

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 312

INTRODUCER: Health Regulation Committee and Senator Richter

SUBJECT: Practice of Denistry

DATE: March 15, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Naf	Roberts	GO	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) requires all Florida licensed dentists and dental hygienists to complete a workforce survey as a part of their licensure renewal, beginning in 2012. The CS provides certain information that is to be collected by the Department of Health (DOH) pursuant to a survey instrument adopted by the Board of Dentistry (Board). The Board is required to issue a nondisciplinary citation to any dentist or dental hygienist who fails to complete the survey within 90 days after the renewal of his or her license to practice as a dentist or dental hygienist. This citation must inform, and the Board must notify, the dentist or dental hygienist that his or her license will not be renewed for any subsequent license renewal unless he or she completes the survey.

The DOH is required to collect, update, and disseminate dental workforce data and maintain a database to serve as a statewide source of such data. The DOH, in conjunction with the Board, is required to develop strategies to maximize federal and state programs that provide incentives for dentists to practice in federally-designated shortage areas. The DOH and Board must use existing resources to support these activities.

The CS establishes an advisory body to assist the DOH and the Board in addressing matters relating to the state's dental workforce.

The CS also authorizes a professional corporation or limited liability company composed of dentists to pay for prescription drugs purchased by a dentist and designates the dentist as the purchaser and owner of the prescription drugs.

The CS corrects a technical problem in the statutes relating to the appointment of a dental representative to the Board of Directors of the Florida Healthy Kids Corporation, which resulted from the passage of two bills in the 2009 Regular Session dealing with the board membership.

This CS amends the following sections of the Florida Statutes: 499.01 and 624.91.

The CS creates three undesignated sections of law.

II. Present Situation:

Dentists and dental hygienists are licensed and regulated by the DOH under ch. 466, F.S., related to dentistry, dental hygiene, and dental laboratories, and ch. 456, F.S., related to general provisions for health professionals and occupations. Licenses for both professions are renewed biennially.¹ Section 466.0285, F.S., requires a business entity that employs a dentist or dental hygienist in the operation of a dental office to be a professional corporation or limited liability company composed of dentists.

Dental Workforce Initiatives

According to the Institute of Medicine's U.S. Oral Health Workforce in the Coming Decade: Workshop Summary, "The current oral health workforce fails to meet the needs of many segments of the U.S. population."² The inability of the dental workforce to provide assistance and basic oral health care to all people in Florida contributes to the number of individuals experiencing poor general health. Dental workforce planning is an essential component of ensuring that there is an adequate and appropriate supply of well-trained health care providers to meet the state of Florida's current and future dental health care service needs.³

In the last few years, the DOH has actively addressed dental workforce issues. In January of 2008, the State Surgeon General established the Florida Health Practitioner Oral Healthcare Workforce Ad Hoc Committee (Ad Hoc Committee). The mission of the Ad Hoc Committee was to evaluate and address the complex range of oral health workforce concerns that impact Florida's ability to recruit or retain available practicing dental providers (dentists, dental hygienists, and dental assistants), especially for Florida's disadvantaged and underserved populations. The Ad Hoc Committee published the Health Practitioner Oral Healthcare

¹ Section 466.013(2), F.S.

² The workshop summary is available at <http://www.iom.edu/Reports/2009/OralHealthWorkforce.aspx> (Last visited on January 14, 2011).

³ See DOH, *The Florida Oral Health Workforce Workgroup Report 2009*, December 2009, available at: <http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html> (Last visited on January 14, 2011).

Workforce Ad Hoc Committee Report in February 2009, which provided recommendations on dental workforce and access to oral health care.⁴

The DOH received a \$200,000 federal grant in 2008 to develop a statewide needs assessment and a strategic planning report to be used to improve the state's dental workforce and service delivery infrastructure for the underserved.⁵ This grant helped support an Oral Health Workforce Workgroup (the Workgroup) to continue the work of the Ad Hoc Committee and a contract for a statewide needs assessment. The two main objectives of the needs assessment were to conduct a statewide analysis of Florida's oral health workforce relative to traditionally underserved populations and to evaluate access to dental care among low-income children, including children with special health care needs, children in the Medicaid and SCHIP programs and to identify the child and family characteristics that are associated with better access.⁶

Building on the efforts of previous activities, the Workgroup outlined implementation steps that address Florida's oral health workforce needs. The workgroup proposed eight goals, with specific recommendations to support each goal. These goals include:

- Increase education and preventive efforts;
- Improve data collection;
- Increase provider participation in the Medicaid program;
- Increase utilization of allied dental staff;
- Integrate oral health education and prevention into general health and medical programs;
- Increase training opportunities for providers;
- Improve the state oral health infrastructure; and,
- Increase efforts to recruit practitioners to provide care to disadvantaged populations.⁷

The DOH has recently completed a voluntary workforce survey for all Florida licensed dentists and dental hygienists and the DOH is currently analyzing the collected data.⁸ The compliance rate of those voluntarily completing the survey was about 90 percent.⁹

The DOH received an additional federal grant in September 2009, to further implement workforce strategies. A third oral health workgroup is operating as part of the Oral Health Florida Coalition.¹⁰

⁴ The Ad Hoc Committee Report is available at http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/200903Dental_Workforce_Report.pdf (Last visited on January 14, 2011).

⁵ *Supra* fn. 3.

⁶ *Id.*

⁷ *Id.*

⁸ Professional committee staff received this information via email from a DOH representative on January 18, 2011. A copy of the email is on file with the Health Regulation Committee.

⁹ Per Memoranda to the Senate Health Regulation Committee Staff from the Florida Dental Association dated March 3, 2010, on file with the committee.

¹⁰ DOH Bill Analysis, Economic Statement and Fiscal Note for SB 312, dated December 29, 2010, on file in the Senate Health Regulation Committee.

Physician Workforce Assessment and Development

In 2007, the Florida Legislature established a structure to facilitate physician workforce assessment and planning in s. 381.4018, F.S. The legislative intent and responsibilities focused on, among other things, the need to ensure that there is an adequate and appropriate supply of well-trained physicians to meet this state's future health care service needs by ensuring the availability and capacity of quality graduate medical schools and students who are well-prepared for a medical education in this state.¹¹

Florida Health Services Corps

The Florida Health Services Corp (Corps) is established in s. 381.0302, F.S., to encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel. The program offers scholarships, loan repayment assistance, and financial assistance for relocation to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students in return for service in a public health care program or in a medically underserved area. In addition, members of the Corps are agents of the state under s. 768.28(9), F.S., related to sovereign immunity and the waiver of sovereign immunity, while providing uncompensated services to medically indigent persons who are referred by the DOH.¹²

Advisory Bodies

Section 20.03, F.S., defines "council" or "advisory council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.052, F.S., provides that an advisory body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with the following provisions:

- It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose;
- It must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose;
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of the advisory body;
- It may not be created or reestablished unless it meets a statutorily defined purpose; its powers and responsibilities conform with the definitions for governmental units in s. 20.03; F.S., its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.; and

¹¹ Section 381.4018(2), F.S.

¹² Section 381.0302(11), F.S.

- Any private citizen members must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

Further, unless an exemption is otherwise specifically provided by law, all meetings of an advisory body adjunct to an executive agency are public meetings under s. 286.011, F.S. Minutes, including a record of all votes cast, must be maintained for all meetings. Records of an abolished advisory body must be appropriately stored by the executive agency to which it was made adjunct.

Health Care Clinic Establishment Permit

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S. The DOH¹³ is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.¹⁴ The DOH issues 20 different types of permits to persons (defined to also include business entities) who qualify to engage in activity regulated under the Act.¹⁵ The regulatory structure provides for prescription drugs to be under the responsibility of a permit at all times, until a prescription drug is dispensed to a patient, in which case the prescription from the practitioner represents the authority for the patient to possess the prescription drug.¹⁶

One of the permits issued by the DOH under the Act is the Health Care Clinic Establishment (HCCE) permit. The biennial fee for the HCCE permit is \$255 and the permit is valid for 2 years, unless suspended or revoked.¹⁷

The HCCE permit was established in 2008 to enable a business entity (medical practice) to purchase prescription drugs. In 2009, the Legislature broadened the array of business entities eligible to qualify for the HCCE permit.¹⁸ The HCCE permit is an optional permit that a medical practice may obtain in order to purchase and own prescription drugs in the business entity's name. The HCCE permit is not required if a practitioner in the clinic or practice wants to purchase and own prescription drugs in his or her own name using his or her professional license that authorizes that practitioner to prescribe prescription drugs.

Under the requirements of the permit, a qualifying practitioner¹⁹ or a veterinarian licensed under ch. 474, F.S., is designated to be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs purchased and possessed by the business entity. Both the qualifying practitioner and the permitted health care clinic must notify the DOH within 10 days after any change in the qualifying practitioner.

¹³ However, as of October 1, 2011, all of the DOH's responsibilities under the Act will be transferred to the Department of Business and Professional Regulation. *See* Section 27, ch. 2010-161, Laws of Florida.

¹⁴ Section 499.002(2), F.S.

¹⁵ *See* s. 499.01(1), F.S.

¹⁶ Section 499.03, F.S.

¹⁷ *See* ch. 64F-12.018, F.A.C., Fees.

¹⁸ *See* ch. s. 2, ch. 2009-221, Laws of Florida.

¹⁹ The health care practitioners defined in s. 456.001, F.S., that are authorized to prescribe prescription drugs include a: medical physician, osteopathic physician, physician assistant, advanced registered nurse practitioner, optometrist, podiatric physician, dentist, or chiropractic physician.

The Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation is established in s. 624.91, F.S., to provide comprehensive health insurance coverage to children without adequate health care services. The primary recipients are school-age children with a family income below 200 percent of the federal poverty level²⁰ who do not qualify for Medicaid.

The 2009 Legislature enacted two laws amending membership of the Board of Directors for the Florida Healthy Kids Corporation, both by creating a subparagraph 11. Chapter 2009-41, Laws of Florida (L.O.F.) which added one member, appointed by the Governor, from among three members nominated by the Florida Dental Association. Chapter 2009-113, L.O.F., added the Secretary of Children and Family Services, or his or her designee. According to the rules of statutory construction found in the preface to the Florida Statutes, when amendatory acts are irreconcilable, the “last passed” version is placed in the text, absent legislative intent to the contrary. As a result, the dental representative is not included in the statutory list of members of the Board of Directors of the Florida Healthy Kids Corporation.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to require dentists and dental hygienists to complete a dental workforce survey as a part of their licensure renewal beginning in 2012. The Board is required to adopt procedures and forms for the survey. A dentist or dental hygienist responding to the survey must include a statement that the information provided is true and accurate to the best of his or her knowledge and belief. The CS requires the survey to elicit the following information from the licensee:

- The name of the dental school or dental hygiene program that the dentist or dental hygienist graduated from and the year of graduation;
- The year that the dentist or dental hygienist began practicing or working in this state;
- The geographic location of the dentist’s or dental hygienist’s practice or address within the state;
- For a dentist in private practice:
 - The number of full-time dental hygienists employed by the dentist during the reporting period,
 - The number of full-time dental assistants employed by the dentist during the reporting period,
 - The average number of patients treated per week by the dentist during the reporting period, and
 - The settings where the dental care was delivered;
- Anticipated plans of the dentist to change the status of his or her license or practice;
- The dentist’s areas of specialty or certification;

²⁰ For 2010, the federal poverty levels were \$10,830 for one person; \$14,570 for a family of two; \$18,310 for a family of three; and \$22,050 for a family of four. See U.S. Department of Health and Human Services, *The 2010 Poverty Guidelines for the 48 Contiguous States and the District of Columbia*, available at <http://aspe.hhs.gov/poverty/10fedreg.shtml> (Last visited on January 14, 2011).

- The year that the dentist completed a specialty program recognized by the American Dental Association;
- For the hygienist:
 - The average number of patients treated per week by the hygienist during the reporting period, and
 - The settings where the dental care was delivered;
- The dentist's memberships in professional organizations;
- The number of pro bono hours provided by the dentist or dental hygienist during the last biennium;
- Information concerning the availability and trends relating to critically needed services, including, but not limited to, the following types of care provided by the dentist or dental hygienist:
 - Dental care to children having special needs;
 - Geriatric dental care;
 - Dental services in emergency departments;
 - Medicaid services; and,
 - Other critically needed specialty areas, as determined by the advisory body.

The CS provides that licensure renewal in 2012 is not contingent upon the completion and submission of the dental workforce survey, however the Board may not renew the license of any dentist or dental hygienist for subsequent renewals until the survey is completed and submitted by the licensee. If a dentist or dental hygienist fails to complete the survey within 90 days after the renewal of his or her license to practice as a dentist or dental hygienist, the Board of Dentistry is required to issue a nondisciplinary citation to the dentist or dental hygienist. The nondisciplinary citation must notify the dentist or dental hygienist that his or her license will not be renewed for any subsequent license renewal unless he or she completes the survey.

The Board is also required to notify each dentist or dental hygienist that the survey must be completed before the subsequent license renewal when the license renewal notice is sent to the licensee.

Section 2 creates an undesignated section of law to require the DOH to serve as the coordinating body for the purpose of collecting and regularly updating and disseminating dental workforce data. The DOH is required to work with stakeholders, including the Florida Dental Association and the Florida Dental Hygiene Association, to assess and share the workforce data in a timely fashion with all interested parties. The DOH is required to maintain a database of dental workforce data.

The DOH, in conjunction with the Board, is required to develop strategies to maximize federal and state programs that provide incentives for dentists to practice in federally-designated shortage areas. The CS requires strategies to include programs such as the Florida Health Services Corp. In addition, the DOH and the Board are required to act as a clearinghouse for collecting and disseminating information concerning the dental workforce and adopt rules to administer this section.

The CS creates an advisory body of at least 15 members. The required members include the following: the State Surgeon General or his or her designee; the dean of each dental school

accredited in the United States and based in this state or his or her designee; a representative from the Florida Dental Association, Florida Dental Hygiene Association, and the Board; and a dentist from each of the dental specialties recognized by the American Dental Association's Commission on Dental Accreditation. The members of the advisory body are to serve without compensation. The DOH and the Board are to work in conjunction with the advisory body to address matters relating to the Florida's dental workforce. The advisory body is also required to provide input on developing questions for the dental workforce survey.

Section 3 creates an undesignated section of law requiring the DOH and the Board to implement the provisions of this act within existing resources.

Section 4 amends s. 499.01, F.S., to authorize a professional corporation or limited liability company composed of dentists to pay for prescription drugs purchased by a dentist, using the dentist's professional license, and designates that dentist as the purchaser and owner of the prescription drugs.

Section 5 amends s. 624.91, F.S., to add a representative from the Florida Dental Association to the Board of Directors of the Florida Healthy Kids Corporation.

Section 6 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of article VII, section 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

CS for SB 314 is the linked bill, which exempts personal identifying information contained in the dental workforce surveys from the public records requirements under s. 119.07(1), F.S., and article I, subsection 24(a), of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of article III, subsection 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS authorizes a dentist to purchase and pay for prescription drugs without obtaining the health care clinic establishment permit, which allows a dental practice that is a health care clinic establishment to avoid the \$255 biennial fee for the health care clinic establishment permit.

B. Private Sector Impact:

A dentist or dental hygienist who does not complete the dental workforce survey will not be able to renew his or her dental or dental hygienist license beginning in 2014. If false or misleading information is intentionally provided on the workforce survey, the dentist or dental hygienist providing such information may be subject to administrative or criminal penalties.²¹

C. Government Sector Impact:

The DOH and the Board are required to adopt rules related to the dental workforce survey and convene meetings of the advisory group. Although the CS requires the DOH to implement the CS within existing resources, the DOH has indicated that a .05 full time equivalent (FTE) administrative assistant is required to assist with the activities of the advisory group. If meetings of the advisory group are not handled electronically, then the DOH estimates it will cost approximately \$41,000 annually in related travel expenses to convene the 15 members four times per year.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on January 25, 2011:

The CS differs from the bill in that it:

- Clarifies that all information collected from the dental workforce survey is to be assessed and shared in a timely fashion with all communities of interest, instead of collected in a timely fashion (which occurs automatically upon licensure renewal); and,
- Clarifies that the advisory body formed in the CS is to provide input as to developing questions for the “dental” workforce survey, not “dentist” workforce surveys, which is in keeping with the rest of the CS.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²¹ See ss. 456.072, 837.06, and 456.067, F.S.

²² *Supra* fn. 10.