Health Quality Subcommittee

Monday, February 3, 2020
3:00 PM - 6:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose R. Oliva
Speaker

Colleen Burton
Chair

PCS for HB 313

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 313 Nonembryonic Stem Cells
SPONSOR(S): Donalds
TIED BILLS: **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Guzzo	McElroy
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A stem cell is a cell that has the ability to develop into a specialized cell in the body. Stem cell therapy, also called regenerative medicine, is the use of stem cells to treat or prevent a disease or condition. The use of stem cells have shown potential in regenerative and reconstructive medicine. These practices are regulated by the United States Food and Drug Administration.

PCS for HB 313 creates a voluntary registration program within the Department of Health (DOH) for stem cell providers. Physicians licensed under chapter 458 or chapter 459 who provide stem cell services may register with the program. Any physician who registers agrees to adhere to current good manufacturing practices established pursuant to the Federal Food, Drug, and Cosmetic Act. A manufacturer or distributor of stem cell products may also register with the program.

The bill requires DOH to establish and maintain an online registry on its website of all physicians, manufacturers and distributors participating in the voluntary registration program. DOH is required to update this registry monthly.

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

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Stem Cells

Stem cells are cells that have the ability to divide for indefinite periods in culture and to give rise to specialized cells.[1] Under certain physiologic or experimental conditions, stem cells can be induced to become tissue- or organ-specific cells with special functions.[2] Stem cells are referred to as "undifferentiated" because they have not yet committed to a developmental path that will for a specific tissue or organ.[3] Differentiation is the process of changing into a specific type of cell.[4] Stem cells have the potential to repair, restore, replace, and regenerate cells, and could possibly be used to treat a number of medical conditions.[5]

Scientists primarily work with two categories of stem cells: embryonic and adult.[6] Embryonic stem cells are derived from embryos, usually created by in vitro fertilization and donated for research with the informed consent of donors.[7] Embryonic stem cells may be used to generate every cell type found in the body because they are pluripotent.[8]

Adult stem cells (nonembryonic) are more specialized than embryonic stem cells and typically generate different cell types for the specific tissue or organ in which they live.[9] Adult stem cells have been found in organs that need to continuously replenish themselves, such as the blood, skin, and gut, but also are in other less generative organs such as the brain.[10]

In 2007, scientists identified conditions that would allow some specialized adult stem cells to be genetically reprogrammed or engineered to become pluripotent, i.e. behave like embryonic cells.[11] These reprogrammed cells are called induced pluripotent stem cells. It is not known if the induced pluripotent stem cells differ from embryonic stem cells in a clinically significant way.[12] However, induced pluripotent stem cells could replace the use of embryonic stem cells in research and clinics.[13]

Stem cell therapy is the treatment of a condition or illness with stem cells or cells that come from stem cells to replace or repair a patient's damaged cells or tissues.[14] Currently, the range of diseases for which there are proven treatments based on stem cell therapy is small.[15] However, treatments for disorders of the blood and immune systems and acquired loss of bone marrow, can in some cases be

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[1] National Institutes of Health, *Stem Cell Information: Glossary*, available at https://stemcells.nih.gov/glossary.htm (last visited January 31, 2020).
[2] National Institutes of Health, *Stem Cell Information: Stem Cell Basics I.*, available at https://stemcells.nih.gov/info/basics/1.htm (last visited January 31, 2020).
[3] National Institutes of Health, *Stem Cell Information: Stem cell Basics II.*, available at https://stemcells.nih.gov/info/basics/2.htm (last visited February 1, 2020).
[4] Id.
[5] U.S. Food and Drug Administration, *FDA Warns about Stem Cell Therapies*, (Nov. 16, 2017), available at https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm286155.htm (last visited February 2, 2020).
[6] *Supra* note 2.
[7] National Institutes of Health, *Stem Cell Information: Stem Cell Basics III.*, available at https://stemcells.nih.gov/info/basics/3.htm (last visited February 1, 2020).
[8] Id. Pluripotent is the state of a single cell that is capable of differentiating into all tissues of an organism, but not alone capable of sustaining full organismal development (*supra* note 1).
[9] International Society for Stem Cell Research, *Stem Cell Facts*, available at https://www.closerlookatstemcells.org/wp-content/uploads/2018/10/stem-cell-facts.pdf (last visited February 1, 2020).
[10] Id.
[11] *Supra* note 9.
[12] National Institutes of Health, *Stem Cell Information: Stem Cell Basics VI.*, available at https://stemcells.nih.gov/info/basics/6.htm (last visited February 1, 2020).
[13] Vimal Singh, et al, *Induced Pluripotent Stem Cells: Applications in Regenerative Medicine, Disease Modeling, and Drug Discovery*,
[14] *Supra* note 9.
[15]

treated effectively with blood stem cells.[16] Tissue- and organ-specific treatments, such as those for skin and corneas, have proven successful.[17] However, other stem cell therapies are experimental, and may not yet been shown to be safe or effective.[18]

Stem Cell Regulation

The Center for Biologics Evaluation and Research (CBER), within the United States Food and Drug Administration (FDA), regulates biological products for human use, including gene therapy.[19] An establishment that manufactures human cells, tissues, and cellular and tissue-based products (HCT/Ps), must register with CBER, if the:[20]

- The HCT/P is minimally manipulated;
- The HCT/P is intended for homologous use only;
- The manufacture of the HCT/P does not involve the combination of cells or tissues with another article, except for water, crystalloids, or a sterilizing, preserving, or storage agent, provided that the addition of water, crystalloids, or the sterilizing, preserving, or storage agent does not raise new clinical safety concerns with respect to the HCT; and
- Either:
    - The HCT/P does not have a systemic effect and is not dependent upon the metabolic activity of living cells for its primary function; or
    - The HCT/P has a systemic effect or is dependent upon the metabolic activity of living cells for its primary function, and:
        - Is for autologous use;
        - Is for allogeneic use in a first-degree or second-degree blood relative; or
        - Is for reproductive use.

An establishment is not required to comply with registration and reporting requirements if the establishment:[21]

- Uses HCT/P's solely for nonclinical scientific or educational purposes;
- Removes HCT/P's from an individual and implants such HCT/P's into the same individual during the same surgical procedure;
- Is a carrier who accepts, receives, carries, or delivers HCT/P's in the usual course of business as a carrier;
- Does not recover, screen, test, process, label, package, or distribute, but only receives or stores HCT/P's solely for implantation, transplantation, infusion, or transfer within your facility;
- Only recovers reproductive cells or tissue and immediately transfers them into a sexually intimate partner of the cell or tissue donor; or
- Is an individual under contract, agreement, or other arrangement with a registered establishment and engaged solely in recovering cells or tissues and sending the recovered cells or tissues to the registered establishment; however, it must comply with all other applicable requirements.

The HCT/P is regulated as a drug, device, or biologic product under the Public Health Service Act and/or the Food, Drug, and Cosmetics Act, if it does not meet the above-referenced requirements or qualify for an exemption.[22]

In August 2017, the FDA announced plans to increase its regulation of clinics who use therapies involving biologic products that have not been approved by the FDA.[23] In November 2017, the FDA

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[16] Id.
[17] Id.
[18] Id.
[19] U.S. Food and Drug Administration, *About the Center for Biologics Evaluation and Research*, available at https://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/default.htm (last visited February 1, 2020).
[20] 21 C.F.R. s. 1271.10.
[21] 21 C.F.R. s. 1271.15.
[22] 21 C.F.R. s. 1270.20.

published its comprehensive regenerative medicine policy framework.[24] The only stem cell-based therapies that have been approved by the FDA for use in the United States consist of blood-forming stem cells derived from cord blood.[25]

Regulation of Physicians in Florida

The Board of Medicine and the Board of Osteopathic Medicine (collectively, Boards), within the Department of Health (DOH), have authority to adopt rules to regulate practice of medicine and osteopathic medicine, respectively. The Boards have authority to establish, by rule, standards of practice and standards of care for particular settings.[26] Such standards may include education and training, medications including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.[27]

In 2015, the Florida Board of Medicine warned physicians and consumers that they should be aware of the risks involved accessing stem cell therapies and regenerative medicine that has not approved by the FDA.[28] The Board of Medicine further warned that a physician providing stem cell treatment should have investigational new drug application (IND) or a single patient IND for Compassionate or Emergency Use.[29] Florida does not specifically regulate clinics who perform treatments using stem cells; however, the Board of Medicine and the Board of Osteopathic Medicine, have authority to investigate and discipline physicians who fail to meet the standard of care for providing medical services. In 2013, the Board of Medicine revoked the licenses of two physicians in administrative cases involving stem cells for failing to meet the standard of care.[30]

Effect of Proposed Changes

PCS for HB 313 creates a voluntary registration program within the Department of Health (DOH) for stem cell providers. Physicians licensed under chapter 458 or chapter 459 who provide stem cell services may register with the program. Any physician who registers agrees to adhere to current good manufacturing practices established pursuant to the Federal Food, Drug, and Cosmetic Act. A manufacturer or distributor of stem cell products may also register with the program.

The bill requires DOH to establish and maintain an online registry on its website of all physicians, manufacturers and distributors participating in the voluntary registration program. DOH is required to update this registry monthly.

The bill has an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 381.4017, F.S., voluntary registration of stem cell providers.
Section 2: Provides an effective date of July 1, 2020.

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[23] *Statement from FDA Commissioner Scott Gottlieb, M.D. on the FDA's New Policy Steps and Enforcement Efforts to Ensure Proper Oversight of Stem Cell Therapies and Regenerative Medicine,* August 28, 2017, available at https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-fdas-new-policy-steps-and-enforcement-efforts-ensure (last visited February 1, 2020).
[24] *FDA Announces Comprehensive Regenerative Medicine Policy Framework*, November 15, 2017, available at https://www.fda.gov/news-events/press-announcements/fda-announces-comprehensive-regenerative-medicine-policy-framework (last visited February 1, 2020).
[25] *Supra* note 5.
[26] Sections 458.331(v) and 459.015(z), F.S.
[27] Id.
[28] Florida Board of Medicine, *Information on Stem Cell Clinics Offering Unapproved Therapies*, available at http://flboardofmedicine.gov/latest-news/october-2015-newsletter/ (last visited February 1, 2020).
[29] Id.
[30] Department of Health, *2018 Agency Analysis for House Bill 1185*, (Jan. 12, 2018), on file with the Health Quality Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   The bill will have an indeterminate, negative fiscal impact on the Department of Health.

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:
   The bill provides DOH sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:
   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the voluntary registration of stem cell providers; defining the term “stem cell”; allowing a physician who provides stem cell services to voluntarily register with the Department of Health; requiring a registered physician to adhere to good manufacturing practices; allowing certain manufactures and distributors to voluntarily register with the department; requiring the department to establish and maintain an online registry identifying such physicians, manufacturers, and distributors, and update the information contained in the registry monthly; authorizing the department to adopt rules to administer registration; providing an effective date.

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

Section 1. Section 381.4017, Florida Statutes, is created to read:

381.4017 Voluntary Registration of Stem Cell Providers.—

(1) For the purposes of this section "stem cell" means an allogenic or autologous cell that is altered or processed to become undifferentiated, losing its original structural function, so that it can become differentiated into a specialized cell type. The term does not include cells that are

26 only rinsed, cleaned, or sized and remain differentiated.
27 (2) A physician licensed under chapter 458 or chapter 459
28 who advertises, uses, or purports to use stem cells or products
29 containing stem cells may register with the department. A
30 physician who registers under this program shall agree to adhere
31 to the applicable current good manufacturing practices for the
32 collection, removal, processing, implantation, and transfer of
33 stem cells, or products containing stem cells, pursuant to the
34 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq.;
35 52 Stat. 1040 et seq.; and 21 C.F.R. 1271, Human Cells, Tissues,
36 and Cellular and Tissue-Based Products in the performance of any
37 procedure using or purporting to use stem cells or products
38 containing stem cells.
39 (3) A manufacturer or distributor of stem cells or
40 products containing stem cells who advertises, distributes or
41 operates in this state may register with the department.
42 (4) The department shall establish and maintain an online
43 registry accessible on its website which identifies the
44 physicians, manufacturers, and distributors registered under
45 this program and documents physician agreements to adhere to
46 good manufacturing practices. The department shall update the
47 information contained in the registry at least monthly.
48 (5) The department may adopt rules to implement this
49 section.
50 Section 2. This act shall take effect July 1, 2020.

HB 825

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Administration of Vaccines
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Current law authorizes pharmacists and registered interns who meet certain educational requirements to administer vaccines to adults within an established protocol with a supervising physician. A pharmacist may administer:

- Immunizations or vaccines listed on the U.S. Centers for Disease Control and Prevention (CDC) Adult Immunization Schedule as of February 1, 2015;
- Vaccines recommended by the CDC for international travel as of July 1, 2015; and
- Immunizations or vaccines approved by the Board of Pharmacy in response to a state of emergency declared by the Governor.

HB 825 authorizes Florida-licensed pharmacists or registered pharmacy interns who are certified to administer any CDC-recommended vaccine or vaccine licensed for use in the United States by the U.S. Food and Drug Administration to any individual, regardless of age.

The bill has an insignificant, negative fiscal impact on the Department of Health, which can be absorbed within existing resources. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vaccinations

CDC Immunizations Recommendations

The Advisory Committee on Immunization Practices (ACIP) is comprised of medical and public health experts who develop recommendations on the use of vaccines in the United States.[1] The ACIP works with professional organizations, such as the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians to develop annual childhood and adult immunization schedules.[2] The Center for Disease Control and Prevention (CDC) reviews the ACIP's recommendations; and once approved, they are published as the CDC's official recommendations for immunizations of the U.S. population.[3] The current recommended immunization schedule for those ages 18 and under includes:[4]

- Hepatitis B
- Diphtheria, tetanus, & acellular pertussis
- Pneumococcal conjugate
- Influenza
- Varicella
- Meningococcal
- Meningococcal B
- Rotavirus
- Haemophilus influenza type b
- Inactivated poliovirus
- Measles, mumps, rubella (MMR)
- Hepatitis A
- Human papillomavirus
- Pneumococcal polysaccharide

The current recommended immunization schedule for adults includes[5]

- Influenza (annually)
- Measles, mumps, rubella (if born in 1957 or later)
- Zoster
- Pneumococcal polysaccharide
- Varicella
- Hepatitis B
- Meningococcal B
- Tetatanus, diphtheria, pertussis (booster every 10 years)
- Varicella (if born in 1980 or later)
- Human papillomavirus
- Pneumococcal conjugate
- Hepatitis A
- Meningococcal A, C, W, Y
- Haemophilus influenza type b

New vaccines are considered for addition to the schedule after licensure by the United States Food and Drug Administration.[6] Not all newly licensed vaccines are added to the schedule. Some licensed vaccines are only recommended for people who are traveling to areas where other vaccine preventable

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[1] Centers for Disease Control and Prevention, *General Committee-Related Information*, available at https://www.cdc.gov/vaccines/acip/committee/index.html (last visited December 18, 2019).
[2] Centers for Disease Control and Prevention, *ACIP Recommendations*, available at https://www.cdc.gov/vaccines/acip/recommendations.html (last visited December 18, 2019).
[3] Id.
[4] Centers for Disease Control and Prevention, *Recommended Child and Adolescent Immunization Schedule for Ages 18 Years anord Younger, United States, 2019*, available at https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html (last visited December 18, 2019). The schedule provides the recommended age, as well as the administration intervals for vaccines that require multiple doses. Some vaccines are recommended only for populations with special situations that put these individuals at higher risk.
[5] Centers for Disease Control and Prevention, *Recommended Adult Immunization Schedule for Ages 19 Years or Older, United States, 2019*, available at https://www.cdc.gov/vaccines/schedules/hcp/imz/adult.html (last visited December 18, 2019). The schedule provides the recommended age, as well as the administration intervals for vaccines that require multiple doses. Some vaccines are recommended only for populations with special situations that put these individuals at higher risk.
[6] College of Physicians of Philadelphia, *The History of Vaccines: The Development of the Immunization Schedule,* available at http://www.historyofvaccines.org/content/articles/development-immunization-schedule (last visited December 18, 2019).

diseases occur, such as yellow fever, cholera, dengue, Japanese encephalitis, plague, rabies, smallpox, and typhoid.[7]

CDC Health Information for International Travel

CDC's Health Information for International Travel, commonly called the Yellow Book (Book), is published biannually by the CDC as a reference for those who advise international travelers about health risks.[8] The Book includes the CDC's most current travel health guidelines, including pre-travel vaccine recommendations and destination-specific health advice. The Book is authored by subject-matter experts both within and outside the CDC and the guidelines in the Book are evidence-based and supported by best practices.[9]

Vaccinations are recommended by the CDC to protect international travelers from illness and prevent the importation of infectious diseases across international borders. The Book recommends that persons traveling internationally should be up to date on all CDC recommended vaccines.[10] Additionally, the Book may recommend additional vaccinations based on traveler's destination and other factors. Examples of additional vaccines required for travelers based on the country of entry is yellow fever, meningococcal, and polio.[11] An example of a vaccine the CDC recommends travelers obtain to protect their health, even if they aren't required for entry into the country, is the typhoid vaccine.[12]

Practice of Pharmacy

Licensure

Pharmacy is the third largest health profession behind nursing and medicine.[13] The Board of Pharmacy (Board), in conjunction with the Department of Health (DOH), regulates the practice of pharmacists pursuant to ch. 465, F.S.[14] To be licensed as a pharmacist, a person must:[15]

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;[16]
- Have completed a Board-approved internship; and
- Successfully complete the Board-approved examination.

A pharmacist must complete at least 30 hours of Board-approved continuing education during each biennial renewal period.[17] Pharmacists who are certified to administer vaccines or epinephrine autoinjections must complete a 3-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections as a part of the biennial licensure renewal.[18]

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[7] Id. For a complete list of FDA-licensed vaccines, *see* U.S. Food & Drug Administration, *Vaccines Licensed for Use in the United States*, (last rev. Nov. 27, 2019), available at https://www.fda.gov/vaccines-blood-biologics/vaccines/vaccines-licensed-use-united-states (last visited December 18, 2019).
[8] Centers for Disease Control and Prevention. *CDC Yellow Book 2020: Health Information for International Travel*, available at https://wwwnc.cdc.gov/travel/page/yellowbook-home (last visited December 18, 2019).
[9] Id.
[10] Id.
[11] Centers for Disease Control and Prevention, *Travelers' Health Most Frequently Asked Questions,* available at https://wwwnc.cdc.gov/travel/page/faq (last visited December 18, 2019).
[12] Id.
[13] American Association of Colleges of Pharmacy, *About AACP*, available at https://www.aacp.org/about-aacp (last visited December 16, 2019).
[14] Sections 465.004 and 465.005, F.S.
[15] Section 465.007, F.S. DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.
[16] If the applicant has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist
[17] Section 465.009, F.S.
[18] Section 465.009(6), F.S.

Pharmacists who administer long-acting antipsychotic medications must complete an approved 8-hour continuing education course as a part of the continuing education for biennial licensure renewal.[19]

Scope of Practice

In Florida, the practice of the profession of pharmacy includes:[20]

- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of a medicinal drug;
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient's drug therapy and assisting the patient in the management of his or her drug therapy, including the review of the patient's drug therapy and communication with the patient's prescribing health care provider or other persons specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from prescribers to their patients;
- Administering vaccines to adults;[21]
- Administering epinephrine injections;[22] and
- Administering antipsychotic medications by injection.[23]

Pharmacy Interns

To become a pharmacy intern, a person must be certified by the Board as enrolled in an intern program at an accredited school or college of pharmacy or as a graduate of an accredited school or college of pharmacy and not yet licensed as a pharmacist in Florida.[24] The Board's rules outline the registration process for pharmacy interns and the internship program requirements for U.S. pharmacy students or graduates and foreign pharmacy graduates.[25]

A pharmacist is responsible for any delegated act performed by a registered pharmacy intern employed or supervised by the pharmacist.[26]

Pharmacist Vaccine Administration

A pharmacist, or registered pharmacy intern under the supervision of a certified pharmacist, may administer immunizations and vaccines to adults within an established protocol under a licensed supervising physician.[27] The protocol between the pharmacist and the supervising physician dictates which types of patients to whom the pharmacist may administer allowable vaccines.[28] The terms, scope, and conditions set forth in the protocol must be appropriate to the pharmacist's training and certification. A supervising physician must review the administration of vaccines by the pharmacist.[29]

To be certified to administer vaccines, a pharmacist or registered pharmacy intern must successfully complete a Board-approved vaccine administration certification program. The certification program requires a pharmacist or registered intern to complete 20 hours of Board-approved continuing education that addresses:[30]

- Mechanisms of action for vaccines, contraindications, drug interactions, and monitoring after vaccine administration;

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[19] Section 465.1893, F.S.
[20] Section 465.003(13), F.S.
[21] *See* s. 465.189, F.S.
[22] Id.
[23] Section 465.1893, F.S.
[24] Section 465.013, F.S.
[25] Rule 64B16-26.2032, F.A.C. (U.S. pharmacy students/graduates); Rule 64B16-26.2033, F.A.C. (foreign pharmacy graduates).
[26] Rule 64B16-27.430, F.A.C.
[27] Section 468.189(1), F.S.
[28] Section 465.189(7), F.S.
[29] Id.
[30] Rule 64B16-26.1031, F.A.C.

- Immunization schedules;
- Immunization screening questions, provision of risk/benefit information, informed consent, recordkeeping, and electronic reporting into the statewide immunization registry maintained by DOH;
- Vaccine storage and handling;
- Bio-hazardous waste disposal and sterile technique;
- Entering, negotiating, and performing pursuant to physician oversight protocols;
- Community immunization resources and programs;
- Identifying, managing and responding to adverse incidents including but not limited to potential allergic reactions associated with vaccine administration;
- Procedures and policies for reporting adverse incidents to the Vaccine Adverse Event Reporting System;
- Reimbursement procedures and vaccine coverage by federal, state, and local governmental jurisdictions and private third party payers;
- Administration techniques;
- Administration of epinephrine using an autoinjector delivery system;
- The February 1, 2015, U.S. Centers for Disease Control and Prevention (CDC) Recommended Adult Immunization Schedule;
- The immunizations or vaccines recommended for international travel as of July 1, 2015, found in the CDC Health Information for International Travel (2014 Edition);
- State of emergency administration of immunizations or vaccines;
- Review of the current law permitting a pharmacist to administer vaccinations and epinephrine; and
- CPR training.

A pharmacist must also pass an examination and demonstrate vaccine administration technique.[31] Pharmacists who are certified to administer vaccines must also maintain at least $200,000 of professional liability insurance.[32] A pharmacist is permitted to administer epinephrine to treat any allergic reaction resulting from a vaccine.

Under current law, pharmacists may only provide vaccines and immunizations to adults. Approximately 13,115 Florida-licensed pharmacists and 2,627 pharmacy interns are certified to administer vaccines.[33]

Pharmacist Vaccination and Age Restrictions

Currently, all 50 states authorize pharmacists to administer vaccinations; however, that authority may vary by, among other things, the age of the patients that a pharmacist may vaccinate.[34] Seven states, including Florida, limit pharmacist vaccinations to adult patients.[35] Eight jurisdiction expressly indicate that there is no minimum age limit, and 12 states did not have any express language regarding the age of patients.[36] The remaining states have minimum age restrictions that range from 14 years to 3 years.[37]

Effect of Proposed Changes

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[31] Id.
[32] Section 465.189(3), F.S.
[33] E-mail correspondence with DOH, dated December 19, 2019, on file with the Health Quality Subcommittee.
[34] Yvette C. Terrie, BSPharm, RPH, *Vaccinations: The Expanding Role of Pharmacists*, PHARMACY TIMES, Jan. 15, 2010, available at https://www.pharmacytimes.com/publications/issue/2010/january2010/featurefocusvaccinations-0110 (last visited December 18, 2019).
[35] Cason D. Schmit, JD and Matthew S. Penn, JD, MLIS, *Expanding State Laws and Growing Roll for Pharmacists in Vaccination Services*, JOURNAL OF THE AMERICAN PHARMACISTS ASSOCIATION, Nov.-Dec. 2017, 57:(6), at pp. 661-669, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5704925/pdf/nihms921018.pdf (last visited December 18, 2019). The states that limit pharmacist vaccinations to adults are Connecticut, Delaware, Florida, Massachusetts, New York, Vermont, and West Virginia.
[36] Id. The eight states that expressly state that there is no minimum age restriction are Alaska, Georgia, Indiana, Missouri, New Hampshire, Nevada, Virginia, and the District of Columbia.
[37] Id. Minimum age limits: Hawaii and North Carolina is 14 years; Idaho, Montana, and South Carolina is 12 years; Illinois is 10 years; Kentucky, Maryland, Pennsylvania, and Rhode Island is 9 years; Arkansas, Louisiana, Maine, New Jersey, Ohio, Oregon and Wyoming is 7 years; Arizona, Iowa, Kansas, Minnesota, and Wisconsin is 6 years; North Dakota is 5 years; and California is 3 years.

HB 825 authorizes Florida-licensed pharmacists or registered pharmacy interns who are certified to administer vaccines and immunizations to any individual. Currently, pharmacists and registered pharmacy interns may only administer vaccines and immunizations to adults, the bill repeals this limitation.

The bill makes conforming changes to the referenced immunization schedules, authorizing certified pharmacists to administer those vaccines or immunizations in the CDC's Recommended Immunization Schedule, the CDC's Health Information for International Travel, or vaccines that have been licensed for use in the United States by the U.S. Food and Drug Administration.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.189, F.S., relating to administration of vaccines and epinephrine autoinjection.
Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant, negative fiscal impact on DOH, as the Board of Pharmacy will need to amend its rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those under the age of 18 who need immunizations will be able to obtain immunizations from a pharmacists, which may reduce costs associated with travel and physician office visits.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Board of Pharmacy has sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Beginning January 1, 2021, all physicians, physician assistants, and nurses who administer vaccines to children through age 17 and certain college or university students, must report the vaccinations to the immunization registry maintained by DOH.[38] The bill does not authorize a pharmacist to access the immunization registry to either review or input a patient's immunization records.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[38] *See* ch. 2019-107, Laws of Fla.

A bill to be entitled

An act relating to administration of vaccines; amending s. 465.189, F.S.; revising the recommended immunizations or vaccines a pharmacist, or a registered intern under certain conditions, may administer; providing an effective date.

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

Section 1. Subsection (1) of section 465.189, Florida Statutes, is amended to read:

465.189 Administration of vaccines and epinephrine autoinjection.—

(1) In accordance with guidelines of the Centers for Disease Control and Prevention for each recommended immunization or vaccine, a pharmacist, or a registered intern under the supervision of a pharmacist who is certified under subsection (6), may administer the following vaccines ~~to an adult~~ within the framework of an established protocol under a supervising physician licensed under chapter 458 or chapter 459:

(a) Immunizations or vaccines listed in the ~~Adult Immunization Schedule as of February 1, 2015, by the~~ United States Centers for Disease Control and Prevention's Recommended ~~Prevention. The board may authorize, by rule, additional immunizations or vaccines as they are added to the Adult~~

26 Immunization Schedule, the United States Centers for Disease
27 Control and Prevention's Health Information for International
28 Travel, or the United States Food and Drug Administration's
29 Vaccines Licensed for Use in the United States.
30 ~~(b) Immunizations or vaccines recommended by the United~~
31 ~~States Centers for Disease Control and Prevention for~~
32 ~~international travel as of July 1, 2015. The board may~~
33 ~~authorize, by rule, additional immunizations or vaccines as they~~
34 ~~are recommended by the United States Centers for Disease Control~~
35 ~~and Prevention for international travel.~~
36 (b) ~~(c)~~ Immunizations or vaccines approved by the board in
37 response to a state of emergency declared by the Governor
38 pursuant to s. 252.36.
39
40 A registered intern who administers an immunization or vaccine
41 under this subsection must be supervised by a certified
42 pharmacist at a ratio of one pharmacist to one registered
43 intern.
44 Section 2. This act shall take effect July 1, 2020.

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 Fernandez-Barquin offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsections (2) through (8) of section 465.189,
8 Florida Statutes, are renumbered as sections (3) through (7),
9 respectively, subsection (1) and present subsection (6) are
10 amended, and a new subsection (2) is added to that section, to
11 read:
12 465.189 Administration of vaccines and epinephrine
13 autoinjection.—
14 (1) In accordance with guidelines of the Centers for
15 Disease Control and Prevention for each recommended immunization
16 or vaccine, a pharmacist, or a registered intern under the

17 supervision of a pharmacist who is certified under subsection
18 (7) ~~(6)~~, may administer the following vaccines to an adult
19 within the framework of an established protocol under a
20 supervising physician licensed under chapter 458 or chapter 459:
21 (a) Immunizations or vaccines listed in the ~~Adult~~
22 ~~Immunization Schedule as of February 1, 2015, by the~~ United
23 States Centers for Disease Control and Prevention's Recommended
24 ~~Prevention. The board may authorize, by rule, additional~~
25 ~~immunizations or vaccines as they are added to the Adult~~
26 Immunization Schedule, the United States Centers for Disease
27 Control and Prevention's Health Information for International
28 Travel, or the United States Food and Drug Administration's
29 Vaccines Licensed for Use in the United States.
30 ~~(b) Immunizations or vaccines recommended by the United~~
31 ~~States Centers for Disease Control and Prevention for~~
32 ~~international travel as of July 1, 2015. The board may~~
33 ~~authorize, by rule, additional immunizations or vaccines as they~~
34 ~~are recommended by the United States Centers for Disease Control~~
35 ~~and Prevention for international travel.~~
36 (b)~~(c)~~ Immunizations or vaccines approved by the board in
37 response to a state of emergency declared by the Governor
38 pursuant to s. 252.36.
39
40 A registered intern who administers an immunization or vaccine
41 under this subsection must be supervised by a certified

42 pharmacist at a ratio of one pharmacist to one registered
43 intern.
44 (2) A pharmacist who is certified under subsection (7) may
45 administer influenza vaccines to individuals age 7 and older
46 within the framework of an established protocol under a
47 supervising physician licensed under chapter 458 or chapter 459.
48 (3) In order to address any unforeseen allergic reaction,
49 a pharmacist may administer epinephrine using an autoinjector
50 delivery system within the framework of an established protocol
51 under a supervising physician licensed under chapter 458 or
52 chapter 459.
53 (7)~~(6)~~ Any pharmacist or registered intern seeking to
54 administer vaccines ~~to adults~~ under this section must be
55 certified to administer such vaccines pursuant to a
56 certification program approved by the Board of Pharmacy in
57 consultation with the Board of Medicine and the Board of
58 Osteopathic Medicine. The certification program shall, at a
59 minimum, require that the pharmacist attend at least 20 hours of
60 continuing education classes approved by the board and the
61 registered intern complete at least 20 hours of coursework
62 approved by the board. The program shall have a curriculum of
63 instruction concerning the safe and effective administration of
64 such vaccines, including, but not limited to, potential allergic
65 reactions to such vaccines.
66 Section 2. This act shall take effect July 1, 2020.

67
68 ----------
69 **T I T L E A M E N D M E N T**
70 Remove everything before the enacting clause and insert:
71 An act relating to administration of vaccines; amending s.
72 465.189, F.S.; revising the recommended immunizations or
73 vaccines a pharmacist, or a registered intern under certain
74 conditions, may administer; authorizing a certified pharmacist
75 to administer the influenza vaccine to individuals age seven and
76 older; providing an effective date.

PCS for HB 1143

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1143 Department of Health
SPONSOR(S): Health Quality Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Quality Subcommittee		Siples	McElroy

SUMMARY ANALYSIS

PCS for HB 1143 makes numerous changes to health care professions regulated by Medical Quality Assurance within the Department of Health (DOH).

The Interstate Medical Licensure Compact (IMLC) is a multi-state agreement that creates an expedited path to licensure by setting qualifications for licensure, and outlining a process for physicians to apply and receive licenses in states where they are not currently licensed. The IMLC is not a mutual recognition agreement. A physician must obtain a license from each state in which the physician plans to practice. Twenty-nine states, the District of Columbia, and the Territory of Guam have adopted the IMLC. The bill authorizes Florida to enter into the IMLC.

The bill allows a physician who is licensed through the IMLC and whose licensed is suspended or revoked through the IMLC as a result of disciplinary action taken against the physician's license in another state, to have a formal hearing before the Florida Division of Administrative Hearings. The IMLC Commission oversees the operations of the IMLC, and is responsible for, among other things, adopting rules, issuing advisory opinions, and enforcing compliance. Each member state designates two individuals to serve as commissioners. The bill requires the Florida-appointed IMLC commissioners to ensure the commission complies with the state's laws on public records and open meetings.

The Center for Nursing (Center) examines the supply and demand of nurses in the state, including issues of recruitment, retention, and utilization of nurse workforce resources. A 16-member board of directors oversee the work of the Center and implements its major functions. The bill revises the requirements for appointment to the Florida Center for Nursing Board of Directors.

DOH has authority to certify master social worker. However, there is no statutory definition of the scope of practice for a certified master social worker. The bill establish a scope of practice for the certified master social worker and aligns the application process with the process used for other licensed mental health professionals.

The bill also authorizes the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to approve a one-time exception to the 60-month limit on an internship registration, and revises the licensure requirements for Licensed Clinical Social Workers, Marriage and Family Therapists, and Licensed Mental Health Counselors.

The bill has a significant, negative fiscal impact on DOH and an indeterminate, positive fiscal impact on DOH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Physician Licensure in Florida

The regulation of the practices of medicine and osteopathic medicine fall under chapters 458 and 459, F.S., respectively. The practice acts for both professions establish the regulatory boards, a variety of licenses, the application process with eligibility requirements, and financial responsibilities for the practicing physicians. The boards have the authority to establish, by rule, standards of practice and standards of care for particular settings.[1] Such standards may include education and training, medication including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.[2]

Licensure by Examination

The general requirements for licensure under both practice acts are very similar with the obvious differences found in the educational backgrounds of the applicants. Where the practice acts share the most similarities are the qualifications for licensure. Both the Board of Medicine and the Board of Osteopathic Medicine require their respective applicants to meet these minimum qualifications:[3]

- Complete an application form as designated by the appropriate regulatory board.
- Be at least 21 years of age.
- Be of good moral character.
- Have completed at least two years (medical) or three years (osteopathic) of pre-professional post-secondary education.
- Have not previously committed any act that would constitute a violation of this chapter or lead to regulatory discipline.
- Have not had an application for a license to practice medicine or osteopathic medicine denied or a license revoked, suspended or otherwise acted upon in another jurisdiction by another licensing authority.
- Must submit a set of fingerprints to DOH for a criminal background check.
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the applicant's respective professional association.
- Demonstrate that she or he has successfully completed a resident internship (osteopathic medicine) or supervised clinical training (medical) of not less than 12 months in a hospital approved for this purpose by the applicant's respective professional association.
- Demonstrate that he or she has obtained a passing score, as established by the applicant's appropriate regulatory board, on all parts of the designated professional examination conducted by the regulatory board's approved medical examiners no more than five years before making application to this state; or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than five years after the applicant obtained a passing score on the required examination.

The current licensure application fee for a medical doctor is $350 and is non-refundable.[4] Applications must be completed within one year. If a license is approved, the initial license fee is $355. The entire process may take from two to six months from the time the application is received.[5]

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[1] Sections 458.331(1)(v) and 459.015(1)(z), F.S.
[2] Id.
[3] Sections 458.311 and 459.0055, F.S.
[4] Florida Board of Medicine, *Medical Doctor - Fees,* available at https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/ (Last visited January 31, 2020).

For osteopathic physicians, the current application fee is non-refundable $200, and if approved, the initial licensure fee is $305.[6] The same application validity provision of one year applies and the processing time of two to six months is the range of time that applicants should anticipate for a decision.[7]

Licensure by Endorsement

In Florida, to practice medicine an individual must become a licensed medical doctor through licensure by examination[8] or licensure by endorsement.[9] Florida does not recognize another state's medical license or provide licensure reciprocity.[10] To qualify for licensure by endorsement a physician must:[11]

- Meet one of the following education and training requirements:
  - Be a graduate of an allopathic U.S. medical school recognized and approved by the U.S. Office of Education and completed at least one year of residency training;
  - Be a graduate of an allopathic international medical school and have a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate and completed an approved residency of at least two years in one specialty area; or
  - Be a graduate who has completed the formal requirements of an international medical school except the internship or social service requirements, passed parts I and II of the National Board of Medical Examiners (NBME) or ECFMG equivalent examination, and completed an academic year of supervised clinical training (5th pathway) and completed an approved residency of at least two years in one specialty area.
- Have passed all parts of a national examination (the NBME; the Federation Licensing Examination offered by the Federation of State Medical Boards of the United States, Inc.; or the United States Medical Licensing Exam); and
- Have actively practiced medicine in another jurisdiction for at least two of the immediately preceding four years; or passed a board-approved clinical competency examination within the year preceding filing of the application or; successfully completed a board approved postgraduate training program within two years preceding filing of the application.

There is no specific statutory authority for osteopathic medicine licensure by endorsement. However, if an applicant is licensed in another state, the applicant may request that Florida "endorse" those exam scores and demonstrate that the license was issued based on those exam scores. The applicant must also show that the exam was substantially similar to any exam that Florida allows for licensure.[12]

Financial Responsibility

Florida-licensed allopathic and osteopathic physicians are required to maintain professional liability insurance or other financial responsibility to cover potential claims for medical malpractice as a condition of licensure, with specified exemptions.[13] Physicians who perform surgeries in a certain setting or have hospital privileges must maintain professional liability insurance or other financial responsibility to cover an amount not less than $250,000 per claim.[14] Physicians without hospital

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[5] Florida Board of Medicine, *Medical Doctor Unrestricted – Process,* available at https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/ (last visited January 31, 2020).
[6] Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Fees,* available at https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/ (last visited January 31, 2020).
[7] Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Process,* available at https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/ (last visited January 31, 2020)
[8] Section 458.311, F.S.
[9] Section 458.313, F.S.
[10] Notwithstanding this lack of reciprocity, physicians and other health care practitioners licensed out-of-state who meet certain requirements may register with DOH under s. 456.47(4), F.S., and provide services to patients within Florida via telehealth.
[11] Section 458.313 F.S. *See also* Florida Board of Medicine, *Medical Doctor-Unrestricted; Licensure by Endorsement,* available at https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/ (last visited January 31, 2020).
[12] Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure – Requirements*, available at https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/ (last visited January 31, 2020).
[13] Section 458.320, F.S.
[14] Section 458.320(2), F.S.

privileges must carry sufficient insurance or other financial responsibility in coverage amounts of not less than $100,000 per claim.[15] Certain physicians who are exempted from the requirement to carry professional liability insurance or other financial responsibility must provide notice to their patients.[16] With specified exceptions, DOH must suspend, on an emergency basis, any licensed allopathic or osteopathic physician who fails to satisfy a medical malpractice claim against him or her within specified time frames.[17]

Licensure Discipline

Chapter 456, F.S., contains the general regulatory provisions for health care professions and occupations under the Division of Medical Quality Assurance (MQA) in DOH. Section 456.072, F.S., specifies acts that constitute grounds for which disciplinary actions may be taken against a health care practitioner. Section 458.331, F.S., identifies acts that constitute grounds for which disciplinary actions may be taken against an allopathic physician and s. 459.015, F.S., identifies acts specific to an osteopathic physician. Some portions of the licensure discipline process are public and some are confidential.[18]

MQA reviews complaints against licensees to determine if the complaint is legal sufficient.[19] A determination of legal sufficiency is made if the ultimate facts show that a violation has occurred.[20] The complaint is forwarded for investigation if it is found to be legally sufficient. MQA notifies the complainant by letter to advise whether the complaint will be investigated, additional information is needed, or the complaint is being closed because it is not legally sufficient.[21] Complaints which involve an immediate threat to public safety are given the highest priority.

A probable cause panel of the appropriate board reviews all evidence and information gathered during the investigation and determine whether the case should be escalated to a formal administrative complaint, closed with a letter of guidance, or dismissed.[22] If a formal administrative complaint is filed, the case may be heard before an administrative law judge (ALJ) if it involves disputed issues of material fact and the ALJ will issue a recommended order.[23] The issue of whether a licensee has violated the laws and rules regulating the profession, including determining the reasonable standard of care, is a conclusion of law determined by the board.[24] The appropriate board will issue a final order in each disciplinary case.[25]

Authorization for the discipline of allopathic and osteopathic physicians can be found in state law and administrative rule.[26] If held liable for one of the offenses, the fines and sanctions by category and by offense are based on whether it is the physician's first, second, or third offense.[27] The boards may issue a written notice of noncompliance for the first occurrence of a single minor violation.[28] The amount of fines assessed can vary depending on the severity of the situation, such as improper use of

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[15] Section 458.320(1), F.S.
[16] Section 458.320(5)(f) and (g), F.S.
[17] Sections 458.320(8) and 459.0085(9), F.S.
[18] Fla. Department of Health, Division of Medical Quality Assurance, *Enforcement Process,* (last rev. Nov. 2019), available at http://www.floridahealth.gov/licensing-and-regulation/enforcement/_documents/enforcement-process-chart.pdf (last visited January 31, 2020).
[19] Section 456.073, F.S.
[20] Fla. Department of Health, *Consumer Services – Administrative Complaint Process,* available at http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html (last visited January 31, 2020).
[21] Id.
[22] Fla. Department of Health, Medical Quality Assurance, *A Quick Guide to the MQA Disciplinary Process Probable Cause Panels*, available at http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/a-quick-guide-to-the-mqa-disciplinary-process.pdf (last visited January 31, 2020).
[23] Section 456.073(5), F.S.
[24] Id.
[25] Section 456.073(6), F.S.
[26] *See s*s. 458.307 and 459.004, F.S., for the regulatory boards, and rules 64B8-8 and 64B15-19, F.A.C., for administrative rules relating to disciplinary procedures.
[27] Id.
[28] Rules 64B8-8.011 and 64B15-19.0065, F.A.C. A minor violation is deemed to not endanger the public health, safety, and welfare and does not demonstrate a serious inability to practice.

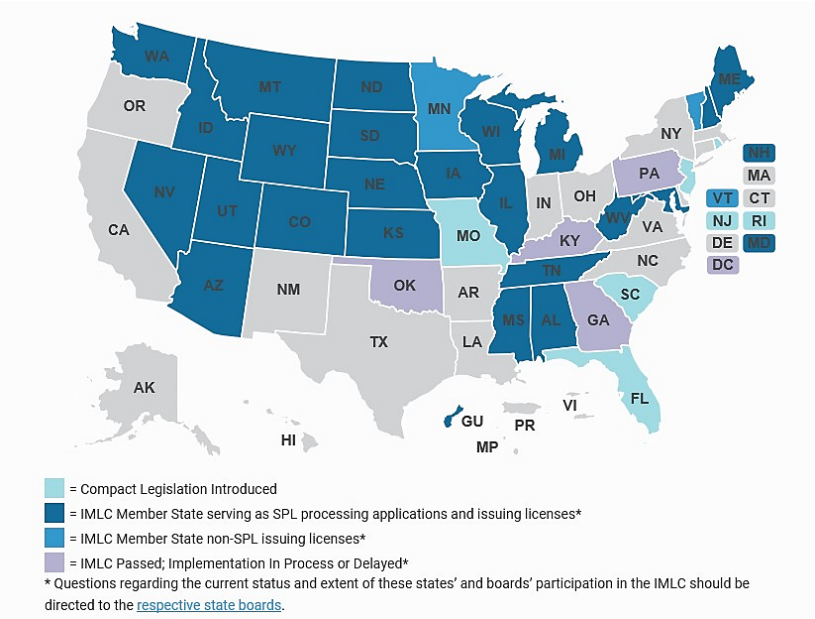
a substance to concealment of a material fact. A penalty may come in the form of a reprimand, a licensure suspension, or revocation followed by some designated period of probation if there is an opportunity for licensure reinstatement. Other sanctions may include supplemental continuing education requirements and require proof of completion before the license can be reinstated.

Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states.[29] Article 1, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other. Case law has provided that not all interstate agreements are subject to congressional approval, but only those that may encroach on the federal government's power.[30] There are currently more than 200 compacts between the states, including 50 national compacts of which six are for health professions.[31,32]

Interstate Medical Licensure Compact

In 2013-2014, a group of state medical board executives, administrators, and attorneys created the model language of Interstate Medical Licensure Compact (IMLC).[33] The IMLC creates an expedited path to licensure by setting qualifications for licensure, and outlining a process for physicians to apply and receive licenses in states where they are not currently licensed.[34] Twenty-nine states, the District of Columbia, and the Territory of Guam have adopted the IMLC.[35]



The model language of the IMLC provides the framework under which party states must operate. The Compact has 24 sections which establish the Compact's administration and components and prescribe

[29] Council of State Governments, Capitol Research, *Special Edition – Interstate Compacts*, available at http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history (last visited January 31, 2020).
[30] *For example, see Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976)
[31] Ann O'M. Bowman and Neal D. Woods, *Why States Join Interstate Compacts,* The Council of State Governments (March 2017) p. 19 and 20, available at http://knowledgecenter.csg.org/kc/system/files/Bowman%202017.pdf, (last visited January 31, 2020).
[32] Federal Trade Commission, *Policy Perspectives: Options to Enhance Occupational License Portability* (September 2018), p. 9, available at https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf (last visited January 31, 2020). The six health professions are nurses, medical, emergency medical services, physical therapy, psychology, and advanced registered nurse practitioners. The only two compacts currently operational are the Enhanced Nurse Compact and the physicians compacts as the others are awaiting the completion of an administrative structure.
[33] Interstate Medical Licensure Compact, *The Interstate Medical Licensure Compact: Frequently Asked Questions*, available at https://imlcc.org/faqs/ (last visited January 31, 2020).
[34] Id.
[35] Interstate Medical Licensure Compact, *The IMLC*, available at https://imlcc.org/ (last visited January 31, 2020).

how the Interstate Medical Licensure Compact Commission will oversee the Compact and conduct its business. The table below describes, by Compact section, the components of the Compact.

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
1	Purpose *Establishes prevailing standard of care*	The purpose of the Interstate Medical Licensure Compact (Compact) is to provide a streamlined, comprehensive process that allows physicians to become licensed in multiple states. It allows physicians to become licensed without changing a state's Medical Practice Act(s). The Compact adopts the prevailing standard of care based on where the patient is located at the time of the patient-provider encounter. Jurisdiction for disciplinary action or any other adverse actions against a physician's license is retained in the jurisdiction where the license is issued to the physician.
2	Definitions *Establishes standard definitions for operation of the Compact and the Commission.*	Definitions are provided for: - Bylaws: means those Bylaws established by the Commission pursuant to Section 11 for governance, direction, and control of its action and conduct. - Commissioner: means the voting representative appointed by each member board pursuant to Section 11 whereby each member state appoints two members to the Commission. If the member state has two medical boards, the two representatives should be split between the two boards. - Conviction: means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. A conviction also means evidence of an entry of a conviction of a criminal offense by the court shall be considered final for the purposes of disciplinary action by a member board. - Expedited license: means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact. - Interstate Commission: means the interstate commission created pursuant to Section 11. - License: means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization. - Medical Practice Act: means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state. (In Florida, the Medical Practice Act for allopathic medicine is under ch. 458, F.S., and for osteopathic medicine, under ch. 459, F.S.) - Member Board: means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government. (The Florida Board of Medicine and the Florida Board of Osteopathic Medicine are responsible for the licensure, regulation, and education of physicians in Florida.) - Member State: means a state that has enacted the Compact. - Practice of medicine: means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical, or mental condition, by attendance, advise, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
		able to do, any of these acts. - Physician means: any persons who is a graduate of medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent; passed each component of the USMLE or the COMPLEX-USA within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes; successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; holds specialty certification or time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Board of Osteopathic Specialties; however, the times unlimited specialty certificate does not have to be maintained once the physician is initially determined through the expedited Compact process; possess a full and unrestricted license to engage in the practice of medicine issued by a member board; has never been convicted received adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction; has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license; has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction. - Offense means: A felony, high court misdemeanor, or crime of moral turpitude. - Rule means: A written statement by the Commission promulgated pursuant to Section 12 of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a member state, if the rule is not inconsistent with the laws of the member state. The term includes the amendment, repeal, or suspension of an existing rule. - State means: Any state, commonwealth, district, or territory of the United States. - State of Principal License means: A member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
3	Eligibility *Provides minimum requirements to receive an expedited license*	To be eligible to participate and receive an expedited license, a physician must meet the requirements of Section 2 (definition of physician). A physician who does not meet the requirements of Section 2 may obtain a license to practice medicine in a member state outside of the Compact if the individual complies with all of the laws and requirements to practice medicine in that state.
4	State of Principal License (SPL) *Defines a SPL*	The Compact requires participating physicians to designate a State of Principal License (SPL) for purposes of registration for expedited licensure if the physician possesses a full and unrestricted license to practice medicine in that state. The SPL must be a state where: - The physician has his/her primary residence, or - The physician has at least 25 percent of his/her practice, or - The state where the physician's employer is located. If no state qualifies for one of the above options, then the state of residence as designated on the physician's federal income taxes is the SPL. A SPL may be re-designated at any time as long as the physician possesses a full and unrestricted license to practice medicine in that state. The Commission is authorized to develop rules to facilitate the re-designation process.
5	Application and Issuance of Expedited Licensure *Qualifications*	Section 5 of the Compact establishes the process for the issuance of the expedited license. A physician must file an application with the member of the state selected as the SPL. The SPL will evaluate the application to determine whether the physician is eligible for the expedited licensure process and issue a letter of qualification, either verifying or denying eligibility, to the Commission. - Static Qualifications: Include verification of medical education, graduate medical education, results of any medical or licensing examinations and any other qualifications set by the Commission through rule. - Performance of Criminal Background Checks by the member board through FBI, with the exception of federal employees who have suitability determined in accordance with U.S. 5 CFR section 731.202. - Appeals on eligibility determinations are handled through the member state. - Upon completion of eligibility verification process with member state, applicants suitable for an expedited license are directed to complete the registration process with the Commission, including the payment of any fees. - After receipt of registration and payment of fees, the physician receives his/her expedited license. The license authorizes the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state. - An expedited license must be valid for a period consistent with the member state licensure period and in the same manner as required for other physicians holding a full and unrestricted license. - An expedited license obtained through the Compact must be

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
		terminated if a physician fails to monitor a license in the SPL for a non-disciplinary reason, without re-designation of a new SPL.
	Commission rulemaking provisions	The Commission is authorized to develop rules relating to the application process, including fees and issuing the expedited license.
6	Fees for Expedited Licensure	A member state is authorized to charge a fee for an expedited license that is issued or renewed through the Compact. The individual state fees currently vary from a low of $75.00 in Alabama to a high of $700 in Maine.[36]
	Rulemaking authority	The Commission is authorized is develop rules relating to fees for expedited licenses. The rules are not permitted to limit the authority of the member states, the regulating authority of the member states, or to impose and determine the amount of the fee charged by the member states.
7	Renewal and Continued Participation *Renewal license process created*	A physician with an expedited license in a member state must complete a renewal process with the Commission if the physician: - Maintains a full and unrestricted license in a SPL. - Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction. - Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action relating to non-payment of fees related to a license. - Has not had a controlled substance license or permit suspended or revoked by a state or the United State Drug Enforcement Administration.
	Continuing education required for renewal with member state	Physicians are required to comply with all continuing education and professional development requirements for renewal of a license issued by a member state.
	Fees collected, if any, by member state.	The Commission must collect any renewal fees charged for the renewal of a license and distribute the fees to the appropriate member board. Upon payment of fees, a physician's license may be renewed. Any information collected during the renewal process shall also be shared with all member boards.
	Rulemaking authority.	The Commission is authorized to develop rules to address the renewal of licenses.

[36] Interstate Medical Licensure Compact, *What Does It Cost?* https://imlcc.org/what-does-it-cost/ (last visited Mar. 8, 2019).

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
8	Coordinated Information Systems *Authorized to create database of all applicants* *By request, may share data* *Rulemaking authority*	The Commission is required to establish a database of all licensed physicians who have applied for licensure. Member boards are required to report disciplinary or investigatory actions as required by Commission rule. Member boards may also report any non-public complaint, disciplinary, or investigatory information not required to be reported to the Commission. Upon request, member boards may share complaint or disciplinary information about physicians to another member board. All information provided to the Commission or distributed by the member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters. The Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.
9	Joint Investigations *Permits joint investigations between the state and the member boards*	Licensure and disciplinary records of physicians are deemed investigative. A member board may participate with other member boards in joint investigations of physicians licensed by the member boards in addition to the authority granted by the member board and its respective Medical Practice Act or other respective state law. Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact. Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.
10	Disciplinary Actions *Licensure actions specific actions to reinstate* *Discipline by a member state has reciprocal actions*	Any disciplinary action taken by any member board against a physician licensed through the Compact is be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that State. If the physician's license is revoked, surrendered, or relinquished in lieu of discipline in the SPL, or suspended, then all licenses issued to that physician by member boards are automatically placed, without any further action necessary by any member board, on the same status. If the SPL subsequently reinstates the physician's license, a license issued to the physician by any other member board remains encumbered until that respective board takes action to specifically reinstate the license in a manner consistent with the Medical Practice Act in that state. If a disciplinary action is taken against the physician in a member state that is the physician's SPL, any other member state may deem the action conclusive as to matter of law and fact decided, and: - Impose the same or lesser sanction or sanctions against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or - Pursue separate disciplinary action against the physician under the Medical Practice Act, regardless of the action taken in other

Provisions of the Interstate Medical Licensure Compact		
Section	**Title**	**Description**
		member states. If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board or boards is be suspended, automatically, and without further action necessary by the other board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the Medical Practice Act of that state.
11	Interstate Medical Licensure Compact Commission *Recognizes creation of Commission and state's representative with 2 Commissioners, one from each regulatory board* *Availability of Commission meetings, except for certain topics* *Public notice required*	The member states create the Interstate Medical Licensure Compact Commission as a joint agency of the member states and administration of the Compact. The Commission has all the duties, powers, and responsibilities set forth in the Compact, plus any other powers conferred upon it by the member states through the Compact. Each member state has two (2) two voting representatives appointed by each member state to serve as Commissioners. For states with separate regulatory boards for allopathic and osteopathic regulatory boards, the member appoints one representative from each member board. A Commissioner must be: - An allopathic or osteopathic physician appointed to a member board. - Executive director, executive secretary, or similar executive or a member board, or - Member of the public appointed to a member board. The Commission must meet at least once per calendar year and at least a portion of the meeting shall be a business meeting which shall include the election of officers. The Chair may call additional meeting and shall call for all meeting upon the request of a majority of the member states. Meetings are permitted via telecommunication according to the Bylaws. Each Commissioner is entitled to one vote. A majority of Commissioners constitutes a quorum, unless a larger quorum is required by the Bylaws of the Commission. A Commissioner may not delegate a vote to another Commissioner. In the absence of its Commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who meets the requirements of being a Commissioner. The Commission must provide public notice of all meetings and all meetings shall be open to the public. A meeting may be closed to the public, in full or in portion, when it determines by a 2/3 vote of the Commissioners present, that an issue or matter would likely to: - Relate solely to the internal personnel practices and procedures

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		of the Interstate Commission. - Discuss matters specifically exempted from disclosure by federal statute; - Discuss trade secrets, commercial, or financial information that is privileged or confidential; - Involve accusing a person of a crime, or formally censuring a person; - Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; - Discuss investigative records compiled for law enforcement purposes; or - Specifically relate to the participation in a civil action or other legal proceeding.
	Availability of public data from the Commission	The Commission must make its information and official records, to the extent, not otherwise designated in the Compact or by its rules, available to the public for inspection.
	Creates an executive committee to act on behalf of the Commission	An executive committee is established which has the authority to act on behalf of the Commission, with the exception of rulemaking, when the Commission is not in session. The executive committee oversees the administration of the Compact, including enforcement and compliance with the Compact, its bylaws and rules, and other such duties as necessary. The Commission may establish other committees for governance and administration of the Compact.
12	Powers and Duties of the Interstate Commission *Recognizes creation of the Commission*	The Commission has the duties and the powers to: - Oversee and administer the Compact. - Promulgate rules which are binding. - Issue advisory opinions upon the request of member states concerning the meaning or interpretation of the Compact or its bylaws, rules, and actions. - Enforce compliance with the Compact, provisions, the rules, and the bylaws. - Establish and appoint committees, including the executive committee, which has the power to act on behalf of the Interstate Commission. - Pay, or provide for the payment of Commission expenses. - Establish and maintain one or more offices. - Borrow, accept, hire, or contract for services of personnel. - Purchase and maintain insurance and bonds. - Employ an executive director with power to employ, select, or appoint employees, agents, or consultants, determine their duties, and fix their compensation. - Establish personnel policies and programs. - Accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of it consistent with conflict of interest policies as established by the Commission. - Lease, purchase, accept contributions, or donation of, or otherwise own, hold, improve or use, any property, real, personal, or mixed. - Establish a budget and make expenditures.

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		- Adopt a seal and bylaws governing the management and operation of the Commission. - Report annually to the legislatures and governors of the members concerning the activities of the Commission during the preceding year, including reports of financial audits and any recommendations that may have been adopted by the Commission. - Coordinate education, training, and public awareness regarding the Compact, its implementation and operation. - Maintain records in accordance with bylaws. - Seek and obtain trademarks, copyrights, and patents. - Perform such functions as may be necessary or appropriate to achieve the purpose of the Compact.
13	Finance Powers *Provides for annual assessment* *Requires rule for any assessment* *No pledging credit without authorization* *Yearly audits*	The Compact authorizes an annual assessment levied on each member state to cover the costs of operations and activities of the Commission and its staff. The assessment must be sufficient to cover the amount not provided by other sources and needed to cover the annual budget approved each year by the Commission. The Compact requires that the assessment be memorialized by rule binding all the member states. The Commission is not authorized to pledge the credit of any of the member states, except by, and with the authority of, the member states. The Compact requires yearly financial audits conducted by a certified or licensed public accountant and the report is to be included in the Commission's annual report.
14	Organization and Operation of the Interstate Commission *Annual officer election* *No officer remuneration* *Liability protection for actions within scope of duties and responsibilities only for*	The Compact creates a requirement for the Commission to adopt bylaws by a two-thirds (2/3) vote within twelve months of the first meeting which has already occurred. The first Bylaws were adopted in October 2015.[37] A Chair, Vice Chair, and Treasurer are be elected or appointed each year by the Commission. Officers serve without remuneration. Officers and employees are immune from suit and liability, either personally or in their professional capacity, for a claim for damage to or loss of property or personal injury or other civil liability cause or arising out of, or relating to, an actual or alleged act, error or omission that occurred with the scope of Commission employment, duties, or responsibilities, provided such person should not be protected from suit or liability for damage or loss, injury or liability caused by the intentional or willful and wanton conduct of such a person. The liability of the executive director and Commission employees or representatives of the Commission, acting within the scope of their employment, may not exceed the limits set forth under the state's Constitution and laws for state officials, employees, and agents.

[37] Interstate Medical Licensure Compact, *Annual Report 2017,* https://imlcc.org/wp-content/uploads/2018/03/IMLCC-Annual-Report-2017-1.pdf (last visited Mar. 11, 2019).

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	officers, employees, and agents	The Compact provides that the Commission is considered an instrumentality of the state for this purpose. The Compact provides that the Commission must defend the executive director, its employees, and subject to the approval of the state's attorney general or other appropriate legal counsel, must defend in any civil action seeking to impose liability within scope of duties. The Compact provides that employees and representatives of the Commission shall be held harmless in the amount of any settlement or fees, including attorney fees and costs that occurred within the scope of employment or responsibilities and not a result of willful or wanton misconduct.
15	Rulemaking Functions of the Interstate Commission *Promulgate reasonable rules* *Judicial review at U.S. Federal District Court*	The Commission is required to promulgate reasonable rules in order to implement and operate the Compact and the Commission. The Compact adds that any attempt to exercise rulemaking beyond the scope of the Compact renders the action invalid. The rules should substantially conform to the "Model State Administrative Procedures Act" of 2010 and subsequent amendments thereto. The Compact allows for judicial review of any promulgated rule. A petition may be filed thirty (30) days after a rule has been promulgated in the U.S. District Court in Washington, D.C., or the federal court where the Commission is located.[38] The Compact requests deference to the Commission's action consistent with state law.
16	Oversight of Interstate Contract *Enforcement* *Service of process*	The Compact is the responsibility of each state's own executive, legislative, and judicial branch to oversee and enforce. All courts are to take judicial notice of the Compact and any adopted administrative rules in a proceeding involving Compact subject matter. The Compact provides that the Commission is entitled to receive service of process in any proceeding and have standing in any proceeding. Failure to serve the Commission renders a judgment null and void as to the Commission, the Compact, or promulgated rule.
17	Enforcement of Interstate Contract	The Compact provides the Commission reasonable discretion to enforce the provisions and rules of the Compact, including when and where to initiate legal action. The Commission is permitted to seek a range of remedies.
18	Default Procedures	The Compact provides a number of reasons a member state may default on the Compact, including failure to perform required duties and responsibilities and the options available to the Commission. The Compact requires the Commission to promulgate rules to address how physician licenses are affected by the termination of a member state from the Compact. The rules must also ensure that a member state does not bear any costs when a state has been found to be in default.

[38] The Interstate Medical Licensure Compact Commission is currently headquartered in Littleton, Colorado. *See* Interstate Medical License Commission, Frequently Asked Questions (FAQS), https://imlcc.org/faqs/

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Section	**Title**	**Description**
		The Compact provides an appeal process for the terminating state and procedures for attorney's fees and costs.
19	Dispute Resolution	The Compact authorizes the Commission to use dispute resolution tools to resolve disputes between states, such as mediation and binding dispute resolution. The Commission must promulgate rules for the dispute resolution process.
20	Member States, Effective Date and Amendment	The Compact allows any state to become a member state and that the Compact is binding upon the legislative enactment of the Compact by no less than seven (7) states.[39]
21	Withdrawal	A member state may withdraw from the Compact through repeal of this section of law which inserted the Compact into state statute. Any repeal of the Compact through repeal of the state law cannot take effect until one (1) year after the effective date of such an action and written notice has been given by the withdrawing state to the governor of each other member state. The Compact provision also requires that upon introduction of any repeal legislation, that the withdrawing state immediately notify the Chairperson of the Commission of the legislation. The Compact provides that it is the Commission's responsibility to notify the other member states within 60 (sixty) days of its receipt of information about legislation that would repeal that state's participation in the Compact. The withdrawing state would be responsible for any dues, obligations, or liabilities incurred through the date of withdrawal. Reinstatement is an option under the Compact. The Compact authorizes the Commission to develop rules to address the impact of the withdrawal of a member state on licenses.
22	Dissolution	When the membership of the Compact is reduced to one, the Compact shall be dissolved. Once dissolved, the Compact is null and void. Once concluded, any surplus funds of the Commission shall be distributed in accordance with the bylaws.
23	Severability and Construction	If any part of this Compact is not enforceable, the remaining provisions are still enforceable. The provisions of the Compact are to be liberally construed, and nothing is to be construed so as to prohibit the applicability of other interstate compacts to which states might be members.
24	Binding Effect of Compact and Other Laws	This Compact does not prohibit the enforcement of other laws which are not in conflict with this Compact. All laws which are in a member state which are inconsistent with this Compact are superseded to the point of the contact. The actions of the Commission are binding on the member states, including all promulgated rules and the adopted bylaws of the Commission. All agreements between the Commission and the

[39] The Compact is in force now. The Commission was seated for the first time in October 2015 and issued its first letters of qualification to physicians in April 2017. *See* Interstate Medical Licensure Compact, *https://imlcc.org/faqs/* (last Mar. 11, 2019).

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		member state are binding in accordance with their terms. In the event that any provision of this Compact exceeds Florida's constitutional limits imposed on the legislature of any member state, such provision is ineffective to the extent that the conflict of the constitutional provision in question in that member state.

OPPAGA Review of the IMLC

Chapter 2019-138, Law of Florida, directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze the IMLC and develop recommendations addressing Florida's prospective entrance into the Compact. On October 1, 2019, OPPAGA published its report.[40] To avoid legal conflict, OPPAGA recommended that the Legislature:

- Repeal Florida's initial licensure provisions that fall outside of the Compact's licensure provisions. Florida does not license persons who are listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.[41] The Compact has no comparable requirement.
- Enact statutory language providing physicians who practice in Florida whose licenses were revoked in their State of Principal License (SPL) an opportunity to challenge the reason for the revocation or suspension in Florida.
- Enact statutory language clarifying that the Compact pays claims or judgments arising from the Commission's employment-related actions in the state.
- Provide an exception from public meeting requirements to allow closed meetings of the Commission.
- Provide an exception from public records requirements to exempt application records received by the Commission from disclosure.
- Set a Compact implementation date to ensure that the DOH would have adequate time to make required changes to rule, forms, and technological infrastructure in order to process licenses through the Compact.

OPPAGA also found that the average time to receive a license through the IMLC is 55 days, while the average time to receive a license from the state of Florida is 10-15 days.[42] The average time to receive a license through the IMLC is 19 days if the time for obtaining the Letter of Qualification is excluded.

While The Average Time to Receive a License Via the Compact Is Higher Than the Average Time to Receive a Florida License, Physicians May Receive Multiple Licenses Under the Compact Process

Licensure Process	Average Number of Days to Receive an LOQ	Average Number of Days to Receive a License	Total Time (In Average Number of Days) to Receive a License	Type of License Received
Florida Licensure	N/A	10-15 days[1,2]	10-15 days[1,2]	Florida License
Compact Licensure	36 days	19 days	55 days	One or more licenses in compact state(s) of physician's choice

[1] The average number of days for licensure was 10 days for osteopathic physicians and 15 days for medical doctors.
[2] This is the average time to receive a license under circumstances where there are no complications or missing information from the applications.
Source: OPPAGA analysis of Florida Department of Health data and commission data.

Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law. [43]

[40] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Florida's Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts*, Report No. 19-07, (Oct. 1, 2019) available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1907rpt.pdf (last visited January 31, 2020).
[41] Section 456.0635, F.S.
[42] *Supra* note 40.
[43] FLA. CONST. art. X, s. 13.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.[44] According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . ." Section 768.28(5), F.S., imposes a $200,000 limit on the government's liability to a single person, and a $300,000 total limit on liability for claims arising out of a single incident.

Florida Center for Nursing

The Legislature established the Florida Center for Nursing (Center) to address the supply and demand of nurses in the state, including issues of recruitment, retention, and utilization of nurse workforce resources.[45] The primary goals of the Center are to:

- Develop a strategic statewide plan for nursing manpower in this state by:
    - Establishing and maintaining a database on nursing supply and demand in the state, to include current supply and demand;
    - Analyzing the current supply and demand in the state and making future projections of such; and
    - Selecting priorities to be addressed.
- Convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:
    - Review and comment on data analysis prepared for the center;
    - Recommend systemic changes, including strategies for implementation of recommended changes; and
    - Evaluate and report the results of these efforts to the Legislature and others.
- Enhance and promote recognition, reward, and renewal activities for nurses in the state by:
    - Promoting nursing excellence programs such as magnet recognition by the American Nurses Credentialing Center;
    - Proposing and creating additional reward, recognition, and renewal activities for nurses; and
    - Promoting media and positive image-building efforts for nursing.

The Center is governed by a 16-member board of directors, which includes:

- Four members recommended by the President of the Senate, at least one of whom shall be a registered nurse recommended by the Florida Organization of Nurse Executives and at least one other representative of the hospital industry recommended by the Florida Hospital Association;
- Four members recommended by the Speaker of the House of Representatives, at least one of whom shall be a registered nurse recommended by the Florida Nurses Association and at least one other representative of the long-term care industry;
- Four members recommended by the Governor, two of whom shall be registered nurses;
- One nurse educator recommended by the Board of Governors who is a dean of a College of Nursing at a state university; and
- Three nurse educators recommended by the State Board of Education, one of whom must be a director of a nursing program at a Florida College System institution.

The powers and duties of the board of directors include:

- Employing an executive director;
- Determining operational policy;
- Electing a chair and officers, to serve 2-year terms;
- Establishing committees of the board;

[44] Chapter 73-313, L.O.F., codified at s. 768.28, F.S.
[45] Section 464.0195, F.S.

- Appoint a multidisciplinary advisory council for input and advice on policy matters;
- Implementing the major functions of the center as established in the goals; and
- Seeking and accepting non-state funds for sustaining the center and carrying out center policy.

Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Intern Registration

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.[46] 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.[47] 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.[48]

An applicant seeking registration as an intern must:[49]

- 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.

An intern registration expires 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.[50] DOH has no authority to extend an intern registration beyond the 60 months if there are extenuating circumstances.

Certified Master Social Workers

Currently, an individual may be designated as a certified master social worker if the individual applies to DOH and submits an application fee of $50 and an initial certification fee of $150.[51] To qualify for certification, an applicant must:

- Possess a master's or doctoral degree from an accredited program; and
- Have at least three years' experience in clinical service or administrative activities, two of which must be at the post-master's level.

There is no defined scope of practice for certified master's social workers in statute or rule. However, statute expressly prohibits certified master social workers from providing clinical services.[52]

Licensed Clinical Social Workers

Licensed 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, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering to prevent and

[46] Section 491.005, F.S. A procedure for licensure by endorsement is provided in s. 491.006, F.S.
[47] Section 491.0045, F.S.
[48] Rule 64B4-2.001, F.A.C.
[49] Section 491.0045(2), F.S.
[50] Section 491.0045(6), F.S.
[51] Rule 64B25-28.002, F.A.C. Section 491.0145, F.S., authorizes an application fee of up to $250 and an examination fee of up to $250.
[52] Section 491.0145(6), F.S.

treat undesired behavior and enhance of mental health.[53] An applicant seeking licensure as a clinical social worker must:[54]

- Possess a master's or doctoral degree from an accredited program;
- Have a least two years' experience in clinical social work;
- Pass a theory and practice examination approved by DOH; and
- Demonstrate knowledge of laws and rules governing the practice.

Licensed Clinical Social Workers must pass an examination offered by the American Association of State Social Worker Boards.[55] In 1999, the American Association of State Social Worker Boards changed its name to the Association of Social Work Boards.[56]

Marriage and Family Therapists

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.[57] An applicant seeking licensure as a mental health counselor must:[58]

- Possess a master's degree from an accredited program;
- Complete 36 semester hours of graduate coursework that includes a minimum of 3 semester hours of graduate-level coursework in:
    - The dynamics of marriage and family systems;
    - Marriage therapy and counseling theory;
    - Family therapy and counseling theory and techniques;
    - Individual human development theories throughout the life cycle;
    - Personality or general counseling theory and techniques;
    - Psychosocial theory; and
    - Substance abuse theory and counseling techniques.
- Complete at least one graduate-level course of 3 semester hours in legal, ethical, and professional standards;
- Complete as least one graduate-level course of 3 semester hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction;
- Complete at least one graduate-level course of 3 semester hours in behavioral research;
- Complete at least one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services;
- Complete two years of post-master's supervised experience under the supervision of a licensed marriage and family therapist with five years of experience or the equivalent who is a qualified supervisor as determined by the board;
- Pass a board-approved examination; and
- Demonstrate knowledge of laws and rules governing the practice.

DOH must verify that an applicant's education matches the specified courses and hours as outlined in statute. However, there are organizations that accredit marriage and family therapy education programs, including the Commission on Accreditation for Marriage and Family Therapy Education and

[53] Section 491.003(7), F.S.
[54] Section 491.005(1), F.S.
[55] Id.
[56] Association of Social Work Boards, *History*, available at https://www.aswb.org/about/history/ (last visited January 31, 2020).
[57] Id.
[58] Section 491.005(3), F.S. An individual may qualify for a dual license in marriage and family therapy if he or she passes an examination in marriage and family therapy and has held an active license for at least three years as a psychologist, clinical social worker, mental health counselor, or advanced registered nurse practitioner who is determined by the Board of Nursing to be a specialist in psychiatric mental health (s. 491.0057, F.S.)

the Council for the Accreditation of Counseling and Related Educational Programs that establish the minimum standards to meet the requirements to practice the profession.[59]

Mental Health Counselors

A mental health counselor is an individual who uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development and is based on 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.[60] To qualify for licensure as a mental health counselor, an individual must:[61]

- Have a master's degree from a mental health counseling program accredited by the Council of the Accreditation of Counseling and Related Educational Programs, or a program related to the practice of mental health counseling that includes coursework and a 1,000-hour practicum, internship, or fieldwork of at least 60 semester hours that meet certain requirements;
- Have at least two years of post-master's supervised clinical experience in mental health counseling;
- Pass an examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors; and
- Pass an eight-hour course on Florida laws and rules approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.[62]

Currently, an applicant for a mental health counselor license must, by rule, pass the National Clinical Mental Health Counseling Examination. Current law refers to an outdated mental health counseling examination.

Effect of Proposed Changes

Interstate Medical Licensure Compact

PCS for HB 1143 enacts the Interstate Medical Licensure Compact (see a description of the compact provisions in the Present Situation section), and authorizes Florida to enter into the IMLC will all other jurisdictions that have legally joined the IMLC. The bill authorizes DOH to adopt rules to implement the IMLC. Under the bill, any physician licensed to practice medicine or osteopathic medicine under the IMLC is deemed to be licensed under chapter 458 F.S., or chapter 459, F.S., respectively.

The bill provides Florida-licensed physicians or those licensed under the IMLC whose licensure is disciplined by another state access to the administrative review process under Florida law.

Commissioners

The bill requires the appointed commissioners to ensure that the IMLC Commission complies with Florida laws on public records and open meetings. The bill also provides that commissioners and any administrator, officer, executive director, employee, or representative of the IMLC Commission, when acting within the scope of their employment or responsibilities in this state are considered agents of the state. The bill requires the IMLC Commission to pay any claims or judgements that arise and authorizes the IMLC Commission to maintain insurance coverage to any such claims or judgments.

Florida Center for Nursing Board of Directors

[59] *See* Commission on Accreditation for Marriage and Family Therapy Education, *What Are the Benefits of COAMFTE Accreditation*, available at https://www.coamfte.org/COAMFTE/Accreditation/About_Accreditation.aspx (last visited December 2, 2019), and Council for the Accreditation of Counseling and Related Educational Programs, *About CACREP*, available at https://www.cacrep.org/about-cacrep/ (last visited December 2, 2019).
[60] Sections 491.003(6) and (9), F.S.
[61] Section 491.005(4), F.S.
[62] Section 491.005(4), F.S., and r. 64B4-3.0035, F.A.C.

The bill revises the requirements for appointment to the Florida Center for Nursing Board of Directors. The bill retains the number of members that the Governor, President of the Senate, Speaker of the House of Representatives, the Board of Governors, and the State Board of Education must appoint, but removes the specifications for such appointments.

Mental Health Professions

Certified Master Social Workers

The bill requires DOH to license, as a certified master social worker (CMSW), an individual who applies to DOH and:

- Remits the appropriate fee as established by the Board;[63]
- Submits proof of receipt of a doctoral degree in social work or a master's degree to the Board;
- Submits proof of two years' experience providing clinical services or performing administrative activities to the Board; and
- Passes the Board-designated licensure examination.

The bill defines the scope of practice for a certified master social worker as the application of social work theory, knowledge, methods, and ethics, and the professional use of the self to restore or enhance social enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities. This also includes the application of specialized knowledge and advanced practice skills in non-diagnostic assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.

The bill requires CMSWs to use the title "certified master social worker" and the acronym "CMSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media and signs on which the CMSW is named.

Mental Health Interns

The bill authorizes the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to make a one-time exception to the 60-month limit on an internship registration. Such exceptions may only be granted in an emergency or hardship case, as defined by rule. The bill deletes obsolete language related to biennial renewals of intern registrations.

Licensed Clinical Social Workers

The bill updates the name of the organization that administers the licensure examination for clinical social work licensure applicants to the Association of Social Work Boards, which was previously known as the American Association of State Social Work Boards.[64] The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

The bill also eliminates the specified coursework required for licensure that is currently enumerated in statute, and authorizes the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling adopt rules on the specific course requirements. This will simplify the education review process and expedite licensure.[65]

Marriage and Family Therapists

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[63] Under current law, DOH is authorized to charge a nonrefundable application fee of up to $250, as established by DOH rule.
[64] *See* Association of Social Work Boards, *History*, available at https://www.aswb.org/about/history/ (last visited January 30, 2020).
[65] Fla. Department of Health, *2020 Agency Legislative Bill Analysis for HB 1143*, (Jan. 21, 2020), on filed with the Health Quality Subcommittee.

The bill requires that an applicant for licensure hold a master's degree with an emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education or a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs. An applicant may also qualify for licensure if he or she holds a master's degree in a closely related field and has completed graduated courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The bill eliminates specified coursework and clinical experience required for licensure that is currently enumerated in statute.

To be licensed as a marriage and family therapist, s. 491.005(3), F.S., requires an applicant to complete two years of clinical experience. However, later in the same paragraph, it states the clinical experience required is three years. The bill corrects the scrivener's error in the paragraph to clarify that two years of clinical experience is required for licensure. The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

Licensed Mental Health Counselors

The bill updates the name of the organization that administers the licensure examination for mental health counseling licensure applicants to the National Board for Certified Counselors or its successor. The bill revises the content areas that must be included in educational programs used to qualify for licensure to include substance abuse; legal, ethical, and professional standards issues in the practice of mental health counseling; and diagnostic process.

The bill reduces the number of hours required for the clinical practicum or internship from 1,000 hours to 700 hours to conform the number of hours to the accreditation standards established by the Council for Accreditation of Counseling and Related Educational Programs. The bill requires the clinical practicum or internship to include at least 280 hours of direct client services. The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

The bill requires that applicants who apply for licensure after July 1, 2026, hold a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs.

Licensure by Endorsement

The bill repeals educational requirements for applicants for licensure by endorsement. Such applicant qualifies for licensure if he or she holds a valid, active license to practice in another state for 3 of the 5 years preceding the date of application, passes an equivalent licensure examination, and is not under investigation for and has not been found to have committed any act that would constitute a licensure violation in Florida.

The bill clarifies that DOH may deny or impose penalties on the license of a certified master social worker who violates the practice act or ch. 456, F.S., the general regulatory statute by deleting an inaccurate reference to psychologists. This will alleviate confusion regarding the authority of DOH to impose such discipline or deny a license.

The bill also adds social media to the list of promotional materials required to include the professional titles of all licensees, certificateholders, provisional licensees and interns in professions of clinical social work, marriage and family therapy, and mental health counseling.

The bill makes conforming changes and deletes obsolete provisions.

B. SECTION DIRECTORY:

Section 1: Creates s. 456.4501, F.S., relating to Interstate Medical Licensure Compact.
Section 2: Creates s. 456.4502, F.S., relating to Interstate Medical Licensure Compact; disciplinary proceedings.

Section 3: Creates s. 456.4503, F.S., relating to Interstate Medical Licensure Compact Commissioners.
Section 4: Creates s. 456.4504, F.S., relating to Interstate Medical Licensure Compact rules.
Section 5: Creates s. 458.3129, F.S., relating to Interstate Medical Licensure Compact.
Section 6: Creates s. 459.074, F.S., relating to Interstate Medical Licensure Compact.
Section 7: Amends s. 464.0196, F.S., relating to Florida Center for Nursing; board of directors.
Section 8: Amends s. 491.003, F.S., relating to definitions.
Section 9: Amends s. 491.004, F.S., relating to Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.
Section 10: Amends s. 491.0045, F.S., relating to intern registration, requirements.
Section 11: Amends s. 491.005, F.S., relating to licensure by examination.
Section 12: Amends s. 491.0057, F.S., relating to dual licensure as a marriage and family therapist.
Section 13: Amends s. 491.006, F.S., relating to licensure or certification by endorsement.
Section 14: Amends s. 491.007, F.S., relating to renewal of license, registration, or certificate.
Section 15: Amends s. 491.009, F.S., relating to discipline.
Section 16: Amends s. 491.012, F.S., relating to violations; penalty; injunction.
Section 17: Amends s. 491.0145, F.S., relating to certified master social workers.
Section 18: Amends s. 491.0149, F.S., relating to display of license; use of professional title on promotional materials.
Section 19: Repeals s. 491.015, F.S., relating to duties of the department as to certified master social workers.
Section 20: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; risk management programs.
Section 21: Amends s. 414.065, F.S., relating to noncompliance with work requirements.
Section 22: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DOH may experience an indeterminate, recurring increase in revenue associated with the applications and initial and renewal licensure fees under the IMLC.[66]

2. Expenditures:

   DOH may experience a significant, negative fiscal impact associated with the possible increase in the number of physicians licensed in Florida under the IMLC and the preparation of letters of qualification for Florida licensees.[67] With the increase in licensees, costs associated with regulation and complaints and investigations will increase; however, the fiscal impact is indeterminate.[68]

   DOH will incur costs to update the Licensing and Enforcement Information Database, which cannot be calculated at this time.[69]

   DOH will incur costs associated with the rulemaking authorized in the bill which current resources are adequate to absorb.[70]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[66] Id at p. 9.
[67] Id.
[68] Id.
[69] Id.
[70] Id.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The IMLC may lead to more physicians practicing in Florida, which may increase access for patients and create additional competition for existing physicians.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Delegation of Legislative Authority

The bill delegates authority to the commission to adopt rules that facilitate and coordinate the implementation and administration of the IMLC.

If enacted into law, the state will effectively bind itself to rules not yet adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.[71,72] Under this holding, the constitutionality of the bill's adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely address this issue in the context of interstate compacts.

The most recent opportunity Florida courts have had to address this issue appears to be in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).[73] The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."[74] The court states that "the precise legal effect of the ICPC compact administrators'

[71] *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772 (1945).
[72] This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. *See Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).
[73] 801 So.2d 1047 (Fla. 1st DCA 2001).
[74] *Id* at 1052.

regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.[75] However, in a footnote, the court provided:

> Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. *See Freimuth v. State,* 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.,* 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.,* 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.,* 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.[76]

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill's delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of legislative authority. This case, however, does not appear to be binding as precedent as the court's footnote discussion is dicta.[77]

<u>Public Records and Open Meetings</u>

Provisions in the compact conflict with Florida's public records and open meeting requirements. All or portions of an IMLC Commission meeting may be closed if the topic of the meeting is likely to involve certain matter, such as personnel matters or investigative records. Recordings, minutes, and records generated in such matter are also not publicly available.

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[78]

B. RULE-MAKING AUTHORITY:

The bill authorizes the IMLC Commission adopt rules to facilitate and coordinate the implementation and administration of the compact. The IMLC specifies that the rules have the force and effect of law

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[75] *Id.*
[76] *Id.*
[77] Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no biding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).
[78] Art. I, s. 24(c), Fla. Const.

and are binding in all party states. If a party state fails to meet its obligations under the IMLC or the promulgated rules, the state may be subject to remedial training, alternative dispute resolution, suspension, termination, or legal action.

The compact details the rule-making process that must be followed including, notice, an opportunity for public participation, and hearings. The compact also provides a procedure for emergency rule-making in cases of imminent danger to public health, safety, or welfare, to prevent financial loss to the state's or commission, or to comply with federal laws or regulations. All rules and amendments are binding on a party state as of the effective date specified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to Department of Health; creating s.
3 456.4501, F.S.; implementing the Interstate Medical
4 Licensure Compact in this state; providing for an
5 interstate medical licensure process; providing
6 requirements for multistate practice; creating s.
7 456.4502, F.S.; establishing that a formal hearing
8 before the Division of Administrative Hearings must be
9 held if there are any disputed issues of material fact
10 when the licenses of certain physicians and
11 osteopathic physicians are suspended or revoked by
12 this state under the compact; requiring the department
13 to notify the division of a petition for a formal
14 hearing within a specified timeframe; requiring the
15 administrative law judge to issue a recommended order;
16 requiring the Board of Medicine or the Board of
17 Osteopathic Medicine, as applicable, to determine and
18 issue final orders in certain cases; providing the
19 department with standing to seek judicial review of
20 any final order of the boards; creating s. 456.4504,
21 F.S.; authorizing the department to adopt rules;
22 creating s. 458.3129, F.S.; establishing that a
23 physician licensed under the Interstate Medical
24 Licensure Compact is deemed to be licensed under
25 chapter 458, F.S.; requiring the Board of Medicine to

26 ensure the Interstate Medical Licensure Compact
27 Commission to comply with chapter 119; creating s.
28 459.074, F.S.; establishing that an osteopathic
29 physician licensed under the Interstate Medical
30 Licensure Compact is deemed to be licensed under
31 chapter 459, F.S.; requiring the Board of Osteopathic
32 Medicine to ensure the Interstate Medical Licensure
33 Compact Commission to comply with chapter 119;
34 amending s. 464.0196, F.S.; revising the membership of
35 the board of directors of the Florida Center for
36 Nursing; deleting obsolete provisions; amending s.
37 491.003, F.S.; providing definitions; amending s.
38 491.004, F.S.; deleting an obsolete provision;
39 amending s. 491.0045, F.S.; revising intern
40 registration requirements; providing an exception;
41 amending s. 491.005, F.S.; revising the licensure
42 requirements for clinical social workers, marriage and
43 family therapists, and mental health counselors;
44 amending s. 491.0057, F.S.; requiring that an
45 applicant for dual licensure as a marriage and family
46 therapist pass an examination designated by the Board
47 of Clinical Social Work, Marriage and Family Therapy,
48 and Mental Health Counseling; amending s. 491.006,
49 F.S.; revising requirements for licensure or
50 certification by endorsement for certain professions;

51 amending s. 491.007, F.S.; deleting a provision
52 providing certified master social workers an exemption
53 from continuing education requirements; deleting a
54 provision requiring the board to establish a procedure
55 for the biennial renewal of intern registrations;
56 amending s. 491.009, F.S.; revising who may enter an
57 order denying licensure or imposing penalties against
58 an applicant for licensure under certain
59 circumstances; amending s. 491.012, F.S.; providing
60 that using the title "certified master social worker"
61 without a valid, active license is unlawful; amending
62 s. 491.0145, F.S.; requiring the department to license
63 an applicant for designation as a certified master
64 social worker under certain circumstances; providing
65 that applicants for designation as a certified master
66 social worker submit their application to the board;
67 deleting a provision relating to the nonrefundable fee
68 for examination set by department rule; authorizing
69 the board to adopt rules; amending s. 491.0149, F.S.;
70 requiring the use of applicable professional titles by
71 specified licensees and registrants on social media
72 and other specified materials; repealing s. 491.015,
73 F.S., relating to duties of the department as to
74 certified master social workers; amending s. 768.28,
75 F.S.; designating the state commissioners of the

76 Interstate Medical Licensure Compact Commission and
77 other members or employees of the commission as state
78 agents for the purpose of applying sovereign immunity
79 and waivers of sovereign immunity; requiring the
80 commission to pay certain claims or judgments;
81 authorizing the commission to maintain insurance
82 coverage to pay such claims or judgments; amending s.
83 414.065, F.S.; conforming a cross-reference; providing
84 an effective date.
85
86 Be It Enacted by the Legislature of the State of Florida:
87
88 Section 1. Section 456.4501, Florida Statutes, is created
89 to read:
90 456.4501 Interstate Medical Licensure Compact.—The
91 Interstate Medical Licensure Compact is hereby enacted into law
92 and entered into by this state with all other jurisdictions
93 legally joining therein in the form substantially as follows:
94
95 SECTION 1
96 PURPOSE
97
98 In order to strengthen access to health care, and in
99 recognition of the advances in the delivery of health care, the
100 member states of the Interstate Medical Licensure Compact have

101 allied in common purpose to develop a comprehensive process that
102 complements the existing licensing and regulatory authority of
103 state medical boards, provides a streamlined process that allows
104 physicians to become licensed in multiple states, thereby
105 enhancing the portability of a medical license and ensuring the
106 safety of patients. The Compact creates another pathway for
107 licensure and does not otherwise change a state's existing
108 Medical Practice Act. The Compact also adopts the prevailing
109 standard for licensure and affirms that the practice of medicine
110 occurs where the patient is located at the time of the
111 physician-patient encounter, and therefore, requires the
112 physician to be under the jurisdiction of the state medical
113 board where the patient is located. State medical boards that
114 participate in the Compact retain the jurisdiction to impose an
115 adverse action against a license to practice medicine in that
116 state issued to a physician through the procedures in the
117 Compact.
118
119 SECTION 2
120 DEFINITIONS
121
122 In this compact:
123 (a) "Bylaws" means those bylaws established by the
124 Interstate Commission pursuant to Section 11 for its governance,
125 or for directing and controlling its actions and conduct.

126 (b) "Commissioner" means the voting representative
127 appointed by each member board pursuant to Section 11.
128 (c) "Conviction" means a finding by a court that an
129 individual is guilty of a criminal offense through adjudication,
130 or entry of a plea of guilt or no contest to the charge by the
131 offender. Evidence of an entry of a conviction of a criminal
132 offense by the court shall be considered final for purposes of
133 disciplinary action by a member board.
134 (d) "Expedited License" means a full and unrestricted
135 medical license granted by a member state to an eligible
136 physician through the process set forth in the Compact.
137 (e) "Interstate Commission" means the interstate
138 commission created pursuant to Section 11.
139 (f) "License" means authorization by a state for a
140 physician to engage in the practice of medicine, which would be
141 unlawful without the authorization.
142 (g) "Medical Practice Act" means laws and regulations
143 governing the practice of allopathic and osteopathic medicine
144 within a member state.
145 (h) "Member Board" means a state agency in a member state
146 that acts in the sovereign interests of the state by protecting
147 the public through licensure, regulation, and education of
148 physicians as directed by the state government.
149 (i) "Member State" means a state that has enacted the
150 Compact.

151 (j) "Practice of medicine" means the diagnosis, treatment,
152 prevention, cure, or relieving of a human disease, ailment,
153 defect, complaint, or other physical or mental condition, by
154 attendance, advice, device, diagnostic test, or other means, or
155 offering, undertaking, attempting to do, or holding oneself out
156 as able to do, any of these acts.
157 (k) "Physician" means any person who:
158 (1) Is a graduate of a medical school accredited by the
159 Liaison Committee on Medical Education, the Commission on
160 Osteopathic College Accreditation, or a medical school listed in
161 the International Medical Education Directory or its equivalent;
162 (2) Passed each component of the United States Medical
163 Licensing Examination (USMLE) or the Comprehensive Osteopathic
164 Medical Licensing Examination (COMLEX-USA) within three
165 attempts, or any of its predecessor examinations accepted by a
166 state medical board as an equivalent examination for licensure
167 purposes;
168 (3) Successfully completed graduate medical education
169 approved by the Accreditation Council for Graduate Medical
170 Education or the American Osteopathic Association;
171 (4) Holds specialty certification or a time-unlimited
172 specialty certificate recognized by the American Board of
173 Medical Specialties or the American Osteopathic Association's
174 Bureau of Osteopathic Specialists; however, the specialty
175 certification or a time-unlimited specialty certificate does not

176 have to be maintained once a physician is initially determined
177 to be eligible for expedited licensure through the Compact;
178 (5) Possesses a full and unrestricted license to engage in
179 the practice of medicine issued by a member board;
180 (6) Has never been convicted, received adjudication,
181 deferred adjudication, community supervision, or deferred
182 disposition for any offense by a court of appropriate
183 jurisdiction;
184 (7) Has never held a license authorizing the practice of
185 medicine subjected to discipline by a licensing agency in any
186 state, federal, or foreign jurisdiction, excluding any action
187 related to non-payment of fees related to a license;
188 (8) Has never had a controlled substance license or permit
189 suspended or revoked by a state or the United States Drug
190 Enforcement Administration; and
191 (9) Is not under active investigation by a licensing
192 agency or law enforcement authority in any state, federal, or
193 foreign jurisdiction.
194 (l) "Offense" means a felony, high court misdemeanor, or
195 crime of moral turpitude.
196 (m) "Rule" means a written statement by the Interstate
197 Commission promulgated pursuant to Section 12 of the Compact
198 that is of general applicability, implements, interprets, or
199 prescribes a policy or provision of the Compact, or an
200 organizational, procedural, or practice requirement of the

201 Interstate Commission, and has the force and effect of statutory
202 law in a member state, if the rule is not inconsistent with the
203 laws of the member state. The term includes the amendment,
204 repeal, or suspension of an existing rule.
205 (n) "State" means any state, commonwealth, district, or
206 territory of the United States.
207 (o) "State of Principal License" means a member state
208 where a physician holds a license to practice medicine and which
209 has been designated as such by the physician for purposes of
210 registration and participation in the Compact.
211
212 SECTION 3
213 ELIGIBILITY
214
215 (a) A physician must meet the eligibility requirements as
216 defined in Section 2(k) to receive an expedited license under
217 the terms and provisions of the Compact.
218 (b) A physician who does not meet the requirements of
219 Section 2(k) may obtain a license to practice medicine in a
220 member state if the individual complies with all laws and
221 requirements, other than the Compact, relating to the issuance
222 of a license to practice medicine in that state.
223
224 SECTION 4
225 DESIGNATION OF STATE OF PRINCIPAL LICENSE

226
227 (a) A physician shall designate a member state as the
228 state of principal license for purposes of registration for
229 expedited licensure through the Compact if the physician
230 possesses a full and unrestricted license to practice medicine
231 in that state, and the state is:
232 (1) The state of primary residence for the physician, or
233 (2) The state where at least 25% of the practice of
234 medicine occurs, or
235 (3) The location of the physician's employer, or
236 (4) If no state qualifies under subsection (1), subsection
237 (2), or subsection (3), the state designated as state of
238 residence for purpose of federal income tax.
239 (b) A physician may redesignate a member state as state of
240 principal license at any time, as long as the state meets the
241 requirements in subsection (a).
242 (c) The Interstate Commission is authorized to develop
243 rules to facilitate redesignation of another member state as the
244 state of principal license.
245
246 SECTION 5
247 APPLICATION AND ISSUANCE OF EXPEDITED LICENSURE
248
249 (a) A physician seeking licensure through the Compact
250 shall file an application for an expedited license with the

251 member board of the state selected by the physician as the state
252 of principal license.
253 (b) Upon receipt of an application for an expedited
254 license, the member board within the state selected as the state
255 of principal license shall evaluate whether the physician is
256 eligible for expedited licensure and issue a letter of
257 qualification, verifying or denying the physician's eligibility,
258 to the Interstate Commission.
259 (1) Static qualifications, which include verification of
260 medical education, graduate medical education, results of any
261 medical or licensing examination, and other qualifications as
262 determined by the Interstate Commission through rule, shall not
263 be subject to additional primary source verification where
264 already primary source verified by the state of principal
265 license.
266 (2) The member board within the state selected as the
267 state of principal license shall, in the course of verifying
268 eligibility, perform a criminal background check of an
269 applicant, including the use of the results of fingerprint or
270 other biometric data checks compliant with the requirements of
271 the Federal Bureau of Investigation, with the exception of
272 federal employees who have suitability determination in
273 accordance with U.S. 5 C.F.R. s. 731.202.
274 (3) Appeal on the determination of eligibility shall be
275 made to the member state where the application was filed and

276 shall be subject to the law of that state.
277 (c) Upon verification in subsection (b), physicians
278 eligible for an expedited license shall complete the
279 registration process established by the Interstate Commission to
280 receive a license in a member state selected pursuant to
281 subsection (a), including the payment of any applicable fees.
282 (d) After receiving verification of eligibility under
283 subsection (b) and any fees under subsection (c), a member board
284 shall issue an expedited license to the physician. This license
285 shall authorize the physician to practice medicine in the
286 issuing state consistent with the Medical Practice Act and all
287 applicable laws and regulations of the issuing member board and
288 member state.
289 (e) An expedited license shall be valid for a period
290 consistent with the licensure period in the member state and in
291 the same manner as required for other physicians holding a full
292 and unrestricted license within the member state.
293 (f) An expedited license obtained through the Compact
294 shall be terminated if a physician fails to maintain a license
295 in the state of principal licensure for a non-disciplinary
296 reason, without redesignation of a new state of principal
297 licensure.
298 (g) The Interstate Commission is authorized to develop
299 rules regarding the application process, including payment of
300 any applicable fees, and the issuance of an expedited license.

301
302 SECTION 6
303 FEES FOR EXPEDITED LICENSURE
304
305 (a) A member state issuing an expedited license
306 authorizing the practice of medicine in that state, or the
307 regulating authority of the member state, may impose a fee for a
308 license issued or renewed through the Compact.
309 (b) The Interstate Commission is authorized to develop
310 rules regarding fees for expedited licenses. However, those
311 rules shall not limit the authority of a member state, or the
312 regulating authority of the member state, to impose and
313 determine the amount of a fee under subsection (a).
314
315 SECTION 7
316 RENEWAL AND CONTINUED PARTICIPATION
317
318 (a) A physician seeking to renew an expedited license
319 granted in a member state shall complete a renewal process with
320 the Interstate Commission if the physician:
321 (1) Maintains a full and unrestricted license in a state
322 of principal license;
323 (2) Has not been convicted, received adjudication,
324 deferred adjudication, community supervision, or deferred
325 disposition for any offense by a court of appropriate

326 jurisdiction;
327 (3) Has not had a license authorizing the practice of
328 medicine subject to discipline by a licensing agency in any
329 state, federal, or foreign jurisdiction, excluding any action
330 related to non-payment of fees related to a license; and
331 (4) Has not had a controlled substance license or permit
332 suspended or revoked by a state or the United States Drug
333 Enforcement Administration.
334 (b) Physicians shall comply with all continuing
335 professional development or continuing medical education
336 requirements for renewal of a license issued by a member state.
337 (c) The Interstate Commission shall collect any renewal
338 fees charged for the renewal of a license and distribute the
339 fees to the applicable member board.
340 (d) Upon receipt of any renewal fees collected in
341 subsection (c), a member board shall renew the physician's
342 license.
343 (e) Physician information collected by the Interstate
344 Commission during the renewal process will be distributed to all
345 member boards.
346 (f) The Interstate Commission is authorized to develop
347 rules to address renewal of licenses obtained through the
348 Compact.
349
350 SECTION 8

351 COORDINATED INFORMATION SYSTEM
352
353 (a) The Interstate Commission shall establish a database
354 of all physicians licensed, or who have applied for licensure,
355 under Section 5.
356 (b) Notwithstanding any other provision of law, member
357 boards shall report to the Interstate Commission any public
358 action or complaints against a licensed physician who has
359 applied or received an expedited license through the Compact.
360 (c) Member boards shall report disciplinary or
361 investigatory information determined as necessary and proper by
362 rule of the Interstate Commission.
363 (d) Member boards may report any non-public complaint,
364 disciplinary, or investigatory information not required by
365 subsection (c) to the Interstate Commission.
366 (e) Member boards shall share complaint or disciplinary
367 information about a physician upon request of another member
368 board.
369 (f) All information provided to the Interstate Commission
370 or distributed by member boards shall be confidential, filed
371 under seal, and used only for investigatory or disciplinary
372 matters.
373 (g) The Interstate Commission is authorized to develop
374 rules for mandated or discretionary sharing of information by
375 member boards.

376
377 SECTION 9
378 JOINT INVESTIGATIONS
379
380 (a) Licensure and disciplinary records of physicians are
381 deemed investigative.
382 (b) In addition to the authority granted to a member board
383 by its respective Medical Practice Act or other applicable state
384 law, a member board may participate with other member boards in
385 joint investigations of physicians licensed by the member
386 boards.
387 (c) A subpoena issued by a member state shall be
388 enforceable in other member states.
389 (d) Member boards may share any investigative, litigation,
390 or compliance materials in furtherance of any joint or
391 individual investigation initiated under the Compact.
392 (e) Any member state may investigate actual or alleged
393 violations of the statutes authorizing the practice of medicine
394 in any other member state in which a physician holds a license
395 to practice medicine.
396
397 SECTION 10
398 DISCIPLINARY ACTIONS
399
400 (a) Any disciplinary action taken by any member board

401 against a physician licensed through the Compact shall be deemed
402 unprofessional conduct which may be subject to discipline by
403 other member boards, in addition to any violation of the Medical
404 Practice Act or regulations in that state.
405 (b) If a license granted to a physician by the member
406 board in the state of principal license is revoked, surrendered
407 or relinquished in lieu of discipline, or suspended, then all
408 licenses issued to the physician by member boards shall
409 automatically be placed, without further action necessary by any
410 member board, on the same status. If the member board in the
411 state of principal license subsequently reinstates the
412 physician's license, a license issued to the physician by any
413 other member board shall remain encumbered until that respective
414 member board takes action to reinstate the license in a manner
415 consistent with the Medical Practice Act of that state.
416 (c) If disciplinary action is taken against a physician by
417 a member board not in the state of principal license, any other
418 member board may deem the action conclusive as to matter of law
419 and fact decided, and:
420 (1) Impose the same or lesser sanction(s) against the
421 physician so long as such sanctions are consistent with the
422 Medical Practice Act of that state; or
423 (2) Pursue separate disciplinary action against the
424 physician under its respective Medical Practice Act, regardless
425 of the action taken in other member states.

426 (d) If a license granted to a physician by a member board
427 is revoked, surrendered or relinquished in lieu of discipline,
428 or suspended, then any license(s) issued to the physician by any
429 other member board(s) shall be suspended, automatically and
430 immediately without further action necessary by the other member
431 board(s), for ninety (90) days upon entry of the order by the
432 disciplining board, to permit the member board(s) to investigate
433 the basis for the action under the Medical Practice Act of that
434 state. A member board may terminate the automatic suspension of
435 the license it issued prior to the completion of the ninety (90)
436 day suspension period in a manner consistent with the Medical
437 Practice Act of that state.
438
439 SECTION 11
440 INTERSTATE MEDICAL LICENSURE COMPACT COMMISSION
441
442 (a) The member states hereby create the "Interstate
443 Medical Licensure Compact Commission."
444 (b) The purpose of the Interstate Commission is the
445 administration of the Interstate Medical Licensure Compact,
446 which is a discretionary state function.
447 (c) The Interstate Commission shall be a body corporate
448 and joint agency of the member states and shall have all the
449 responsibilities, powers, and duties set forth in the Compact,
450 and such additional powers as may be conferred upon it by a

451 subsequent concurrent action of the respective legislatures of
452 the member states in accordance with the terms of the Compact.
453 (d) The Interstate Commission shall consist of two voting
454 representatives appointed by each member state who shall serve
455 as Commissioners. In states where allopathic and osteopathic
456 physicians are regulated by separate member boards, or if the
457 licensing and disciplinary authority is split between multiple
458 member boards within a member state, the member state shall
459 appoint one representative from each member board. A
460 Commissioner shall be a(n):
461 (1) Allopathic or osteopathic physician appointed to a
462 member board;
463 (2) Executive director, executive secretary, or similar
464 executive of a member board; or
465 (3) Member of the public appointed to a member board.
466 (e) The Interstate Commission shall meet at least once
467 each calendar year. A portion of this meeting shall be a
468 business meeting to address such matters as may properly come
469 before the Commission, including the election of officers. The
470 chairperson may call additional meetings and shall call for a
471 meeting upon the request of a majority of the member states.
472 (f) The bylaws may provide for meetings of the Interstate
473 Commission to be conducted by telecommunication or electronic
474 communication.
475 (g) Each Commissioner participating at a meeting of the

476 Interstate Commission is entitled to one vote. A majority of
477 Commissioners shall constitute a quorum for the transaction of
478 business, unless a larger quorum is required by the bylaws of
479 the Interstate Commission. A Commissioner shall not delegate a
480 vote to another Commissioner. In the absence of its
481 Commissioner, a member state may delegate voting authority for a
482 specified meeting to another person from that state who shall
483 meet the requirements of subsection (d).
484 (h) The Interstate Commission shall provide public notice
485 of all meetings and all meetings shall be open to the public.
486 The Interstate Commission may close a meeting, in full or in
487 portion, where it determines by a two-thirds vote of the
488 Commissioners present that an open meeting would be likely to:
489 (1) Relate solely to the internal personnel practices and
490 procedures of the Interstate Commission;
491 (2) Discuss matters specifically exempted from disclosure
492 by federal statute;
493 (3) Discuss trade secrets, commercial, or financial
494 information that is privileged or confidential;
495 (4) Involve accusing a person of a crime, or formally
496 censuring a person;
497 (5) Discuss information of a personal nature where
498 disclosure would constitute a clearly unwarranted invasion of
499 personal privacy;
500 (6) Discuss investigative records compiled for law

501 enforcement purposes; or
502 (7) Specifically relate to the participation in a civil
503 action or other legal proceeding.
504 (i) The Interstate Commission shall keep minutes which
505 shall fully describe all matters discussed in a meeting and
506 shall provide a full and accurate summary of actions taken,
507 including record of any roll call votes.
508 (j) The Interstate Commission shall make its information
509 and official records, to the extent not otherwise designated in
510 the Compact or by its rules, available to the public for
511 inspection.
512 (k) The Interstate Commission shall establish an executive
513 committee, which shall include officers, members, and others as
514 determined by the bylaws. The executive committee shall have the
515 power to act on behalf of the Interstate Commission, with the
516 exception of rulemaking, during periods when the Interstate
517 Commission is not in session. When acting on behalf of the
518 Interstate Commission, the executive committee shall oversee the
519 administration of the Compact including enforcement and
520 compliance with the provisions of the Compact, its bylaws and
521 rules, and other such duties as necessary.
522 (l) The Interstate Commission may establish other
523 committees for governance and administration of the Compact.
524
525 SECTION 12

526 POWERS AND DUTIES OF THE INTERSTATE COMMISSION
527
528 The Interstate Commission shall have the duty and power to:
529 (a) Oversee and maintain the administration of the
530 Compact;
531 (b) Promulgate rules which shall be binding to the extent
532 and in the manner provided for in the Compact;
533 (c) Issue, upon the request of a member state or member
534 board, advisory opinions concerning the meaning or
535 interpretation of the Compact, its bylaws, rules, and actions;
536 (d) Enforce compliance with Compact provisions, the rules
537 promulgated by the Interstate Commission, and the bylaws, using
538 all necessary and proper means, including but not limited to the
539 use of judicial process;
540 (e) Establish and appoint committees including, but not
541 limited to, an executive committee as required by Section 11,
542 which shall have the power to act on behalf of the Interstate
543 Commission in carrying out its powers and duties;
544 (f) Pay, or provide for the payment of the expenses
545 related to the establishment, organization, and ongoing
546 activities of the Interstate Commission;
547 (g) Establish and maintain one or more offices;
548 (h) Borrow, accept, hire, or contract for services of
549 personnel;
550 (i) Purchase and maintain insurance and bonds;

551 (j) Employ an executive director who shall have such
552 powers to employ, select or appoint employees, agents, or
553 consultants, and to determine their qualifications, define their
554 duties, and fix their compensation;
555 (k) Establish personnel policies and programs relating to
556 conflicts of interest, rates of compensation, and qualifications
557 of personnel;
558 (l) Accept donations and grants of money, equipment,
559 supplies, materials and services, and to receive, utilize, and
560 dispose of it in a manner consistent with the conflict of
561 interest policies established by the Interstate Commission;
562 (m) Lease, purchase, accept contributions or donations of,
563 or otherwise to own, hold, improve or use, any property, real,
564 personal, or mixed;
565 (n) Sell, convey, mortgage, pledge, lease, exchange,
566 abandon, or otherwise dispose of any property, real, personal,
567 or mixed;
568 (o) Establish a budget and make expenditures;
569 (p) Adopt a seal and bylaws governing the management and
570 operation of the Interstate Commission;
571 (q) Report annually to the legislatures and governors of
572 the member states concerning the activities of the Interstate
573 Commission during the preceding year. Such reports shall also
574 include reports of financial audits and any recommendations that
575 may have been adopted by the Interstate Commission;

576 (r) Coordinate education, training, and public awareness
577 regarding the Compact, its implementation, and its operation;
578 (s) Maintain records in accordance with the bylaws;
579 (t) Seek and obtain trademarks, copyrights, and patents;
580 and
581 (u) Perform such functions as may be necessary or
582 appropriate to achieve the purposes of the Compact.
583
584 SECTION 13
585 FINANCE POWERS
586
587 (a) The Interstate Commission may levy on and collect an
588 annual assessment from each member state to cover the cost of
589 the operations and activities of the Interstate Commission and
590 its staff. The total assessment, subject to appropriation, must
591 be sufficient to cover the annual budget approved each year for
592 which revenue is not provided by other sources. The aggregate
593 annual assessment amount shall be allocated upon a formula to be
594 determined by the Interstate Commission, which shall promulgate
595 a rule binding upon all member states.
596 (b) The Interstate Commission shall not incur obligations
597 of any kind prior to securing the funds adequate to meet the
598 same.
599 (c) The Interstate Commission shall not pledge the credit
600 of any of the member states, except by, and with the authority

601 of, the member state.
602 (d) The Interstate Commission shall be subject to a yearly
603 financial audit conducted by a certified or licensed public
604 accountant and the report of the audit shall be included in the
605 annual report of the Interstate Commission.
606
607 SECTION 14
608 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION
609
610 (a) The Interstate Commission shall, by a majority of
611 Commissioners present and voting, adopt bylaws to govern its
612 conduct as may be necessary or appropriate to carry out the
613 purposes of the Compact within twelve (12) months of the first
614 Interstate Commission meeting.
615 (b) The Interstate Commission shall elect or appoint
616 annually from among its Commissioners a chairperson, a vice-
617 chairperson, and a treasurer, each of whom shall have such
618 authority and duties as may be specified in the bylaws. The
619 chairperson, or in the chairperson's absence or disability, the
620 vice-chairperson, shall preside at all meetings of the
621 Interstate Commission.
622 (c) Officers selected in subsection (b) shall serve
623 without remuneration from the Interstate Commission.
624 (d) The officers and employees of the Interstate
625 Commission shall be immune from suit and liability, either

626 personally or in their official capacity, for a claim for damage
627 to or loss of property or personal injury or other civil
628 liability caused or arising out of, or relating to, an actual or
629 alleged act, error, or omission that occurred, or that such
630 person had a reasonable basis for believing occurred, within the
631 scope of Interstate Commission employment, duties, or
632 responsibilities; provided that such person shall not be
633 protected from suit or liability for damage, loss, injury, or
634 liability caused by the intentional or willful and wanton
635 misconduct of such person.
636 (1) The liability of the executive director and employees
637 of the Interstate Commission or representatives of the
638 Interstate Commission, acting within the scope of such person's
639 employment or duties for acts, errors, or omissions occurring
640 within such person's state, may not exceed the limits of
641 liability set forth under the constitution and laws of that
642 state for state officials, employees, and agents. The Interstate
643 Commission is considered to be an instrumentality of the states
644 for the purposes of any such action. Nothing in this subsection
645 shall be construed to protect such person from suit or liability
646 for damage, loss, injury, or liability caused by the intentional
647 or willful and wanton misconduct of such person.
648 (2) The Interstate Commission shall defend the executive
649 director, its employees, and subject to the approval of the
650 attorney general or other appropriate legal counsel of the

651 member state represented by an Interstate Commission
652 representative, shall defend such Interstate Commission
653 representative in any civil action seeking to impose liability
654 arising out of an actual or alleged act, error or omission that
655 occurred within the scope of Interstate Commission employment,
656 duties or responsibilities, or that the defendant had a
657 reasonable basis for believing occurred within the scope of
658 Interstate Commission employment, duties, or responsibilities,
659 provided that the actual or alleged act, error, or omission did
660 not result from intentional or willful and wanton misconduct on
661 the part of such person.
662 (3) To the extent not covered by the state involved,
663 member state, or the Interstate Commission, the representatives
664 or employees of the Interstate Commission shall be held harmless
665 in the amount of a settlement or judgment, including attorney's
666 fees and costs, obtained against such persons arising out of an
667 actual or alleged act, error, or omission that occurred within
668 the scope of Interstate Commission employment, duties, or
669 responsibilities, or that such persons had a reasonable basis
670 for believing occurred within the scope of Interstate Commission
671 employment, duties, or responsibilities, provided that the
672 actual or alleged act, error, or omission did not result from
673 intentional or willful and wanton misconduct on the part of such
674 persons.
675

676 SECTION 15
677 RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION
678
679 (a) The Interstate Commission shall promulgate reasonable
680 rules in order to effectively and efficiently achieve the
681 purposes of the Compact. Notwithstanding the foregoing, in the
682 event the Interstate Commission exercises its rulemaking
683 authority in a manner that is beyond the scope of the purposes
684 of the Compact, or the powers granted hereunder, then such an
685 action by the Interstate Commission shall be invalid and have no
686 force or effect.
687 (b) Rules deemed appropriate for the operations of the
688 Interstate Commission shall be made pursuant to a rulemaking
689 process that substantially conforms to the "Model State
690 Administrative Procedure Act" of 2010, and subsequent amendments
691 thereto.
692 (c) Not later than thirty (30) days after a rule is
693 promulgated, any person may file a petition for judicial review
694 of the rule in the United States District Court for the District
695 of Columbia or the federal district where the Interstate
696 Commission has its principal offices, provided that the filing
697 of such a petition shall not stay or otherwise prevent the rule
698 from becoming effective unless the court finds that the
699 petitioner has a substantial likelihood of success. The court
700 shall give deference to the actions of the Interstate Commission

701 consistent with applicable law and shall not find the rule to be
702 unlawful if the rule represents a reasonable exercise of the
703 authority granted to the Interstate Commission.
704
705 SECTION 16
706 OVERSIGHT OF INTERSTATE COMPACT
707
708 (a) The executive, legislative, and judicial branches of
709 state government in each member state shall enforce the Compact
710 and shall take all actions necessary and appropriate to
711 effectuate the Compact's purposes and intent. The provisions of
712 the Compact and the rules promulgated hereunder shall have
713 standing as statutory law but shall not override existing state
714 authority to regulate the practice of medicine.
715 (b) All courts shall take judicial notice of the Compact
716 and the rules in any judicial or administrative proceeding in a
717 member state pertaining to the subject matter of the Compact
718 which may affect the powers, responsibilities or actions of the
719 Interstate Commission.
720 (c) The Interstate Commission shall be entitled to receive
721 all service of process in any such proceeding, and shall have
722 standing to intervene in the proceeding for all purposes.
723 Failure to provide service of process to the Interstate
724 Commission shall render a judgment or order void as to the
725 Interstate Commission, the Compact, or promulgated rules.

726
727 SECTION 17
728 ENFORCEMENT OF INTERSTATE COMPACT
729
730 (a) The Interstate Commission, in the reasonable exercise
731 of its discretion, shall enforce the provisions and rules of the
732 Compact.
733 (b) The Interstate Commission may, by majority vote of the
734 Commissioners, initiate legal action in the United States
735 District Court for the District of Columbia, or, at the
736 discretion of the Interstate Commission, in the federal district
737 where the Interstate Commission has its principal offices, to
738 enforce compliance with the provisions of the Compact, and its
739 promulgated rules and bylaws, against a member state in default.
740 The relief sought may include both injunctive relief and
741 damages. In the event judicial enforcement is necessary, the
742 prevailing party shall be awarded all costs of such litigation
743 including reasonable attorney's fees.
744 (c) The remedies herein shall not be the exclusive
745 remedies of the Interstate Commission. The Interstate Commission
746 may avail itself of any other remedies available under state law
747 or the regulation of a profession.
748
749 SECTION 18
750 DEFAULT PROCEDURES

751
752 (a) The grounds for default include, but are not limited
753 to, failure of a member state to perform such obligations or
754 responsibilities imposed upon it by the Compact, or the rules
755 and bylaws of the Interstate Commission promulgated under the
756 Compact.
757 (b) If the Interstate Commission determines that a member
758 state has defaulted in the performance of its obligations or
759 responsibilities under the Compact, or the bylaws or promulgated
760 rules, the Interstate Commission shall:
761 (1) Provide written notice to the defaulting state and
762 other member states, of the nature of the default, the means of
763 curing the default, and any action taken by the Interstate
764 Commission. The Interstate Commission shall specify the
765 conditions by which the defaulting state must cure its default;
766 and
767 (2) Provide remedial training and specific technical
768 assistance regarding the default.
769 (c) If the defaulting state fails to cure the default, the
770 defaulting state shall be terminated from the Compact upon an
771 affirmative vote of a majority of the Commissioners and all
772 rights, privileges, and benefits conferred by the Compact shall
773 terminate on the effective date of termination. A cure of the
774 default does not relieve the offending state of obligations or
775 liabilities incurred during the period of the default.

776 (d) Termination of membership in the Compact shall be
777 imposed only after all other means of securing compliance have
778 been exhausted. Notice of intent to terminate shall be given by
779 the Interstate Commission to the governor, the majority and
780 minority leaders of the defaulting state's legislature, and each
781 of the member states.
782 (e) The Interstate Commission shall establish rules and
783 procedures to address licenses and physicians that are
784 materially impacted by the termination of a member state, or the
785 withdrawal of a member state.
786 (f) The member state which has been terminated is
787 responsible for all dues, obligations, and liabilities incurred
788 through the effective date of termination including obligations,
789 the performance of which extends beyond the effective date of
790 termination.
791 (g) The Interstate Commission shall not bear any costs
792 relating to any state that has been found to be in default or
793 which has been terminated from the Compact, unless otherwise
794 mutually agreed upon in writing between the Interstate
795 Commission and the defaulting state.
796 (h) The defaulting state may appeal the action of the
797 Interstate Commission by petitioning the United States District
798 Court for the District of Columbia or the federal district where
799 the Interstate Commission has its principal offices. The
800 prevailing party shall be awarded all costs of such litigation

801 including reasonable attorney's fees.
802
803 SECTION 19
804 DISPUTE RESOLUTION
805
806 (a) The Interstate Commission shall attempt, upon the
807 request of a member state, to resolve disputes which are subject
808 to the Compact and which may arise among member states or member
809 boards.
810 (b) The Interstate Commission shall promulgate rules
811 providing for both mediation and binding dispute resolution as
812 appropriate.
813
814 SECTION 20
815 MEMBER STATES, EFFECTIVE DATE AND AMENDMENT
816
817 (a) Any state is eligible to become a member state of the
818 Compact.
819 (b) The Compact shall become effective and binding upon
820 legislative enactment of the Compact into law by no less than
821 seven (7) states. Thereafter, it shall become effective and
822 binding on a state upon enactment of the Compact into law by
823 that state.
824 (c) The governors of non-member states, or their
825 designees, shall be invited to participate in the activities of

826 the Interstate Commission on a non-voting basis prior to
827 adoption of the Compact by all states.
828 (d) The Interstate Commission may propose amendments to
829 the Compact for enactment by the member states. No amendment
830 shall become effective and binding upon the Interstate
831 Commission and the member states unless and until it is enacted
832 into law by unanimous consent of the member states.
833
834 SECTION 21
835 WITHDRAWAL
836
837 (a) Once effective, the Compact shall continue in force
838 and remain binding upon each and every member state; provided
839 that a member state may withdraw from the Compact by
840 specifically repealing the statute which enacted the Compact
841 into law.
842 (b) Withdrawal from the Compact shall be by the enactment
843 of a statute repealing the same, but shall not take effect until
844 one (1) year after the effective date of such statute and until
845 written notice of the withdrawal has been given by the
846 withdrawing state to the governor of each other member state.
847 (c) The withdrawing state shall immediately notify the
848 chairperson of the Interstate Commission in writing upon the
849 introduction of legislation repealing the Compact in the
850 withdrawing state.

851 (d) The Interstate Commission shall notify the other
852 member states of the withdrawing state's intent to withdraw
853 within sixty (60) days of its receipt of notice provided under
854 subsection (c).
855 (e) The withdrawing state is responsible for all dues,
856 obligations and liabilities incurred through the effective date
857 of withdrawal, including obligations, the performance of which
858 extend beyond the effective date of withdrawal.
859 (f) Reinstatement following withdrawal of a member state
860 shall occur upon the withdrawing state reenacting the Compact or
861 upon such later date as determined by the Interstate Commission.
862 (g) The Interstate Commission is authorized to develop
863 rules to address the impact of the withdrawal of a member state
864 on licenses granted in other member states to physicians who
865 designated the withdrawing member state as the state of
866 principal license.
867
868 SECTION 22
869 DISSOLUTION
870
871 (a) The Compact shall dissolve effective upon the date of
872 the withdrawal or default of the member state which reduces the
873 membership in the Compact to one (1) member state.
874 (b) Upon the dissolution of the Compact, the Compact
875 becomes null and void and shall be of no further force or

876 effect, and the business and affairs of the Interstate
877 Commission shall be concluded and surplus funds shall be
878 distributed in accordance with the bylaws.
879
880 SECTION 23
881 SEVERABILITY AND CONSTRUCTION
882
883 (a) The provisions of the Compact shall be severable, and
884 if any phrase, clause, sentence, or provision is deemed
885 unenforceable, the remaining provisions of the Compact shall be
886 enforceable.
887 (b) The provisions of the Compact shall be liberally
888 construed to effectuate its purposes.
889 (c) Nothing in the Compact shall be construed to prohibit
890 the applicability of other interstate compacts to which the
891 states are members.
892
893 SECTION 24
894 BINDING EFFECT OF COMPACT AND OTHER LAWS
895
896 (a) Nothing herein prevents the enforcement of any other
897 law of a member state that is not inconsistent with the Compact.
898 (b) All laws in a member state in conflict with the
899 Compact are superseded to the extent of the conflict.
900 (c) All lawful actions of the Interstate Commission,

901 including all rules and bylaws promulgated by the Commission,
902 are binding upon the member states.
903 (d) All agreements between the Interstate Commission and
904 the member states are binding in accordance with their terms.
905 (e) In the event any provision of the Compact exceeds the
906 constitutional limits imposed on the legislature of any member
907 state, such provision shall be ineffective to the extent of the
908 conflict with the constitutional provision in question in that
909 member state.
910 Section 2. Section 456.4502, Florida Statutes, is created
911 to read:
912 456.4502 Interstate Medical Licensure Compact;
913 disciplinary proceedings.—A physician licensed pursuant to
914 chapter 458, chapter 459, or s. 456.4501 whose license is
915 suspended or revoked by this state pursuant to the Interstate
916 Medical Licensure Compact as a result of disciplinary action
917 taken against the physician's license in another state shall be
918 granted a formal hearing before an administrative law judge from
919 the Division of Administrative Hearings held pursuant to chapter
920 120 if there are any disputed issues of material fact. In such
921 proceedings:
922 (a) Notwithstanding s. 120.569(2), the department shall
923 notify the division within 45 days after receipt of a petition
924 or request for a formal hearing.
925 (b) The determination of whether the physician has

926 violated the laws and rules regulating the practice of medicine
927 or osteopathic medicine, as applicable, including a
928 determination of the reasonable standard of care, is a
929 conclusion of law that is to be determined by appropriate board,
930 and is not a finding of fact to be determined by an
931 administrative law judge.
932 (c) The administrative law judge shall issue a recommended
933 order pursuant to chapter 120.
934 (d) The Board of Medicine or the Board of Osteopathic
935 Medicine, as applicable, shall determine and issue the final
936 order in each disciplinary case. Such order shall constitute
937 final agency action.
938 (e) Any consent order or agreed-upon settlement is subject
939 to the approval of the department.
940 (f) The department shall have standing to seek judicial
941 review of any final order of the board, pursuant to s. 120.68
942 Section 3. Section 456.4503, Florida Statutes, is created
943 to read:
944 456.4503 Interstate Medical Licensure Compact
945 Commissioners.—The duly appointed commissioners to the
946 Interstate Medical Licensure Compact Commission under s.
947 456.4503, shall ensure the Interstate Medical Licensure Compact
948 Commission complies with the requirements of chapter 119, and s.
949 24, Art. I of the State Constitution.
950 Section 4. Section 456.4504, Florida Statutes, is created

951 to read:
952 456.4504 Interstate Medical Licensure Compact Rules.—The
953 department may adopt rules to implement the Interstate Medical
954 Licensure Compact.
955 Section 5. Section 458.3129, Florida Statutes, is created
956 to read:
957 458.3129 Interstate Medical Licensure Compact.—A physician
958 licensed to practice medicine under s. 456.4501 is deemed to
959 also be licensed under this chapter.
960 Section 6. Section 459.074, Florida Statutes, is created
961 to read:
962 459.074 Interstate Medical Licensure Compact.—A physician
963 licensed to practice osteopathic medicine under s. 456.4501 is
964 deemed to also be licensed under this chapter.
965 Section 7. Subsections (1) and (2) of section 464.0196,
966 Florida Statutes, are amended to read:
967 464.0196 Florida Center for Nursing; board of directors.—
968 (1) The Florida Center for Nursing shall be governed by a
969 policy-setting board of directors. The board shall consist of 16
970 members, with a simple majority of the board being nurses
971 representative of various practice areas. Other members shall
972 include representatives of other health care professions,
973 business and industry, health care providers, and consumers. The
974 members of the board shall be appointed by the Governor as
975 follows:

976 (a) Four members recommended by the President of the
977 Senate~~, at least one of whom shall be a registered nurse~~
978 ~~recommended by the Florida Organization of Nurse Executives and~~
979 ~~at least one other representative of the hospital industry~~
980 ~~recommended by the Florida Hospital Association~~;
981 (b) Four members recommended by the Speaker of the House
982 of Representatives~~, at least one of whom shall be a registered~~
983 ~~nurse recommended by the Florida Nurses Association and at least~~
984 ~~one other representative of the long-term care industry;~~
985 (c) Four members recommended by the Governor~~, two of whom~~
986 ~~shall be registered nurses~~;
987 (d) One nurse educator recommended by the Board of
988 Governors~~ who is a dean of a College of Nursing at a state~~
989 ~~university~~; and
990 (e) Three nurse educators recommended by the State Board
991 of Education~~, one of whom must be a director of a nursing~~
992 ~~program at a Florida College System institution~~.
993 (2) ~~The initial terms of the members shall be as follows:~~
994 ~~(a) Of the members appointed pursuant to paragraph (1)(a),~~
995 ~~two shall be appointed for terms expiring June 30, 2005, one for~~
996 ~~a term expiring June 30, 2004, and one for a term expiring June~~
997 ~~30, 2003.~~
998 ~~(b) Of the members appointed pursuant to paragraph (1)(b),~~
999 ~~one shall be appointed for a term expiring June 30, 2005, two~~
1000 ~~for terms expiring June 30, 2004, and one for a term expiring~~

1001 ~~June 20, 2003.~~
1002 ~~(c) Of the members appointed pursuant to paragraph (1)(c),~~
1003 ~~one shall be appointed for a term expiring June 30, 2005, one~~
1004 ~~for a term expiring June 30, 2004, and two for terms expiring~~
1005 ~~June 30, 2003.~~
1006 ~~(d) Of the members appointed pursuant to paragraph (1)(d),~~
1007 ~~the terms of two members recommended by the State Board of~~
1008 ~~Education shall expire June 30, 2005; the term of the member who~~
1009 ~~is a dean of a College of Nursing at a state university shall~~
1010 ~~expire June 30, 2004; and the term of the member who is a~~
1011 ~~director of a state community college nursing program shall~~
1012 ~~expire June 30, 2003.~~
1013
1014 ~~After the initial appointments expire,~~ The terms of all the
1015 members shall be for 3 years, with no member serving more than
1016 two consecutive terms.
1017 Section 8. Subsections (2) through (7) of section 491.003,
1018 Florida Statutes, are renumbered as subsections (3) through (8),
1019 respectively, present subsections (8) through (17) are
1020 renumbered as subsections (10) through (19), respectively, and
1021 new subsections (2) and (9) are added to that section to read:
1022 491.003 Definitions.—As used in this chapter:
1023 (2) "Certified master social worker" means a person
1024 licensed under this chapter to practice generalist social work.
1025 (9) "Practice of generalist social work" means the

1026 application of social work theory, knowledge, methods, and
1027 ethics, and the professional use of self to restore or enhance
1028 social, psychosocial, or biopsychosocial functioning of
1029 individuals, couples, families, groups, organizations, and
1030 communities. The term includes the application of specialized
1031 knowledge and advanced practice skills in nondiagnostic
1032 assessment, treatment planning, implementation and evaluation,
1033 case management, information and referral, supervision,
1034 consultation, education, research, advocacy, community
1035 organization, and the development, implementation, and
1036 administration of policies, programs, and activities.
1037 Section 9. Section 10. Subsections (4) through (7) of
1038 section 491.004, Florida Statutes, are renumbered as subsections
1039 (3) through (6), respectively, and present subsections (3) and
1040 (4) of that section are amended to read:
1041 491.004 Board of Clinical Social Work, Marriage and Family
1042 Therapy, and Mental Health Counseling.—
1043 ~~(3) No later than January 1, 1988, the Governor shall~~
1044 ~~appoint nine members of the board as follows:~~
1045 ~~(a) Three members for terms of 2 years each.~~
1046 ~~(b) Three members for terms of 3 years each.~~
1047 ~~(c) Three members for terms of 4 years each.~~
1048 (3)~~(4)~~ As the terms of the ~~initial~~ members expire, the
1049 Governor shall appoint successors for terms of 4 years; and
1050 those members shall serve until their successors are appointed.

1051 Section 10. Subsection (6) of section 491.0045, Florida
1052 Statutes, is amended to read:
1053 491.0045 Intern registration; requirements.—
1054 (6) A registration issued on or before March 31, 2017,
1055 expires March 31, 2022, and may not be renewed or reissued. Any
1056 registration issued after March 31, 2017, expires 60 months
1057 after the date it is issued. The board may make a one-time
1058 exception from the requirements of this section in emergency or
1059 hardship cases, as defined by board rule, if ~~A subsequent intern~~
1060 ~~registration may not be issued unless~~ the candidate has passed
1061 the theory and practice examination described in s.
1062 491.005(1)(d), (3)(d), and (4)(d).
1063 Section 11. Subsection (1), paragraph (b) of subsection
1064 (2), and subsections (3) and (4) of section 491.005, Florida
1065 Statutes, are amended to read:
1066 491.005 Licensure by examination.—
1067 (1) CLINICAL SOCIAL WORK.—Upon verification of
1068 documentation and payment of a fee not to exceed $200, as set by
1069 board rule, plus the actual per applicant cost ~~to the department~~
1070 for purchase of the examination from the ~~American~~ Association of
1071 ~~State~~ Social Work ~~Worker's~~ Boards or its successor ~~a similar~~
1072 ~~national organization~~, the department shall issue a license as a
1073 clinical social worker to an applicant who the board certifies:
1074 (a) Has submitted an application and paid the appropriate
1075 fee.

1076 (b)1. Has received a doctoral degree in social work from a
1077 graduate school of social work which at the time the applicant
1078 graduated was accredited by an accrediting agency recognized by
1079 the United States Department of Education or has received a
1080 master's degree in social work from a graduate school of social
1081 work which at the time the applicant graduated:
1082 a. Was accredited by the Council on Social Work Education;
1083 b. Was accredited by the Canadian Association of Schools
1084 of Social Work; or
1085 c. Has been determined to have been a program equivalent
1086 to programs approved by the Council on Social Work Education by
1087 the Foreign Equivalency Determination Service of the Council on
1088 Social Work Education. An applicant who graduated from a program
1089 at a university or college outside of the United States or
1090 Canada must present documentation of the equivalency
1091 determination from the council in order to qualify.
1092 2. The applicant's graduate program must have emphasized
1093 direct clinical patient or client health care services,
1094 including, but not limited to, coursework in clinical social
1095 work, psychiatric social work, medical social work, social
1096 casework, psychotherapy, or group therapy. The applicant's
1097 graduate program must have included all of the following
1098 coursework:
1099 a. A supervised field placement which was part of the
1100 applicant's advanced concentration in direct practice, during

1101 which the applicant provided clinical services directly to
1102 clients.
1103 b. Completion of 24 semester hours or 32 quarter hours in
1104 courses approved by board rule ~~theory of human behavior and~~
1105 ~~practice methods as courses in clinically oriented services,~~
1106 ~~including a minimum of one course in psychopathology, and no~~
1107 ~~more than one course in research, taken in a school of social~~
1108 ~~work accredited or approved pursuant to subparagraph 1~~.
1109 ~~3. If the course title which appears on the applicant's~~
1110 ~~transcript does not clearly identify the content of the~~
1111 ~~coursework, the applicant shall be required to provide~~
1112 ~~additional documentation, including, but not limited to, a~~
1113 ~~syllabus or catalog description published for the course.~~
1114 (c) Has had at least 2 years of clinical social work
1115 experience, which took place subsequent to completion of a
1116 graduate degree in social work at an institution meeting the
1117 accreditation requirements of this section, under the
1118 supervision of a licensed clinical social worker or the
1119 equivalent who is a qualified supervisor as determined by the
1120 board. An individual who intends to practice in Florida to
1121 satisfy clinical experience requirements must register pursuant
1122 to s. 491.0045 before commencing practice. If the applicant's
1123 graduate program was not a program which emphasized direct
1124 clinical patient or client health care services as described in
1125 subparagraph (b)2., the supervised experience requirement must

1126 take place after the applicant has completed a minimum of 15
1127 semester hours or 22 quarter hours of the coursework required. A
1128 doctoral internship may be applied toward the clinical social
1129 work experience requirement. A licensed mental health
1130 professional must be on the premises when clinical services are
1131 provided by a registered intern in a private practice setting.
1132 (d) Has passed a theory and practice examination
1133 designated ~~provided~~ by the board ~~department for this purpose~~.
1134 (e) Has demonstrated, in a manner designated by board rule
1135 ~~of the board~~, knowledge of the laws and rules governing the
1136 practice of clinical social work, marriage and family therapy,
1137 and mental health counseling.
1138 (2) CLINICAL SOCIAL WORK.—
1139 (b) An applicant from a master's or doctoral program in
1140 social work which did not emphasize direct patient or client
1141 services may complete the clinical curriculum content
1142 requirement by returning to a graduate program accredited by the
1143 Council on Social Work Education or the Canadian Association for
1144 Social Work Education ~~of Schools of Social Work~~, or to a
1145 clinical social work graduate program with comparable standards,
1146 in order to complete the education requirements for examination.
1147 However, a maximum of 6 semester or 9 quarter hours of the
1148 clinical curriculum content requirement may be completed by
1149 credit awarded for independent study coursework as defined by
1150 board rule.

1151 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of
1152 documentation and payment of a fee not to exceed $200, as set by
1153 board rule, plus the actual cost ~~to the department~~ for the
1154 purchase of the examination from the Association of Marital and
1155 Family Therapy Regulatory Boards ~~Board~~, or its successor ~~similar~~
1156 ~~national~~ organization, the department shall issue a license as a
1157 marriage and family therapist to an applicant who the board
1158 certifies:
1159 (a) Has submitted an application and paid the appropriate
1160 fee.
1161 (b)~~1.~~ Has a minimum of a master's degree with major
1162 emphasis in marriage and family therapy from a program
1163 accredited by the Commission on Accreditation for Marriage and
1164 Family Therapy Education or from a state university program
1165 accredited by the Council for Accreditation of Counseling and
1166 Related Educational Programs, or a closely related field, and
1167 graduate courses approved by the Board of Clinical Social Work,
1168 Marriage and Family Therapy, and Mental Health Counseling ~~has~~
1169 ~~completed all of the following requirements:~~
1170 ~~a. Thirty-six semester hours or 48 quarter hours of~~
1171 ~~graduate coursework, which must include a minimum of 3 semester~~
1172 ~~hours or 4 quarter hours of graduate-level course credits in~~
1173 ~~each of the following nine areas: dynamics of marriage and~~
1174 ~~family systems; marriage therapy and counseling theory and~~
1175 ~~techniques; family therapy and counseling theory and techniques;~~

1176 ~~individual human development theories throughout the life cycle;~~
1177 ~~personality theory or general counseling theory and techniques;~~
1178 ~~psychopathology; human sexuality theory and counseling~~
1179 ~~techniques; psychosocial theory; and substance abuse theory and~~
1180 ~~counseling techniques. Courses in research, evaluation,~~
1181 ~~appraisal, assessment, or testing theories and procedures;~~
1182 ~~thesis or dissertation work; or practicums, internships, or~~
1183 ~~fieldwork may not be applied toward this requirement.~~
1184 ~~b. A minimum of one graduate-level course of 3 semester~~
1185 ~~hours or 4 quarter hours in legal, ethical, and professional~~
1186 ~~standards issues in the practice of marriage and family therapy~~
1187 ~~or a course determined by the board to be equivalent.~~
1188 ~~c. A minimum of one graduate-level course of 3 semester~~
1189 ~~hours or 4 quarter hours in diagnosis, appraisal, assessment,~~
1190 ~~and testing for individual or interpersonal disorder or~~
1191 ~~dysfunction; and a minimum of one 3-semester-hour or 4-quarter-~~
1192 ~~hour graduate-level course in behavioral research which focuses~~
1193 ~~on the interpretation and application of research data as it~~
1194 ~~applies to clinical practice. Credit for thesis or dissertation~~
1195 ~~work, practicums, internships, or fieldwork may not be applied~~
1196 ~~toward this requirement.~~
1197 ~~d. A minimum of one supervised clinical practicum,~~
1198 ~~internship, or field experience in a marriage and family~~
1199 ~~counseling setting, during which the student provided 180 direct~~
1200 ~~client contact hours of marriage and family therapy services~~

1201 ~~under the supervision of an individual who met the requirements~~
1202 ~~for supervision under paragraph (c). This requirement may be met~~
1203 ~~by a supervised practice experience which took place outside the~~
1204 ~~academic arena, but which is certified as equivalent to a~~
1205 ~~graduate-level practicum or internship program which required a~~
1206 ~~minimum of 180 direct client contact hours of marriage and~~
1207 ~~family therapy services currently offered within an academic~~
1208 ~~program of a college or university accredited by an accrediting~~
1209 ~~agency approved by the United States Department of Education, or~~
1210 ~~an institution which is publicly recognized as a member in good~~
1211 ~~standing with the Association of Universities and Colleges of~~
1212 ~~Canada or a training institution accredited by the Commission on~~
1213 ~~Accreditation for Marriage and Family Therapy Education~~
1214 ~~recognized by the United States Department of Education.~~
1215 ~~Certification shall be required from an official of such~~
1216 ~~college, university, or training institution.~~
1217 ~~2. If the course title which appears on the applicant's~~
1218 ~~transcript does not clearly identify the content of the~~
1219 ~~coursework, the applicant shall be required to provide~~
1220 ~~additional documentation, including, but not limited to, a~~
1221 ~~syllabus or catalog description published for the course~~.
1222
1223 The required master's degree must have been received in an
1224 institution of higher education which at the time the applicant
1225 graduated was: fully accredited by a regional accrediting body

1226 recognized by the Council for Higher Education Accreditation
1227 ~~Commission on Recognition of Postsecondary Accreditation~~;
1228 publicly recognized as a member in good standing with ~~the~~
1229 ~~Association of~~ Universities ~~and Colleges of~~ Canada; or an
1230 institution of higher education located outside the United
1231 States and Canada~~,~~ which at the time the applicant was enrolled
1232 and at the time the applicant graduated maintained a standard of
1233 training substantially equivalent to the standards of training
1234 of those institutions in the United States which are accredited
1235 by a regional accrediting body recognized by the Council for
1236 Higher Education Accreditation ~~Commission on Recognition of~~
1237 ~~Postsecondary Accreditation~~. Such foreign education and training
1238 must have been received in an institution or program of higher
1239 education officially recognized by the government of the country
1240 in which it is located as an institution or program to train
1241 students to practice as professional marriage and family
1242 therapists or psychotherapists. The burden of establishing that
1243 the requirements of this provision have been met shall be upon
1244 the applicant, and the board shall require documentation, such
1245 as, but not limited to, an evaluation by a foreign equivalency
1246 determination service, as evidence that the applicant's graduate
1247 degree program and education were equivalent to an accredited
1248 program in this country. An applicant with a master's degree
1249 from a program which did not emphasize marriage and family
1250 therapy may complete the coursework requirement in a training

1251 institution fully accredited by the Commission on Accreditation
1252 for Marriage and Family Therapy Education recognized by the
1253 United States Department of Education.
1254 (c) Has had at least 2 years of clinical experience during
1255 which 50 percent of the applicant's clients were receiving
1256 marriage and family therapy services, which must be at the post-
1257 master's level under the supervision of a licensed marriage and
1258 family therapist with at least 5 years of experience, or the
1259 equivalent, who is a qualified supervisor as determined by the
1260 board. An individual who intends to practice in Florida to
1261 satisfy the clinical experience requirements must register
1262 pursuant to s. 491.0045 before commencing practice. If a
1263 graduate has a master's degree with a major emphasis in marriage
1264 and family therapy or a closely related field that did not
1265 include all the coursework required under paragraph (b) ~~sub-~~
1266 ~~subparagraphs (b)1.a.-c.~~, credit for the post-master's level
1267 clinical experience shall not commence until the applicant has
1268 completed a minimum of 10 of the courses required under
1269 paragraph (b) ~~sub-subparagraphs (b)1.a.-c.~~, as determined by the
1270 board, and at least 6 semester hours or 9 quarter hours of the
1271 course credits must have been completed in the area of marriage
1272 and family systems, theories, or techniques. Within the 2 ~~3~~
1273 years of required experience, the applicant shall provide direct
1274 individual, group, or family therapy and counseling, to include
1275 the following categories of cases: unmarried dyads, married

1276 couples, separating and divorcing couples, and family groups
1277 including children. A doctoral internship may be applied toward
1278 the clinical experience requirement. A licensed mental health
1279 professional must be on the premises when clinical services are
1280 provided by a registered intern in a private practice setting.
1281 (d) Has passed a theory and practice examination
1282 designated ~~provided~~ by the board ~~department~~ for this purpose.
1283 (e) Has demonstrated, in a manner designated by board rule
1284 ~~of the board~~, knowledge of the laws and rules governing the
1285 practice of clinical social work, marriage and family therapy,
1286 and mental health counseling.
1287 (f) For the purposes of dual licensure, the department
1288 shall license as a marriage and family therapist any person who
1289 meets the requirements of s. 491.0057. Fees for dual licensure
1290 shall not exceed those stated in this subsection.
1291 (4) MENTAL HEALTH COUNSELING.—Upon verification of
1292 documentation and payment of a fee not to exceed $200, as set by
1293 board rule, plus the actual per applicant cost ~~to the department~~
1294 for purchase of the examination from the National Board for
1295 Certified Counselors or its successor ~~Professional Examination~~
1296 ~~Service for the National Academy of Certified Clinical Mental~~
1297 ~~Health Counselors or a similar national organization~~, the
1298 department shall issue a license as a mental health counselor to
1299 an applicant who the board certifies:
1300 (a) Has submitted an application and paid the appropriate

1301 fee.
1302 (b)1. Has a minimum of an earned master's degree from a
1303 mental health counseling program accredited by the Council for
1304 the Accreditation of Counseling and Related Educational Programs
1305 that consists of at least 60 semester hours or 80 quarter hours
1306 of clinical and didactic instruction~~, including a course in~~
1307 ~~human sexuality and a course in substance abuse~~. If the master's
1308 degree is earned from a program related to the practice of
1309 mental health counseling that is not accredited by the Council
1310 for the Accreditation of Counseling and Related Educational
1311 Programs, then the coursework and practicum, internship, or
1312 fieldwork must consist of at least 60 semester hours or 80
1313 quarter hours and meet the following requirements:
1314 a. Thirty-three semester hours or 44 quarter hours of
1315 graduate coursework, which must include a minimum of 3 semester
1316 hours or 4 quarter hours of graduate-level coursework in each of
1317 the following 11 content areas: counseling theories and
1318 practice; human growth and development; diagnosis and treatment
1319 of psychopathology; human sexuality; group theories and
1320 practice; individual evaluation and assessment; career and
1321 lifestyle assessment; research and program evaluation; social
1322 and cultural foundations; substance abuse; and legal, ethical,
1323 and professional standards issues in the practice of mental
1324 health counseling ~~in community settings; and substance abuse~~.
1325 Courses in research, thesis or dissertation work, practicums,

1326 internships, or fieldwork may not be applied toward this
1327 requirement.
1328 b. A minimum of 3 semester hours or 4 quarter hours of
1329 graduate-level coursework addressing diagnostic processes,
1330 including differential diagnosis and the use of the current
1331 diagnostic tools, such as the current edition of the American
1332 Psychiatric Association's Diagnostic and Statistical Manual of
1333 Mental Disorders. The graduate program must have emphasized the
1334 common core curricular experience ~~in legal, ethical, and~~
1335 ~~professional standards issues in the practice of mental health~~
1336 ~~counseling, which includes goals, objectives, and practices of~~
1337 ~~professional counseling organizations, codes of ethics, legal~~
1338 ~~considerations, standards of preparation, certifications and~~
1339 ~~licensing, and the role identity and professional obligations of~~
1340 ~~mental health counselors. Courses in research, thesis or~~
1341 ~~dissertation work, practicums, internships, or fieldwork may not~~
1342 ~~be applied toward this requirement~~.
1343 c. The equivalent, as determined by the board, of at least
1344 700 ~~1,000~~ hours of university-sponsored supervised clinical
1345 practicum, internship, or field experience that includes at
1346 least 280 hours of direct client services, as required in the
1347 accrediting standards of the Council for Accreditation of
1348 Counseling and Related Educational Programs for mental health
1349 counseling programs. This experience may not be used to satisfy
1350 the post-master's clinical experience requirement.

1351 2. If the course title which appears on the applicant's
1352 transcript does not clearly identify the content of the
1353 coursework, the applicant shall be required to provide
1354 additional documentation, including, but not limited to, a
1355 syllabus or catalog description published for the course.
1356
1357 Education and training in mental health counseling must have
1358 been received in an institution of higher education which at the
1359 time the applicant graduated was: fully accredited by a regional
1360 accrediting body recognized by the Council for Higher Education
1361 Accreditation or its successor ~~Commission on Recognition of~~
1362 ~~Postsecondary Accreditation~~; publicly recognized as a member in
1363 good standing with ~~the Association of~~ Universities ~~and Colleges~~
1364 ~~of~~ Canada; or an institution of higher education located outside
1365 the United States and Canada, which at the time the applicant
1366 was enrolled and at the time the applicant graduated maintained
1367 a standard of training substantially equivalent to the standards
1368 of training of those institutions in the United States which are
1369 accredited by a regional accrediting body recognized by the
1370 Council for Higher Education Accreditation or its successor
1371 ~~Commission on Recognition of Postsecondary Accreditation~~. Such
1372 foreign education and training must have been received in an
1373 institution or program of higher education officially recognized
1374 by the government of the country in which it is located as an
1375 institution or program to train students to practice as mental

1376 health counselors. The burden of establishing that the
1377 requirements of this provision have been met shall be upon the
1378 applicant, and the board shall require documentation, such as,
1379 but not limited to, an evaluation by a foreign equivalency
1380 determination service, as evidence that the applicant's graduate
1381 degree program and education were equivalent to an accredited
1382 program in this country. Beginning July 1, 2026, an applicant
1383 must have a master's degree in a program that is accredited by
1384 the Council for Accreditation of Counseling and Related
1385 Educational Programs which consists of at least 60 semester
1386 hours or 80 quarter hours to apply for licensure under this
1387 paragraph.
1388 (c) Has had at least 2 years of clinical experience in
1389 mental health counseling~~,~~ which must be at the post-master's
1390 level under the supervision of a licensed mental health
1391 counselor or the equivalent who is a qualified supervisor as
1392 determined by the board. An individual who intends to practice
1393 in Florida to satisfy the clinical experience requirements must
1394 register pursuant to s. 491.0045 before commencing practice. If
1395 a graduate has a master's degree with a major related to the
1396 practice of mental health counseling that did not include all
1397 the coursework required under sub-subparagraphs (b)1.a.-b.,
1398 credit for the post-master's level clinical experience shall not
1399 commence until the applicant has completed a minimum of seven of
1400 the courses required under sub-subparagraphs (b)1.a.-b., as

1401 determined by the board, one of which must be a course in
1402 psychopathology or abnormal psychology. A doctoral internship
1403 may be applied toward the clinical experience requirement. A
1404 licensed mental health professional must be on the premises when
1405 clinical services are provided by a registered intern in a
1406 private practice setting.
1407 (d) Has passed a theory and practice examination
1408 designated ~~provided~~ by the board ~~department~~ for this purpose.
1409 (e) Has demonstrated, in a manner designated by board rule
1410 ~~of the board~~, knowledge of the laws and rules governing the
1411 practice of clinical social work, marriage and family therapy,
1412 and mental health counseling.
1413 Section 12. Subsection (3) of section 491.0057, Florida
1414 Statutes, is amended to read:
1415 491.0057 Dual licensure as a marriage and family
1416 therapist.—The department shall license as a marriage and family
1417 therapist any person who demonstrates to the board that he or
1418 she:
1419 (3) Has passed the examination designated ~~provided~~ by the
1420 board ~~department~~ for marriage and family therapy.
1421 Section 13. Paragraph (b) of subsection (1) of section
1422 491.006, Florida Statutes, is amended to read:
1423 491.006 Licensure or certification by endorsement.—
1424 (1) The department shall license or grant a certificate to
1425 a person in a profession regulated by this chapter who, upon

1426 applying to the department and remitting the appropriate fee,
1427 demonstrates to the board that he or she:
1428 (b)1. Holds an active valid license to practice and has
1429 actively practiced the profession for which licensure is applied
1430 in another state for 3 of the last 5 years immediately preceding
1431 licensure.
1432 ~~2. Meets the education requirements of this chapter for~~
1433 ~~the profession for which licensure is applied.~~
1434 2.~~3.~~ Has passed a substantially equivalent licensing
1435 examination in another state or has passed the licensure
1436 examination in this state in the profession for which the
1437 applicant seeks licensure.
1438 3.~~4.~~ Holds a license in good standing, is not under
1439 investigation for an act that would constitute a violation of
1440 this chapter, and has not been found to have committed any act
1441 that would constitute a violation of this chapter. ~~The fees paid~~
1442 ~~by any applicant for certification as a master social worker~~
1443 ~~under this section are nonrefundable.~~
1444 Section 14. Subsections (2) and (3) of section 491.007,
1445 Florida Statutes, are amended to read:
1446 491.007 Renewal of license, registration, or certificate.—
1447 (2) Each applicant for renewal shall present satisfactory
1448 evidence that, in the period since the license or certificate
1449 was issued, the applicant has completed continuing education
1450 requirements set by rule of the board or department. Not more

1451 than 25 classroom hours of continuing education per year shall
1452 be required. ~~A certified master social worker is exempt from the~~
1453 ~~continuing education requirements for the first renewal of the~~
1454 ~~certificate.~~
1455 ~~(3) The board or department shall prescribe by rule a~~
1456 ~~method for the biennial renewal of an intern registration at a~~
1457 ~~fee set by rule, not to exceed $100.~~
1458 Section 15. Subsection (2) of section 491.009, Florida
1459 Statutes, is amended to read:
1460 491.009 Discipline.—
1461 (2) The ~~department, or, in the case of psychologists, the~~
1462 board~~,~~ may enter an order denying licensure or imposing any of
1463 the penalties in s. 456.072(2) against any applicant for
1464 licensure or licensee who is found guilty of violating any
1465 provision of subsection (1) of this section or who is found
1466 guilty of violating any provision of s. 456.072(1).
1467 Section 16. Paragraph (a) of subsection (1) of section
1468 491.012, Florida Statutes, is amended to read:
1469 491.012 Violations; penalty; injunction.—
1470 (1) It is unlawful and a violation of this chapter for any
1471 person to:
1472 (a) Use the following titles or any combination thereof,
1473 unless she or he holds a valid, active license as a clinical
1474 social worker issued pursuant to this chapter:
1475 1. "Licensed clinical social worker."

1476 2. "Clinical social worker."
1477 3. "Licensed social worker."
1478 4. "Psychiatric social worker."
1479 5. "Psychosocial worker."
1480 6. "Certified master social worker."
1481 Section 17. Section 491.0145, Florida Statutes, is amended
1482 to read:
1483 491.0145 Certified master social worker.—
1484 (1) The department shall license ~~may certify~~ an applicant
1485 for a designation as a certified master social worker who, upon
1486 applying to the department and remitting the appropriate fee,
1487 demonstrates to the board that he or she has met the following
1488 conditions:
1489 (a)~~(1)~~ The applicant has submitted ~~completes~~ an
1490 application and has paid ~~to be provided by the department and~~
1491 ~~pays~~ a nonrefundable fee not to exceed $250 to be established by
1492 rule of the board ~~department~~. ~~The completed application must be~~
1493 ~~received by the department at least 60 days before the date of~~
1494 ~~the examination in order for the applicant to qualify to take~~
1495 ~~the scheduled exam.~~
1496 (b)~~(2)~~ The applicant submits proof satisfactory to the
1497 board ~~department~~ that the applicant has received a doctoral
1498 degree in social work, or a master's degree in social work with
1499 a major emphasis or specialty in ~~clinical practice or~~
1500 ~~administration, including, but not limited to, agency~~

1501 administration and supervision, program planning and evaluation,
1502 staff development, research, community organization, community
1503 services, social planning, and human service advocacy. Doctoral
1504 degrees must have been received from a graduate school of social
1505 work which at the time the applicant was enrolled and graduated
1506 was accredited by an accrediting agency approved by the United
1507 States Department of Education. Master's degrees must have been
1508 received from a graduate school of social work which at the time
1509 the applicant was enrolled and graduated was accredited by the
1510 Council on Social Work Education or the Canadian Association of
1511 Schools for ~~of~~ Social Work Education or by one that meets
1512 comparable standards.
1513 (c)~~(3)~~ The applicant has had at least 2 ~~3~~ years'
1514 experience, as defined by rule of the board, including, but not
1515 limited to, clinical services or administrative activities as
1516 defined in subsection (2), 2 years of which must be at the post-
1517 master's level under the supervision of a person who meets the
1518 education and experience requirements for certification as a
1519 certified master social worker, as defined by rule of the board,
1520 or licensure as a clinical social worker under this chapter. A
1521 doctoral internship may be applied toward the supervision
1522 requirement.
1523 (d)~~(4)~~ Any person who holds a master's degree in social
1524 work from institutions outside the United States may apply to
1525 the board ~~department~~ for certification if the academic training

1526 in social work has been evaluated as equivalent to a degree from
1527 a school accredited by the Council on Social Work Education. Any
1528 such person shall submit a copy of the academic training from
1529 the Foreign Equivalency Determination Service of the Council on
1530 Social Work Education.
1531 (e)~~(5)~~ The applicant has passed an examination required by
1532 the board ~~department~~ for this purpose. ~~The nonrefundable fee for~~
1533 ~~such examination may not exceed $250 as set by department rule.~~
1534 (2)~~(6)~~ Nothing in this chapter shall be construed to
1535 authorize a certified master social worker to provide clinical
1536 social work services.
1537 (3) The board may adopt rules to implement this section.
1538 Section 18. Section 491.0149, Florida Statutes, is amended
1539 to read:
1540 491.0149 Display of license; use of professional title on
1541 promotional materials.—
1542 (1)(a) A person licensed under this chapter as a clinical
1543 social worker, marriage and family therapist, or mental health
1544 counselor, or certified as a master social worker shall
1545 conspicuously display the valid license issued by the department
1546 or a true copy thereof at each location at which the licensee
1547 practices his or her profession.
1548 (b)1. A licensed clinical social worker shall include the
1549 words "licensed clinical social worker" or the letters "LCSW" on
1550 all promotional materials, including cards, brochures,

1551 stationery, advertisements, social media, and signs, naming the
1552 licensee.
1553 2. A licensed marriage and family therapist shall include
1554 the words "licensed marriage and family therapist" or the
1555 letters "LMFT" on all promotional materials, including cards,
1556 brochures, stationery, advertisements, social media, and signs,
1557 naming the licensee.
1558 3. A licensed mental health counselor shall include the
1559 words "licensed mental health counselor" or the letters "LMHC"
1560 on all promotional materials, including cards, brochures,
1561 stationery, advertisements, social media, and signs, naming the
1562 licensee.
1563 (c) A generalist social worker shall include the words
1564 "certified master social worker" or the letters "CMSW" on all
1565 promotional materials, including cards, brochures, stationery,
1566 advertisements, social media, and signs, naming the licensee.
1567 (2)(a) A person registered under this chapter as a
1568 clinical social worker intern, marriage and family therapist
1569 intern, or mental health counselor intern shall conspicuously
1570 display the valid registration issued by the department or a
1571 true copy thereof at each location at which the registered
1572 intern is completing the experience requirements.
1573 (b) A registered clinical social worker intern shall
1574 include the words "registered clinical social worker intern," a
1575 registered marriage and family therapist intern shall include

1576 the words "registered marriage and family therapist intern," and
1577 a registered mental health counselor intern shall include the
1578 words "registered mental health counselor intern" on all
1579 promotional materials, including cards, brochures, stationery,
1580 advertisements, social media, and signs, naming the registered
1581 intern.
1582 (3)(a) A person provisionally licensed under this chapter
1583 as a provisional clinical social worker licensee, provisional
1584 marriage and family therapist licensee, or provisional mental
1585 health counselor licensee shall conspicuously display the valid
1586 provisional license issued by the department or a true copy
1587 thereof at each location at which the provisional licensee is
1588 providing services.
1589 (b) A provisional clinical social worker licensee shall
1590 include the words "provisional clinical social worker licensee,"
1591 a provisional marriage and family therapist licensee shall
1592 include the words "provisional marriage and family therapist
1593 licensee," and a provisional mental health counselor licensee
1594 shall include the words "provisional mental health counselor
1595 licensee" on all promotional materials, including cards,
1596 brochures, stationery, advertisements, social media, and signs,
1597 naming the provisional licensee.
1598 Section 19. Section 491.015, Florida Statutes, is
1599 repealed.
1600 Section 20. Paragraph (h) is added to subsection (10) of

1601 section 768.28, Florida Statutes, to read:
1602 768.28 Waiver of sovereign immunity in tort actions;
1603 recovery limits; limitation on attorney fees; statute of
1604 limitations; exclusions; indemnification; risk management
1605 programs.—
1606 (10)
1607 (h) For the purposes of this section, the representative
1608 appointed from the Board of Medicine and the representative
1609 appointed from the Board of Osteopathic Medicine, when serving
1610 as commissioners of the Interstate Medical Licensure Compact
1611 Commission pursuant to s. 456.4501, and any administrator,
1612 officer, executive director, employee, or representative of the
1613 Interstate Medical Licensure Compact Commission, when acting
1614 within the scope of their employment, duties, or
1615 responsibilities in this state, are considered agents of the
1616 state. The commission shall pay any claims or judgments pursuant
1617 to this section and may maintain insurance coverage to pay any
1618 such claims or judgments.
1619 Section 21. Paragraph (c) of subsection (4) of section
1620 414.065, Florida Statutes, is amended to read:
1621 414.065 Noncompliance with work requirements.—
1622 (4) EXCEPTIONS TO NONCOMPLIANCE PENALTIES.—Unless
1623 otherwise provided, the situations listed in this subsection
1624 shall constitute exceptions to the penalties for noncompliance
1625 with participation requirements, except that these situations do

1626 not constitute exceptions to the applicable time limit for
1627 receipt of temporary cash assistance:
1628 (c) Noncompliance related to treatment or remediation of
1629 past effects of domestic violence.—An individual who is
1630 determined to be unable to comply with the work requirements
1631 under this section due to mental or physical impairment related
1632 to past incidents of domestic violence may be exempt from work
1633 requirements, except that such individual shall comply with a
1634 plan that specifies alternative requirements that prepare the
1635 individual for self-sufficiency while providing for the safety
1636 of the individual and the individual's dependents. A participant
1637 who is determined to be out of compliance with the alternative
1638 requirement plan shall be subject to the penalties under
1639 subsection (1). The plan must include counseling or a course of
1640 treatment necessary for the individual to resume participation.
1641 The need for treatment and the expected duration of such
1642 treatment must be verified by a physician licensed under chapter
1643 458 or chapter 459; a psychologist licensed under s. 490.005(1),
1644 s. 490.006, or the provision identified as s. 490.013(2) in s.
1645 1, chapter 81-235, Laws of Florida; a therapist as defined in s.
1646 491.003(3) or (7) ~~s. 491.003(2) or (6)~~; or a treatment
1647 professional who is registered under s. 39.905(1)(g), is
1648 authorized to maintain confidentiality under s. 90.5036(1)(d),
1649 and has a minimum of 2 years' ~~years~~ experience at a certified
1650 domestic violence center. An exception granted under this

1651 paragraph does not automatically constitute an exception from
1652 the time limitations on benefits specified under s. 414.105.
1653 Section 22. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1287 Assisted Reproduction Facilities
SPONSOR(S): Health Quality Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Quality Subcommittee		Siples	McElroy

SUMMARY ANALYSIS

Infertility is the inability to conceive a child, and generally, a person is considered to be infertile after one year of unsuccessful conception. A physician may treat infertility by using in intrauterine insemination or assistive reproductive technology. In intrauterine insemination, the physician uses reproductive material from the woman's partner or a donor. In assistive reproductive technology, an egg is fertilized in a laboratory using reproductive material from the woman's partner or a donor.

With the rising popularity of at-home genetic testing, former patients and adult children are learning that fertility doctors used their own reproductive material without the consent of their former patients. This practice is now known as fertility fraud. Currently, Florida law does not specifically prohibit this practice.

PCS for HB 1287 bans a physician from implanting or implanting a patient or causing a patient to be inseminated or implanted with the reproductive material of the physician. The bill establishes such action as a ground for disciplinary action against the physician's license. The bill also prohibits any health care practitioner from intentionally implanting, inseminating, or causing to be implanted or inseminated reproductive material into a patient from a donor whom the patient unless the patient has consented to the use of reproductive material.

The bill creates the crime of reproductive battery, which prohibits a healthcare practitioner from intentionally penetrating the vagina of a patient with the reproductive material of a donor or any object containing the reproductive material of a donor knowing the patient has not consented to the use of reproductive material from that donor. The bill tolls the statute of limitations for criminal prosecution of a reproductive battery until the date a violation is discovered and reported to law enforcement or another governmental agency.

The bill has an insignificant, negative fiscal impact on the Department of Health, which current resources are adequate to absorb. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida licenses two types of physicians: allopathic and osteopathic. Allopathic physicians diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity, or other physical or mental condition.[1] The scope of practice for osteopathic physicians is the same as that of allopathic physicians; however, osteopathic medicine emphasizes the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.[2]

Physician Licensure in Florida

Allopathic Physicians

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

Allopathic Licensure by Examination

An individual seeking to be licensed by examination as an allopathic physician, must meet the following requirements:[3]

- Be at least 21 years of age;
- Be of good moral character;
- Has not committed an act or offense that would constitute the basis for disciplining a physician, pursuant to s. 458.331, F.S.;
- Complete 2 years of post-secondary education which includes, at a minimum, courses in fields such as anatomy, biology, and chemistry prior to entering medical school;
- Meets one of the following medical education and postgraduate training requirements:
    - Is a graduate of an allopathic medical school recognized and approved by an accrediting agency recognized by the U.S. Office of Education or recognized by an appropriate governmental body of a U.S. territorial jurisdiction, and has completed at least one year of approved residency training;
    - Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute as meeting the standards required to accredit U.S. medical schools, and has completed at least one year of approved residency training; or
    - Is a graduate of an allopathic foreign medical school that has not been certified pursuant to statute; has an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG),[4] has passed that commission's examination; and has completed an approved residency or fellowship of at least 2 years in one specialty area;

[1] Section 458.305, F.S.
[2] Section 459.003, F.S.
[3] Section 458.311(1), F.S.; s. 458.313, F.S. offers a path to licensure by endorsement for physicians who hold an active license to practice medicine in another jurisdiction.
[4] A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination. (Section 458.311, F.S.)

- Has submitted to a background screening by the DOH; and
- Has obtained a passing score on:
    - The United States Medical Licensing Examination (USMLE);
    - A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or
    - The Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX), if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the United States or Canada, and has practiced for a period of at least 10 years.

Osteopathic Physicians

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board), in conjunction the DOH. The chapter provides, among other things, general licensure requirements, including by examination for medical school graduates and licensure by endorsement requirements.

Osteopathic General Licensure

An individual seeking to be licensed as an osteopathic physician must meet the following requirements:[5]

- Complete at least three years of pre-professional post-secondary education;
- Has not committed, or be under investigation in any jurisdiction for, an act or offense that would constitute the basis for disciplining an osteopathic physician, unless the osteopathic board determines such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Has not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against by the licensing authority in any jurisdiction;
- Has not received less than a satisfactory evaluation from an internship, residency, or fellowship training program;
- Has submitted to a background screening by the DOH;
- Has graduated from a medical college recognized and approved by the American Osteopathic Association;
- Successfully completes a resident internship of at least 12 months in a hospital approved by the Board of Trustees of the American Osteopathic Association or any other internship approved by the osteopathic board; and
- Obtains a passing score, as established by rule of the osteopathic board, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the osteopathic board, no more than five years prior to applying for licensure.[6]

<u>Infertility</u>

Infertility is the inability to conceive a child, and generally, a person is considered to be infertile after one year of unsuccessful conception.[7] The Centers for Disease Control (CDC) estimates about 12 percent of women aged 15 to 44 years in the United States have difficulty getting pregnant or carry a

[5] Section 459.0055(1), F.S.
[6] However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.
[7] Centers for Disease Control and Prevention, *Infertility FAQs*, available at https://www.cdc.gov/reproductivehealth/infertility/index.htm (last visited January 25, 2020).

pregnancy to term.[8] Infertility affects both men and women equally. In approximately forty percent of infertile couples, the male partner is either the sole cause or a contributing cause of infertility.[9]

Treatment of Infertility

Health care practitioners may treat infertility using a number of methods: medicine, surgery, intrauterine insemination, or assisted reproductive technology.[10] Health care practitioners often use more than one of these methods concurrently. The treatment used by the health care practitioner depends on the:[11]

- Factors contributing to the infertility.
- Duration of the infertility.
- Age of the female.
- Couple's treatment preference after counseling about success rates, risks, and benefits of each treatment option.

Eighty-five to ninety percent of infertility cases are treated with medication or surgery.[12] A health care practitioner may use intrauterine insemination (IUI), also known as artificial insemination if medication or surgery is not indicated or in unsuccessful in resolving the infertility. With IUI, specially prepared sperm are inserted into a woman's uterus.[13] The sperm may be the sperm of her partner or from a donor.

Assistive reproductive technology (ART) includes all fertility treatments in which both the eggs and the embryos are handled outside of the body. Examples of ART includes in vitro fertilization (IVF), gamete intrafallopian transfer, pronuclear stage tubal transfer, tubal embryo transfer, and zygote intrafallopian transfer.[14]

IVF involves surgically removing eggs from a woman's ovaries and combining them with her partner's sperm or donor sperm in a laboratory.[15] After 40 hours the eggs are examined to see if they have become fertilized by cell and are dividing into cells. The fertilized eggs, or embryos, are then placed in the woman's uterus.[16] The transfer may occur at the time they are fertilized or the embryos may be cryopreserved for future use.

Fraudulent Insemination

With the rising popularity of at-home genetic testing, adult children are learning that they are not biologically related to their fathers and that they may have multiple half-siblings. Beginning in 2016, cases began to emerge where male physicians had used their own sperm in the 1970s through 1990s to inseminate patients without their knowledge.[17]

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[8] Id.
[9] American Society for Reproductive Medicine, *Quick Facts about Infertility*, available at https://www.reproductivefacts.org/faqs/quick-facts-about-infertility/ (last visited February 1, 2020).
[10] *Supra* note 7.
[11] Id.
[12] *Supra* note 9.
[13] *Supra* note 7.
[14] American Society for Reproductive Medicine, *Assisted Reproductive Technologies*, available at https://www.reproductivefacts.org/topics/topics-index/assisted-reproductive-technologies/ (last visited February 1, 2020).
[15] American Society for Reproductive Medicine, *What is In Vitro Fertilization?*, available at https://www.reproductivefacts.org/faqs/frequently-asked-questions-about-infertility/q05-what-is-in-vitro-fertilization/ (last visited February 1, 2020).
[16] Id.
[17] Dr. Jody Lynee Madeira, *Uncommon Misconceptions: Holding Physicians Accountable for Fertility Fraud*, 37 LAW & INEQUALITY 45 (Winter 2019), available at https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1605&context=lawineq (last visited February 1, 2020).

When infertility treatment was relatively new, physicians would mix a spouse's sample with that of a donor and physicians typically provided little information about the donor to the patient.[18] A survey conducted by the federal Office of Technology Assessment in 1987, revealed that approximately two percent of fertility doctors who responded had use their own sperm to inseminate patients.[19] Physicians have justified this practice by indicating that the donors were advised that the sperm donors were anonymous and the patients weren't provided any other information to protect that anonymity.[20] Unlike the practice in 1970s and 1980s, many donations today are provided to sperm banks that typically catalog donations, along with profiles of the donors.[21]

Former patients impacted by fertility fraud feel physically violated and assaulted, and may feel guilty or remorseful for seeking accountability due to their affection for their children.[22] Children who resulted from fertility fraud may experience disruption in personal identity and may become estranged from their families if they pursue relationships with their newly found half-siblings.[23]

Criminal Liability

Current law presents several obstacles to imposing criminal sanctions for fraudulent insemination. As of 2019, no health care practitioner has been held criminally liable for conduct relating to the unauthorized use of human reproductive material.[24] Prosecuting authorities have charged health care practitioners with mail fraud, wire fraud, perjury, and obstruction of justice when state laws have failed to specifically provide criminal penalties for such conduct.[25]

Florida

Florida law does not specifically prohibit a health care practitioner from implanting or inseminating a patient with human reproductive material from an unspecified donor without the patient's consent. The elements of some existing crimes come close to capturing the conduct, but present challenges when applied in a health care setting. For example, it is unlikely that the crime of battery[26] captures fraudulent insemination. A person commits battery when he or she:[27]

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes another person bodily harm.

A fertility patient consents to an insemination procedure prior to sperm being injected. Even if a fertility patient would not have consented to the sperm's source, because she consents to the actual "touching" required for a battery, it may be difficult to prove a violation. Moreover, other states have resisted applying battery statutes to fraudulent insemination out of concern that a jury may determine that a patient consented to conduct in cases where anonymous donor sperm is used for insemination.[28]

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[18] Dov Fox, JD, DPhil, I. Glenn Cohen, JD, and Eli Y. Adashi, MD, MS, *Fertility Fraud, Legal Firsts, and Medical Ethics (Abstract)*, 134 Obstetrics & Gynecology 918 (Nov. 2019), available at https://journals.lww.com/greenjournal/Citation/2019/11000/Fertility_Fraud,_Legal_Firsts,_and_Medical_Ethics.4.aspx (last visited February 1, 2020).
[19] *Supra* note 17.
[20] Michael Cook, *Another Case of Fertility Fraud, This Time in Colorado*, BIOEDGE, (Feb. 1, 2020), available at https://www.bioedge.org/bioethics/another-case-of-fertility-fraud-this-time-in-colorado/13311 (last visited February 1, 2020).
[21] *Supra* note 18.
[22] *Supra* note 17.
[23] Id.
[24] *Supra* note 17.
[25] Jody Lynee Madeira, *Understanding Illicit Insemination and Fertility Fraud, From Patient Experience to Legal Reform*, (Jan. 29, 2020) https://journals.library.columbia.edu/index.php/cjgl/article/view/4559 (last visited Feb. 1, 2020).
[26] Section 784.03, F.S.
[27] Battery is a first degree misdemeanor, punishable by up to one year in county jail and a fine up to $1,000. Ss. 775.082 and 775.083, F.S.
[28] *Supra* note 17.

Similarly, the elements of fraudulent insemination are likely not captured by the existing crime of sexual battery. Sexual battery is the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.[29] Sexual battery does not include an act done for a bona fide medical purpose.[30] Although sexual battery does not require proof that the act was performed for the purpose of sexual gratification, the fact that the act is performed in a clinical setting in which the patient has consented to the procedure may present obstacles to proving a violation.[31]

Other States

Texas prohibits a person from using genetic material without disclosing the source of such material as a form of sexual assault. Under the law, it is a felony to implant human reproductive material without a patient's consent, and a violation is punishable by six months to two years imprisonment and a fine up to $10,000.[32] Indiana prohibits making a misrepresentation involving human reproductive material or a medical procedure, device, or drug. A violation of the prohibition is punishable by one to six years imprisonment and a fine up to $10,000.[33] Currently, Texas and Indiana are the only states that have criminalized conduct related to fraudulent insemination.[34]

California law makes it a crime for a person to knowingly use reproductive material in ART, for any purpose other than that authorized by the provider of the reproductive material.[35] It also prohibits anyone from knowingly implanting reproductive material, through ART, into a recipient who is not the provider of the reproductive material without the written consent of both the provider and recipient.[36]

Statute of Limitations

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.[37] The SOL in effect at the time a crime is committed controls.[38] In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.[39] Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.[40]

Capital felonies,[41] life felonies,[42] and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.[43] The standard time limitations for other crimes are:[44]

- Four years for a first degree felony.

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[29] The act must be committed without the victim's consent. S. 794.011(1)(h), F.S.
[30] A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force or violence likely to cause serious personal injury commits a second degree felony, punishable by 15 years imprisonment and a $10,000 fine. Ss. 775.082 and 775.083, F.S.
[31] Jody Lynee Madeira, *Understanding Illicit Insemination*, *supra* note 2.
[32] Tex. Penal Code Ann. § 22.011 (2019).
[33] Ind. Code § 35-43-5-3 (2019).
[34] Jody Lynee Madeira, *Fertility Fraud: An Update*, Society for Reproductive Technology (Oct. 21, 2019), https://www.sart.org/news-and-publications/news-and-research/legally-speaking/fertility-fraud-an-update/ (last visited Feb. 2, 2020).
[35] Cal. Penal Code § 367g (2019).
[36] Id.
[37] Section 775.15, F.S.
[38] *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).
[39] Sections. 775.15(3)–(4), F.S.
[40] Section 775.15(5), F.S.
[41] Section 775.082, F.S.
[42] Id.
[43] Section 775.15(1), F.S.
[44] Section 775.15(2), F.S.

- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins for sex crimes, including sexual battery, lewd or lascivious offenses, and human trafficking.[45]

The potential lapse of time between a fraudulent insemination and the discovery of such conduct may present a barrier to prosecution. Patients often do not discover fertility fraud until several years after the insemination has occurred.[46] For example, Donald Cline, an obstetrician from Indianapolis, Indiana, fraudulently inseminated multiple patients and fathered several children between 1974 and 1987.[47] His conduct was not discovered until 2014.[48]

Health Care Professional Licensure

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.[49] MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.[50] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

Section 456.072, F.S., authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner's licensure for a number of offenses, including but not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession;
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession; or
- Engaging or attempting to engage in sexual misconduct[51] as defined in s. 456.063, F.S.

If the appropriate regulatory board or DOH, if there is no board, finds that a licensee committed a violation, the board or DOH may:[52]

- Refuse to certify, or to certify with restrictions, an application for a license;
- Suspend or permanently revoke a license;
- Place a restriction on the licensee's practice or license;

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[45] An extension of a particular crime's SOL does not violate the ex post facto clause of the State Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. Art. I, s. 10, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).
[46] *Supra* note 17.
[47] Id.
[48] Id.
[49] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.
[50] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited February 2, 2020).
[51] Section 456.063, F.S., prohibits a health care practitioner from engaging, or attempting to engage, in verbal or physical sexual activity outside the scope of the professional practice of his or her health care profession with a patient or client, or an immediate family member, guardian, or representative of a patient or client. A person who commits such sexual misconduct is disqualified from licensure in this state.
[52] Section 456.072(2), F.S.

- Impose an administrative fine not to exceed $10,000 for each count or separate offense; if the violation is for fraud or making a false representation, a fine of $10,000 must be imposed for each count or separate offense;
- Issue a reprimand or letter of concern;
- Place the licensee on probation;
- Require a corrective action plan;
- Refund fees billed and collected from the patient or third party on behalf of the patient; or
- Require the licensee to undergo remedial education.

The board or DOH, if there is no board, must consider what is necessary to protect the public or to compensate the patient when it decides the penalty to impose.[53]

Effect of Proposed Changes

PCS for HB 1287 bans a physician from inseminating or implanting a patient or causing a patient to be inseminated or implanted with the reproductive material[54] of the physician. The bill establishes such action as a ground for disciplinary action against the physician's license.

The bill also prohibits any health care practitioner from intentionally implanting, inseminating, or causing to be implanted or inseminated reproductive material into a patient from a donor whom the patient has not consented to the use of reproductive material. A health care practitioner who intentionally performs this act is subject to licensure discipline.

The bill creates the crime of reproductive battery, which prohibits a healthcare practitioner from intentionally penetrating the vagina of a patient with the reproductive material[55] of a donor or any object containing the reproductive material of a donor knowing the patient has not consented to the use of reproductive material from that donor. A health care practitioner who violates the prohibition commits a third degree felony, punishable by up to five years imprisonment and a $5,000 fine.[56]

The bill tolls the statute of limitations for criminal prosecution of a reproductive battery until the date a violation is discovered and reported to law enforcement or another governmental agency. As such, the standard three-year statute of limitations for a third degree felony does not apply to a reproductive battery. This exception to the general statute of limitations will prevent a prosecution from being barred by a patient's failure to discover the healthcare practitioner's conduct until several years after the offense occurred.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.
Section 2: Amends s. 458.331, F.S., relating to grounds for discipline; action by the board and department.
Section 3: Amends s. 459.015, F.S., relating to grounds for discipline; action by the board and department.
Section 4: Creates s. 784.006, F.S., relating to reproductive battery.
Section 5: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[53] Id.
[54] The bill defines reproductive material as any human egg, preembryo, or sperm.
[55] Reproductive material means any human egg, preembryo, or sperm, as those terms are defined in s. 742.13, F.S.
[56] Ss. 775.082, 775.083, or 775.084, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH may incur an insignificant, negative fiscal impact to investigate and the new grounds for discipline; however, existing resources should be adequate to absorb.

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. The bill has no effect on municipal or county governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Existing rule-making authority is sufficient to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reproductive medicine; amending s. 456.072, F.S.; establishing certain uses of reproductive material without patient consent as a grounds for licensure discipline; amending s. 458.331, F.S.; prohibiting a physician from performing specified acts with reproductive material; providing exceptions; amending s. 459.015, F.S.; prohibiting a physician from performing specified acts with; providing exceptions; creating s. 784.086, F.S.; defining terms; prohibiting a health care practitioner from intentionally performing specified acts with reproductive material; providing penalties; tolling applicable time limitations for criminal prosecution; creating s. 817.5051, F.S.; defining terms; prohibiting a health care practitioner from intentionally using reproductive material without consent or in a manner other than consented to by the donor or recipient; providing penalties; tolling applicable time limitations for criminal prosecution; providing an effective date.

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

Section 1. Paragraph (pp) is added to subsection (1) of

26 section 456.072, Florida Statutes, to read:
27 456.072 Grounds for discipline; penalties; enforcement.—
28 (1) The following acts shall constitute grounds for which
29 the disciplinary actions specified in subsection (2) may be
30 taken:
31 (pp) Intentionally implanting or inseminating or causing
32 to be implanted or inseminated human reproductive material, as
33 defined in s. 784.086, into a patient from a donor whom the
34 recipient has not consented to the use of reproductive material
35 from that donor.
36 Section 2. Paragraph (ww) is added to subsection (1) of
37 section 458.331, Florida Statutes, to read:
38 458.331 Grounds for disciplinary action; action by the
39 board and department.—
40 (1) The following acts constitute grounds for denial of a
41 license or disciplinary action, as specified in s. 456.072(2):
42 (ww) Implant or inseminate a patient or cause a patient to
43 be implanted or inseminated with the reproductive material, as
44 defined in s. 784.086, of the licensee.
45 Section 3. Paragraph (yy) is added to subsection (1) of
46 section 459.015, Florida Statutes, to read:
47 459.015 Grounds for disciplinary action; action by the
48 board and department.—
49 (1) The following acts constitute grounds for denial of a
50 license or disciplinary action, as specified in s. 456.072(2):

51 (yy) Implant or inseminate a patient or cause a patient to
52 be implanted or inseminated with the reproductive material, as
53 defined in s. 784.086, of the licensee.
54 Section 4. Effective October 1, 2020, section 784.086,
55 Florida Statutes, is created to read:
56 784.086 Reproductive battery.—
57 (1) DEFINITIONS.—As used in this section, the term:
58 (a) "Health care practitioner" has the same meaning as
59 provided in s. 456.001.
60 (b) "Donor" means a person who donates reproductive
61 material, regardless of whether for personal use or
62 compensation.
63 (c) "Recipient" means a person who receives reproductive
64 material from a donor.
65 (d) "Reproductive material" means any human egg, preembryo,
66 or sperm, as those terms are defined in s. 742.13.
67 (2) A health care practitioner may not intentionally
68 penetrate the vagina of a recipient with the reproductive
69 material of a donor or any object containing the reproductive
70 material of a donor, knowing the recipient has not consented to
71 the use of reproductive material from that donor.
72 (3) A health care practitioner who violates this section
73 commits reproductive battery, a felony of the third degree,
74 punishable as provided in s. 775.082, s. 775.083, or 775.084.
75 (4) Notwithstanding any other provision of law, the period of

76 limitation for a violation of this section does not begin to run
77 until the date the violation is discovered and reported to law
78 enforcement or other governmental agency.
79 Section 5. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Informed Consent for Pelvic Examinations
SPONSOR(S): Jenne
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

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

SUMMARY ANALYSIS

Informed consent is a process in which a health care provider educates a patient about the risks, benefits, and alternatives of a given procedure or intervention. Such information will enable a patient to make a competent decision about whether to undergo a procedure or treatment.

Recently, news outlets have reported that medical students may be performing pelvic examinations on anesthetized or unconscious women, without obtaining informed consent from the woman prior to anesthesia or any other person who can provide consent. This practice had been standard since the 1800s, but in recent years the practice has been met with disapproval by professional medical associations. The American Association of Medical Colleges does not believe that this is a widespread practice, as many institutions have implemented comprehensive informed consent processes.

HB 1289 prohibits a health care provider from performing a pelvic examination on an unconscious or anesthetized patient without consent unless an exception applies. The bill requires a health care provider to obtain consent for a pelvic examination from the patient prior to the patient being anesthetized or rendered unconscious by providing the patient or patient's representative a written or electronic document that:

- Specifies the nature and purpose of the pelvic examination;
- List the name and titles of the health care providers authorized to perform the pelvic examination;
- States whether a student or resident is authorized to perform an additional pelvic examination or to observe or be present during a pelvic examination, for educational or training purposes;

A health care provider who fails to obtain the required informed consent is subject to discipline by the Department of Health. A health care provider does not have to obtain informed consent if the pelvic examination is required by a court order, is within the scope of the services for a procedure or diagnostic examination scheduled for the patient; or is immediately necessary for diagnosis and treatment of the patient.

The bill has an insignificant, negative fiscal impact on the Department of Health, which current resources are sufficient to absorb. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Informed Consent

Informed consent for medical treatment is fundamental in both ethics and law.[1] Informed consent is a process in which a health care provider educates a patient about the risks, benefits, and alternatives of a given procedure or intervention.[2] A patient must be competent to make a voluntary decision about whether to undergo a procedure. Foregoing the process of consent within medicine can result in violations of both autonomy and basic rights, as well as trust.[3]

The idea of informed consent was established in 1914, in a case in which a patient was operated on without her consent.[4] In determining whether she had a cause of action against the hospital in which the operation was formed, Judge Cardozo opined that "every human being of adult years and sound mind has a right to determine what shall be done to his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable for damages."[5]

Florida Requirements for Informed Consent

Florida law does not contain a general statute on informed consent. However, Florida physicians and physicians practicing within a postgraduate training program approved by the Board of Medicine must explain the medical or surgical procedure to be performed to the patient and obtain the informed consent of the patient.[6] However, the physician does not have to obtain or witness the signature of the patient on a written form evidencing informed consent.

Pelvic Examinations

A pelvic examination involves the visual examination of the external genitalia and an internal visual examination of the vaginal walls and cervix using a speculum and palpation of the pelvic organs.[7] Health care practitioners often perform pelvic examinations as a part of the annual well woman visit.[8] A health care practitioner may also perform a pelvic examination to diagnose specific health conditions, such as cancer and bacterial vaginosis.[9]

New clinical guidelines have recommended against pelvic examinations on asymptomatic, non-pregnant, adult women.[10] Routine pelvic examination has not been shown to benefit such women in

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[1] American Medical Association, *Informed Consent: Code of Medical Ethics Opinion 2.1.1*, available at https://www.ama-assn.org/delivering-care/ethics/informed-consent (last visited January 31, 2020).
[2] William Gossman, Imani Thornton, John Hipskind, *Informed Consent*, (July 2019), available at https://www.ncbi.nlm.nih.gov/books/NBK430827/ (last visited January 31, 2020).
[3] Phoebe Friesen, *Educational Pelvic Exams on Anesthetized Women: Why Consent Matters (Abstract),* 32 BIOETHICS 298 (June 2018), available at https://onlinelibrary.wiley.com/doi/abs/10.1111/bioe.12441 (last visited January 31, 2020).
[4] *Schloendorff v. Society of N.Y. Hosp.*, 105 N>E. 92, 93 (N.Y. 1914).
[5] Id.
[6] Rule 64B8-9.007, F.A.C.
[7] Id. A pelvic examination usually involves an examination of woman's vulva, vagina, uterus, ovaries, and fallopian tubes. It may also include examination of the bladder and the rectum. Melissa Conrad Stoppler, MD, *Pelvic Exam*, MedicineNet, available at https://www.medicinenet.com/pelvic_exam/article.htm#why_is_a_pelvic_exam_performed (last visited January 31, 2020).

[8] Amir Qaseem, et al., *Screening Pelvic Examination in Adult Women: A Clinical Practice Guideline from the American College of Physicians*, 161 Ann Intern Med 67 (2014), available at https://annals.org/aim/fullarticle/1884537/screening-pelvic-examination-adult-women-clinical-practice-guideline-from-american?_ga=2.7498674.1663533724.1580510917-1215329083.1580510917 (last visited January 31, 2020).
[9] Id.
[10] *Supra* note 8. This recommendation does not apply to pap smears.

that it rarely detects important disease and does not reduce mortality.[11] Several harms have been identified for the performance of pelvic examinations including fear, anxiety, embarrassment, pain, and discomfort.[12] Other physical harms include urinary tract infections and symptoms, such as dysuria and frequent urination.[13]

However, benefits of routine pelvic examinations include early detection of treatable gynecologic conditions before symptoms occur and incidental findings such as dermatologic changes and foreign bodies.[14] It also gives the health care practitioner an opportunity to establish open communication with the patient to answer specific questions and reassure her of normalcy.[15]

The American College of Obstetricians and Gynecologists finds that data is currently insufficient to make a recommendation for or against routine pelvic examinations.[16] Therefore, it recommends that pelvic examinations be performed when indicated by medical history or symptoms, such as abnormal bleeding, pelvic pain, or urinary issues.[17]

Pelvic Examinations on Unconscious or Anesthetized Patients

In recent years, articles have detailed reports of medical students performing pelvic examinations, without consent, on women who are anesthetized or unconscious.[18] This practice has been common since the late 1800s and in 2003, a study reported that 90 percent of medical students who completed obstetrics and gynecology rotations at four Philadelphia-area hospitals performed pelvic examinations on anesthetized patients for educational purposes.[19]

Several medical organizations have taken positions that pelvic examinations should not be performed on anesthetized or incapacitated:

- The American Medical Association Council on Ethical and Judicial Affairs recommends that in situations where the patient will be temporarily incapacitated (e.g., anesthetized) and where student involvement is anticipated, involvement should be discussed before the procedure is undertaken whenever possible.[20]

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[11] American College of Physicians, *American College of Physicians Recommends Against Screening Pelvic Examinations in Adult, Asymptomatic, Average Risk, Non-Pregnant Women*, (July 1, 2014), available at https://www.acponline.org/acp-newsroom/american-college-of-physicians-recommends-against-screening-pelvic-examination-in-adult-asymptomatic (last visited on January 31, 2020).
[12] Id.
[13] Id.
[14] American College of Obstetricians and Gynecologists, Committee on Gynecologic Practice, *ACOG Committee Opinion, Number 754*, 132(4) OBSTETRICS & GYNECOLOGY 174 (Oct. 2018), available at https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Gynecologic-Practice/The-Utility-of-and-Indications-for-Routine-Pelvic-Examination?IsMobileSet=false (last visited January 31, 2020).
[15] Id.
[16] Id.
[17] Id.
[18] *For examples, see:* Paul Hsieh, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018), available at https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/#74d152df7846 (last visited January 31, 2020); Dr. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), available at https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/ (last visited January 31, 2020); Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (Sept. 2019), available at http://www.abajournal.com/magazine/article/examined-while-unconscious (last visited January 31, 2020); and Amanda Eisenberg, *New Bills Would Ban Pelvic Exams without Consent*, POLITICO (March 14, 2019), available at https://www.politico.com/states/new-york/albany/story/2019/03/13/new-bills-would-ban-pelvic-exams-without-consent-910976 (last visited January 31, 2020).
[19] John Duncan, Dan Luginbill, Matthew Richardson, Robin Fretwell Wilson, *Using Tort Law to Secure Patient Dignity: Often Used as Teaching Tools for Medical Students, Unauthorized Pelvic Exams Erode Patient Rights, Litigation Can Reinstate Them*, 40 TRIAL 42 (Oct. 2004).
[20] AMA Council on Ethical and Judicial Affairs, *Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs*, AMA Journal of Ethics (Mar. 2001), available at https://journalofethics.ama-assn.org/article/medical-student-involvement-patient-care-report-council-ethical-and-judicial-affairs/2001-03 (last visited January 31, 2020).

- The Association of American Medical Colleges, reversing its prior policy position, offered that "performing pelvic examinations on women under anesthesia, without their knowledge or approval … is unethical and unacceptable."[21]
- The Committee on Ethics of the American College of Obstetricians and Gynecologists resolved that "pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery."[22]

California, Hawaii, Illinois, Iowa, Maryland, Oregon, Utah, and Virginia prohibit unauthorized pelvic examinations.[23]

The Association of American Medical Colleges (AAMC) has found that most teaching hospitals inform patients that trainees will be involved in their care and generally, patients approve of the trainees' involvement.[24] The chief health care officer for the AAMC notes that recent articles on unauthorized pelvic examinations rely on studies from more than 10 years ago and before more detailed informed consent forms were used. [25]Typically, students and residents practice pelvic examinations with special mannequins and standardized patients who are specifically trained for this purpose.[26]

Effect of Proposed Changes

HB 1289 prohibits a health care provider[27] from performing a pelvic examination on an unconscious or anesthetized patient without consent unless an exception applies. The bill defines pelvic examination as a medical examination that requires contact with a patient's sexual organs.

A health care provider must obtain consent for a pelvic examination from the patient prior to the patient being anesthetized or rendered unconscious by providing the patient or patient's representative a written or electronic document that:

- Is separate from any other notice or agreement;
- Contains the heading "CONSENT FOR EXAMINATION OF THE PELVIC REGION" in an 18-point bold font type;
- Specifies the nature and purpose of the pelvic examination;
- List the name and titles of the health care providers authorized by the patient or patient's representative to perform the pelvic examination;
- States whether the patient or patient's representative authorizes a student or resident to perform an additional pelvic examination or to observe or be present during a pelvic examination, in person or through electronic means, for educational or training purposes;
- Allows the patient or the patient's representative to indicate, using checkboxes, for one of the following:
    - Consent to the pelvic examination for diagnosis or treatment and to the presence of or additional examination performed by a student or resident for educational or training purposes;
    - Consent to the pelvic examination only for diagnosis or treatment; or

[21] Robin Fretwell Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent*, 8 J OF HEALTH CARE LAW AND POLICY 240, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=880120 (last visited January 31, 2020).
[22] American College of Obstetricians and Gynecologists, Committee on Ethics, *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training*, (Aug. 2011), available at https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Professional-Responsibilities-in-Obstetric-Gynecologic-Medical-Education-and-Training?IsMobileSet=false (last visited January 31, 2020).
[23] Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (Sept 2019), available at http://www.abajournal.com/magazine/article/examined-while-unconscious (last visited January 31, 2020).
[24] Stacy Weiner, *What "Informed Consent" Really Means*, (Jan. 24, 2019), available at https://www.aamc.org/news-insights/what-informed-consent-really-means (last visited on January 31, 2020).
[25] Id.
[26] Id.
[27] The bill defines health care provider as a health care practitioner, as defined in 456.003, F.S., or a paramedic or emergency medical technician certified under part III of ch. 401, F.S.

- Refuse to consent to the pelvic examination.

The patient or patient's representative and the health care provider must sign the consent document, in writing or electronically.

The bill does not require a health care provider to obtain consent for a pelvic examination from a patient or patient's representative if:

- A court orders a pelvic examination be performed to collect evidence;
- The pelvic examination is within the scope of the services for a procedure or diagnostic examination scheduled for the patient; or
- The pelvic examination is immediately necessary for diagnosis and treatment of the patient.

Any health care provider who fails to get consent as required is subject to licensure discipline by the applicable regulatory board or the Department of Health, if there is no board.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 456.51, F.S., relating to health care providers; consent for pelvic examinations.
Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH may experience an increase in workload associated with additional complaints, investigations, and prosecutions, which current resources are adequate to absorb.[28]

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:

[28] Department of Health, *2020 Agency Legislative Bill Analysis for HB 1289*, (Jan. 27, 2020), on file with the Health Quality Subcommittee.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to informed consent for pelvic
3 examinations; creating s. 456.51, F.S.; defining the
4 terms "health care provider" and "pelvic examination";
5 specifying circumstances under which a health care
6 provider may perform a pelvic examination on an
7 anesthetized or unconscious patient and procedures for
8 obtaining consent for such examination; providing for
9 disciplinary action against a health care provider who
10 fails to comply with certain provisions; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 456.51, Florida Statutes, is created to
16 read:
17 456.51 Health care providers; consent for pelvic
18 examinations.—
19 (1) As used in this section, the term:
20 (a) "Health care provider" means a health care
21 practitioner as defined in s. 456.001 or a paramedic or
22 emergency medical technician certified under part III of chapter
23 401.
24 (b) "Pelvic examination" means a medical examination that
25 requires contact with a patient's sexual organs.

26 (2) A health care provider may not perform a pelvic
27 examination on an anesthetized or unconscious patient unless:
28 (a) The health care provider obtains consent from the
29 patient or the patient's representative in accordance with
30 subsection (3);
31 (b) A court orders performance of the pelvic examination
32 for the collection of evidence;
33 (c) The performance of the pelvic examination is within
34 the scope of services for a procedure or diagnostic examination
35 scheduled to be performed on the patient; or
36 (d) The pelvic examination is immediately necessary for
37 diagnosis and treatment of the patient.
38 (3) To obtain consent to perform a pelvic examination on
39 an anesthetized or unconscious patient, the health care provider
40 must do all of the following before the patient is anesthetized
41 or rendered unconscious:
42 (a) Provide the patient or the patient's representative
43 with a written or electronic document that:
44 1. Is provided separately from any other notice or
45 agreement.
46 2. Contains a heading at the top of the document in at
47 least 18-point bold type which states the following: "CONSENT
48 FOR EXAMINATION OF PELVIC REGION".
49 3. Specifies the nature and purpose of the pelvic
50 examination.

51 4. Lists the name and title of one or more health care
52 providers whom the patient or the patient's representative may
53 authorize to perform the pelvic examination.
54 5. States whether there may be a student or resident who
55 the patient or the patient's representative authorizes to
56 perform an additional pelvic examination or observe or otherwise
57 be present at the pelvic examination, either in person or
58 through electronic means, for educational or training purposes.
59 6. Provides the patient or the patient's representative
60 with a series of check boxes that allow the patient or the
61 patient's representative to:
62 a. Consent to the pelvic examination for diagnosis or
63 treatment and to the presence of or an additional examination
64 performed by a student or resident for educational or training
65 purposes;
66 b. Consent to the pelvic examination only for diagnosis or
67 treatment; or
68 c. Refuse to consent to the pelvic examination.
69 (b) Obtain the signature of the patient or the patient's
70 representative on the written or electronic document witnessed
71 by a third party.
72 (c) Sign the written or electronic document.
73 (4) A health care provider who fails to comply with this
74 section is subject to discipline by the applicable board, or the
75 department if there is no board.

76 Section 2. This act shall take effect July 1, 2020.

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 Jenne offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 456.51, Florida Statutes, is created to
8 read:
9 456.51 Health care practitioners; consent for pelvic
10 examinations.—
11 (1) As used in this section, the term "pelvic examination"
12 means the direct palpation of the organs of the female internal
13 reproductive system.
14 (2) A health care practitioner may not perform a pelvic
15 examination on a patient without the written consent of the

16 patient or the patient's representative executed specific to,
17 and expressly identifying, the pelvic examination, unless:
18 (a) A court orders performance of the pelvic examination
19 for the collection of evidence; or
20 (b) The pelvic examination is immediately necessary to
21 avert a serious risk of imminent substantial and irreversible
22 physical impairment of a major bodily function of the patient.
23 Section 2. This act shall take effect July 1, 2020.
24
25 ----------
26 **T I T L E A M E N D M E N T**
27 Remove everything before the enacting clause and insert:
28 An act relating to informed consent for pelvic examinations;
29 creating s. 456.51, F.S.; defining "pelvic examination";
30 requiring a health care practitioner to obtain informed consent
31 to perform a pelvic examination; providing exceptions; providing
32 an effective date.

HB 1319

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1319 Dental Health
SPONSOR(S): Robinson
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Board of Dentistry (Board), within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act. A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures. A dental hygienist provides education, preventive and delegated therapeutic dental services.

Teledentistry is the use of telehealth systems or methodologies to provide and support dental care delivery, diagnosis, consultation, treatment, transfer of dental information, and education. At-home clear aligner systems, which gradually reposition teeth, employ teledentistry to develop treatment plans and remotely manage treatment.

Current law provides that taking impressions of the human teeth is the practice of dentistry; however, it is unclear whether a dentist who orders impression material for patients to use on themselves is violation of the practice act. HB 1319 authorizes a dentist to order physical impression material for self-administration by a patient.

The bill also authorizes dental hygienist to perform intraoral and extraoral photography under the general supervision of a dentist.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Board of Dentistry (Board), within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.[1] The Council on Dental Hygiene develops rules and policies for recommendations to the Board.[2] The Board must consider the rules and policy recommendations at its next regularly scheduled meeting. The Council on Dental Assisting makes recommendations to the Board on dental assisting.[3]

Practice of Dentistry

A person wising to practice dentistry in this state must be a graduate of an accredited dental school and successfully complete the required licensing examinations.[4] Dentists must also maintain professional liability insurance or provide proof of professional responsibility. If the dentist obtains professional liability insurance, the coverage must be at least $100,000 per claim, with a minimum annual aggregate of at least $300,000.[5] The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.[6]

The scope of practice for a dentist includes:[7]

- Examining, diagnosing, treating, planning, and caring for conditions within the human oral cavity and its adjacent tissues and structures;
- Performing or attempting to perform any dental operation or oral-maxillofacial surgery;
- Taking of impressions of the human tooth, teeth, or jaws directly or indirectly and by any means or method;
- Supplying artificial substitutes for the natural teeth or furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or any other structure designed to be worn in the human mouth except on the written work order of a duly licensed dentist;
- Placing appliance or structure in the human mouth or adjusting or attempting to adjust such appliance or structure;
- Delivering an appliance or structure to any person other than the dentist upon whose work order the work was performed;
- Professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure designed to be worn in the human mouth;
- Diagnosing, prescribing, or treating or professing to diagnose, prescribe, or treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws or oral-maxillofacial region;
- Extracting or attempting to extract human teeth;
- Correcting or attempting to correct malformations of teeth or of jaws; and
- Repairing or attempting to repair cavities in the human teeth.

Practice of Dental Hygiene

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[1] Section 466.004, F.S.
[2] Section 466.004(2)(a), F.S.
[3] Section 466.004(2)(b), F.S.
[4] Section 466.006, F.S.
[5] Rule 64B5-17.011(1), F.A.C. Alternatively, a dentist may maintain an unexpired, irrevocable letter of credit in the amount of $100,000 per claim, with a minimum aggregate availability of credit of at least $300,000.
[6] Rule 64B5-17.011(4), F.A.C.
[7] Section 466.003(3), F.S.

Any person wishing to be licensed as a dental hygienist must be a graduate of an accredited dental hygiene college or school and pass the required licensing examinations.[8] A dental hygienist is not required to maintain professional liability insurance and must be covered by supervising dentist's liability insurance.[9]

A supervising dentist may delegate certain tasks to a dental hygienist, such as removing calculus deposits, accretions, and stains from exposed surfaces of the teeth and from the gingival sulcus and the task of performing root planning and curettage.[10] A dental hygienist may also expose dental X-ray films, apply topical preventive or prophylactic agents, and delegated remediable tasks.[11] Remediable tasks are intra-oral tasks which do not create an unalterable change in the oral cavity or contiguous structures, are reversible, and do not expose a risk to the patient, including but not limited to:

- Fabricating temporary crowns or bridges inter-orally;
- Selecting and pre-sizing orthodontic bands;
- Preparing a tooth service by applying conditioning agents for orthodontic appliances;
- Removing and re-cementing properly contoured and fitting loose bands that are not permanently attached to any appliance;
- Applying bleaching solution, activating light source, and monitoring and removing in-office bleaching solution;
- Placing or removing rubber dams;
- Making impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations, or orthodontic appliances;
- Taking impressions for passive appliances, occlusal guards, space maintainers, and protective mouth guards; and
- Cementing temporary crowns and bridges with temporary cement.

A dental hygienist may perform the following remediable tasks, if the dental hygienist has received training in a pre-licensure course or through formal training:

- Polish restorations or clinical crowns which are not for the purpose of changing the existing contour of the tooth and may only use burnishers, slow-speed hand pieces, rubber cups, and bristle brushes;
- Apply topical fluorides that are approved by the American Dental Association or the U.S. Food and Drug Administration;
- Remove excess cement from dental restorations and appliances with non-mechanical hand instruments or ultrasonic scalers;
- Remove sutures;
- Place periodontal or surgical dressings;
- Pre-assess and chart suspected findings of the oral cavity; and
- Apply sealants.

A dental hygienist may perform the following remediable tasks if the dental hygienist has training in a pre-licensure course or on-the-job:

- Fabricating temporary crowns and bridges in a laboratory;
- Applying topical anesthetics and anti-inflammatory agents which are not applied by aerosol or jet spray;
- Taking or recording patients' blood pressure rate, pulse rate, respiration rate, case history and oral temperature;
- Retracting lips, cheeks and tongue;
- Irrigating and evacuating debris not to include endodontic irrigation;
- Placing and removing cotton rolls;

[8] Section 466.007, F.S.
[9] *See supra* note 6.
[10] Section 466.023, F.S.
[11] Sections 466.023 and 466.024, F.S.

- Placing or removing temporary restorations with non-mechanical hand instruments only; and,
- Obtaining plaque specimens, which do not involve cutting of the tissue and which do not include taking endodontic cultures, to be examined under a microscope for educational purposes.

A dental hygienist may apply to be certified to administer local anesthesia under the direct supervision of a non-sedated, adult patient, if the dental hygienist completes an accredited course of 30 hours of didactic training and 30 hours of clinical training and is certified in basic or advanced cardiac life support.[12]

Teledentistry

Teledentistry is the use of electronic information, imaging, and communication technologies, including interactive audio, video, data communications as well as store and forward technologies, to provide and support dental care delivery, diagnosis, consultation, treatment, transfer of dental information, and education.[13] According to the American Dental Association's policy on teledentistry, a patient has the right to expect, among other things:[14]

- That the dentist providing services using teledentistry is licensed in the state where the patient receives services, or is providing these services as otherwise authorized by the state dental board;
- The services provided through teledentistry will follow evidence-based practice guidelines as a means of ensuring patient safety, quality of care, and positive health outcomes;
- The services provided through teledentistry include care coordination as a part of a dental home;
- That the patient will be actively involved in treatment decisions, will be able to choose how they receive a covered service, including considerations for urgency, convenience, and satisfaction and without such penalties as higher deductibles, copayments, or coinsurance relative to that of in-person services.

Teledentistry has been shown to reduce the cost of care and increase efficiency through reduced travel time, shared professional staff, and fewer in-person visits.[15] Teledentistry also improves access to care for patient who live in a rural area or where there is a lack of easy access to health care services.[16]

Clear Aligners

Clear aligners are plastic orthodontic devices that, similar to traditional metal braces, apply pressure to gradually move and adjust teeth.[17] Clear aligners were introduced as an alternative to metal braces in 1998, when the federal Food and Drug Administration approved there use.[18] Clear aligner therapy was initially introduced to treat minor irregularities in tooth position.[19]

Prior to initiating treatment, an orthodontist or dentist will examine the patient and perform impressions or digital scans of the teeth. Using the impressions or scans, a dentist or orthodontist creates a digital treatment plan to straighten the patient's teeth.[20]

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[12] Section 466.017(5), F.S.
[13] American Teledentistry Association, *Facts about Teledentistry*, available at https://www.americanteledentistry.org/facts-about-teledentistry/ (last visited on February 1, 2020).
[14] American Dental Association, *ADA Policy on Teledentistry*, (2015), available at https://www.ada.org/en/about-the-ada/ada-positions-policies-and-statements/statement-on-teledentistry (last visited February 1, 2020).
[15] *Supra* note 13.
[16] Id.
[17] American Association of Orthodontists, *Orthodontic Treatment with Clear Aligners,* (June 13, 2018), available at https://www.aaoinfo.org/blog/orthodontic-treatment-with-clear-aligners/ (last visited January 28, 2020).
[18] T. Weir, "Clear Aligners in Orthodontic Treatment," AUSTRALIAN DENTAL JOURNAL 62, available at https://onlinelibrary.wiley.com/doi/epdf/10.1111/adj.12480 (last visited January 28, 2020). The technology employed by aligners has existed since 1946.
[19] Id.
[20] Invisalign, *Frequently Asked Questions*, available at https://www.invisalign.com/frequently-asked-questions (last visited January 28, 2020). Invisalign is only available for use by dentists and orthodontists.

In recent years, makers of clear aligners began marketing the systems directly to consumers for at-home use. A consumer may visit a retail location where a representative will make impressions or take scans of the teeth, or a consumer may choose to take impressions at home using a kit provided by the company.[21] The impressions or scans are then provided to a dental professional using a teledentistry platform who develops a treatment plan and manage the clear alignment therapy remotely. There are no in-office visits with the dentist or orthodontist.[22]

Litigation

Dental boards in several states, as well as professional dental associations, have taken actions against clear aligner companies for the unlicensed practice of dentistry. General allegations include that the companies are conducting dental examinations and taking impressions, which fall within the scope of practice of a licensed dentist.[23] No such action has been taken in Florida.

Effect of Proposed Changes

Current law provides that taking impressions of the human teeth is the practice of dentistry; however, it is unclear whether a dentist who orders impression material for patients to use on themselves is violation of the practice act. HB 1319 authorizes a dentist to order physical impression material for self-administration by a patient.

The bill also authorizes dental hygienist to perform intraoral and extraoral photography under the general supervision of a dentist.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 466.017, F.S., relating to prescription of drugs; anesthesia.
Section 2: Amends s. 466.024, F.S., relating to delegation of duties; expanded functions.
Section 3: Provides an effective date of July 1, 2020.

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:

[21] Dentaly.org, *Invisalign Alternatives: Find the Best Invisalign Competitor for You*, (last rev. Jan. 24, 2020), available at https://www.dentaly.org/us/adult-braces/invisalign-alternatives/ (last visited February 1, 2020).
[22] Id.
[23] *See generally*, David Burger, *New Jersey Dental Association Lodges Complaint against SmileDirect Club*, (Feb. 8, 2019), ADANEWS, available at https://www.ada.org/en/publications/ada-news/2019-archive/february/new-jersey-dental-association-lodges-complaint-against-smiledirect-club (last visited February 1, 2020); Kimber Solana, *Association Files Complaint with FTC, FDA against SmileDirect Club*, (July 12, 2019), ADANEWS, available at https://www.ada.org/en/publications/ada-news/2019-archive/july/association-files-complaint-with-ftc-fda-against-smiledirect-club (last visited February 1, 2020); Blake Farmer, *Fast Growing SmileDirect Club Faces Class Action Suit by Orthodontists*, (Sept. 25, 2019), available at https://wpln.org/post/fast-growing-smiledirectclub-faces-class-action-suit-by-orthodontists/ (last visited February 1, 2020); Michael Carabash, *Class Actions Filed Against SmileDirect Club for their IPO*, (Nov. 5, 2019), available at https://dentistlawyers.ca/class-action-lawsuits-filed-against-smiledirectclub-for-their-ipo/ (last visited February 1, 2020).

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. The 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 dental health; amending s. 466.017,
3 F.S.; authorizing a licensed dentist to order
4 impression materials for self-administration by a
5 patient; amending s. 466.024, F.S.; authorizing
6 intraoral or extraoral photography as remediable and
7 delegable tasks under certain circumstances; providing
8 an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (9) is added to section 466.017,
13 Florida Statutes, to read:
14 466.017 Prescription of drugs; anesthesia.—
15 (9) A licensed dentist may order physical impression
16 materials for self-administration by a patient.
17 Section 2. Paragraph (m) is added to subsection (1) of
18 section 466.024, Florida Statutes, to read:
19 466.024 Delegation of duties; expanded functions.—
20 (1) A dentist may not delegate irremediable tasks to a
21 dental hygienist or dental assistant, except as provided by law.
22 A dentist may delegate remediable tasks to a dental hygienist or
23 dental assistant when such tasks pose no risk to the patient. A
24 dentist may only delegate remediable tasks so defined by law or
25 rule of the board. The board by rule shall designate which tasks

26 are remediable and delegable, except that the following are by
27 law found to be remediable and delegable:
28 (m) Intraoral or extraoral photography under general
29 supervision.
30
31 This subsection does not limit delegable tasks to those
32 specified herein.
33 Section 3. This act shall take effect July 1, 2020.

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 Robinson offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsection (9) is added to section 466.017,
8 Florida Statutes, to read:
9 466.017 Prescription of drugs; anesthesia.—
10 (9) A dentist licensed under this chapter may order
11 physical impression materials for self-administration by a
12 patient for the purpose of fabricating an orthodontic appliance.
13 Section 2. This act shall take effect July 1, 2020.
14
15 ----------
16 **T I T L E A M E N D M E N T**

17 Remove lines 5-7 and insert:
18 patient for certain purposes; providing

Workshop on HB 1365

1 A bill to be entitled
2 An act relating to the Vulnerable Child Protection
3 Act; creating s. 456.0335, F.S.; providing a short
4 title; defining the term "sex"; providing criminal
5 penalties for health care practitioners who engage in
6 or cause specified practices to be performed on a
7 minor under certain conditions; providing
8 applicability; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 456.0335, Florida Statutes, is created
13 to read:
14 456.0335 Vulnerable Child Protection Act.—
15 (1) This section may be cited as the "Vulnerable Child
16 Protection Act."
17 (2) As used in this section, the term "sex" means the
18 biological state of being female or male based on sex organs,
19 chromosomes, and endogenous hormone profiles.
20 (3) A health care practitioner who engages in any of the
21 following practices upon a minor, or who causes such practices
22 to be performed upon a minor, for the purpose of attempting to
23 change the minor's sex, or for the purpose of affirming the
24 minor's perception of the minor's sex if that perception is
25 inconsistent with the minor's sex, commits a felony of the

26 second degree, punishable as provided in s. 775.082, s. 775.083,
27 or s. 775.084:
28 (a) Performing surgeries that sterilize, including
29 castration, vasectomy, hysterectomy, oophorectomy,
30 metoidioplasty, orchiectomy, penectomy, phalloplasty, and
31 vaginoplasty;
32 (b) Performing a mastectomy;
33 (c) Administering, prescribing, or supplying the following
34 medications that induce transient or permanent infertility:
35 1. Puberty-blocking medication, which stops or delays
36 normal puberty;
37 2. Supraphysiologic doses of testosterone, to females; or
38 3. Supraphysiologic doses of estrogen, to males; or
39 (d) Removing any otherwise healthy or nondiseased body
40 part or tissue.
41 (4) This section does not apply to a health care
42 practitioner acting in accordance with a good faith medical
43 decision of a parent or guardian of a minor born with a
44 medically verifiable genetic disorder of sex development,
45 including:
46 (a) External biological sex characteristics that are
47 unresolvably ambiguous, such as the minor being born with having
48 46 XX chromosomes with virilization, 46 XY chromosomes with
49 undervirilization, or both ovarian and testicular tissue.
50 (b) A sexual development disorder whereby a physician has

51 determined through genetic testing that the minor does not have
52 the normal chromosome structure for a male or a female.
53 Section 2. This act shall take effect July 1, 2020.