

STORAGE NAME: h1077s1.hcl

DATE: March 16, 2000

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

BILL #: CS/HB 1077

RELATING TO: Mental Health Professionals

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Kelly and others

TIED BILL(S): None

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 8 NAYS 3
- (2) JUDICIARY
- (3) GOVERNMENTAL RULES & REGULATION
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (5)

I. SUMMARY:

The bill amends exemption provisions in chapters 490 and 491, F.S., which allow certain persons to provide psychological or psychotherapeutic services without a license under certain circumstances. This bill requires the employees of government agencies, private non-profit agencies, and specified programs who are not licensed pursuant to chapters 490 or 491 who perform duties within the confines of such agency and who are currently exempt from licensure as a psychologist, clinical social worker, marriage and family therapist, and mental health counselor to disclose to a Court and all parties that he or she is not licensed under chapters 490 or 491. The bill also prohibits specified employees after January 1, 2002, from rendering a psychological or psychotherapeutic diagnosis or practicing psychology, clinical social work, marriage and family therapy, or mental health counseling as defined in chapters 490 and 491 without a license, with the exception of school psychologists, and those persons practicing in an accredited academic institution or research institution.

There is no fiscal impact to the Department of Health.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill will require persons who are currently exempt from licensure to meet the minimum education, training, and competency requirements for licensure as of January 1, 2002. Applicants for licensure must pay the costs of regulation. Persons who do not meet the minimum education, training, and competency requirements will no longer be able to hold themselves out as able to provide psychological or psychotherapeutic services.

B. PRESENT SITUATION:

Sections 490.014 and 491.014, F.S., provide exemptions from licensure as a psychologist and exemptions from licensure as a clinical social worker, marriage and family therapist, or mental health counselor, respectively. Current law does not require the unlicensed person to notify the Court or the parties when providing testimony as an expert witness or otherwise of the person's status as unlicensed.

According to the proponents of this bill, the exempted persons do not always voluntarily disclose to clients nor to the Court when providing expert witness testimony the fact that they are not licensed psychologists or licensed psychotherapists with special education, training, and experience to render such expert diagnosis opinions. Such non-disclosure has resulted in testimony being admitted into evidence as expert testimony and given greater weight than it might have been if the status of the witness as an unlicensed person been known to the Court and the parties.

C. EFFECT OF PROPOSED CHANGES:

The bill amends exemption provisions in chapters 490 and 491, F.S., which allow certain persons to provide psychological or psychotherapeutic services without a license under certain circumstances. This bill requires the employees of government agencies, private non-profit agencies, and specified programs who are not licensed pursuant to chapters 490 or 491 who perform duties within the confines of such agency and who are currently exempt from licensure as a psychologist, clinical social worker, marriage and family therapist, or mental health counselor to disclose to a Court and all parties that he or she is not licensed under chapters 490 or 491, F.S. The amendment also prohibits specified employees after January 1, 2002, from rendering a psychological or psychotherapeutic diagnosis or practicing psychology, clinical social work, marriage and family therapy, or mental health counseling as defined in chapters 490 and 491, F.S., without a license, with the exception

of school psychologists, and those persons practicing in an accredited academic institution or research institution.

It is unknown how many persons are currently purporting to practice psychology or psychotherapy under the exemptions provided in chapters 490 and 491, F.S. After January 1, 2002, those employees could continue to provide counseling and other services so long as they do not make a psychological or psychotherapeutic diagnosis or perform any of the services requiring special education, training, and experience which are specifically reserved to licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed mental health counselors who can be held accountable for rendering a diagnosis or practicing below the minimum standard of practice. Those employers who currently utilize unlicensed personnel to provide a psychological or psychotherapeutic diagnosis will have to hire a licensed person to provide those particular services.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 490.014, F.S., to require unlicensed persons who provide expert testimony to disclose to the Court and all parties the fact that he or she is unlicensed. Prohibits specified employees after January 1, 2002, from rendering a psychological diagnosis, practicing psychology as defined in chapter 490, or using the title "psychologist" or any permutation thereof without a license. Provides certain exceptions for school psychologists and those persons working in an accredited academic institution or research institution.

Section 2. Amends s. 491.014, F.S., to require unlicensed persons who provide expert testimony to disclose to the Court and all parties the fact that he or she is unlicensed. Prohibits specified employees after January 1, 2002, from rendering a psychotherapeutic diagnosis, practicing clinical social work, marriage and family therapy, or mental health counseling as defined in chapter 491, or using the title "clinical social worker," "marriage and family therapist," or "mental health counselor" without a license. Provides certain exceptions for those persons working in an accredited academic institution or research institution.

Section 3. Provides for an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Psychology: Applicants for licensure by examination must pay an application fee not to exceed \$500 and an examination fee not to exceed \$500. Applicants for provisional licensure must pay an application fee not to exceed \$250. The licensure renewal fee, payable by the licensee every 2 years, shall not exceed \$500.

Psychotherapy: Applicants for licensure by examination must pay a fee not to exceed \$200 plus the actual per applicant cost to the Department of Health to purchase the examination from the national organization. Applicants for provisional licensure must pay an application fee not to exceed \$100. The licensure renewal fee, payable by the licensee every 2 years, shall not exceed \$250.

2. Expenditures:

The Department of Health would incur the costs of processing applications, examining candidates, issuing licenses, and regulating the practice of the additional persons who would have to become licensed under this bill who are now exempt from licensure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments section.

D. FISCAL COMMENTS:

It is unknown how many persons are currently purporting to practice psychology or psychotherapy under the exemptions provided in chapters 490 and 491, F.S. After January 1, 2002, those employees could continue to provide counseling and other services so long as they do not make a psychological or psychotherapeutic diagnosis or perform any of the services requiring special education, training, and experience which are specifically reserved to licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed mental health counselors who can be held accountable for rendering a diagnosis or practicing below the minimum standard of practice. Those employers who currently utilize unlicensed personnel to provide a psychological or psychotherapeutic diagnosis will have to hire a licensed person to provide those particular services.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a county or municipality to expend funds or to take any 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:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill required the unlicensed persons to work under a protocol and notify their clients and the Court that they are unlicensed. The bill also required employers to maintain a list of unlicensed persons, their disclosure to clients as to the employee's licensure status, and a log of unlicensed activities. A strike-everything amendment was offered by the sponsor of the bill and was adopted by the Committee on Health Care Licensing & Regulation as a committee substitute. The committee substitute is explained herein.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen

Lucretia Shaw Collins