

**STORAGE NAME:** h3207s2.go

**DATE:** April 7, 1998

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/CS/HB 3207

**RELATING TO:** Social Work Services

**SPONSOR(S):** Committees on Governmental Operations, Health Care Standards and Regulatory Reform, Representative Wise and others

**COMPANION BILL(S):** SB 402(s), CS/HB 3209(c), SB 870(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 7 NAYS 1
  - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
  - (4)
- 

**I. SUMMARY:**

CS/CS/HB 3207 creates part XV of chapter 468, F.S., establishing regulatory provisions applicable to social work practice that are separate from those applicable to marriage and family therapy and mental health counseling. Certain provisions of chapter 491, F.S., are repealed.

A seven-member Advisory Council on Nonclinical Social Work Practice is created, and appointments and terms of members and headquarters are provided.

Definitions and scope of practice for "licensed bachelor social worker" and "licensed graduate social worker" are provided. With regard to licensed bachelor social workers and licensed graduate social workers, this bill also addresses continuing education; discipline of applicants and licensees; exceptions to the licensure requirements; and, penalties (felony) for licensees who engage in sexual misconduct, as defined. Additionally, this bill lists unlawful acts and provides for a first degree misdemeanor penalty as well as provides for confidential communications. Finally, this bill provides rulemaking authority regarding sexual misconduct, licensure of graduate social workers and bachelor social workers, and record keeping requirements.

Expenses incurred by regulation of the new levels of licensure will be paid from fees, fines, and other revenues collected by the department.

The Department of Health and the Department of Elder Affairs indicate that the bill has a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 491, F.S., regulates the practice of clinical social work, marriage and family therapy, and mental health counseling. The three licenses issued under the law are Licensed Clinical Social Worker, Licensed Marriage and Family Therapist, and Licensed Mental Health Counselor. Chapter 491, F.S., further provides for the definition of the practice of each of the professions and establishes prohibitions against the practice of any one of the three professions without an active, valid license issued under the chapter.

Current law recognizes a single level of licensure for each category of practice, which requires a minimum of a master's degree in the related field and three years of clinical experience, two of which must be post-master's. It also provides for certification by the Department of Health (department) of a master social worker, requiring a minimum of a master's degree in social work (MSW), with a major emphasis in administration. The certificate issued by the department is Certified Master Social Worker. The law does not recognize any type of license or certificate for a bachelor's of social work degree (BSW).

There are approximately 4,000 licensed clinical social workers and six (6) certified master social workers at this time. According to estimates published by the National Association of Social Workers (NASW)-Florida Chapter, there are approximately 8,000 BSW's and MSW's in Florida who are not licensed.

The law provides for licensure by endorsement, establishing requirements for licensure which must be met by persons who are licensed in other states. The requirements include equivalent education and examination and a minimum number of years of licensed practice.

Current law allows individuals in certain practice settings to provide clinical social work, marriage and family therapy, or mental health counseling services, without a license. This section also "exempts" students pursuing a course of study leading to a degree required for licensure under this chapter from being licensed. It allows certain individuals to practice for a limited number of days in the state, without a license. This section also refers to an October 1, 1995, date by which persons who have registered their intent to become licensed must be fully licensed.

The Agency for Health Care Administration, through contract with the Department of Health, is responsible for consumer complaint, investigative, and prosecutorial services for twenty-nine health care professions, including clinical social workers, marriage and family therapists, and mental health counselors.

The Department of Elder Affairs (DOEA) provides case management services to clients, with the minimal educational and experience requirements for such case managers being a bachelor's degree in social work, sociology, psychology, nursing, gerontology, or related field. Other directly related job education or experience may be substituted for all or some of these basic requirements at the discretion of the Area Agency on Aging (AAA). DOEA case managers are not required to be licensed.

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DOEA contracts with providers for case management services. The cost and availability of licensed master and bachelor level case managers is unknown (\*see Fiscal Comments Section).

The National Conference of State Legislatures indicates that approximately twenty-seven states have some form of tiered licensure.

**B. EFFECT OF PROPOSED CHANGES:**

Part XV of Chapter 468, F.S., is created, establishing regulation for “licensed bachelor social workers” (LBSW) and “licensed graduate social workers” (LGSW), requiring licensure of all social workers in Florida, except those specifically exempted in other sections of the bill.

An Advisory Council on Non-Clinical Social Work Practice is established under the Department of Health to oversee social work licensees.

All LGSW’s and LBSW’s who practice in the state are required to take and pass a national examination.

All categories of licensure will include licensure by endorsement.

The cap on renewal fees is lowered from \$250 to \$150.

The fee cap for provider approval is increased from \$200 to \$300. A continuing education provider is required to obtain separate approvals, requiring separate applications and fees, if they desire to provide continuing education to clinical social workers and to marriage and family therapists and mental health counselors.

Titles and services are delineated which may not be used by a person unless the person holds a valid, active license as a clinical social worker, licensed graduate social worker, or licensed bachelor social worker. In addition to the titles and combinations which exist under current law, the term “social worker” (which has not previously been a protected title) is included. Also prohibited is the use of the terms “social work” or “social work services” to describe services provided by anyone except persons licensed under this chapter. The effect is very encompassing, because terms which are commonly used today as generic descriptors of a broad range of social services are being captured as part of this practice act.

A sunset date of January 1, 2003, provides that salaried employees of governmental and other agencies or salaried employees of private, non-profit organizations will be required to become licensed or to work within an agency which administers and maintains a competency-based training program or maintains external accreditation by a standard-setting body.

All references to clinical social work are eliminated from the current Chapter 491, F.S., and clarification is provided that the remaining part of the chapter regulates only licensed mental health counselors and marriage and family therapists.

A "window" of time is provided for any person to continue to practice who, on the effective date of this act, hold a license or certificate to practice social work under Chapter 491, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. This bill provides for a new regulatory body with the authority to create rules. (\*See Comments Section).

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, for boards under the Department of Health and for certain affected health care providers.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. This bill requires certain fees for application for licensure to be paid to the Department of Health.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not directly. Applicants pay through license application fees. The individuals using the provider's services do not directly pay for the costs of the implementation and operation of the bill.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Potentially, yes. Additional licensure requirements for providers of certain health care services will be imposed.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Creates chapter 468, Part XV, F.S. Amends s. 491.0149, F.S. Repeals ss. 491.0145 and 491.015, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1.**

Creates s. 468.851, F.S., establishing legislative intent.

Creates s. 468.852, F.S., defining, among other terms, “licensed bachelor social worker”, “licensed graduate social worker”, “practice of licensed bachelor social work”, “practice of licensed graduate social work”, “advisory council”, “assessment”, “case management supervision”, and “support services”.

Creates s. 468.853, F.S., establishing within the Department of Health an Advisory Council on Non-Clinical Social Work Practice comprised of seven members; specifying terms.

Creates s. 468.855, F.S., specifying requirements for licensure by examination of licensed graduate social workers and licensed bachelor social workers.

Creates s. 468.856, F.S., establishing the requirements for licensure by endorsement, mirroring s. 491.006, F.S.

Creates s. 468.857, F.S., copying existing statutory language in s. 491.0065, F.S., requiring instruction on human immunodeficiency virus and acquired immune deficiency syndrome for initial licensure.

Creates s. 468.858, F.S., providing for licensure renewal; establishing a cap on renewal fees of \$150; providing for not more than 25 classroom hours of continuing education annually.

Creates s. 468.859, F.S., establishing inactive status, requirements for reactivation of a license, and applicable fee caps.

Creates s. 468.861, F.S., directing the department to approve continuing education providers, programs, and courses, and establishment of proof of completion requirements; establishing a fee cap for provider approval at \$300.

Creates s. 468.862, F.S., relating to discipline, establishing acts, if committed, for which the department may impose penalties; imposing in s. 468.862(1) (e), F.S., an administrative fine not to exceed \$1,000 per count, which is incongruent with ss. 455.624(2)(d), F.S., which establishes a cap of \$5,000 per count.

Creates s. 468.863, F.S., relating to sexual misconduct, establishing a prohibition against sexual misconduct, and instructing the department to define sexual misconduct by rule.

Creates s. 468.864, F.S., establishing penalties for sexual misconduct by a social worker.

Creates s. 468.865, F.S., relating to violations, penalties, and injunctions; delineating titles and services which may not be used by a person unless the person holds a valid active license to practice social work. In addition to the titles and combinations which exist under current law, the term "social worker", which has not heretofore been a protected title, is included. Also prohibited under this section is the use of the terms "social work" or "social work services" to describe services provided by anyone except persons licensed under this chapter \*See Comments Section\*.

Creates s. 468.866, F.S., establishing parameters for exemption from licensure and specifying a window of time during which an unlicensed person may register with the department their intent to become licensed. The language is copied from existing law (s. 491.014, F.S.), with two additional provisions. First is a sunset date of January 1, 2004, after which no person currently exempted under ss. 491.014(4)(a) and (b), F.S., shall be exempt from licensure except under specific criteria, which include competency-based training and agency accreditation. Second, a window of time is established for a person who is not licensed by January 1, 1999, to register their intent to become licensed by January 1, 2000. School social workers certified by the Department of Education are exempted.

Creates s. 468.867, F.S., relating to confidentiality and confidential communications, delineating the conditions under which the confidentiality of communications between a licensee and patient may be waived.

Creates s. 468.868, F.S., relating to records, establishing the requirement for maintenance of records and granting the department the authority to adopt rules for minimum requirements.

Creates s. 468.869, F.S., regarding the display of a license and professional title, requiring a licensee to conspicuously display the license and include specific words or initials on all advertisements or promotional materials.

## **Section 2.**

Amends s. 491.0149, F.S., relating to display of license and use of professional title to conform to new language.

## **Section 3.**

Repeals ss. 491.0145 and 491.015, F.S., relating to certified master social worker and duties of the department as to certified master social workers. All holders of active licenses under s. 491.0145, F.S., are permitted to continue practicing until January 1, 1999, or until license expiration.

## **Section 4.**



Establishes an effective date of July 1 of the year in which the bill is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>1998-99</u>	<u>1999-2000</u>
a. Office Set-up - 4 F.T.E. Staff (Expenses)	\$7,026	
4 F.T.E. Staff (OCO) Estimate Assumes Modular Furniture	21,114	
b. Administration: Rule Development, Workshops, Publication, Printing & Mailing	20,322	
Total Non-recurring Costs	\$48,462	

2. Recurring Effects:

	<u>1998-99</u>	<u>1999-2000</u>
a. Council Operations (Seven Members) Cost of stipends, meetings, lodging, airfare, court reporters, legal advertising and communications	\$35,378	\$47,194
b. Board Office Operations		
Board Office 1.0 F.T.E. Reg. Spv.	28,324	37,765
Board Office 1.0 F.T.E. Reg. Spec. II	23,983	31,977
Board Office 1.0 F.T.E. Reg. Spec. I	21,548	28,731
Board Office 1.0 F.T.E. Staff Asst.	19,524	26,032
Expenses 4.0 F.T.E.	25,514	34,018
Total Recurring Costs	\$154,271	\$205,717

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues: The Department of Health indicates that LBSW (Licensed Bachelor Social Worker), LGSW (Licensed Graduate Social Worker) and LCSW (Licensed Clinical Social Worker) application fees are \$200, examination fees are \$350, initial licensure fees are \$100, and renewal fees are \$105. For FY 98-99 there will be approximately 5,000 LBSW applicants, 1,000 LGSW applicants, and 500 LCSW applicants. For FY 99-2000 there will be approximately 500 applicants each for LBSW, LGSW, and LCSW, and approximately 4,000 renewals of LCSW's.

LBSW applicants	3,250,000	325,000
LGSW applicants	650,000	325,000
Total Revenue	3,900,000	650,000

Total expenditures for FY 1998-99 would be \$212,837 and for FY 1999-2000 would be \$205,717. Biennial total expenditures would be \$432,002. Total biennial revenues would be \$5,620,000.

Both the Department of Elder Affairs and the Agency for Health Care Administration have indicated that they would experience a significant fiscal impact. See Fiscal Comments Section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

\*The Agency for Health Care Administration has indicated the following:

"This bill will require the licensure of **all** social workers practicing in Florida. It is estimated that there will be 8,000 additional licensees if this bill passes. According to the 96/97 Annual Report, there were approximately 4,000 licensed social workers that generated approximately 200 complaints. Therefore, it is anticipated that the additional 8,000 licensees will generate 400 additional complaints. This will require 1 FTE Investigation Specialist II in Consumer Services, 1 FTE Medical Malpractice Investigator in Investigative Services and 1 Senior Attorney in the Office of the General Counsel to process, investigate and litigate the additional workload. The methodology used to determine this need is as follows:

Standards - 232 days used by EOG for number of days available for employees to work a year;

7 cases per month - number of cases an investigator can work;

6 cases per day - number of cases per month a consumer services analyst can review/analyze.

Consumer Services (all cases reviewed/analyzed within 7 workdays)

-There are 400 additional complaints to be received annually

-There are 33 seven-day work periods in each work year

-The consumer services analyst can review 42 cases per seven-day period  
(7X6=42 per day)

-400 cases divided by 33 seven-day periods=12.12 cases per 7-day period to be worked

-12.12 divided by 42 cases per FTE=.29 FTE

Investigative Services (all cases investigated within 128 days)

-Approximately 29% of total complaints received require investigative services  
(400X29%=116)

-There are 2.8 - 128 day work periods in a year

-Each investigator can work 30 cases in each 128 day period (7 cases per month X 4.3 months=30 cases)

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- 116 cases divided by 2.8 work periods+41.43 cases per 128 day period to be worked
- 41.43 divided by 30 cases per FTE=1.38 FTE

The total FTE needed for the Bureau of Consumer and Investigative Services is 2.

Office of the General Counsel (legal recommendations made on cases within 45 days)

- Approximately 91% of total complaints investigated go to legal for recommendation of probable cause (116X91%=106 additional cases)
- There are eight 45 day work periods in a year
- There are currently 3,127 cases pending in legal
- 3,127 + 106 additional cases=3,233 pending caseload in legal
- Each attorney can close 58 cases in a 45 day period (29 work days in a 45 day period X 2 cases per day=58 cases)
- 3233 cases divided by 58 cases per attorney=7 attorneys
- 7 attorneys needed minus 6 current FTE attorneys=1 additional FTE attorney needed"

The Department of Elder Affairs has indicated the following:

"DOEA contracts with providers for case management services. The cost and availability of licensed master and bachelor level case managers is unknown. However, the availability of case managers who would meet the requirements of HB 3207 is suspected to be limited and would not meet case management needs. One selected DOEA provider employs licensed professionals and provides excellent case management services. These services are typically more costly.

By comparing the rates for this provider's case management services to CC case management services statewide, the following was found:

Statewide average CC case management rate \$27.11

CC case management costs for provider in Orange and Seminole Counties 33.53

Increased difference between provider case management costs and statewide average CC case management rate 6.42

Total Case management hours SAY 1996-97 for Department-funded programs 483,371.00

Difference in average CCE case management rates and provider case management rates multiplied by total case management hours for SFY 1996-97:  $\$6.42 \times 483,371 =$  \$3,103,242.00

Results of increased licensing costs for case managers and the resulting increased costs of case management could result in any one of the following:

- Reduce the number of home delivered meals served by 814,499;

-Terminate services to 2,905 persons receiving Community Care for the Elderly services;

-Reduce one-way transportation trips by 940,376;

-Reduce the number of hours of respite care to families and care givers by 239,448"

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

HB 3207 was discussed at length during a workshop by the Committee on Health Care Standards and Regulatory Reform in early December, 1997. Individuals representing all sides of the issue have met several times since the workshop in an attempt to work out their differences.

Since the bill was workshopped, both the Agency for Health Care Administration and the Department of Elder Affairs have provided some additional comments to the bill, which are as follows:

From the Agency for Health Care Administration:

The agency has indicated a concern that, while the Department of Health is authorized under this bill to make rules, they are not.

From the Department of Elder Affairs:

"If passed, the impact of the proposed legislation would have a damaging effect on the aging network. DOEA does not require that case managers be licensed social workers. The bill lists the following activities specified as scope of practice for a licensed bachelor social worker: assessment and referral, providing information, case management and supportive services, problem-solving intervention, and client advocacy. These activities are performed daily by aging network case managers statewide. While the minimum requirements for employment as a case manager include a bachelor's degree in social services or a related

field, not all of these individuals have such degree. Area agencies on aging may waive the requirement for a degreed case manager where such persons are not available. This is particularly critical in Florida's numerous rural counties.

In recent years, provider agencies have found that the most important qualifications in a case manager are not having a social work degree, but a genuine concern for older people and creativity in helping arrange for needed services where formal services may not be available. In addition, the department requires that all case managers receive 6 hours of annual in-service training to keep their knowledge of the community care services system current.

The cost of hiring case managers who are licensed social workers would dramatically decrease funds available for services to elders in Florida. With limited resources for home and community-based services, DOEA strives to keep the cost of case management down to maximize funding for crucial services such as home-delivered meals, respite and personal care.

Additionally, the definitions of "master social worker" and "bachelor social worker" do not appear to define any unique professional practice. While there are overlapping certain activities common to more than one licensed profession, such activities are generally protected as they relate to the unique nature of the particular profession. For instance, "assessment" is an activity inherent in several professions, but when used in the context of clinical social work, "assessment" is related to psychotherapy; it is not just "assessment".

There does not appear to be a nexus between most or any of the activities contained in the definitions of "master social work" and "bachelor social work" and any comparably unique professional practice."

#### VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The differences between the original bill and the Committee Substitute are:

-The provisions relate to part XV of chapter 458, F.S., instead of creating a new part in chapter 491, F.S.

-The term "licensed graduate social worker" is identified instead of "licensed master social worker".

-The department is given specific rulemaking authority in accordance with the Administrative Procedure Act.

-The requirement is deleted for persons who have already graduated from an accredited school of social work and have at least two years of experience to take an exam before applying for a bachelor's or graduate social work license.

-An exemption is provided for school social workers who are certified by the Department of Education.

On March 30, 1998, the Committee on Governmental Operations adopted 5 amendments to CS/HB 3207. CS/HB 3207, as amended, was made a committee substitute.

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The first amendment exempted school guidance counseling from application of the bill's provisions.

The second amendment added the language: "chapter 458, chapter 459". This amendment clarifies that there was no intent to preclude physicians licensed under chapter 458 or 459 from using the terms or titles psychotherapy, sex therapy, or sex counseling -- all of which are within the practice of medicine.

The third amendment extended the exemptions to include hospices.

The fourth amendment extended the exemptions to include volunteers in public or private non-profit or for profit social welfare agencies, if certain conditions are met.

The fifth amendment amended one of the phrases defined in s. 468.852 from "practice of graduate social work" to "practice of licensed graduate social work".

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

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