

STORAGE NAME: h1077.hhsa.doc

DATE: April 4, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 1077

RELATING TO: Health Care/Alternative Treatment

SPONSOR(S): Representative Mack

TIED BILL(S): None.

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

- (1) HEALTH REGULATION YEAS 9 NAYS 0
 - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

Chapter 456, F.S., establishes general provisions relating to licensure and regulation of all health care practitioners, but does not specifically speak to complementary or alternative modes of treatment. Likewise, the individual practice acts do not specifically address such treatment options. Some treatment methodologies that have historically been considered by traditional health care practitioners as complementary or alternative treatment are specifically authorized by Florida Statute; such as, the practice of acupuncture, governed by Chapter 457, F.S.; and the practice of naturopathy, governed by Chapter 462, F. S.

HB 1077 creates provisions authorizing licensed health care practitioners to provide complementary or alternative health care treatment as an option to conventional treatment. The bill provides that health care practitioners utilizing complementary or alternative treatment methods are subject to the same requirements, provisions, and liabilities associated with conventional treatment methods. The bill explicitly requires documentation of informed consent communication with the patient. In addition, the bill specifies that it does not modify or change the scope of practice of any Florida health care practice acts. Finally, the bill revises the Florida Patient's Bill of Rights and Responsibilities to include the right to access complementary or alternative health care treatments.

The bill does not have a fiscal impact on the Department.

Provides for an effective date upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

B. PRESENT SITUATION:

The State of Florida began licensing naturopaths in the 1920's, but ended the process in 1959. A grandfather clause, enacted in 1985, gave all individuals licensed prior to 1959 an active license. Currently, only seven individuals are practicing naturopathy with a pre-1959 license.

Florida currently defines "naturopathy" and "natureopathy" in Chapter 462, F.S. (the definition written in 1927), as:

"...the use of and practice of psychological, mechanical, and material health sciences to aid in purifying, cleansing, and normalizing human tissues for the preservation or restoration of health, according to the fundamental principles of anatomy, physiology, and applied psychology, as may be required. Naturopathic practice employs, among other agencies, phytotherapy, dietetics, psychotherapy, suggestotherapy, hydrotherapy, zone therapy, biochemistry, external applications, electrotherapy, mechanotherapy, mechanical and electrical appliances, hygiene, first aid, sanitation, and heliotherapy; provided, however, that nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice material medical or surgery or chiropractic medicine, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathic medicine, chiropractic medicine, Christian Science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments."

Last year, HB 591, created a minimum mandatory sentence of a \$1,000 fine and one year in prison for those convicted of practicing a health care profession (i.e., naturopathy, as well as other natural health modalities) without a license.

Chapter 456, F.S., does not specifically speak to complementary or alternative modes of treatment. Likewise, the individual practice acts do not specifically address such treatment options. Some treatment methodologies that have historically been considered by traditional health care practitioners as complementary or alternative treatment are specifically authorized by Florida Statute: the practice of acupuncture, governed by Chapter 457, F.S., and the practice of naturopathy, governed by Chapter 462, F. S.

Chapter 456, Florida Statutes, governs the provisions relating to licensure and regulation of health care practitioners and authorizes the Department of Health to administer this statute. Numerous

other statutes specify individual practice acts and licensing and regulation provisions for individual health care professions:

- Chapter 457, F.S., The Practice of Acupuncture
- Chapter 458, F.S., The Medical Practice Act
- Chapter 459, F.S., The Osteopathic Medicine Practice Act
- Chapter 460, F.S., The Chiropractic Medicine Practice Act
- Chapter 461, F.S., The Podiatric Medicine Practice Act
- Chapter 462, F.S., The Practice of Naturopathy
- Chapter 463, F.S., The Optometry Practice Act
- Chapter 464, F.S., The Nurse Practice Act and Certified Nursing Assistants
- Chapter 465, F.S., The Pharmacy Act
- Chapter 466, F.S., The Practice of Dentistry and Dental Hygiene
- Chapter 467, F.S., The Midwifery Practice Act
- Part I of Chapter 468, F.S., The Practice of Speech-Language Pathology and Audiology
- Part II of Chapter 468, F.S., Nursing Home Administration
- Part III of Chapter 468, F.S., The Occupational Therapy Practice Act
- Part V of Chapter 468, F.S., The Respiratory Care Act
- Part X of Chapter 468, F.S., The Dietetics and Nutrition Practice
- Part XIII of Chapter 468, F.S., Athletic Trainers
- Part XIV of Chapter 468, F.S., The Practice of Orthotics, Prosthetics and Pedorthics
- Chapter 478, F.S., The Electrolysis Practice Act
- Chapter 480, F.S., The Massage Practice Act
- Part III of Chapter 483, F.S., The Practice of Clinical Laboratory Personnel
- Part IV of Chapter 483, F.S., The Practice of Medical Physicists
- Chapter 484, F.S., Dispensing of Optical Devices and Hearing Aids
- Chapter 486, F.S., The Physical Therapy Practice Act
- Chapter 490, F.S., The Psychological Services Act
- Chapter 491, F.S., Clinical, Counseling, and Psychotherapy Services (Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors)

The Federation of State Medical Boards is an association of 67 state medical and osteopathic boards throughout the United States, including the Florida Board of Medicine and Florida Board of Osteopathic Medicine. The Federation adopted a policy position in 1997 that includes a recommendation that state medical boards review their Medical Practice Acts and pursue legislative support for revisions to strengthen the medical board's ability to regulate physicians engaging in questionable health care practices. This recommendation reflects the concern that there may be substantial direct and indirect harm to patients resulting from unconventional treatments if appropriate safeguards are not provided. Direct harm may result in adverse patient outcomes and indirect harm may result in delay of appropriate diagnoses and/or treatments, which harm may occur with conventional, complementary, or alternative methods of treatment. The Federation takes the position that in order to fulfill the responsibility to protect the public from incompetent, unprofessional, improper, unlawful, fraudulent, and/or deceptive medical practice, it is necessary for state medical boards to have adequate legislative authority to regulate all practices, whether conventional or complementary or alternative, constituting the practice of medicine or osteopathic medicine.

The Florida Board of Medicine has examined relative issues associated with the practice of complementary or alternative medicine and has affirmed that patients have a right to access alternative modes of treatment. In addition, the Board affirmed that licensed practitioners must be held accountable to the same standards of care and other medical practice standards as provided

in the Medical Practice Act, including critical requirements relating to licensure criteria, informed consent process, advertising and promotional claims, and adequate patient assessment and follow-up. The Board has determined that Florida's Medical Practice Act contains authority sufficient for the Board to be able to hold licensees accountable for safe and appropriate provision of complementary or alternative treatments and procedures.

Section 456.072, F.S., provides grounds for disciplinary actions against licensed health care practitioners, including, but not limited to:

- Making misleading, deceptive, or fraudulent representations related to the practice of the licensee's profession;
- Practicing beyond the scope permitted by law or performing responsibilities the licensee knows he or she is not competent to perform;
- Failing to perform any statutory or legal obligation placed upon the licensee;
- Exercising influence on a patient for the purpose of financial gain;
- Failing to provide patients with information about their patient rights as required in s. 381.026, F.S.

Individual practice acts also contain specific grounds for discipline, as found in s. 458.331, F.S., The Medical Practice Act:

- False, deceptive or misleading advertising;
- Failing to keep medical records that justify the course of treatment;
- Failure to practice with that level of care, skill, and treatment, which is recognized by a reasonably prudent similar physician as being acceptable
- Performing services which have not been duly authorized by the patient (informed consent);
- Performing any procedure that would constitute experimentation without first obtaining full, informed, and written consent.

Section 766.103, F.S., Florida's Medical Consent Law, provides requirements for obtaining a patient's informed consent to health care procedures and treatment.

Section 381.026, F.S., is the Florida Patient's Bill of Rights and Responsibilities. This law provides that health care facilities and providers shall observe specified standards related to the provision of health care services to patients. These standards include, but are not limited to: a right to impartial access to medical treatment; a right to emergency medical treatment; a right to be informed of diagnosis, planned treatment alternatives, risk, and prognosis; a right to refuse treatment; and a right to informed consent prior to any experimental treatment.

Section 456.072(1)(t), F.S., provides grounds to discipline a health care practitioner for violating the responsibility to inform patients of their rights established under the Florida Patient's Bill of Rights and Responsibilities. The Bill of Rights does not specify any enforcement authority or penalties for violations of the law, other than fining authority for failure to make available a summary of rights to patients.

Disciplinary action taken against health care licensees is based on investigation of complaints filed with the Department of Health. Historically, records of disciplinary actions taken against licensed health care practitioners reflect violations of scope of practice and unsafe practice. The current disciplinary data system does not yield an aggregate analysis of discipline for acts related to the provision of complementary or alternative health care treatments. However, according to the Department of Health, the system may easily be modified to begin tracking pertinent complaints. Anecdotal accounts of individual disciplinary action related to complementary or alternative treatments are reported, but these anecdotal accounts do not reflect widespread reporting of unsafe practice of complementary or alternative treatments. The absence of widespread consumer or patient complaints, however, does not necessarily reflect the absence of patient risk of harm from complementary or alternative treatments from practitioners who do not comply with standards of care for patient assessment, informed consent, and general standards of care.

C. EFFECT OF PROPOSED CHANGES:

HB 1077 amends the Florida Patient's Bill of Rights and Responsibilities, s. 381.026, F.S., to explicitly include a right for the patient to access any mode of treatment, including complementary or alternative health care treatments. Health care practitioners are required by current law to ensure that patients are informed of these rights.

The bill creates legislative intent, provides definitions, and establishes requirements for health care practitioners who offer complementary or alternative health care treatment. Any licensed health care practitioner who offers such non-conventional treatments must ensure that the informed consent process is documented, reflecting that the patient was advised of the benefits and risks associated with the treatment, and the practitioner's education, experience and credentials in providing the treatment.

In addition, HB 1077 clearly states that this section does not modify or change the scope of practice of any health care practitioners, nor does it alter the provisions of individual practice acts which provide enforcement authority to hold practitioners accountable for practicing within their respective standards of care and which prohibit fraud and exploitation of patients.

The bill expresses a clear public policy that patients have a right to complementary and alternative methods of health care treatment. The bill also expresses the public policy that patients have a right to the same level of protection from practitioners who may be unqualified or unsafe to provide complementary or alternative treatments as they are protected from unsafe or unqualified practitioners who provide conventional treatments. Practitioners who offer complementary and alternative health care treatments will be held to the same regulatory requirements applied to these licensees as is applied for conventional treatments.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates section 456.41, Florida Statutes, adding legislative intent, creating definitions for "complementary or alternate health care treatment" and "health care practitioner." Provides that a health care practitioner who offers a patient complementary or alternative health care treatments must inform patients of benefits and risks associated with such treatment. In addition, this section requires that the practitioner provide the patient with information regarding practitioner's education, experience, and credential. This information may be communicated either orally or written, and requires that the health care practitioner maintain record of all said treatment. This section specifies that this does not modify or change the scope of practice of any licensee, or the associated practice acts.

Section 2. Amends paragraph (d) of subsection (4) of section 381.026, Florida Statutes, the Patient's Bill of Rights and Responsibilities, allowing the right to access any mode of treatment that is in the patient's own judgment the best interest of the patient.

Section 3. Provides this act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The requirements under current law that licensed practitioners ensure financial responsibility for any malpractice judgments are not changed by this bill. This bill does not change current provisions of law for patient compensation and remedies for malpractice. This bill may have an indirect impact on health care costs, depending on whether the bill has the effect of encouraging a growth in the provision of complementary or alternative treatments. The costs of such treatments are indeterminate and could have either a positive or a negative impact on individual consumers.

D. FISCAL COMMENTS:

According to the Department of Health, complaints regarding complementary or alternative health care treatments provided by licensees regulated by the Department are not expected to significantly increase the department's workload to the point of requiring additional resources.

Complaints regarding complementary or alternative health care treatments provided by licensees regulated by the Department are not expected to significantly increase the Agency for Health Care Administration's complaint investigation and prosecution workload to the point of requiring additional resources.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require a city or county to expend funds or to take 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

No specific rulemaking authority is provided.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Lisa Rawlins Maurer, Legislative Analyst

Staff Director:

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

Prepared by:

Thomas Weaver

Staff Director:

Cynthia Kelly