

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 Committee on Criminal Justice

BILL: SB 818

INTRODUCER: Senator Burgess

SUBJECT: Mental Health Professionals

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	Favorable
2.	Siples	Jones	CJ	Pre-meeting
3.			RC	

I. Summary:

SB 818 deletes the current-law requirement that a licensed mental health professional must remain on the premises when clinical services are provided by a registered mental health counselor intern in a private practice setting. The bill also authorizes the appointment of physicians licensed under chs. 458 or 459, F.S., and mental health professionals licensed under ch. 491, F.S., as experts in criminal cases.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

¹ Section 20.43(1), F.S.

² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43(3)(g), F.S.

Mental Health Counselors

A mental health counselor is someone who is licensed in this state to practice mental health counseling.⁴ The practice of mental health counseling involves 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 and 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.⁵ The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.⁶

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, or mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.⁷

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.⁸

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. The DOH must issue a license to an applicant as a mental health counselor if the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has a minimum of a master's degree from:

⁴ Section 491.003(6), F.S.

⁵ Section 491.003(9), F.S.

⁶ *Id.*

⁷ Section 491.0046, F.S.

⁸ Section 491.0045, F.S.

- A mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP)⁹ which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
- A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:
 - Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours of graduate-level coursework in 11 content areas;¹⁰
 - Includes a minimum of three semester hours, or four quarter hours, of coursework in the diagnostic processes and emphasized the common core curricular experience; and
 - Includes at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes 280 hours of direct client services, as required in the accrediting standards of the CACREP for mental health counseling programs; or the equivalent, as determined by the board;
- Has passed the National Clinical Mental Health Counseling Examination, the clinical simulation examination by the National Board for Certified Counselors;¹¹ and
- Has had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor who is a board qualified supervisor.¹²

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting.¹³ Neither the statute, nor board rule, define a “private practice setting.”

Section 491.005, F.S., contains the same provision for registered clinical social worker interns and registered marriage and family therapy interns.

In response to the COVID-19 pandemic, the board revised Rule 64B4-2.002 of the Florida Administrative Code, defining supervision, to authorize registered interns to provide face-to-face psychotherapy by electronic methods (telehealth) if the intern establishes a written telehealth protocol and safety plan with their qualified supervisor.¹⁴ The protocol must include a provision that the supervisor remain readily available during electronic therapy sessions and that the registered intern and their qualified supervisor have determined that providing face-to-face

⁹ Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited March 24, 2021).

¹⁰ See s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

¹¹ Fla Admin. Code R. 64B4-3.003(2)(b), (2021).

¹² Section 491.005(4), F.S.

¹³ Section 491.005(4)(c), F.S.

¹⁴ Florida Department of Health, State Surgeon General, *Emergency Order, DOH No.20-002*, filed Mar. 16, 2020, available at <https://www.flhealthsource.gov/pdf/emergencyorder-20-002.pdf> (last visited March 24, 2021).

psychotherapy by electronic methods is not detrimental to the patient, is necessary to protect the health, safety, or welfare of the patient, and does not violate any existing statutes or regulations.¹⁵

Appointment of Experts

In criminal proceedings involving mentally ill and intellectually disabled persons, s. 916.115, F.S., authorizes a court to appoint no more than three experts to determine the mental condition of a defendant in a criminal case. Under current law, the appointed experts must be a psychiatrist, licensed psychologist, or physician.¹⁶

III. Effect of Proposed Changes:

SB 818:

- Removes the requirement that a licensed mental health professional remain on the premises when clinical services are provided by a registered mental health counselor intern in a private practice setting; and
- Authorizes the appointment of mental health professionals licensed under ch. 491, F.S., as experts in criminal cases, in addition to psychiatrists, licensed psychologists, or physicians currently authorized to serve as experts.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁵ Fla Admin. Code R. 64B4-2.002(6), (2021).

¹⁶ Section 916.115(1)(a), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 491.005 and 916.115.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.