~~

71 (5) An intern registration is valid for 5 years.

72 (6) An intern registration issued on or before April 1,  
 73 2016, expires March 31, 2021, and may not be renewed or  
 74 reissued. A registration issued after April 1, 2016, expires 60  
 75 months after the date of issuance. No subsequent intern  
 76 registration may be issued unless the candidate has passed the  
 77 theory and practice examination described in s. 491.005 (1)(d),  
 78 (3)(d), and (4)(d).

79           (7) A person who has held a provisional license issued by  
 80 the board may not apply for an intern registration in the same  
 81 profession.

82           Section 2. Paragraphs (a) and (c) of subsection (1),  
 83 paragraphs (a) and (c) of subsection (3), paragraphs (a) and (c)  
 84 of subsection (4), and subsections (5) and (6) of section  
 85 491.005, Florida Statutes, are amended to read:

86           491.005 Licensure by examination.—

87           (1) CLINICAL SOCIAL WORK.—Upon verification of  
 88 documentation and payment of a fee not to exceed \$200, as set by  
 89 board rule, plus the actual per applicant cost to the department  
 90 for purchase of the examination from the American Association of  
 91 State Social Worker's Boards or a similar national organization,  
 92 the department shall issue a license as a clinical social worker  
 93 to an applicant who the board certifies:

94           (a) Has submitted an ~~made~~ application ~~therefor~~ and paid  
 95 the appropriate fee.

96           (c) Has had at least ~~not less than~~ 2 years of clinical  
 97 social work experience, which took place subsequent to  
 98 completion of a graduate degree in social work at an institution  
 99 meeting the accreditation requirements of this section, under  
 100 the supervision of a licensed clinical social worker or the  
 101 equivalent who is a qualified supervisor as determined by the  
 102 board. An individual who intends to practice in Florida to  
 103 satisfy clinical experience requirements must register pursuant  
 104 to s. 491.0045 before ~~prior to~~ commencing practice. If the

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105 applicant's graduate program was not a program which emphasized  
106 direct clinical patient or client health care services as  
107 described in subparagraph (b)2., the supervised experience  
108 requirement must take place after the applicant has completed a  
109 minimum of 15 semester hours or 22 quarter hours of the  
110 coursework required. A doctoral internship may be applied toward  
111 the clinical social work experience requirement. A licensed  
112 mental health professional must be on the premises when clinical  
113 services are provided by a registered intern in a private  
114 practice setting. ~~The experience requirement may be met by work~~  
115 ~~performed on or off the premises of the supervising clinical~~  
116 ~~social worker or the equivalent, provided the off-premises work~~  
117 ~~is not the independent private practice rendering of clinical~~  
118 ~~social work that does not have a licensed mental health~~  
119 ~~professional, as determined by the board, on the premises at the~~  
120 ~~same time the intern is providing services.~~

121 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of  
122 documentation and payment of a fee not to exceed \$200, as set by  
123 board rule, plus the actual cost to the department for the  
124 purchase of the examination from the Association of Marital and  
125 Family Therapy Regulatory Board, or similar national  
126 organization, the department shall issue a license as a marriage  
127 and family therapist to an applicant who the board certifies:

128 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid  
129 the appropriate fee.

130 (c) Has had at least ~~not less than~~ 2 years of clinical

131 | experience during which 50 percent of the applicant's clients  
 132 | were receiving marriage and family therapy services, which must  
 133 | be at the post-master's level under the supervision of a  
 134 | licensed marriage and family therapist with at least 5 years of  
 135 | experience, or the equivalent, who is a qualified supervisor as  
 136 | determined by the board. An individual who intends to practice  
 137 | in Florida to satisfy the clinical experience requirements must  
 138 | register pursuant to s. 491.0045 before ~~prior to~~ commencing  
 139 | practice. If a graduate has a master's degree with a major  
 140 | emphasis in marriage and family therapy or a closely related  
 141 | field that did not include all the coursework required under  
 142 | sub-subparagraphs (b)1.a.-c., credit for the post-master's level  
 143 | clinical experience shall not commence until the applicant has  
 144 | completed a minimum of 10 of the courses required under sub-  
 145 | subparagraphs (b)1.a.-c., as determined by the board, and at  
 146 | least 6 semester hours or 9 quarter hours of the course credits  
 147 | must have been completed in the area of marriage and family  
 148 | systems, theories, or techniques. Within the 3 years of required  
 149 | experience, the applicant shall provide direct individual,  
 150 | group, or family therapy and counseling, to include the  
 151 | following categories of cases: unmarried dyads, married couples,  
 152 | separating and divorcing couples, and family groups including  
 153 | children. A doctoral internship may be applied toward the  
 154 | clinical experience requirement. A licensed mental health  
 155 | professional must be on the premises when clinical services are  
 156 | provided by a registered intern in a private practice setting.

157 | ~~The clinical experience requirement may be met by work performed~~  
 158 | ~~on or off the premises of the supervising marriage and family~~  
 159 | ~~therapist or the equivalent, provided the off-premises work is~~  
 160 | ~~not the independent private practice rendering of marriage and~~  
 161 | ~~family therapy services that does not have a licensed mental~~  
 162 | ~~health professional, as determined by the board, on the premises~~  
 163 | ~~at the same time the intern is providing services.~~

164 | (4) MENTAL HEALTH COUNSELING.—Upon verification of  
 165 | documentation and payment of a fee not to exceed \$200, as set by  
 166 | board rule, plus the actual per applicant cost to the department  
 167 | for purchase of the examination from the Professional  
 168 | Examination Service for the National Academy of Certified  
 169 | Clinical Mental Health Counselors or a similar national  
 170 | organization, the department shall issue a license as a mental  
 171 | health counselor to an applicant who the board certifies:

172 | (a) Has submitted an ~~made~~ application ~~therefor~~ and paid  
 173 | the appropriate fee.

174 | (c) Has had at least ~~not less than~~ 2 years of clinical  
 175 | experience in mental health counseling, which must be at the  
 176 | post-master's level under the supervision of a licensed mental  
 177 | health counselor or the equivalent who is a qualified supervisor  
 178 | as determined by the board. An individual who intends to  
 179 | practice in Florida to satisfy the clinical experience  
 180 | requirements must register pursuant to s. 491.0045 before ~~prior~~  
 181 | ~~to~~ commencing practice. If a graduate has a master's degree with  
 182 | a major related to the practice of mental health counseling that



183 did not include all the coursework required under sub-  
 184 subparagraphs (b)1.a.-b., credit for the post-master's level  
 185 clinical experience shall not commence until the applicant has  
 186 completed a minimum of seven of the courses required under sub-  
 187 subparagraphs (b)1.a.-b., as determined by the board, one of  
 188 which must be a course in psychopathology or abnormal  
 189 psychology. A doctoral internship may be applied toward the  
 190 clinical experience requirement. A licensed mental health  
 191 professional must be on the premises when clinical services are  
 192 provided by a registered intern in a private practice setting.  
 193 ~~The clinical experience requirement may be met by work performed~~  
 194 ~~on or off the premises of the supervising mental health~~  
 195 ~~counselor or the equivalent, provided the off-premises work is~~  
 196 ~~not the independent private practice rendering of services that~~  
 197 ~~does not have a licensed mental health professional, as~~  
 198 ~~determined by the board, on the premises at the same time the~~  
 199 ~~intern is providing services.~~

200 ~~(5) INTERNSHIP. An individual who is registered as an~~  
 201 ~~intern and has satisfied all of the educational requirements for~~  
 202 ~~the profession for which the applicant seeks licensure shall be~~  
 203 ~~certified as having met the educational requirements for~~  
 204 ~~licensure under this section.~~

205 (5)(6) RULES.—The board may adopt rules necessary to  
 206 implement any education or experience requirement of this  
 207 section for licensure as a clinical social worker, marriage and  
 208 family therapist, or mental health counselor.

HB 373

2016

209 | Section 3. This act shall take effect July 1, 2016. |



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health Quality  
 2 Subcommittee

3 Representative Burgess offered the following:

4

5 **Amendment**

6 Remove lines 73-74 and insert:

7 2017, expires March 31, 2022, and may not be renewed or  
 8 reissued. A registration issued after April 1, 2017, expires 60



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 375 Physician Assistants  
**SPONSOR(S):** Steube  
**TIED BILLS:** IDEN./SIM. BILLS: SB 748

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

### SUMMARY ANALYSIS

A physician assistant (PA) is a person licensed to perform health care services, in the specialty areas in which he or she has been trained, delegated by a supervising physician. PAs are governed by the respective physician practice acts for medical doctors (MDs) and doctors of osteopathic medicine (DOs), because PAs may only practice under the supervision of a MD or DO. A physician may supervise up to four PAs and is responsible and liable for the performance and the acts and omissions of the PA. Upon submission of required paperwork to the Department of Health (DOH), a supervising physician may delegate to a PA the authority to prescribe or dispense medicinal drugs used in the supervisory physician's practice.

The bill requires a PA to have a designated supervising physician in a practice with multiple supervisory physicians and to notify the DOH of changes in the designated supervising physician within 30 days after the change. The requirement to have a designated supervising physician does not prevent a PA from practicing under multiple supervising physicians. The designated supervising physician must maintain a current list of all supervising physicians within the practice or facility.

The bill clarifies that a PA may perform any duties or services he or she has been delegated by a supervising physician unless it is expressly prohibited by a statute or rule.

The bill amends chapters 458 and 459, F.S., to streamline the requirements for PA licensure by allowing the applicant for licensure to submit an acknowledgement of prior felony convictions and disciplinary action taken against a license from another state, rather than submitting a sworn statement attesting to such information. The bill also repeals a requirement that a PA licensure applicant submit two letters of recommendation.

Currently, all PA licensure applicants must successfully pass a certification examination offered by the National Commission on Certification of Physician Assistants, prior to being licensed. The bill repeals a provision that allows the DOH to issue temporary licenses to PA licensure applicants awaiting the results of the certification examination. The bill deletes obsolete provisions relating to a certification examination offered by the DOH.

The bill allows a PA, with prescribing authority, to certify that he or she has met the required continuing medical education hours, rather than submitting a signed affidavit attesting to the completion of the requirement at the time of license renewal.

The bill allows a PA's prescriptions to be in written or electronic form, as long as they are in compliance with prescription labeling information requirements.

The bill has an insignificant, negative fiscal impact on the DOH and no fiscal impact on local government.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Physician Assistants

A physician assistant (PA) is an individual who has completed an approved medical training program and is licensed to perform medical services as delegated by a supervising physician.<sup>1</sup> Currently, there are 7,987 PAs who hold active licenses in Florida.<sup>2</sup>

##### *Licensure*

The licensure of PAs in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.<sup>3</sup> PAs are also regulated by either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S.

To become licensed as a PA in Florida, an applicant must demonstrate to the Council that he or she has met the following requirements:<sup>4</sup>

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;<sup>5</sup>
- Completion of an approved PA training program;
- Submission of a sworn statement of any prior felony convictions;
- Submission of a sworn statement of any previous revocation or denial of licensure in any state;
- Submission of two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, submission of a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.

Licenses are renewed biennially.<sup>6</sup> At the time of renewal, a PA must demonstrate that he or she has met the continuing medical education requirements and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.<sup>7</sup>

##### *Supervision of PAs*

A PA may only practice under the supervision of a medical doctor or a doctor of osteopathic medicine with whom they have a clinical relationship. A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>8</sup> Supervision is

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

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

<sup>3</sup> The council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)

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

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

<sup>6</sup> For timely renewed licenses, the renewal fee is \$275 and the prescribing registration is \$150. Additionally, at the time of renewal, the PA must pay an unlicensed activity fee of \$5. See Rules 64B8-30.019 and 64B15-6.013, F.A.C.

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

<sup>8</sup> Rules 64B8-30.012 and 64B15-6.010, F.A.C.

defined as responsible supervision and control that requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.<sup>9</sup> In providing supervision, the supervising physician is required to periodically review the PA's performance.<sup>10</sup> A physician may not supervise more than four PAs at any time.<sup>11</sup>

The Board of Medicine and the Osteopathic Board have prescribed by rule what constitutes adequate responsible supervision. Responsible supervision is the ability of the supervising physician to reasonably exercise control and provide direction over the services or tasks performed by the PA.<sup>12</sup> In determining whether supervision is adequate, the following factors must be considered:<sup>13</sup>

- The complexity of the task;
- The risk to the patient;
- The background, training, and skill of the PA;
- The adequacy of the direction in term of its form;
- The setting in which the tasks are performed;
- The availability of the supervising physician;
- The necessity for immediate attention; and
- The number of other persons that the supervising physician must supervise.

Under current regulations, a physician may decide, based on his or her reasonable medical judgment regarding the probability of morbidity to the patient, whether to supervise a PA directly or indirectly in the performance of a task or procedure.<sup>14</sup> The supervising physician must be certain that the PA has the knowledge and skill to perform the tasks and procedures assigned. A physician or a group of physicians supervising PAs are individually or collectively liable for the performance of the acts and omissions of the PA.<sup>15</sup>

#### *Scope of Practice*

PAs are regulated through the respective physician practice acts.<sup>16</sup> The Board of Medicine and the Osteopathic Board have adopted rules that set out the general principles a supervising physician must use in the development of the scope of practice of a PA under both direct and indirect supervision.<sup>17</sup> A physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>18</sup>

Rules of both the Board of Medicine and the Osteopathic Board prohibit the delegation of prescribing, dispensing, or compounding of medicinal drugs, or final diagnosis, except as authorized by statute.<sup>19</sup> Current law allows a supervising physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.<sup>20</sup> A supervising physician is prohibited from delegating certain duties under indirect supervision, such as the insertion chest tubes, cardiac stress testing, insertion of central

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

<sup>10</sup> Rules 64B8-30.001(3) and 64B15-6.001(3), F.A.C.

<sup>11</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

<sup>15</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>16</sup> Chapters 458 and 459, F.S.

<sup>17</sup> Sections 458.347(4) and 459.022(4), F.S.

<sup>18</sup> Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C. The term "scope of practice" refers to those tasks and procedures which the supervision physician is qualified by training or experience to perform.

<sup>19</sup> *Supra* note 14.

<sup>20</sup> Sections 458.347(4)(e) and (f)1. and 459.022(4)(e), F.S. However, a PA is allowed to order medications for the supervisory physician's patient during his or her care in a facility under ch. 395, F.S., such as hospitals. (See ss. 458.347(4)(g) and 459.022(4)(f), F.S.).

venous catheters, interpretation of laboratory tests, X-rays, and EKGs, and the administration of certain anesthetics.<sup>21</sup>

In regulating the practice of PAs, it is the duty of the Board of Medicine and the Osteopathic Board to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.<sup>22</sup>

## **Effect of Proposed Changes**

### Licensure

The bill amends the documentation that a PA must provide at the time of his or her initial application for licensure. Currently, an applicant for a PA license must submit sworn statements of any prior felony convictions and any previous revocation or denial of licensure or certification in any state; however, the bill changes the requirement to acknowledgements of such actions.<sup>23</sup> The bill also removes the requirement that a PA applicant submit two letters of recommendation at the time of application. Repealing this requirement will expedite the licensure process.<sup>24</sup>

For license renewals, current law requires a PA to submit a signed affidavit attesting that he or she has completed at least 10 hours of continuing education in the specialty practice in which he or she will have prescriptive privileges.<sup>25</sup> The bill requires that a PA certify that he or she has met the required continuing education rather than submit a signed affidavit.

The bill repeals an obsolete provision that requires the DOH to administer a written, objective examination to certain PA licensure applicants, such as foreign-trained physicians who are not licensed to practice medicine. Under current law, an applicant must satisfactorily pass a proficiency exam administered by the National Commission on Certification of Physician Assistants.<sup>26</sup> The result is that all applicants will be subject to the same certification examination. The bill also repeals a provision that allows the DOH to grant temporary licenses to individuals who were awaiting scores from the certification examination.

### Supervision of PAs

Under current law, a PA must notify the DOH of his or her employment, within 30 days of commencing such employment or at any time his or her employment changes, as well as the name of the supervising physician. The bill clarifies that the PA must report, within 30 days, the name of any new “designated” supervising physician. The bill defines “designated supervising physician” as a physician designated by the facility or practice to be the primary contact and supervising physician for the PAs in the practice where PAs are supervised by multiple supervising physicians. The requirement to have a designated supervising physician does not prevent a PA from practicing under multiple supervising physicians.

The designated supervising physician must maintain a list of all approved supervising physicians at the practice or facility, which includes each supervising physician’s name and area of practice. This list must be kept current and must be available upon request by the DOH.

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<sup>21</sup> *Supra* note 14.

<sup>22</sup> Sections 458.347(12) and 459.022(12), F.S.

<sup>23</sup> Pursuant to s. 456.0135, F.S., all practitioners licensed under ch. 458 and 459, including PAs, are subject to a background screening

<sup>24</sup> Florida Dep’t of Health, *Bill Analysis of House Bill 375* (Oct. 27, 2015) (on file with the Health Quality Subcommittee).

<sup>25</sup> Sections 458.347(4)(e) 3. and 459.022(4)(e)3., F.S.

<sup>26</sup> See ss. 458.347(7)(a)2. and 459.022(7)(a)2., F.S.



## Scope of Practice

The bill clarifies that a PA may perform any duty or service delegated by a supervising physician unless the PA is expressly prohibited by statute or rule from providing such duty or service. This provision delineates the scope of practice of a PA while providing that there may be express limitations on the scope under the practice acts and board rules.<sup>27</sup>

The bill allows a PA's prescriptions to be in written or electronic form, as long as they comply with prescription labeling information requirements.<sup>28</sup>

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

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 458.347, F.S., relating to physician assistants.

**Section 2.** Amends s. 459.022, F.S., relating to physician assistants.

**Section 3.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The DOH indicates that it may experience a recurring increase in workload associated with the additional complaints and investigations due to the new requirements created under the provisions of the bill. Although indeterminate at this time, current resources are adequate to absorb any fiscal impact.<sup>29</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Since the bill deletes the requirements for sworn statements, to the extent that a PA incurs costs associated with obtaining such statements, the costs associated with applying for licensure or renewing licensure may be reduced.

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<sup>27</sup> *Supra* note 24.

<sup>28</sup> Section 456.0392(1), F.S., provides that a practitioner who does not have authority to prescribe control substance must list his or her name and professional license number on a prescription. Section 456.42(1), F.S., provides that a written prescription must be legibly printed or typed; contain the name of the prescribing practitioner; contain the name, strength, and quantity of the drug prescribed and directions for use; and dated and signed by the prescribing practitioner of the day of issue. Electronic prescriptions must contain the name of the prescribing practitioner, name, strength, and quantity of the drug prescribed and directions for use; and dated and signed by the prescribing practitioner only on the day issued.

<sup>29</sup> *Supra* note 24.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to physician assistants; amending s.  
 3           458.347, F.S.; authorizing a licensed physician  
 4           assistant to perform certain services as delegated by  
 5           a supervisory physician; revising circumstances under  
 6           which a physician assistant may prescribe medication;  
 7           revising physician assistant licensure and license  
 8           renewal requirements; deleting provisions related to  
 9           examination by the Department of Health; defining the  
 10          term "designated supervising physician"; requiring  
 11          licensed physician assistants to report any changes in  
 12          the designated supervising physician within a  
 13          specified time; requiring a designated supervising  
 14          physician to maintain a list of approved supervising  
 15          physicians at the practice or facility; amending s.  
 16          459.022, F.S.; authorizing a licensed physician  
 17          assistant to perform certain services as delegated by  
 18          a supervisory physician; revising circumstances under  
 19          which a physician assistant may prescribe medication;  
 20          revising physician assistant licensure and license  
 21          renewal requirements; defining the term "designated  
 22          supervising physician"; requiring licensed physician  
 23          assistants to report any changes in the designated  
 24          supervising physician within a specified time;  
 25          requiring a designated supervising physician to  
 26          maintain a list of approved supervising physicians at

27 the practice or facility; providing an effective date.

28

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

30

31 Section 1. Paragraph (e) of subsection (4) of section  
 32 458.347, Florida Statutes, is amended, paragraph (h) is added to  
 33 that subsection, paragraphs (c) through (h) of subsection (7)  
 34 are redesignated as paragraphs (b) through (g), respectively,  
 35 and present paragraphs (a), (b), (c), (e), and (f) of that  
 36 subsection are amended, to read:

37 458.347 Physician assistants.—

38 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

39 (e) A supervisory physician may delegate to a fully  
 40 licensed physician assistant the authority to prescribe or  
 41 dispense any medication used in the supervisory physician's  
 42 practice unless such medication is listed on the formulary  
 43 created pursuant to paragraph (f). A fully licensed physician  
 44 assistant may only prescribe or dispense such medication under  
 45 the following circumstances:

46 1. A physician assistant must clearly identify to the  
 47 patient that he or she is a physician assistant. Furthermore,  
 48 the physician assistant must inform the patient that the patient  
 49 has the right to see the physician before ~~prior to~~ any  
 50 prescription is ~~being~~ prescribed or dispensed by the physician  
 51 assistant.

52 2. The supervisory physician must notify the department of

53 his or her intent to delegate, on a department-approved form,  
54 before delegating such authority and notify the department of  
55 any change in prescriptive privileges of the physician  
56 assistant. Authority to dispense may be delegated only by a  
57 supervising physician who is registered as a dispensing  
58 practitioner in compliance with s. 465.0276.

59 3. The physician assistant must certify to ~~file with~~ the  
60 department ~~a signed affidavit~~ that he or she has completed a  
61 minimum of 10 continuing medical education hours in the  
62 specialty practice in which the physician assistant has  
63 prescriptive privileges with each licensure renewal application.

64 4. The department may issue a prescriber number to the  
65 physician assistant granting authority for the prescribing of  
66 medicinal drugs authorized within this paragraph upon completion  
67 of the foregoing requirements. The physician assistant shall not  
68 be required to independently register pursuant to s. 465.0276.

69 5. The prescription may ~~must~~ be written or electronic but  
70 must be in a form that complies with ss. 456.0392(1) and  
71 456.42(1) ~~chapter 499~~ and must contain, in addition to the  
72 supervisory physician's name, address, and telephone number, the  
73 physician assistant's prescriber number. Unless it is a drug or  
74 drug sample dispensed by the physician assistant, the  
75 prescription must be filled in a pharmacy permitted under  
76 chapter 465 and must be dispensed in that pharmacy by a  
77 pharmacist licensed under chapter 465. The appearance of the  
78 prescriber number creates a presumption that the physician

79 assistant is authorized to prescribe the medicinal drug and the  
80 prescription is valid.

81 6. The physician assistant must note the prescription or  
82 dispensing of medication in the appropriate medical record.

83 (h) A licensed physician assistant may perform services  
84 related to his or her practice, in accordance with his or her  
85 education and training, as delegated by the supervisory  
86 physician unless expressly prohibited under this chapter or  
87 chapter 459 or rules adopted thereunder.

88 (7) PHYSICIAN ASSISTANT LICENSURE.—

89 (a) Any person desiring to be licensed as a physician  
90 assistant must apply to the department. The department shall  
91 issue a license to any person certified by the council as having  
92 met the following requirements:

93 1. Is at least 18 years of age.

94 2. Has satisfactorily passed a proficiency examination by  
95 an acceptable score established by the National Commission on  
96 Certification of Physician Assistants. If an applicant does not  
97 hold a current certificate issued by the National Commission on  
98 Certification of Physician Assistants and has not actively  
99 practiced as a physician assistant within the immediately  
100 preceding 4 years, the applicant must retake and successfully  
101 complete the entry-level examination of the National Commission  
102 on Certification of Physician Assistants to be eligible for  
103 licensure.

104 3. Has completed the application form and remitted an

105 application fee not to exceed \$300 as set by the boards. An  
 106 application for licensure made by a physician assistant must  
 107 include:

108 a. A certificate of completion of a physician assistant  
 109 training program specified in subsection (6).

110 b. Acknowledgment ~~A sworn statement~~ of any prior felony  
 111 convictions.

112 c. Acknowledgment ~~A sworn statement~~ of any previous  
 113 revocation or denial of licensure or certification in any state.

114 ~~d. Two letters of recommendation.~~

115 ~~d.e.~~ d.e. A copy of course transcripts and a copy of the course  
 116 description from a physician assistant training program  
 117 describing course content in pharmacotherapy, if the applicant  
 118 wishes to apply for prescribing authority. These documents must  
 119 meet the evidence requirements for prescribing authority.

120 ~~(b)1. Notwithstanding subparagraph (a)2. and sub-~~  
 121 ~~subparagraph (a)3.a., the department shall examine each~~  
 122 ~~applicant who the Board of Medicine certifies:~~

123 ~~a. Has completed the application form and remitted a~~  
 124 ~~nonrefundable application fee not to exceed \$500 and an~~  
 125 ~~examination fee not to exceed \$300, plus the actual cost to the~~  
 126 ~~department to provide the examination. The examination fee is~~  
 127 ~~refundable if the applicant is found to be ineligible to take~~  
 128 ~~the examination. The department shall not require the applicant~~  
 129 ~~to pass a separate practical component of the examination. For~~  
 130 ~~examinations given after July 1, 1998, competencies measured~~

131 ~~through practical examinations shall be incorporated into the~~  
 132 ~~written examination through a multiple-choice format. The~~  
 133 ~~department shall translate the examination into the native~~  
 134 ~~language of any applicant who requests and agrees to pay all~~  
 135 ~~costs of such translation, provided that the translation request~~  
 136 ~~is filed with the board office no later than 9 months before the~~  
 137 ~~scheduled examination and the applicant remits translation fees~~  
 138 ~~as specified by the department no later than 6 months before the~~  
 139 ~~scheduled examination, and provided that the applicant~~  
 140 ~~demonstrates to the department the ability to communicate orally~~  
 141 ~~in basic English. If the applicant is unable to pay translation~~  
 142 ~~costs, the applicant may take the next available examination in~~  
 143 ~~English if the applicant submits a request in writing by the~~  
 144 ~~application deadline and if the applicant is otherwise eligible~~  
 145 ~~under this section. To demonstrate the ability to communicate~~  
 146 ~~orally in basic English, a passing score or grade is required,~~  
 147 ~~as determined by the department or organization that developed~~  
 148 ~~it, on the test for spoken English (TSE) by the Educational~~  
 149 ~~Testing Service (ETS), the test of English as a foreign language~~  
 150 ~~(TOEFL) by ETS, a high school or college level English course,~~  
 151 ~~or the English examination for citizenship, Bureau of~~  
 152 ~~Citizenship and Immigration Services. A notarized copy of an~~  
 153 ~~Educational Commission for Foreign Medical Graduates (ECFMG)~~  
 154 ~~certificate may also be used to demonstrate the ability to~~  
 155 ~~communicate in basic English; and~~

156 ~~b. Is an unlicensed physician who graduated from a foreign~~



157 ~~medical school listed with the World Health Organization who has~~  
 158 ~~not previously taken and failed the examination of the National~~  
 159 ~~Commission on Certification of Physician Assistants and who has~~  
 160 ~~been certified by the Board of Medicine as having met the~~  
 161 ~~requirements for licensure as a medical doctor by examination as~~  
 162 ~~set forth in s. 458.311(1), (3), (4), and (5), with the~~  
 163 ~~exception that the applicant is not required to have completed~~  
 164 ~~an approved residency of at least 1 year and the applicant is~~  
 165 ~~not required to have passed the licensing examination specified~~  
 166 ~~under s. 458.311 or hold a valid, active certificate issued by~~  
 167 ~~the Educational Commission for Foreign Medical Graduates; was~~  
 168 ~~eligible and made initial application for certification as a~~  
 169 ~~physician assistant in this state between July 1, 1990, and June~~  
 170 ~~30, 1991; and was a resident of this state on July 1, 1990, or~~  
 171 ~~was licensed or certified in any state in the United States as a~~  
 172 ~~physician assistant on July 1, 1990.~~

173 ~~2. The department may grant temporary licensure to an~~  
 174 ~~applicant who meets the requirements of subparagraph 1. Between~~  
 175 ~~meetings of the council, the department may grant temporary~~  
 176 ~~licensure to practice based on the completion of all temporary~~  
 177 ~~licensure requirements. All such administratively issued~~  
 178 ~~licenses shall be reviewed and acted on at the next regular~~  
 179 ~~meeting of the council. A temporary license expires 30 days~~  
 180 ~~after receipt and notice of scores to the licenseholder from the~~  
 181 ~~first available examination specified in subparagraph 1.~~  
 182 ~~following licensure by the department. An applicant who fails~~

183 ~~the proficiency examination is no longer temporarily licensed,~~  
184 ~~but may apply for a one-time extension of temporary licensure~~  
185 ~~after reapplying for the next available examination. Extended~~  
186 ~~licensure shall expire upon failure of the licenseholder to sit~~  
187 ~~for the next available examination or upon receipt and notice of~~  
188 ~~scores to the licenseholder from such examination.~~

189 ~~3. Notwithstanding any other provision of law, the~~  
190 ~~examination specified pursuant to subparagraph 1. shall be~~  
191 ~~administered by the department only five times. Applicants~~  
192 ~~certified by the board for examination shall receive at least 6~~  
193 ~~months' notice of eligibility prior to the administration of the~~  
194 ~~initial examination. Subsequent examinations shall be~~  
195 ~~administered at 1-year intervals following the reporting of the~~  
196 ~~scores of the first and subsequent examinations. For the~~  
197 ~~purposes of this paragraph, the department may develop, contract~~  
198 ~~for the development of, purchase, or approve an examination that~~  
199 ~~adequately measures an applicant's ability to practice with~~  
200 ~~reasonable skill and safety. The minimum passing score on the~~  
201 ~~examination shall be established by the department, with the~~  
202 ~~advice of the board. Those applicants failing to pass that~~  
203 ~~examination or any subsequent examination shall receive notice~~  
204 ~~of the administration of the next examination with the notice of~~  
205 ~~scores following such examination. Any applicant who passes the~~  
206 ~~examination and meets the requirements of this section shall be~~  
207 ~~licensed as a physician assistant with all rights defined~~  
208 ~~thereby.~~

209        ~~(b)(e)~~ The license must be renewed biennially. Each  
 210 renewal must include:

211            1. A renewal fee not to exceed \$500 as set by the boards.  
 212            2. Acknowledgment ~~A sworn statement~~ of no felony  
 213 convictions in the previous 2 years.

214        ~~(d)1.(e)~~ Upon employment as a physician assistant, a  
 215 licensed physician assistant must notify the department in  
 216 writing within 30 days after such employment or after any  
 217 subsequent change ~~changes~~ in the designated supervising  
 218 physician. The notification must include the full name, Florida  
 219 medical license number, specialty, and address of the designated  
 220 supervising physician. For purposes of this paragraph, the term  
 221 "designated supervising physician" means a physician designated  
 222 by the facility or practice to be the primary contact and  
 223 supervising physician for the physician assistants in a practice  
 224 where physician assistants are supervised by multiple  
 225 supervising physicians.

226            2. A licensed physician assistant shall notify the  
 227 department of any subsequent change in the designated  
 228 supervising physician within 30 days after the change.  
 229 Assignment of a designated supervising physician does not  
 230 preclude a physician assistant from practicing under the  
 231 supervision of a physician other than the designated supervising  
 232 physician.

233            3. The designated supervising physician shall maintain a  
 234 list of all approved supervising physicians at the practice or

235 facility. Such list must include the name of each supervising  
 236 physician and his or her area of practice, must be kept up to  
 237 date with respect to additions and terminations, and must be  
 238 provided, in a timely manner, to the department upon written  
 239 request.

240 (e)~~(f)~~ Notwithstanding subparagraph (a)2., the department  
 241 may grant to a recent graduate of an approved program, as  
 242 specified in subsection (6), who expects to take the first  
 243 examination administered by the National Commission on  
 244 Certification of Physician Assistants available for registration  
 245 after the applicant's graduation, a temporary license. The  
 246 temporary license shall expire 30 days after receipt of scores  
 247 of the proficiency examination administered by the National  
 248 Commission on Certification of Physician Assistants. Between  
 249 meetings of the council, the department may grant a temporary  
 250 license to practice based on the completion of all temporary  
 251 licensure requirements. All such administratively issued  
 252 licenses shall be reviewed and acted on at the next regular  
 253 meeting of the council. The recent graduate may be licensed  
 254 before ~~prior to~~ employment~~,~~ but must comply with paragraph (d)  
 255 ~~(e)~~. An applicant who has passed the proficiency examination may  
 256 be granted permanent licensure. An applicant failing the  
 257 proficiency examination is no longer temporarily licensed~~,~~ but  
 258 may reapply for a 1-year extension of temporary licensure. An  
 259 applicant may not be granted more than two temporary licenses  
 260 and may not be licensed as a physician assistant until he or she

261 passes the examination administered by the National Commission  
 262 on Certification of Physician Assistants. As prescribed by board  
 263 rule, the council may require an applicant who does not pass the  
 264 licensing examination after five or more attempts to complete  
 265 additional remedial education or training. The council shall  
 266 prescribe the additional requirements in a manner that permits  
 267 the applicant to complete the requirements and be reexamined  
 268 within 2 years after the date the applicant petitions the  
 269 council to retake the examination a sixth or subsequent time.

270 Section 2. Paragraph (e) of subsection (4) of section  
 271 459.022, Florida Statutes, is amended, paragraph (g) is added to  
 272 that subsection, and paragraphs (a), (b), and (d) of subsection  
 273 (7) of that section are amended, to read:

274 459.022 Physician assistants.—

275 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

276 (e) A supervisory physician may delegate to a fully  
 277 licensed physician assistant the authority to prescribe or  
 278 dispense any medication used in the supervisory physician's  
 279 practice unless such medication is listed on the formulary  
 280 created pursuant to s. 458.347. A fully licensed physician  
 281 assistant may only prescribe or dispense such medication under  
 282 the following circumstances:

283 1. A physician assistant must clearly identify to the  
 284 patient that she or he is a physician assistant. Furthermore,  
 285 the physician assistant must inform the patient that the patient  
 286 has the right to see the physician before ~~prior to~~ any

287 prescription is ~~being~~ prescribed or dispensed by the physician  
 288 assistant.

289 2. The supervisory physician must notify the department of  
 290 her or his intent to delegate, on a department-approved form,  
 291 before delegating such authority and notify the department of  
 292 any change in prescriptive privileges of the physician  
 293 assistant. Authority to dispense may be delegated only by a  
 294 supervisory physician who is registered as a dispensing  
 295 practitioner in compliance with s. 465.0276.

296 3. The physician assistant must certify to ~~file with~~ the  
 297 department ~~a signed affidavit~~ that she or he has completed a  
 298 minimum of 10 continuing medical education hours in the  
 299 specialty practice in which the physician assistant has  
 300 prescriptive privileges with each licensure renewal application.

301 4. The department may issue a prescriber number to the  
 302 physician assistant granting authority for the prescribing of  
 303 medicinal drugs authorized within this paragraph upon completion  
 304 of the foregoing requirements. The physician assistant shall not  
 305 be required to independently register pursuant to s. 465.0276.

306 5. The prescription may ~~must~~ be written or electronic but  
 307 must be in a form that complies with ss. 456.0392(1) and  
 308 456.42(1) ~~chapter 499~~ and must contain, in addition to the  
 309 supervisory physician's name, address, and telephone number, the  
 310 physician assistant's prescriber number. Unless it is a drug or  
 311 drug sample dispensed by the physician assistant, the  
 312 prescription must be filled in a pharmacy permitted under

313 chapter 465, and must be dispensed in that pharmacy by a  
 314 pharmacist licensed under chapter 465. The appearance of the  
 315 prescriber number creates a presumption that the physician  
 316 assistant is authorized to prescribe the medicinal drug and the  
 317 prescription is valid.

318 6. The physician assistant must note the prescription or  
 319 dispensing of medication in the appropriate medical record.

320 (g) A licensed physician assistant may perform services  
 321 related to his or her practice, in accordance with his or her  
 322 education and training, as delegated by the supervisory  
 323 physician unless expressly prohibited under chapter 458 or this  
 324 chapter or rules adopted thereunder.

325 (7) PHYSICIAN ASSISTANT LICENSURE.—

326 (a) Any person desiring to be licensed as a physician  
 327 assistant must apply to the department. The department shall  
 328 issue a license to any person certified by the council as having  
 329 met the following requirements:

- 330 1. Is at least 18 years of age.
- 331 2. Has satisfactorily passed a proficiency examination by  
 332 an acceptable score established by the National Commission on  
 333 Certification of Physician Assistants. If an applicant does not  
 334 hold a current certificate issued by the National Commission on  
 335 Certification of Physician Assistants and has not actively  
 336 practiced as a physician assistant within the immediately  
 337 preceding 4 years, the applicant must retake and successfully  
 338 complete the entry-level examination of the National Commission

339 on Certification of Physician Assistants to be eligible for  
 340 licensure.

341 3. Has completed the application form and remitted an  
 342 application fee not to exceed \$300 as set by the boards. An  
 343 application for licensure made by a physician assistant must  
 344 include:

345 a. A certificate of completion of a physician assistant  
 346 training program specified in subsection (6).

347 b. Acknowledgment ~~A sworn statement~~ of any prior felony  
 348 convictions.

349 c. Acknowledgment ~~A sworn statement~~ of any previous  
 350 revocation or denial of licensure or certification in any state.

351 ~~d. Two letters of recommendation.~~

352 d.e. A copy of course transcripts and a copy of the course  
 353 description from a physician assistant training program  
 354 describing course content in pharmacotherapy, if the applicant  
 355 wishes to apply for prescribing authority. These documents must  
 356 meet the evidence requirements for prescribing authority.

357 (b) The licensure must be renewed biennially. Each renewal  
 358 must include:

359 1. A renewal fee not to exceed \$500 as set by the boards.

360 2. Acknowledgment ~~A sworn statement~~ of no felony  
 361 convictions in the previous 2 years.

362 (d)1. Upon employment as a physician assistant, a licensed  
 363 physician assistant must notify the department in writing within  
 364 30 days after such employment or after any subsequent changes in



365 the designated supervising physician. The notification must  
366 include the full name, Florida medical license number,  
367 specialty, and address of the designated supervising physician.  
368 For purposes of this paragraph, the term "designated supervising  
369 physician" means a physician designated by the facility or  
370 practice to be the primary contact and supervising physician for  
371 the physician assistants in a practice where physician  
372 assistants are supervised by multiple supervising physicians.

373 2. Any subsequent change in the designated supervising  
374 physician shall be reported to the department within 30 days  
375 after the change. Assignment of a designated supervising  
376 physician does not preclude a physician assistant from  
377 practicing under the supervision of a physician other than the  
378 designated supervising physician.

379 3. The designated supervising physician shall maintain a  
380 list of all approved supervising physicians at the practice or  
381 facility. Such list must include the name of each supervising  
382 physician and his or her area of practice, must be kept up to  
383 date with respect to additions and terminations, and must be  
384 provided, in a timely manner, to the department upon written  
385 request.

386 Section 3. This act shall take effect July 1, 2016.