

STORAGE NAME: h1793b.hcl

DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 1793

RELATING TO: Nonclinical Social Work Practice

SPONSOR(S): Representative Bradley

COMPANION BILL(S): SB 1726(s)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1793 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 Certain provisions of chapter 491, F.S., are repealed.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 master social worker" are provided. With regard to licensed bachelor social workers and licensed master 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.

A section requires competency based training for those who do not qualify for licensure, and who are in the social work area. Especially targeted are governmental agencies. Some types of work are not limited in this area, however. According to several of these governmental agencies, the potential impact in the out years would be significant. The amount is estimated in the range of \$30-60 million with a significant impact on the private sector.

II. SUBSTANTIVE ANALYSIS:

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 (M.S.W.), 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 (BMW).

There are approximately 5,000 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 BSWs and MSWs 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.

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 Department of Children and Families (DCF) provides case management services to clients, with the minimal educational and experience requirements for such case managers being a bachelor's degree, with preferences in social work, sociology, psychology, nursing, 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 program area in which the position resides. DCF case managers are not required to be licensed.

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 master social workers" (LMSW), 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 LMSWs and LBSWs who practice in the state are required to take and pass a national examination. The initial license fee cap is \$200 plus the actual cost per applicant of the national examination.

All categories of licensure will include licensure by endorsement.

The fee cap for provider approval is set at \$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, 2005, 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 (January 1, 2000) 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.

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

Yes, for boards under the Department of Health and other state agencies will gain new responsibilities.

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

No.

b. If an agency or program is 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 examinations, renewal, and provider fees 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?

Yes.

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:

- (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?

N/A

- 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:

- (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 ANALYSIS:

Section 1. Creates s. 468.851 F.S., establishes legislative intent.

468.852, F.S., provides criteria for licensure and defines licensed bachelor of social worker, licensed master social worker, practice of licensed bachelor social worker, practice of master social work, social work assessment, and social work case management, supervision, and support services.

468.853, F.S., creates an Advisory Council on Nonclinical Social Work Practice within the Department of Health . The council shall include two bachelor social workers, two licensed master social worker and one clinical social worker. The council shall set rules relating to the licensure of master social workers and bachelor social workers.

468.855, F.S., specifies requirements for licensure of licensed master social workers and licensed bachelor social workers.

468.856, F.S., provides licensure by endorsement. The department shall issue a license to any person in any level of nonclinical social work practice after the appropriate documentation has been submitted and a fee has been paid. The department holds the right to not grant a license by endorsement to any person under investigation in this or any other jurisdiction.

468.857, F.S., requires the applicant to complete an education course on human immunodeficiency virus and acquired immune deficiency syndrome in order to become licensed in this area.

468.858, F.S., establishes rules for the renewal of licensure. Licensure shall be renewed on a biennial basis at a fee, not to exceed \$150. The applicants must maintain continuing education requirements, as set by the department, not to exceed 30 hours.

468.859, F.S., establishes standards for inactive status, requirements for reactivation of a license, and applicable fees.

468.861, F.S., establishes standards of continuing education requirements, programs, and courses; approval of providers and fee caps; and proof of completion.

468.862, F.S., establishes guidelines for disciplinary actions against those applicants or licensees who have violated established standards.

468.863, F.S., prohibits sexual misconduct as defined by the rules of the department.

468.864, F.S., establishes guidelines and penalties for sexual misconduct.

468.865, F.S., establishes violations, penalties, and for injunction relief for use of various titles without proper licensure.

468.866, F.S., provides list of exemptions from the provisions of this new section.

468.868, F.S., provides for maintenance of proper records in accordance with department rules.

468.869, F.S., provides for display of license and use of professional title on promotional materials.

Section 2. Amends s. 491.0149, F.S., to eliminate the title "certified master social worker" from this section.

Section 3. Repeals ss. 491.045 and 491.015, F.S. Section 491.045, F.S., provides for a certified social worker. Section 491.015, F.S., provides for the duties of the department as to certified social workers.

Section 4. Provides that any person licensed under the provisions of s. 491.0145, F.S., may continue to practice until their certificate expires or until January 1, 2000, whichever occurs sooner.

Section 5. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Medical Quality assurance Trust Fund:	FY 1999-00	FY 2000-01
4 FTEs	\$ 16,708	
Expenses	26,492	
OCO	10,484	
Total Non-recurring	\$ 53,684	

2. Recurring Effects:

Medical Quality Assurance Trust Fund:		
4 FTEs	\$ 104,341	\$139,120
Expenses	28,684	28,684
Council Operations		
Annualized Continuation Costs	44,864	40,762
Total Recurring Costs	\$ 177,889	\$208,566

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Medical Quality Assurance Trust Fund:		
Total Revenues	\$3,900,000	\$650,000
Total Expenditures	\$ 231,573	\$208,566

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:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The Department of Health in their fiscal response to this bill stated "not applicable" to this section. However, in the 1998 analysis of similar language the legislative fiscal analysis stated, In January 1, 2003, when all BSW, M.S.W. social workers or those doing functions as outlined in the bill must either be licensed, be involved with an agency that has competency-based training or involved with an agency that is accredited, the costs will increase both for the employee and for the agency. An estimate for competency based training is currently \$140 per day for 60 days. This is a training per person of \$8,400. That estimate does not include competency based pay plan increases as is the case with child protective services in the Department of Children and Families.

2. Direct Private Sector Benefits:

None.

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

The Department of Health in their fiscal response to this bill stated "not applicable" to this section. However, in the 1998 analysis of similar language the legislative fiscal analysis stated, The social worker market would become more competitive after 2003, giving advantage for the BSW or M.S.W. who holds a license and who could be compensated at a higher rate than non-licensed social workers who enter the system through competency based training or through the agency accreditation.

D. FISCAL COMMENTS:

The Department of Health did not provide any fiscal information about the potential fiscal impact of this legislation on other governmental agencies. Last year (1998), the fiscal analysis of this legislation stated the potential impact on the private sector and all applicable governmental agencies (Departments of Children and Families, Juvenile Justice, and Elder Affairs) was determined to be very significant.

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:

According to the Department of Health, a delay in the effective date from July 1, 1999, to October 1, 1999, or later, is needed. This would allow the department time to prepare for the influx of some 8,000 applicants and to allow them time to establish the four positions requested.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 1999, the Committee on Health Care Licensing & Regulation adopted a strike everything amendment. The amendment establishes a 12-member committee to evaluate the need to regulate nonclinical social workers. This act shall take effect upon becoming law.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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