

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1161 Clinical, Counseling, & Psychotherapy Services

SPONSOR(S): Health Quality Subcommittee; Baxley

TIED BILLS: **IDEN./SIM. BILLS:** SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Holt	O'Callaghan
2) Health & Human Services Committee	17 Y, 0 N	Holt	Calamas

SUMMARY ANALYSIS

The bill makes substantial changes to the Clinical, Counseling, and Psychotherapy Services Practice Act (act), to update the provisions to current practice, training, and education standards. The act regulates the following professions: clinical social worker, marriage and family therapist, mental health counselor, psychotherapist, and social worker.

The bill creates s. 491.017, F.S., to provide a presumption of good faith for court-appointed mental health professionals regulated by the act, when developing a parenting plan recommendation in the instances of dissolution of marriage, domestic violence, and paternity matters involving the relationship of a child and parent. The bill requires administrative complaints or legal actions to be filed in a certain manner if filed against a court-appointed mental health professional. The bill also provides for the assignment of costs and fees associated with the complaint or legal action.

The bill provides that a person, who is registered to practice as an intern under the act, must remain under supervision for clinical hours to count toward full licensure. Additionally, intern registrations issued before July 1, 2016, may not be renewed or reissued and expire within 60 months after the date of issue. Any registration issued after July 1, 2016, is valid for 5 years and the bill grants the board the authority to adopt by rule, the eligibility requirements for reapplying for an internship. The bill provides that a person who holds a provisional license may not apply for intern registration in the same profession; which closes an avenue that may be utilized by some to lengthen the time period to practice in the field, once the intern registration expires in 5 years, without obtaining full licensure.

The bill makes several changes to the educational standards to increase coursework requirements for marriage and family therapists and mental health counselors. The bill repeals a dual licensure provision on a specified future date.

Additionally, the bill removes: obsolete dates, out-of-date references to accrediting organizations, and unnecessary rule-making. The bill makes substantial changes to the structure of the act to improve readability.

The bill appears to have an insignificant fiscal impact on the Medical Quality Assurance Trust Fund within the Department of Health and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) implements and enforces rules related to clinical, counseling, and psychotherapy. The board is composed of nine members appointed by the Governor and confirmed by the Senate within the Department of Health (DOH).¹ Presently there are:²

- 7,092 licensed clinical social workers;
- 1,512 marriage and family therapists; and
- 7,795 mental health counselors in the state.

Scope of Practice

Clinical social work is defined as the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, to prevent undesired behavior and to better mental health. The practice is 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. Clinical social work incorporates psychotherapy, hypnotherapy, and sex therapy.³

Marriage and family therapy is defined as the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems. Practice involves marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. Marriage and family therapy incorporates marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy.⁴

Mental health counseling is defined as the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development. The practice is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. Mental health counseling incorporates psychotherapy, hypnotherapy, and sex therapy.⁵

Licensure Requirements

An applicant seeking licensure as a *certified master social worker* must:⁶

- Submit an application and pay the appropriate fees;

¹ Section 491.004, F.S.

² Department of Health Bill Analysis of HB 1161, dated March 4, 2013, on file with Health Quality Subcommittee staff.

³ Section 491.003(7), F.S.

⁴ Section 491.003(8), F.S.

⁵ Section 491.003(9), F.S.

⁶ Section 491.005(1) and (2), F.S.

- Possess a doctoral or master's degree in social work from an agency accredited by the Council on Social Work Education or an equivalent program;
- Complete a program that emphasized direct clinical patient or client health care services;
- Complete supervised field placement where the applicant provided direct clinical services to clients;
- Complete 24 semester hours in theory of human behavior and practice methods as courses in clinically oriented services;
- Complete at least two years of post-master's level clinical social work experience requirements, under supervision of a licensed clinical social worker who is qualified by the board;
- Pass a board approved examination; and
- Demonstrate knowledge of laws and rules governing practice.

An applicant seeking licensure as a *marriage and family therapist* must:⁷

- Submit an application and pay appropriate fees;
- Receive a minimum of a master's degree program with major emphasis in marriage and family therapy, or a closely related field;
- Complete thirty-six semester hours of graduate coursework in specified areas;
- Complete a minimum of one graduate-level course in legal, ethical, and professional standards issues in the practice of marriage and family therapy or a course determined by the board to be equivalent;
- Complete minimum of 180 direct client contact hours in a supervised clinical practicum, internship, or field experience in a marriage and family counseling setting;
- Complete at least two years of clinical of post-master's level experience where 50 percent of the applicant's clients were receiving marriage and family therapy services, under the supervision of a licensed mental health counselor with at least five years of experience who is qualified by the board;
- Pass a board-approved examination; and
- Demonstrate knowledge of laws and rules governing the practice.

An applicant seeking licensure as a *mental health counselor* must:⁸

- Submit an application and pay the appropriate fees;
- Possess a master's degree from a program accredited by the Council for the Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours of clinical and didactic instruction;
- Complete thirty-three semester hours of graduate coursework that includes a minimum of three semester hours of graduate-level coursework in legal, ethical, and professional standards issues in the practice of mental health counseling;
- Complete at least 1,000 hours of university-sponsored supervised clinical practicum, internship at a school accredited by the Council for the Accreditation of Counseling and Related Educational Programs;
- Complete at least two years of clinical experience in mental health counseling at the post-masters level under the supervision of a licensed mental health counselor 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.

⁷ Section 491.005(3), F.S.

⁸ Section 491.005(4), F.S.

Dual Licensure

An individual may apply for a marriage and family therapy dual license if he or she passes an examination in marriage and family therapy and holds an active license for at least three years as a: 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.⁹

Licensure by Endorsement¹⁰

Section 491.006, F.S., allows an applicant who possesses an active, valid license from another state an avenue for licensure. The applicant must have actively practiced in the profession in another state for three of the last five preceding years, passed an equivalent licensing exam and education requirements, held a license in good standing, and must not be under investigation for anything that would violate Florida law.

Provisional Licensure

A provisional license allows individual practice, under supervision a licensed mental health professional, while not meeting all of the clinical experience requirements. Individuals must meet minimum coursework requirements, and possess the respective graduate degree. A provisional license is valid for 2 years.¹¹

Internship

In Florida, an individual may register as an intern in the following areas: clinical social work, marriage and family therapy, or mental health counseling. Registering as an intern enables an individual to gain the required postgraduate or postmaster's clinical experience that is required for full licensure. Currently, 1,500 hours of face-to-face psychotherapy is required, which may not be accrued in less than 100 weeks.¹²

An applicant seeking registration as an intern must:¹³

- Submit the application form and the nonrefundable fee;
- Complete the 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.

Currently, an intern may renew their registration every biennium, with no limit on the number of times a registration may be renewed.¹⁴ According to DOH, there are 2,708 clinical social work interns, 726 marriage and family therapist interns, and 3,394 mental health counseling interns.¹⁵

Promotional Material

A licensed clinical social worker, marriage and family therapist, mental health counselor, or certified master social worker conspicuously displays the valid license issued by the DOH or a copy of the license at each location at which the licensee practices. All promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee must be provided. Currently, none of these requirements for the professional promotional materials includes social media.¹⁶

⁹ Section 491.0057, F.S.

¹⁰ Section 491.006, F.S.

¹¹ Section 491.0046, F.S. and Rule 64B-3.0075, F.A.C.

¹² Rule 64B4-2.001, F.A.C.

¹³ Section 491.005, F.S.

¹⁴ *Supra* fn 2.

¹⁵ *Supra* fn 2.

¹⁶ Section 491.0149, F.S.

Effect of Proposed Changes

The bill makes substantial changes to the Clinical, Counseling, and Psychotherapy Services Practice Act (act), to update the provisions to current practice, training, and education standards. The act regulates the following professions: clinical social worker, marriage and family therapist, mental health counselor, psychotherapist, and social worker.

Parenting Plan

The bill creates s. 491.017, F.S., requiring a court-appointed mental health professional regulated by ch. 491, F.S., to develop a parenting plan recommendation in the following types of cases:

- Dissolution of marriage;
- Domestic violence; and
- Paternity matters involving the relationship of a child and a parent, including time-sharing.

The bill provides a presumption of good faith if the court-appointed mental health professional's recommendation is reached under the standards that a reasonable mental health professional would use to develop a parenting plan recommendation. Moreover, if an administrative complaint is filed against a court-appointed mental health professional, the filer's name, address, and telephone number must be included. A parent who wishes to file a legal action against a court-appointed mental health professional must petition the judge who presided over the case and show good cause before another mental health professional is appointed. Additionally, the court is responsible for determining who is responsible for all court costs and attorney fees associated with making an appointment. If a legal action is filed, whether civil or criminal, the claimant is responsible for all reasonable costs and reasonable attorney fees associated with the action for both parties if the mental health professional is not held liable. If the mental health professional is held liable in civil court, then he or she must pay all reasonable costs and attorney fees for the claimant.

Presently there is no statute to protect a court-appointed mental health professional acting in good faith under standards of licensure, who develops a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of child and parent including time sharing of children. There is no provision that prevents anonymous filings of administrative complaints against court-appointed mental health professionals. There is also no law for petitioning the judge and determining responsibilities, fees, and costs associated with civil, criminal, or administrative proceedings. However, similar language is contained in s. 61.122, F.S., which deals with the dissolution of marriage and court-appointed psychologists.

Intern Registration

The bill rewords current law in numerous sections to clarify that a licensed mental health professional is required to be on the premises when clinical services are provided by an intern in a private practice setting, and the intern may not engage in his or her own independent practice.

The bill provides that a person, who is registered to practice as an intern, must remain under supervision for clinical hours to count toward full licensure. Additionally, those interns registered before July 1, 2016, may not have their registration renewed or reissued and the registration is to expire within 60 months after the date of issue. Any registration issued after July 1, 2016, is valid for 5 years and the bill grants the board the authority to adopt by rule, the eligibility requirements for reapplying for registration as an intern. According to DOH, there are 3,042 clear, active registered clinical social work interns, 983 of them have been registered for over five years. There are currently 811 active registered marriage and family therapy interns; of these, 237 have been registered for over 5 years. There are currently 3,937 active registered mental health counselor interns, of these, 756 have been in this status

for over 5 years. As of March 1, 2013, there were 7,790 total registered interns; of these 1,976 having been in intern status for over 5 years.¹⁷

The bill deletes the renewal fee for interns. The fee is unnecessary because the intern registration may not be renewed; instead interns must reapply.

Provisional License

The bill provides that a person who holds a provisional license may not apply for intern registration in the same profession; which closes an avenue that may be utilized by some to lengthen the time period to practice in the field, once the intern license expires in 5 years, without obtaining full licensure.

The bill restructures the current prerequisite training requirements for persons applying for provisional licenses to ease readability.

Educational Standards

The bill amends the educational standards for persons seeking full licensure such that for:

- *Marriage and Family Therapy* – the university sponsored requirements are increased from 48 to 80 quarter hours and 36 to 60 semester hours in coursework from an accredited and board-approved program; direct client contact hours are increased from 180 to 400 hours.
- *Mental Health Counseling* – the university sponsored clinical practicum, internship, or field experience is decreased from 1,000 to 700 hours, and the 700 hours must include 280 hours of direct client services. According to DOH, this change will make the requirements the same regardless of whether the person graduated from an accredited program or non-accredited program.¹⁸ Moreover, effective July 1, 2020, an applicant for licensure must hold a master's degree from an accredited institution consisting of at least 60 semester hours or 80 quarter hours, and the coursework must include 3 semester hours or 4 quarter hours in differential diagnosis and the use of current diagnostic tools.

Dual Licensure

The bill repeals s. 491.0057, F.S., on July 1, 2020, which currently allows for dual licensure for Marriage and Family Therapists. According to DOH, since 1997, the following have been dually licensed as marriage and family therapists: 12 advanced registered nurse practitioners; 8 licensed clinical social workers; and 48 licensed mental health counselors.¹⁹

Out of State Applicants

The bill amends s. 491.006, F.S., the licensure by endorsement provisions for out-of-state applicants, by removing the requirement that applicants must have actively practiced the profession in another state within three of the last five immediately preceding years. Additionally, the bill authorizes the board to determine by rule, what educational requirements are required to demonstrate completion of substantially equivalent education.

¹⁷ Supra fn 2.

¹⁸ *Id.*

¹⁹ *Id.*

Disciplinary Action

The bill amends s. 491.009(2), F.S., to re-affirm the board's jurisdiction in the case of certified master social workers, such that DOH may enter orders denying licensure or imposing penalties for any applicant or licensee who is found guilty of violating any provisions of the law. According to DOH, the board determines the disciplinary action for the mental health professionals and DOH determines the disciplinary action for the certified master social workers.

Furthermore, the bill removes references to psychologists, because the profession is regulated by the Board of Psychology under chapter 490, F.S.

Display of License

The bill amends s. 491.0149, F.S., to add social media to the list of materials in which a person regulated by ch. 491, F.S., must include his or her name and appropriate title.

Other Provisions

The bill updates in numerous provisions the names of accrediting institutions that approve training programs under ch. 491, F.S., to include: the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, and the Council for Higher Education.

The bill amends s. 491.005(4), F.S., to update the name of the national examination entity for Mental Health Counselors from the Professional Examination for the National Academy of Certified Clinical Mental Health Counselors to the National Clinical Mental Health Counselors.

The bill amends the applicability of s. 491.0112(1), F.S., relating to psychotherapist misconduct to include a broader term of "sexual misconduct" instead of the more limited term of "sexual contact."

The bill deletes a provision in s. 491.0006(1), F.S., providing that fees paid by an applicant for certification as a Master Social Worker is nonrefundable.

The bill amends s. 491.012, F.S., to add "mental health coach" to the list of titles that a person may not use without a license.

The bill removes: obsolete dates, out-of-date references to the U.S. Department of Education and the Council for Higher Education, and unnecessary rule-making.

The bill makes substantial changes to the structure of existing law to simplify provisions and improve readability.

B. SECTION DIRECTORY:

Section 1. Amends s. 491.004, F.S., relating to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.

Section 2. Amends s. 491.0045, F.S., relating to intern registration and requirements.

Section 3. Amends s. 491.0046, F.S., relating to provisional license and requirements.

Section 4. Amends s. 491.005, F.S., relating to Clinical Social Work.

Section 5. Amends s. 491.0057, F.S., relating to dual licensure as a marriage and family therapist.

Section 6. Amends s. 491.006, F.S., relating to licensure or certification by endorsement.

Section 7. Amends s. 491.007, F.S., relating to renewal of license, registration, or certificate.

Section 8. Amends s. 491.009, F.S., relating to discipline.

Section 9. Amends s. 491.0112, F.S., relating to sexual misconduct by a psychotherapist and penalties.

Section 10. Amends s. 491.012, F.S., relating to violations, penalties, and injunctions.

Section 11. Amends s. 491.0145, F.S., relating to certified master social worker.

Section 12. Amends s. 491.0149, F.S., relating to display of license, and use of professional title.

Section 13. Creates s. 491.017, F.S., relating to parenting plan recommendation; presumption of good faith; prerequisite to parent's filing suit; and award of fees, costs, and reimbursement.

Section 14. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appears to have an insignificant fiscal impact on the Medical Quality Assurance Trust Fund associated with rule promulgation and workload, which may be absorbed within current resources.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 13 of the bill, creates, within a practice act, a legal presumption of good faith for court-appointed mental health professionals who are appointed by a court to develop a parenting plan recommendation. It might be more appropriate to place this type of provision within ch. 61, F.S., or another section of law related to civil procedure.

²⁰ *Supra* fn 2.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Health Quality Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

Amendment 1 – Changes the date from July 1, 2013 to July 1, 2016, to allow current registered interns more time to meet the new educational requirements for full licensure.

Amendment 2 – Deletes duplicative training requirements for full licensure as a marriage and family therapist.

Amendment 3 – Inserts the term “private” between “independent” and “practice” to mirror the identical language used in two other provisions within the chapter.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee