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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 1403
RELATING TO: Continuing Dental Education (Palliative Care)
SPONSOR(S): Council for Healthy Communities and Representative Meador
TIED BILL(S): None.

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

- (1) HEALTH REGULATION YEAS 9 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill allows persons licensed under chapter 466, including dentists and dental hygienists, to complete a course approved by the Board of Dentistry in lieu of taking a domestic violence course, so long as the dentist or dental hygienist has taken an approved domestic violence course in the immediately preceding two years.

The bill also clarifies the definition of "end-stage condition," creates a definition of "palliative care," and revises duties of health care providers and practitioners, surrogates, and proxies.

There is no fiscal impact to the state.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 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:

B. PRESENT SITUATION:

Dental Continuing Education

Most health care practitioners are required, under various provisions of chapter 456, F.S., or their respective practice acts, to take continuing education courses as part of the biennial renewal of the license. For example, s. 456.013, F.S., provides certain requirements for risk management courses and ss. 456.033 and 456.034, F.S., provide that certain licensees must take a course on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS).

With regard to dentists, specifically, s. 466.0135, F.S., requires licensed dentists to complete biennially not less than 30 hours of continuing professional education in dental subjects. With regard to dental hygienists, s. 466.014, F.S., requires licensed dental hygienists to complete not less than 24 hours or more than 36 hours of continuing professional education in dental subjects. Both of these statutory sections specify the intent of continuing education courses, the content which may be covered, the approval process for courses, and the requirement for submission of sworn affidavits relating to the completion of the required courses.

Section 456.031, F.S., currently requires allopathic physicians, osteopathic physicians, physician assistants, nurses, dentists, dental hygienists, midwives, psychologists, school psychologists, clinical social workers, marriage and family therapists, and mental health counselors to complete a one-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, F.S., as part of biennial relicensure or recertification. Failure to complete the required domestic violence course constitutes a ground for disciplinary action against the licensee.

Subsection (3) of section 456.031, F.S., currently provides for one alternative course. This subsection allows a licensee to complete a course in end-of-life care and palliative health care, if the licensee or certificateholder has completed an approved domestic violence course in the immediately preceding biennium.

End-of-Life Issues

Federal and state statutory and case laws provide that each legally competent adult person has the right to make decisions about the amount, duration, and type of medical treatment he or she wishes to receive, including the right to refuse or to discontinue medical treatment.

Florida law specifically authorizes mentally capacitated individuals to plan and make health care arrangements for when they become incapacitated. Certain legal documents, known as advance directives, are required to implement such plans or arrangements. The person executing or creating the directive is referred to as the principal. Living wills are one type of advance directive. In an advance directive, the principal make appoint a health care surrogate to make decisions on his or her behalf once the principal becomes incapacitated to make such decisions on his or her own.

In the absence of a designated surrogate, the statute provides for the appointment of a proxy (§ 765.401, F.S.). The proxy is selected from the following list which is in rank order: a guardian authorized to consent to medical treatment; the patient's spouse; an adult child of the patient, or a majority of adult children; a parent of the patient; an adult sibling or a majority of adult siblings; an adult relative; a close friend of the patient.

Where a patient has previously expressed his or her wishes with respect to medical treatment, the Court requires that the surrogate or the proxy must:

1. determine that the patient executed any document knowingly, willingly, and without undue influence, and that the evidence of the patient's oral declaration is reliable;
2. be assured that the patient does not have a reasonable probability of recovering competency so that the right can be exercised directly by the patient; and,
3. take care to assure that any limitations expressed either orally or in the written declaration have been carefully considered and satisfied. In re Browning, 568 So.2d 4, 15 (Fla. 1990).

The issue of withholding life-prolonging procedures from an incompetent person and the doctrine of "substituted judgment" are addressed in John F. Kennedy Hosp. v. Bludworth, 452 So.2d 921 (Fla. 1984). "Substituted judgment" means that an authorized person may exercise the patient's right to refuse extraordinary life-sustaining measures by substituting his or her judgment for what he or she believes the terminally ill incompetent person, if competent, would have done under the circumstances.

If such person, while competent, had executed a living will, the living will would be persuasive evidence of the subsequently incompetent person's intention and would be given great weight by the person who substitutes his or her judgment on behalf of the terminally ill incompetent person.

In the case of In re Browning, 568 So.2d 4 (Fla. 1990), the court held that an incompetent person's right to refuse medical treatment may be exercised by close family members, friends, and guardians based on a medical choice that the patient would have made if competent. A living will provides a presumption of clear and convincing evidence of the patient's wishes. Additional conditions that must be met by the surrogate exercising an incompetent person's right to forgo treatment include:

- (1) a determination that the patient does not have a reasonable probability of recovering capacity so that the right can be directly exercised by the patient (person determined to be incapacitated); and,
- (2) any limitations or conditions expressed orally or in the living will have been carefully considered and satisfied.

In the case of Estelle Browning, the state Supreme Court stated, “[O]ur cases have recognized no basis for drawing a constitutional line between the protections afforded to competent persons and incompetent persons. Indeed, the right of privacy would be an empty right were it not to extend to competent and incompetent persons alike.” (Browning at 12).

The following chart explains the differences in three types of scenarios. The first column explains what happens when a person has capacity at all times. The second column explains what happens when a person has capacity at the time an advance directive is made but later becomes incapacitated. The third column explains what happens when a person never had capacity to execute an advance directive.

Person has capacity	Person has capacity	Person never had capacity
The person may or may not have appointed a health care surrogate or made a living will.	Made a living will and/or designated a health care surrogate and/or made an advance directive to retain control over health care decisions, if incapacitated.	Cannot make a living will; cannot make advance directive; cannot appoint a health care surrogate. Only competent adults can execute an advance directive or choose a health care surrogate.
HEALTH PROBLEMS	HEALTH PROBLEMS	HEALTH PROBLEMS
HAS CAPACITY	BECOMES INCAPACITATED	IS INCAPACITATED
<p>Person makes all decisions for himself or herself.</p> <p>Can accept or refuse any treatment or service.</p>	<p>Health care surrogate can make all health care decisions for the person including the decision to discontinue life-prolonging procedures based on “substituted judgment”.</p> <p>Living will/advance directives are carried out.</p> <p>If the person had not designated a health care surrogate, a proxy may be appointed.</p> <p>The proxy must make all decisions based on “substituted judgment” except for a decision to discontinue life-prolonging procedures.</p> <p>A decision to discontinue life-prolonging procedures must be based on “clear and convincing evidence” <i>i.e.</i>, a living will.</p>	<p>Neither a surrogate or a proxy may make a decision to discontinue life-prolonging procedures.</p> <p>The incapacitated person never designated anyone to make decisions nor left an indication of their wishes.</p> <p>Consequently, all medical treatment is provided.</p> <p>Chapter 765, F.S., does not apply to these persons.</p>

C. EFFECT OF PROPOSED CHANGES:

This bill allows persons licensed under chapter 466, including dentists and dental hygienists, to complete a course approved by the Board of Dentistry in lieu of taking a domestic violence course, so long as the dentist or dental hygienist has taken an approved domestic violence course in the immediately preceding two years.

The bill also clarifies the definition of “end-stage condition,” creates a definition of “palliative care,” and revises duties of health care providers and practitioners, surrogates, and proxies.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 456.031, F.S., to allow dentists and dental hygienists to take a board-approved continuing education course in lieu of the domestic violence course or end-of-life care course so long as the dentist has taken the domestic violence course in the immediately preceding biennium.

Section 2. Amends subsection (9) of 456.033, F.S., related to required AIDS/HIV training requirements for health care practitioners. Dentists who have completed a required course on AIDS/HIV in the immediately preceding two years may complete a course of continuing education approved by the Board of Dentistry.

Section 3. Makes a technical change.

Section 4. Makes a technical change.

Section 5. Revises the definition of “end-stage condition” in section 765.101, F.S., Definitions, related to advanced directives. It deletes language that qualified an end-stage condition as indicated by a determination to a “reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.” It adds language that an end-stage condition is present when the patient or resident or his or her authorized representative would consider “life-prolonging treatment” more a burden than a benefit.

Section 6. Makes a technical change.

Section 7. Creates a new section 765.1025, F.S., related to Palliative Care. It provides a definition of palliative care, and lists several elements which palliative care must include. Those elements are: an opportunity to discuss and plan for the end-of-life care needs; assurance that suffering will be attended to; assurances that personal wishes regarding life-sustaining interventions will be honored; assurances that the goals and dignity of the dying person will be cared for; that health care providers will not abandon the dying person; that the burden on family members and others will be addressed; that palliative and other end-of-life care services will be evaluated for quality and accessibility; that palliative care will be delivered in a culturally appropriate manner.

Section 8. Amends subsection (2) of section 765.1103, F.S., to reword.

Section 9. Amends paragraph (b) of subsection (1) of section 765.205, F.S., related to the responsibility of the surrogate. This section provides that when the surrogate has no indication of what the principal would have chosen in a particular circumstance, the decision maker may act in the “best-interest” when deciding to withhold or withdraw treatment.

Section 10. Amends subsection (2) and (3) of 765.401, F.S., related to the proxy. This section provides that when the proxy has no indication of what the principal would have chosen in a particular circumstance, the decision maker may act in the “best-interest” when deciding to withhold or withdraw treatment.

Section 11. Provides an effective date of July 1, 2001.

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:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county 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:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide any new rulemaking authority. General rulemaking authority is already granted to the Board of Dentistry under s. 466.004(4), F.S. Additionally, the board has specific authority to approve continuing education providers pursuant to s. 466.0135(2)(d), F.S., in addition to those providers specifically listed in that subsection. Furthermore, the board has existing rulemaking authority pursuant to s. 456.013(8), F.S., to adopt rules to establish the criteria for continuing education courses.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in that the original bill only contained the provisions relating to dental continuing education.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen, Senior Attorney

Lucretia Shaw Collins

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

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