SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2170

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Peaden

SUBJECT: Department of Health

DATE: March 23, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

The bill revises various provisions of law concerning the regulation of the practice of health care practitioners by the Department of Health (DOH). The bill:

- Revises the licensure requirements for persons to practice as a medical physician in Florida;
- Deletes provisions that revise requirements for state-developed examinations administered by the Department of Health;
- Allows certain retired physicians to reactivate a medical license to only practice with patients in a clinical study reviewed and approved by an institutional review board;
- Revises procedures to settle disputes between regulatory boards and authorizes the Secretary of Health to resolve differences between boards by recommending rules for adoption by the appropriate board and providing a proposed order which may resolve the matter if adopted;
- Requires DOH to obtain certain licensed facility reports for subsequent investigation of any alleged misconduct by licensed health care practitioners;
- Provides that a health care practitioner or records owner may charge DOH the reasonable costs of reproducing patient records.
- Authorizes DOH to electronically post examination scores on the Internet;
- Requires disciplined licensees to pay fees to defray DOH costs for monitoring compliance with any final disciplinary orders;
- Revises the time from 45 to 30 days in which a subject of a disciplinary complaint may respond to DOH;
- Authorizes DOH and the regulatory boards to adopt rules to implement requirements for reporting allegations of sexual misconduct;

- Revises grounds for which a health care practitioner may be disciplined for performing health care services on the wrong patient and establishes an exception to discipline for leaving a foreign body in a patient;
- Provides that a health care practitioner who is terminated from an impaired practitioner program for failure to comply, without good cause, with the terms of his or her monitoring or treatment contract is subject to disciplinary action;
- Provides requirements for what constitutes a valid professional relationship for purposes of Internet prescribing;
- Revises licensing requirements for acupuncturists to qualify for licensure via a 3-year program;
- Revises registration requirements for osteopathic and podiatric residents;
- Establishes revisions to requirements for pharmacy permits;
- Revises the educational requirements for dentists sitting for the dental hygiene examination;
- Revises requirements for respiratory therapy;
- Revises licensure requirements for physical therapy by limiting the number of times a person may sit for the licensure exam to three attempts;
- Revises licensure provisions for speech-language pathologists/audiologists;
- Provides a procedure and fee for license renewal for certified nursing assistants;
- Revises licensure fees for a midwife's license and renewal requirements;
- Revises licensing requirements for clinical social work, marriage and family therapist, and mental health counseling, athletic trainers;
- Authorizes the Board of Dentistry to adopt continuing education to allow up to 2 hours credit for a course on practice management;
- Limits issuance of the designation "certified master social worker" to current licensees; and
- Eliminates the continuing education requirements for domestic violence and HIV/AIDS.

This bill amends sections 395.0193, 395.0197, 395.3025, 395.7015, 400.141, 400.145, 400.147, 400.211, 400.423, 456.005, 456.011, 456.012, 456.013, 381.00593, 456.017, 456.025, 456.031, 456.036, 456.037, 456.039, 456.057, 456.063, 456.072, 456.073, 457.105, 457.107, 457.109, 458.303, 458.311, 458.3124, 458.315, 458.319, 458.320, 458.331, 458.345, 458.347, 459.008, 459.015, 459.021, 460.406, 460.413, 461.013, 461.014, 463.006, 464.009, 464.0205, 464.201, 464.202, 464.203, 464.204, 465.0075, 465.022, 465.023, 465.025, 465.0251, 465.026, 465.0265, 466.007, 466.021, 467.009, 467.013, 467.0135, 467.017, 468.1155, 468.352, 468.355, 468.368, 468.509, 468.707, 480.041, 486.021, 486.031, 486.051, 486.081, 486.102, 486.104, 486.107, 486.109, 486.161, 486.172, 490.005, 491.005, 491.006, 491.009, 491.0145, 491.0147, 817.505, 817.567, and 1009.992, 468.711, 468.723, 1012.46, 466.0135, F.S.

This bill creates ss. 400.455, 456.0195, and 491.0146, F.S., and one undesignated section of law.

This bill repeals ss. 468.356, 468.357, 456.033, 456.034, 458.313, 458.3147, 458.316, 458.3165, 458.317, 468.711(3), and 480.044(1)(h), F.S.

II. Present Situation:

General Regulatory Provisions

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in DOH. Section 456.001, F.S., defines "health care practitioner" to mean any person licensed under chapter 457, F.S., (acupuncture); chapter 458, F.S., (medicine); chapter 459, F.S., (osteopathic medicine); chapter 460, F.S., (chiropractic medicine); chapter 461, F.S., (podiatric medicine); chapter 462, F.S., (naturopathic medicine); chapter 463, F.S., (optometry); chapter 464, F.S., (nursing); chapter 465, F.S., (pharmacy); chapter 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); part I, II, III, IV, V, X, XIII, or XIV of chapter 468, F.S., (speech-language pathology, nursing home administration, occupational therapy, radiologic technology, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); chapter 478, F.S., (electrology or electrolysis); chapter 480, F.S., (massage therapy); part III or IV of chapter 483, F.S., (clinical laboratory personnel or medical physics); chapter 484, F.S., (opticianry and hearing aid specialists); chapter 486, F.S., (physical therapy); chapter 490, F.S., (psychology); and chapter 491, F.S., (psychotherapy).

Health care professions are regulated by boards or DOH if there is no board. DOH is an umbrella agency that houses the boards. The department provides administrative functions for the boards. The boards are "state agencies" for purposes of rulemaking. Each board may adopt rules to implement specific law conferring duties to regulate the health profession over which that board has jurisdiction. For purposes of developing practice standards, courts defer to the expertise of the boards. Boards are composed of professionals and consumers who are appointed by the Governor and confirmed by the Senate. There are some professions that do not have boards and those professions are regulated directly by DOH.

Continuing Education

A number of health care professions must meet continuing education requirements as a condition of maintaining a license to practice in Florida. Any board that currently requires continuing education for license renewal or DOH, if there is no board, must adopt rules to establish *the criteria* for continuing education courses.[1]

As a condition of license renewal, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine must require licensees whom they regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years.[2] The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment.[3] Each of such boards must determine whether any specific continuing education requirements not otherwise mandated by law shall be mandated and shall *approve criteria for, and content of, any continuing education* mandated by such board.[4]

[1] See s. 456.013(9), F.S.
[2] See s. 456.013(6), F.S.
[3] See s. 456.013(6), F.S.
[4] See s. 456.013(6), F.S.

Notwithstanding any other provision of law, the board[5], or department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term.

The boards, or the department when there is no board, must require the completion of a 2-hour course relating to the prevention of medical errors as part of the licensure and renewal process.[6] The medical errors course must count towards the total number of continuing education hours required for the profession. The course must be approved by the board or department, and must include a study of root-cause analysis, error reduction and prevention, and patient safety. During Special Session 2-D (2003), the Legislature amended the law to require that the prevention of medical errors course approved by the board or department also include information relating to the five most misdiagnosed conditions during the previous biennium.

Section 456.031, F.S., requires the boards of specified health care practitioners to require practitioners under their jurisdiction to complete a 1-hour continuing education course on domestic violence as a condition of initial licensure and licensure renewal every two years. Sections 456.033 and 456.034, F.S., require specified health care practitioners to complete a continuing education course on HIV/AIDS as a condition of initial licensure and licensure renewal.

Patient Records

Section 456.057, F.S., provides that medical records are confidential and, absent certain exceptions, they cannot be shared with or provided to anyone without the consent of the patient. Subsection (5) identifies the circumstances under which medical records may be released without written authorization from the patient. The circumstances are as follows:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent;
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff;
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records; or
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

[5] See s. 456.013(6), F.S., the term includes the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and other boards within the Division of Medical Quality Assurance.
[6] See s. 456.013(7), F.S.

The Florida Supreme Court has addressed the issue of whether a health care provider, absent any of the above-referenced circumstances, can disclose confidential information contained in a patient's medical records as part of a medical malpractice action.[7] The court ruled that, pursuant to s. 455.241, F.S., (the predecessor to current s. 456.057(6), F.S.), only a health care provider who is a defendant, or reasonably expects to become a defendant, in a medical malpractice action can discuss a patient's medical condition. The court also held that the health care provider can only discuss the patient's medical condition with his or her attorney in conjunction with the defense of the action. The court determined that a defendant's attorney cannot have ex parte discussions about the patient's medical condition with any other treating health care provider.

Under s. 456.057(16), F.S., a health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning must charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board. The Board of Medicine has adopted an administrative rule that imposes a limitation on charges that any person licensed as a medical physician or physician assistant may charge for copying patient records:

- Reasonable costs of reproducing copies of written or typed documents or reports may not be more than $1 per page for the first 25 pages; and 25 cents per page, for each page in excess of 25 pages. Reasonable costs of reproducing X rays and other special kinds of records are the actual costs. "Actual costs" means the cost of the material and supplies used to duplicate the record, as well as the labor costs associated with the duplication.[8]

Council for Higher Education Accreditation

Colleges, universities, and programs are accredited. In the United States, colleges and universities are accredited by one of 19 recognized institutional accrediting organizations. Programs are accredited by one of approximately 60 recognized programmatic accrediting organizations. Accrediting organizations that are "recognized" have been reviewed for quality by the Council for Higher Education Accreditation or the United States Department of Education. The Council for Higher Education Accreditation is a private, nonprofit national organization that coordinates accreditation activity in the United States. It represents degree-granting colleges and universities, as well as institutional and programmatic accrediting organizations. The Council for Higher Education Accreditation, formed in 1996, is the successor to the Commission on Recognition of Postsecondary Accreditation and the Council on Postsecondary Accreditation.

III. Effect of Proposed Changes:

Section 1. Amends s. 395.0193, F.S., relating to disciplinary action taken against staff members and physicians by hospitals, ambulatory surgical centers, and mobile surgical facilities, to require such facilities to report in writing any disciplinary actions against a facility staff member or physician within 30 working days after its initial occurrence to the Division of Medical Quality Assurance of DOH rather than to the Agency for Health Care Administration (AHCA). Any final disciplinary action taken, if different from that which was reported to the department within 30

[7] *Acosta v. Richter*, 671 So.2d 149 (Fla. 1996).
[8] See Rule 64B8-10.003, Florida Administrative Code.

days after the initial occurrence, must be reported, in writing, within 10 working days to the Division of Medical Quality Assurance of the department. Such reports must specify the disciplinary action taken and the specific grounds therefor.

Section 2. Amends s. 395.0197, F.S., relating to internal risk management of hospitals, ambulatory surgical centers, and mobile surgical facilities, to revise procedures used by AHCA in its review of adverse incidents to determine whether the incident potentially involved conduct by a licensed health care professional. The Agency for Health Care Administration must forward a copy of the report of each adverse incident reported by such facilities to the Division of Medical Quality Assurance in DOH for the department to determine whether the incident potentially involved conduct by the licensed health care professional who is subject to discipline. Section 456.073, F.S., which provides procedures to be used by DOH in disciplinary cases, would apply to the report obtained by DOH.

Section 3. Amends s. 395.3025, F.S., relating to confidentiality of hospital patient records, to authorize disclosures to facility personnel and all other licensed health care practitioners, rather than licensed facility personnel and attending physicians, for use in connection with the treatment of a patient. References to AHCA are changed to DOH in provisions which currently grant the agency access to patient records upon subpoena for use in the investigation, prosecution, and appeal of disciplinary proceedings. The administrator or records custodian in a licensed facility is required to certify that a true and complete copy of the records requested by the department pursuant to a subpoena or patient release has been provided to the department or otherwise identify those documents that have not been provided. If the department requests copies of records, the facility may charge the department the reasonable costs of reproducing the records, rather than charging the actual copying costs, including reasonable staff time.

Reasonable costs of reproducing copies of written or typed documents or reports may not be more than $1 per page for the first 25 pages; and 25 cents per page, for each page in excess of 25 pages. Reasonable costs of reproducing X rays and other special kinds of records are the actual costs. “Actual costs” means the cost of the material and supplies used to duplicate the record, as well as the labor costs associated with the duplication.

Patient records in a licensed facility are confidential and may not be disclosed without the consent of the person to whom they pertain, but appropriate disclosures may be made without consent under specified circumstances under the section. The bill allows patient records to be disclosed without patient consent to researchers or to facility personnel for research purposes if the researchers demonstrate compliance with the requirements of federal privacy regulations.[9]

Without a specific written release or authorization, patient information may not be used for “marketing” purposes. The term “marketing” has the meaning established in the federal Health Insurance Portability and Accountability Act (HIPAA)[10] regulations regarding patient confidentiality and protection of records.

[9] See Section 262 of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, enacted on August 21, 1996, directed the United States Department of Health and Human Services to develop standards to protect the security, including the confidentiality and integrity, of health information.
[10] *Id.*

Section 4. Amends s. 395.7015, F.S., relating to an annual assessment imposed against certain health care entities, to delete references to s. 458.313, F.S., relating to medical physician licensure by endorsement, and s. 458.317, F.S., relating to medical physician limited licenses. A cross-reference is made to s. 458.315, F.S., which consolidates provisions of four existing sections of statute to streamline and simplify medical physician licensure.

Section 5. Amends s. 400.141, F.S., relating to nursing home residents' records, to require the release of a certified copy of a resident's records to DOH, when subpoenaed, for health care practitioner disciplinary cases. The provisions of chapter 456, F.S., apply to records obtained pursuant to this section.

Section 6. Amends s. 400.145, F.S., relating to treatment records of nursing home residents, providing for release of a certified copy to DOH when subpoenaed for health care practitioner disciplinary cases.

Section 7. Amends s. 400.147, F.S., relating to nursing home internal risk management and quality assurance programs, to revise procedures used by AHCA in its review of adverse incidents obtained from nursing facilities to determine whether it potentially involved conduct by a health care professional who is subject to disciplinary action. The notification regarding the adverse incident is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by AHCA, DOH, or the appropriate board. The Agency for Health Care Administration must forward a copy of the report of each adverse incident submitted under the section which relates to licensed health care practitioners to the Division of Medical Quality Assurance in DOH for the department to determine whether it potentially involved conduct by the licensed health care professional who is subject to disciplinary action. Section 456.073, F.S., which provides procedures to be used by DOH in disciplinary cases, would apply to the report obtained by DOH.

Section 8. Amends s. 400.211, F.S., relating to training requirements for certified nursing assistants employed by nursing homes, to reduce the number of inservice education hours the CNA must have to ensure competence from 18 to 12 hours per year.

Section 9. Amends s. 400.423, F.S., relating to assisted living facility internal risk management and quality assurance programs, to revise procedures used by AHCA in its review of adverse incidents obtained from assisted living facilities to determine whether it potentially involved conduct by a health care professional who is subject to disciplinary action. The Agency for Health Care Administration must forward a copy of the report of each adverse incident submitted under the section which relates to licensed health care practitioners to the Division of Medical Quality Assurance in DOH for the department to determine whether it potentially involved conduct by the licensed health care professional who is subject to disciplinary action. Section 456.073, F.S., which provides procedures to be used by DOH in disciplinary cases, would apply to the report obtained by DOH.

Section 10. Creates s. 400.455, F.S., to require assisted living facilities to provide certified copies of requested records to DOH, when subpoenaed, for health care practitioner disciplinary cases. The provisions of chapter 456, F.S., apply to records obtained pursuant to this section.

Section 11. Amends s. 456.005, F.S., relating to long–range policy planning by DOH for regulatory boards in the Division of Medical Quality Assurance of the department, to allow licensees (licensed health care practitioners) along with boards to provide input to develop the long-range plan.

Section 12. Amends s. 456.011(5), F.S., relating to procedures used to resolve disputes between boards, to provide that notwithstanding chapter 120, F.S., when two or more boards have identified a conflict in the interpretation or application of the respective practice acts of the boards, the following administrative remedies must be used:

- One board or the Secretary of Health must request that the boards establish a special committee to resolve the conflict. The special committee must consist of two members designated by each board, who may be members of the designating board or other experts designated by the board, and three additional persons appointed by the Secretary of Health who are not members of either profession and who do not have an interest in either profession. The committee must make recommendations to resolve the differences by majority vote.

- Matters that cannot be resolved through the special committee may be resolved by DOH through informal mediation. If the committee agrees to a mediated resolution, the mediator must notify DOH of the terms of the resolution. The committee may record an acknowledgement of satisfaction of the terms with the mediation within 60 days after the mediator's notification to DOH. A mediated settlement reached by the special committee is binding on the applicable boards.

- If the boards elect not to resolve a conflict through the use of a special committee or through informal mediation, the Secretary of Health may resolve the differences by recommending rules for adoption by the appropriate board or, in the case of a declaratory statement, by providing a proposed order which may resolve the matter if adopted by the appropriate board.

For any administrative remedy specified in s. 456.011(5), F.S., the department must provide legal representation.

Section 13. Amends s. 456.012, F.S., relating to board rules, to extend the prohibition in current law that prohibits any board created within DOH from having standing to challenge another board's rule or proposed rule, to include declaratory statements of another board. If there is a dispute between boards concerning a rule, proposed rule, or declaratory statement, the boards may use the procedures under s. 456.011(5), F.S.

Section 14. Amends s. 456.013, F.S., relating to the general licensing procedures for DOH, to allow the board or DOH when there is no board, in the case of an applicant who has not been issued a social security number by the federal government because the applicant is not an American citizen or resident, to issue a temporary license to an applicant who is otherwise eligible for licensure, as established by rule of the board, or department if there is no board, for a specified period. The period under which the temporary license expires is changed from 30 days to 90 days after issuance unless a social security number is obtained and submitted in writing to

DOH. After DOH receives the applicant's social security number, DOH must issue a new license which expires at the end of the current two year licensure period.

The board, or DOH if there is no board, is authorized to adopt a rule allowing a licensure applicant to complete the coursework requirements for licensure by successfully completing the required courses as a student or by teaching the required graduate course as an instructor or professor in an accredited institution.

Requirements for the issuance of a wall certificate are revised to delete the size requirements of the certificate and to limit the issuance of the certificate upon initial licensure if specified by the board or if there is no board by department rule, and if the board has a positive cash balance. Circumstances under which a licensee must surrender to DOH a license that had been issued is expanded to include instances when the license was issued in error.

Section 15. Amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, to correct a statutory cross reference to s. 456.013, F.S., relating to board authority to adopt rules to establish the criteria for continuing education courses.

Section 16. Amends s. 456.017, F.S., relating to examinations, to revise requirements relating to the substantive rights of a person's standing to challenge an examination so that an examination candidate may challenge the validity of an examination only if the candidate failed an examination with a score that is less than 10 percent below the minimum score required to pass the examination.

The Department of Health is authorized to post examination scores electronically on the Internet in lieu of mailing the scores to each applicant. The requirements of chapter 120, F.S., relating to administrative procedures is satisfied if the electronic posting of the examination scores by the department is accompanied with a notification of rights. The date of receipt of the examination scores shall be the date the examination scores are posted electronically. The department must notify the examinee when scores are posted electronically of the availability of a post-examination review.

Section 17. Creates s. 456.0195, F.S., relating to continuing education for instruction on domestic violence and HIV/AIDS. The bill authorizes, rather than requires the boards or DOH when there is no board, to require licensees to complete courses in the following subject areas: domestic violence and HIV/AIDS. The course content of such courses as specified in this section is not identical to the provisions that are being repealed in sections 19 and 92 of the bill which specify requirements for continuing education for domestic violence and HIV/AIDS.

Courses completed in the specified subject areas must count towards the total number of continuing education hours required for license renewal for the profession. Any person who holds two or more licenses that is subject to this section must be required to complete only the requirement for one license. Failure to comply with any of the courses required by the boards, or DOH if there is no board, constitutes grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k), F.S.

Section 18. Amends s. 456.025, F.S., relating to fees and requirements for DOH to quarterly issue a report, to correct a statutory cross-reference and to revise requirements for the content of a DOH report on the budget, finances, performance statistics, and recommendations to each board. The content of the quarterly management report is revised to include: revenue and expenditures, performance measures, and recommendations. The department is no longer required to identify and include any changes or projected changes made to the boards' budgets since its last presentation of a report.

Section 19. Amends s. 456.031, F.S., relating to requirements for domestic violence instruction of specified licensees, to revise the course content of the required instruction to include a skills-based curriculum that includes practice protocols for identifying and treating a victim of domestic violence, consistent with the profession and instructions on practical applications. "Skills-based curriculum" means a curriculum that details methods of practical applications to improve responses to domestic violence victims through culturally competent methods of routine screening, assessment, intervention, and health-records documentation. The bill modifies the length of the course and the frequency of completion so that each licensee must complete 2 hours of continuing education on domestic violence every 4 years, as prescribed by board rule, rather than the requirement under current law for licensees to complete 1 hour on domestic violence as a part of biennial relicensure or recertification. Initial licensee is given 1 year, rather than 6 months under the current law, to complete the domestic violence instruction requirement. The requirement for an annual report on the implementation of domestic violence instruction to be completed by each board and submitted to the Legislature is deleted. The requirement under current law that a licensee must submit confirmation of completion of the domestic violence instruction requirement for each biennial licensure renewal is eliminated.

Section 20. Amends s. 456.036, F.S., relating to licenses, to authorize the boards or DOH when there is no board, by rule, to require the display of a license.

Section 21. Amends s 456.037, F.S., relating to business establishments, to authorize the board or DOH if there is no board, by rule, to require the display of a license.

Section 22. Amends. s. 456.039, F.S., relating to certain practitioners subject to profiling requirements, to delete a statutory cross-reference to s. 458.313, F.S., relating to medical licensure which is being repealed in the bill.

Section 23. Amends s. 456.057, F.S., relating to health care practitioner records, to provide that the charges that *may* be assessed by health care practitioners or records owners for furnishing records to DOH are limited to the reasonable costs of reproducing copies of written or typed documents or reports which may not be more than:

- $1 per page for the first 25 pages;
- 25 cents per page, for each page in excess of 25 pages.

Reasonable costs of reproducing X rays and other special kinds of records are the actual costs. "Actual costs" means the cost of the material and supplies used to duplicate the record, as well as the labor costs associated with the duplication.

Section 24. Amends s. 456.063, F.S., relating to sexual misconduct, to allow each board or DOH if there is no board, to adopt rules to administer the requirements for reporting allegations of sexual misconduct, including rules to determine the sufficiency of allegations.

Section 25. Amends s. 456.072, F.S., relating to grounds for which a licensed health care practitioner may be subject to discipline, to exclude noninvasive actions taken to prepare a patient for a procedure from the ground for discipline of performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, or a wrong procedure. The bill limits a ground under which a licensed health care practitioner is liable for discipline for leaving a foreign body in a patient. An exception to the prohibition on leaving a foreign body in a patient is established if the foreign body is medically indicated and documented in the patient record. For purposes of the prohibition, it is legally presumed that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the patient unless medically indicated and documented in the patient record.

A health care practitioner is liable for prescribing, administering, dispensing, or distributing a legend drug, including a controlled substance, if the practitioner knows or reasonably should know that the receiving patient has not established a valid professional relationship with the prescribing practitioner. A medical questionnaire completed via Internet, telephone, electronic transfer, or mail does not establish a valid professional relationship.

A health care practitioner who is terminated from an impaired practitioner program for failure to comply, without good cause, with the terms of his or her monitoring or treatment contract is subject to disciplinary action.

For final disciplinary orders entered on or after July 1, 2004, health care practitioner regulatory boards or DOH are required to assess a nonrefundable fee to defray the costs of monitoring a licensed health care practitioner's compliance with the order in the amount of $25 per month or portion of month set forth in the final order to complete the length of term of the probation, suspension, or practice restrictions imposed by the final order. The assessment must be included in the terms of the final order. The board or DOH if there is no board may elect to assess the same fee to offset other costs of monitoring compliance with the terms imposed by a final order that does not include probation, suspension, or practice restrictions.

Section 26. Amends s. 456.073, F.S., relating to disciplinary proceedings, to delete an exception to disciplinary complaint procedures involving physicians and granting them a specified period to review complaint information. The time in which a subject may provide a written response to a disciplinary complaint is expanded from 20 days to 30 days.

Section 27. Amends. s. 457.105, F.S., relating to acupuncture, to revise licensure requirements to provide a mechanism for licensure of persons who were enrolled in a 3-year acupuncture and oriental medicine program but had not yet completed the program before the statutory change in 2001, which limited licensure to persons who completed either a 2-year program before August 1, 1997, or completed a 4-year program.

A mechanism is established to allow acupuncture applicants to be licensed to practice acupuncture who were enrolled in an authorized 3-year program in acupuncture and oriental

medicine before July 31, 2001, and who completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment in an authorized 3-year acupuncture and oriental medicine program and who completed a 3-year program in acupuncture and oriental medicine which meets standards established by the Board of Acupuncture by rule.

Examination requirements for acupuncture licensure are revised to require the passage of a national examination approved by the Board of Acupuncture rather than an examination administered by DOH.

Section 28. Amends s. 457.107, F.S., relating to acupuncture, to revise criteria for the Board of Acupuncture to adopt rules for continuing education requirements. A provision is eliminated which made all education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profitmaking entity, eligible for approval by the Board of Acupuncture. The Board of Acupuncture is authorized to adopt rules for establishing standards for providers of continuing education.

Section 29. Amends s. 457.109, F.S., relating to disciplinary actions, to revise a ground under which an acupuncturist is subject to discipline to make an acupuncturist subject to discipline for being convicted or found guilty, or entering a plea of nolo contendere to, regardless of adjudication, in a court of Florida or other jurisdiction of a crime that directly relates to the practice of acupuncture or to the ability to practice acupuncture. The bill deletes language stating that any plea of nolo contendere shall be considered a conviction for purposes of chapter 457, F.S., the acupuncture practice act.

Section 30. Amends s. 458.303, F.S., relating to medical licensure, to delete statutory cross-references to s. 458.313, F.S., relating to medical licensure by endorsement, and s. 458.317, F.S., relating to medical physician limited licenses, which are repealed by this bill.

Section 31. Amends s. 458.311, F.S., relating to medical licensure requirements, to overhaul the licensure by examination provisions and the licensure by endorsement provisions to create one uniform set of licensure requirements for the practice of medicine. The bill allows an applicant for physician licensure to practice medicine in Florida if the applicant: is at least 21 years of age; of good moral character; has not committed any act or offense in Florida or another jurisdiction which would constitute the basis for disciplining a Florida-licensed physician; has submitted a set of fingerprints and payment in amount equal to costs incurred by DOH for the criminal background check of the applicant; has caused to be submitted verification of core credentials by the Federation Credentials Verification Services of the Federation of State Medical Boards; and if the applicant holds a valid license in another state, has submitted evidence of the active licensed practice of medicine in another jurisdiction for at least 2 years of the immediately preceding 4 years, or evidence of successful completion of board-approved postgraduate training program within 2 years preceding filing of an application for licensure. “Active licensed practice of medicine” is defined in the section.

The applicant must demonstrate that he or she has meet one of the following medical education requirements:

- Is a graduate of an allopathic medical school recognized and approved by the United States Department of Education or an allopathic medical school within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction; or

- Is a graduate of an allopathic international medical school registered with the World Health Organization and has had his or her medical credentials evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG), holds an active, valid certificate issued by ECFMG, and has passed the examination used by that commission.

The applicant must have completed an approved residency or fellowship of at least 2 years, in one specialty area which is counted as a regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties, with specified exceptions for those who have completed their training prior to October 1, 2003. Applicants must have obtained a passing score on a national medical licensure examination as specified in the section. DOH and the Board of Medicine must assure that applicants meet the criteria for licensure through an investigative process.

The board is authorized to adopt rules. The board is authorized, when it determines that an applicant has failed to meet requirements of this section, to:

- Refuse to certify to the department an application for licensure, certification, or registration;
- Certify an application with restrictions on the scope of practice of the licensee; or
- Certify an application with placement of the physician on probation.

Section 32. Amends s. 458. 3124, F.S., relating to restricted medical licenses of certain foreign-trained physicians, to correct a statutory cross-reference to the medical licensing provisions as revised in the bill.

Section 33. Amends s. 458.315, F.S., to revise the requirements for issuance of a limited license to practice, relating to limited physician licensure, to consolidate provisions from four existing sections of statute. The bill replaces current ss. 458.315, 458.316, 458.3165 and 458.317, F.S., relating to temporary certificates in areas of critical need, public health certificates, public psychiatry certificates, and limited licenses, respectively. The bill establishes limited licensure with one uniform set of licensure requirements to streamline and simplify the limited licensure process.

The bill authorizes physicians who have been licensed to practice medicine in any jurisdiction in the United States, U. S. territory or Canada for at least two years and who submit evidence of the active licensed practice for at least two of the immediately preceding four years to receive a license to provide uncompensated health care services to low-income or uninsured persons. If the applicant has not been in the active licensed practice of medicine within the prior 3 years, a Florida-licensed physician approved by the Board of Medicine must supervise the applicant for 6 months after he or she is granted a limited license to practice or as needed to ensure that the applicant is qualified for licensure. The applicant must not have committed any act or offense in Florida or any other jurisdiction which would constitute the basis for disciplining a Florida-

licensed physician. The applicant must submit a set of fingerprints for a criminal background check.

The recipient of a medical physician's limited license used for *uncompensated* practice may only practice in the employ of specified programs and facilities that provide uncompensated health care services by volunteer licensed health care professionals to low-income persons whose income levels do not exceed 150 percent of the federal poverty level or to uninsured persons. These facilities shall include but not be limited to: DOH, community and migrant health centers funded under s. 330 of the United States Public Health Service Act, and volunteer programs under contract with DOH to provide uncompensated care under s. 766.1115, F.S.

The recipient of a medical physician's limited license for *compensated* practice may practice only in the employ of programs and facilities that provide health care services. These programs and facilities include, but are not limited to: the Department of Corrections, county or municipal correctional facilities, the Department of Juvenile Justice, the Department of Children and Family Services, DOH, and those programs and facilities funded under s. 330 of the United States Public Health Service Act. Programs and facilities must be located within federally designated Primary Care Health Professional Shortage Areas unless otherwise approved by the Secretary of Health.

The recipient of a limited license must notify the Board of Medicine within 30 days after accepting employment and of all approved institutions in which the licensee practices and those in which the licensee has been denied practice privileges. The licensee must renew the limited license biennially and verify compliance with the restrictions prescribed in this section and other applicable provisions of chapter 458, F.S.

Procedures are specified for any person who holds an active or inactive license to practice medicine in Florida to convert that license to a limited license in order to provide volunteer, uncompensated care for low-income persons. The application and all licensure fees, including neurological injury compensation assessments are waived for the applicant. The limited license provisions do not limit any policy by the board to grant licenses to other physicians who are licensed in other states under conditions less restrictive than the requirements of this section. The board may refuse to authorize a physician otherwise qualified in the employ of any agency or institution if the agency or institution has caused or permitted violations of chapter 458, F.S., which it knew or should have known were occurring.

Section 34. Amends s. 458.319, F.S., relating to medical licensure renewal to delete a reference to s. 456.033, F.S., which provides requirements for continuing education on HIV/AIDS and is repealed by this bill.

Section 35. Amends s. 458.320, F.S., relating to medical physician financial responsibility requirements, to eliminate a statutory cross-reference to s. 458.317, F.S., which provides requirements for the issuance of limited licenses to practice medicine in Florida, and provides a statutory cross-reference to the single medical limited licensure provision created in the bill under s. 458.315, F.S.

Section 36. Amends s. 458.331, F.S., relating to grounds under which a medical physician is subject to discipline, to decrease from 45 to 30 the number of days for a physician to submit a written response to DOH for information contained in a disciplinary complaint.

Section 37. Amends s. 458.345, F.S., relating to registration requirements for medical residents, interns, and fellows, to correct a statutory cross-reference to the medical licensing provisions in s. 458.311, F.S., which are amended in the bill.

Section 38. Amends s. 458.347, F.S., relating to physician assistant licensure, to delete a provision that expired on July 1, 2001, which provided for a state-sponsored examination for certain applicants who were graduates of foreign medical schools or who had completed all coursework requirements of a Master of Medical Science Physician's Assistants program that closed in 1996 in lieu of successfully completing the National Commission on Certification of Physician examination as a condition of physician assistant licensure.

The bill revises requirements for the issuance of a temporary certificate to physician assistant licensure applicants who are recent graduates of an approved program for physician assistants. The temporary license expires 1 year after the date of graduation rather than 30 days after the receipt of scores of the national physician assistant program. The requirement for applicants to complete all temporary license requirements in order to receive a temporary license to practice as a physician assistant is eliminated. A provision for an applicant who had failed the proficiency examination to reapply for an extension of the temporary license pending passage of the national physician assistant licensure examination is eliminated. References to the proficiency examination for physician assistants in the section are revised to clarify that it is the National Commission on Certification of Physician Assistants examination that an applicant must pass to be granted permanent licensure.

Section 39. Amends s. 459.008, F.S., relating to osteopathic medicine license renewal, to provide that the Board of Osteopathic Medicine may mandate by rule specific continuing medical education requirements and may approve by rule alternative methods of obtaining continuing education credits. A reference to s. 456.033, F.S., which provides requirements for continuing education on HIV/AIDS and which is repealed by this bill, is deleted.

Section 40. Amends s. 459.015, F.S., relating to grounds under which a osteopathic medical physician is subject to discipline, to decrease from 45 to 30 the number of days for a physician to submit a written response to DOH for information contained in a disciplinary complaint.

Section 41. Amends s. 459.021, F.S., relating to registration requirements for osteopathic medicine residents, interns, and fellows, to revise the requirements for registration to require residents to be registered no later than 30 days before commencing a training program. The bill creates a registration renewal fee not greater than $300 as set by the Board of Osteopathic Medicine.

Section 42. Amends s. 460.406, F.S., relating to chiropractic licensure, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agency the "Council for Higher Education Accreditation" or the United States Department of Education, or a successor organization. The requirements for chiropractic physician licensure are revised to

allow a student in his or her final year of an accredited chiropractic school or college to apply for licensure, to take all of the required examinations for licensure, submit a set of fingerprints and pay all fees for licensure. A chiropractic student who takes and successfully passes the licensure examinations and who otherwise meets all requirements for licensure as a chiropractic physician during the student's final year must have graduated before being certified for licensure by the Board of Chiropractic Medicine.

Section 43. Amends s. 460.413, F.S., relating to grounds under which a chiropractic physician is subject to discipline, to decrease from 45 to 30 the number of days for a physician to submit a written response to DOH for information contained in a disciplinary complaint.

Section 44. Amends s. 461.013, F.S., relating to grounds under which a podiatric medical physician is subject to discipline, to decrease from 45 to 30 the number of days for a physician to submit a written response to DOH for information contained in a disciplinary complaint.

Section 45. Amends s. 461.014, F.S., relating to podiatric medicine, to allow every hospital having a podiatric medicine residency program to annually on July 1 of each year, rather than semiannually, provide the Board of Podiatric Medicine with a list of podiatric residents and such other information required by the board.

Section 46. Amends s. 463.006, F.S., relating to optometry licensure, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agency the "Council for Higher Education Accreditation, or a successor organization."

Section 47. Amends and reenacts s. 464.009, F.S., relating to nursing licensure by endorsement, to repeal a repealer for an alternative nursing licensure endorsement provision that allows applicants to become licensed to practice nursing in Florida without completing an equivalent examination if the applicant has actively practiced nursing in another state, jurisdiction, or territory of the United States for 2 of the preceding 3 years without having his or her license acted against. Under this alternative licensure path, the applicant must complete within 6 months after licensure a Florida laws and rules course approved by the Florida Board of Nursing.

Section 48. Amends s. 464.0205, F.S., relating to certified retired volunteer nurses working under the direct supervision of a physician with a limited license, to delete references to s. 458.317, F.S., relating to medical physician limited licenses. A cross-reference is made to s. 458.315, F.S., which consolidates provisions from four existing sections of statute to streamline and simplify medical physician licensure.

Section 49. Amends s. 464.201, F.S., to define *practice of a certified nursing assistant* as providing care and assisting persons with tasks relating to the activities of daily living, such as personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, post mortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, documentation of nursing assistant services, and other tasks that a certified nursing assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a

registered nurse. The section does not restrict a person who is otherwise trained and educated from performing such tasks.

Section 50. Amends s. 464.202, F.S., to require the Board of Nursing to adopt rules regulating the practice of certified nursing assistants (CNAs) which specify the scope of practice authorized and the level of supervision required for the practice of CNAs.[11]

Section 51. Amends s. 464.203, F.S., relating to CNAs, to outline a procedure for CNA certificate renewal. DOH must renew a CNA certificate upon receipt of the renewal application and a fee of $20 and not more than $50 biennially. DOH must adopt rules establishing a procedure for the biennial renewal of the certificates. Any certificate that is not renewed by July 1, 2006, is void. A certified nursing assistant must complete 12 rather 18 hours of inservice training during each calendar year.

Section 52. Amends s. 464.204, F.S., which specifies the grounds for which CNAs are subject to discipline, to delete an element of intent which must be proved for a violation to occur when a CNA has violated applicable professional regulations, including Board of Nursing rules. The violation is also revised to make a CNA liable for discipline for violating any applicable provision of the nursing practice act, chapter 456, F.S., or rules adopted by the Board of Nursing.

Section 53. Amends s. 465.0075, F.S., relating to pharmacy licensure by endorsement, to require an applicant licensed in another state for a period in excess of 2 years from the date of application for licensure in Florida to submit a total of at least 30 hours of board-approved continuing education for the 24 months rather than 2 calendar years immediately preceding application.

Section 54. Amends s. 465.022, F.S., relating to pharmacies, to revise requirements for pharmacy permit to require applicants for the permit to have good moral character, and clarify that any permit issued to a partnership that partners in that partnership must be at least 18 years of age and of good moral character. The pharmacy permit may be issued to a corporation whose officers, directors, and shareholders with an interest of 5 percent or more are at least 18 years of age and of good moral character.

An application for a pharmacy permit must include a set of fingerprints from each person with an ownership interest of 5 percent or more and from any person who directly or indirectly, manages, oversee, or controls, the operation of the applicant. For corporations with over $100 million of assets in Florida, DOH may, as an alternative, require a set of fingerprints of up to five corporate officers who are involved in the management and operation of the pharmacy. A requirement that fingerprints of a corporate officer be submitted may be satisfied when those fingerprints are on file with a state agency and available to the department. The application must be accompanied by payment of the costs incurred by DOH for the criminal history checks. DOH must submit the fingerprints to the Department of Law Enforcement (FDLE) for a statewide criminal history

[11] On March 24, 2003, the Joint Administrative Procedures Committee (JAPC) objected to the Board of Nursing's Proposed Rule 64B9-15.002, F.A.C., setting forth certified nursing assistant authorized duties and requirements for supervision. The JAPC found it objectionable because there was no statutory authority for the rule.

check and FDLE must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check.

Section 55. Amends s. 465.023, F.S., relating to pharmacy, to revise provisions for disciplinary action against pharmacies, to authorize DOH or the Board of Pharmacy to deny a pharmacy permit application or otherwise discipline any pharmacy when the applicant for a permit, pharmacy, or any officer, director, or agent of the applicant or pharmacy:

- Has been convicted or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for any offense that would constitute a violation of the pharmacy practice act; or
- Has been convicted of, found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, the profession of pharmacy.

Section 56. Amends s. 465.025, F.S., relating to the substitution of drugs, to delete requirements for each pharmacy to substitute drugs listed on a formulary of generic and brand name drug products. In the case of an electronically transmitted prescription, a prescribing practitioner is authorized to indicate by electronic means that a "brand name" drug prescribed is medically necessary and therefore may not be substituted with a generic equivalent of the brand name drug.

The bill repeals a requirement for each community pharmacy to establish a formulary of generic and brand name drug products.

Section 57. Amends s. 456.0251, F.S., relating to generic drugs, to correct a statutory cross-reference to s. 456.025(5), F.S., which requires each community pharmacy to establish a formulary of generic and brand name drug products and is repealed in the bill.

Section 58. Amends s. 465.026, F.S., relating to the filling of certain prescriptions, to allow a Florida-licensed community pharmacy which only receives and transfers prescriptions for dispensing by another pharmacy to transfer a prescription for a medicinal drug listed in Schedule II. The pharmacy receiving the prescription may ship, mail, or deliver in any manner the dispensed Schedule II medicinal drug into Florida under the following conditions:

- The pharmacy receiving and dispensing the transferred prescription maintains at all times a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the law of the state in which the pharmacy is located and from which the medicinal drugs are dispensed;
- The community pharmacy and the receiving pharmacy are owned and operated by the same person and share a centralized database; and
- The community pharmacy assures compliance with federal law and provisions in the section for dispensing of certain prescriptions.

Section 59. Amends s. 465.0265, F.S., relating to centralized prescription filling, to provide that a pharmacy that performs centralized prescription filling services may not mail or otherwise deliver a filled prescription directly to a patient or individual practitioner if the prescription was

filled on behalf of another. The filled prescription must be transported to the originating pharmacy for dispensing.

A pharmacy that provides centralized prescription filling services may prepare prescriptions on behalf of pharmacies only if it has a contractual agreement to provide these services or it shares a common owner. Each pharmacy that performs centralized prescription filling services must keep a list of pharmacies for which it has agreed to provide such services and must verify the Drug Enforcement Administration registration of any pharmacy for which it is filling prescriptions before sending or receiving a prescription for a controlled substance.

Each pharmacy must keep a list of pharmacies that fill prescriptions on its behalf and verify that those pharmacies are registered with the Drug Enforcement Administration. A pharmacy that provides centralized prescription filling services must comply with the same security requirements applicable to pharmacies, including the general requirement to maintain effective controls and procedures to guard against theft and diversion of controlled substances.

Section 60. Amends s. 466.007, F.S., relating to the examination of dental hygienists, to revise alternative licensure requirements for graduates of a dental college or school so that in addition to a dental school diploma comparable to a D.D.S. or D.M.D., the applicant may submit transcripts totaling *4 academic years* of postsecondary dental education rather than provide a transcript of predental education and dental education totaling *5 academic years* of postsecondary education, including 4 academic years of dental education which is what the existing law requires.

Section 61. Amends s. 466.021, F.S., relating to the employment of unlicensed persons by a dentist, to revise requirements for dental work orders so that dentists must maintain a copy of their work orders for 4 years rather than 2 years. Any unlicensed person who works in a dental lab must also maintain the dental work order for 4 years rather than 2 years. References to a "permanent" dentist's file or records are deleted in the section.

Section 62. Amends s. 467.009, F.S., relating to nonpublic educational institutions that conduct approved midwifery programs, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agency the "Council for Higher Education Accreditation" or the United States Department of Education, or a successor organization. Such educational institutions must be licensed by the Commission for Independent Education rather than the State Board of Nonpublic Career Education.

Section 63. Amends s. 467.013, F.S., relating to midwives, to delete the requirements for placement of a midwife's license on inactive status. Continuing education requirements for midwives as part of license reactivation are eliminated.

Section 64. Amends s. 467.0135, F.S., relating to fees for midwives, to eliminate examination fees. The fees for licensure of midwives are revised to authorize DOH to charge a renewal fee of $500 for an active license and $500 for an inactive license and to refund the application fee.

Section 65 Amends s. 467.017, F.S., to revise requirements for emergency care plans to provide that a midwife must submit an emergency care plan upon request of DOH, rather than at licensure renewal.

Section 66. Amends s. 468.1155, F.S., relating to speech-language pathology/audiology provisional licensure requirements, to recognize the United States Department of Education, or a successor organization in addition to the Council for Higher Education Accreditation as entities which recognize educational accrediting agencies for purposes of the educational requirements for speech-language/audiology graduate degree programs.

Section 67. Substantially rewords s. 468.352, F.S., relating to definitions for the regulation of respiratory care, to revise the definition of the various terms. "Critical care" is redefined to mean care given to a patient in any setting involving a life-threatening emergency. "Direct supervision" is redefined to mean supervision under the direction of a licensed, registered, or certified respiratory therapist who is physically on the premises and readily available, as defined by the board. The definition in current law for "noncritical care" is eliminated. The term, "physician supervision" (currently defined as "direct supervision") is defined to mean supervision and control by a licensed allopathic or osteopathic physician who assumes legal liability for the services rendered by the personnel employed in his or her office.

"Certified respiratory therapist" is redefined to mean any person licensed under part V, chapter 468, F.S., who is certified by the National Board for Respiratory Care or its successor, who is employed to deliver respiratory care services, under the order of a Florida-licensed allopathic or osteopathic physician in accordance with protocols established by a hospital or other health care provider or the Board of Respiratory Care, and who functions in situations of unsupervised patient contact requiring individual judgment. "Registered respiratory therapist" is redefined to mean any person licensed under this part who is registered by the National Board for Respiratory Care or its successor, and who is employed to deliver respiratory care services under the order of a Florida-licensed allopathic or osteopathic physician in accordance with protocols established by a hospital or other health care provider or the Board of Respiratory Care, and who functions in situations of unsupervised patient contact requiring individual judgment.

The "practice of respiratory care" or "respiratory therapy" is defined to mean the allied health specialty associated with the cardiopulmonary system that is practiced under the orders of a Florida-licensed allopathic or osteopathic physician and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the Board of Respiratory Care. "Respiratory care practitioner" is defined to mean any person licensed under part V, chapter 468, F.S., to deliver respiratory care services under direct supervision and pursuant to an order of a Florida-licensed allopathic or osteopathic physician.

The definition of "respiratory care services" is revised to include evaluation and disease management; diagnostic and therapeutic use of respiratory equipment, devices, or medical gas; administration of drugs, as duly ordered or prescribed by a Florida-licensed allopathic or osteopathic physician and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the Board of Respiratory Care; initiation, management, and maintenance of equipment to assist and support ventilation and respiration; diagnostic procedures, research, and therapeutic treatment and procedures; cardiopulmonary rehabilitation;

cardiopulmonary resuscitation, advanced cardiac life support, neonatal resuscitation, and pediatric advanced life support, or equivalent functions; insertion and maintenance of artificial airways and intravascular catheters; education; and the initiation and management of hyperbaric oxygen.

Section 68. Substantially rewords s. 468.355, F.S., relating to eligibility for respiratory care licensure and temporary licensure, to revise licensure requirements for respiratory therapists. To be eligible for licensure as a respiratory therapist an applicant must be certified as a "Certified Respiratory Therapist" or registered as a "Registered Respiratory Therapist" by the National Board for Respiratory Care, or its successor.

Section 69. Substantially rewords s. 468.368, F.S., relating to exemptions to respiratory care regulation for certain persons, to substantially revise the exemptions. Under the revised exemptions to respiratory care regulation, the regulation may not be construed to prevent or restrict the practice, service, or activities of: any person licensed in Florida by any other law from engaging in the profession or occupation for which he or she is licensed; any legally qualified person in Florida or another state or territory who is employed by the United States Government while such person is discharging his or her official duties; a friend or family member who is providing respiratory care services to an ill person and who does not represent himself or herself to be a respiratory care practitioner or respiratory therapist; an individual providing respiratory care services in an emergency who does not represent himself or herself as a respiratory care practitioner or respiratory therapist; any individual employed to deliver, assemble, set up, or test equipment for use in a home, upon the order of a Florida-licensed allopathic or osteopathic physician; any individual certified or registered as a pulmonary function technologist who is credentialed by the National Board for Respiratory Care for performing cardiopulmonary diagnostic studies; any student who is enrolled in an accredited respiratory care program approved by the Florida Board of Respiratory Care, while performing respiratory care as an integral part of a required course; the delivery of incidental respiratory care to noninstitutionalized persons by surrogate family members who do not represent themselves as registered or certified respiratory care therapists; and any individual credentialed in hyperbaric medicine by the Underseas Hyperbaric Society, or its equivalent as determined by the Florida Board of Respiratory Care, while performing related duties.

Section 70. Effective, January 1, 2005, repeals s. 468.356, F.S., which provides requirements for the approval of respiratory care therapy educational programs and repeals s. 468.357, F.S., which specifies procedures for the licensure by examination of persons wishing to practice as certified respiratory therapists.

Section 71. Amends s. 468.509, F.S., relating to dietitian/nutritionist licensure requirements, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agency the "Council for Higher Education Accreditation", or a successor organization.

Section 72. Amends s. 468.707, F.S., relating to athletic trainer licensure requirements, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agency the "Council for Higher Education Accreditation", or its successor organization.

The athletic trainer licensure requirements are revised to eliminate requirements for each applicant to complete a continuing education course on HIV/AIDS as part of initial licensure.

Section 73. Amends s. 480.041, F.S., relating to massage therapy, to revise licensure requirements for massage therapists, to require applicants to complete an application form and submit the appropriate fee to DOH, be at least 18 years of age and have received a high school diploma or its equivalent, demonstrate good moral character, complete a course of study at a Board of Massage Therapy approved massage school, and receive of a passing grade on a board-approved national examination certified by DOH.

Section 74. Amends s. 486.021, F.S., relating to physical therapy, to delete obsolete language relating to physical therapy practiced under a temporary permit. Temporary permits are no longer issued for physical therapy practice.

Section 75. Amends s. 486.031, F.S., relating to physical therapy licensing requirements, to recognize the United States Department of Education, or a successor organization in addition to the Council for Higher Education Accreditation as entities which recognize educational accrediting agencies for purposes of the educational requirements for physical therapy programs.

Section 76. Amends s. 486.051, F.S., relating to physical therapy licensure examinations, to provide that an examination candidate is no longer eligible to take the physical therapy licensure examination after three failed attempts by eliminating a provision that allows candidates who have failed the examination in three attempts to sit two additional times for reexamination after completion of additional educational or training requirements prescribed by the Board of Physical Therapy.

Section 77. Amends s. 486.081, F.S., relating to physical therapy, to revise and update provisions allowing a person who is licensed to practice physical therapy in another jurisdiction the means to be licensed to practice as a physical therapist in Florida. Technical changes are made to reflect that "licensure without examination" in effect refers to "licensure by endorsement." The evidence that such licensure by endorsement applicants must submit must be done under oath. If an applicant seeking reentry into the profession has not been in active practice within the last 3 years, the applicant must, before applying for licensure submit documentation to the Board of Physical Therapy showing his or her competence to practice as required by board rule.

Section 78. Amends s. 486.102, F.S., relating to physical therapist assistants licensure requirements, to revise and update the provisions with minor technical changes. Changes are made in the section to references to "Commission on Recognition of Postsecondary Accreditation" to refer to its successor agency the "Council for Higher Education Accreditation," and to provide for a successor organization, or entity that serves in that capacity to recognize accrediting agencies which are approved by the Board of Physical Therapy for purposes of physical therapist educational programs.

Section 79. Amends s. 486.104, F.S., relating to physical therapist assistant licensure examinations, to provide that an examination candidate is no longer eligible take the physical therapist assistant licensure examination after three failed attempts by eliminating a provision

that allows candidates who have failed the examination in three attempts to sit two additional times for reexamination after completion of additional educational or training requirements prescribed by the Board of Physical Therapy.

Section 80. Amends s. 486.107, F.S., to revise and update provisions allowing a person who is licensed to practice as a physical therapist assistant in another jurisdiction the means to be licensed to practice physical therapy in Florida. Technical changes are made to reflect that "licensure without examination" in effect refers to "licensure by endorsement." The evidence that such licensure by endorsement applicants must submit must be done under oath. If an applicant seeking reentry into the profession has not been in active practice within the last 3 years, the applicant must, before applying for licensure submit documentation to the Board of Physical Therapy showing his or her competence to practice as required by board rule.

Section 81. Amends s. 486.109, F.S., relating to physical therapy, to provide that the Board of Physical Therapy must *accept* rather than *approve* only those courses sponsored by a college or university which provide a curriculum for *professional education of* rather than *training* physical therapists or physical therapist assistants, which is accredited by or has status with an accrediting agency approved by, the U. S. Department of Education *as determined by board rule* or courses sponsored or approved by the Florida Physical Therapy Association or the American Physical Therapy Association.

Section 82. Amends s. 486.161, F.S., relating to physical therapy, to exempt from the licensure requirements and the physical therapy practice act, any physical therapist who is licensed in another jurisdiction of the U.S. or credentialed in another country if that person, by contract or employment, is providing physical therapy to individuals affiliated with or employed by an established athletic team, athletic organization, or performing arts company temporarily practicing, competing, or performing in Florida for not more than 60 days in a calendar year.

Section 83. Amends s. 486.172, F.S., relating to physical therapy, to make a technical change to provide notice that s. 456.021, F.S., which relates to the qualification of immigrants for examination to practice a licensed profession or occupation, applies to the physical therapy practice act.

Section 84. Amends s. 490.005, F.S., relating to school psychology, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agencies the "Council for Higher Education Accreditation, the United States Department of Education, or a successor organization."

Section 85. Amends s. 491.005, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling licensure by examination, to require applicants to pass a theory and practice examination that has been approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and to require that the examination may be taken only following the completion of the clinical experience requirement. The licensure requirements are revised to allow applicants to satisfy all coursework requirements either by successfully completing the required course as a student or by teaching the required graduate course as an instructor or professor in an accredited institution. Changes are made in the section to references to the "Commission on Recognition of Postsecondary Accreditation" to

refer to its successor agencies the "Council for Higher Education Accreditation, or the United States Department of Education, or a successor organization."

Section 86. Amends s. 491.006, F.S., relating to licensure by endorsement, to provide that an applicant for licensure by endorsement as a mental health counselor who has not completed a psychopathology or abnormal psychology course may be accepted for licensure by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling if the applicant has completed 2 years of post-master's level supervised clinical experience and has actively practiced as a mental health counselor in another state or territory for 5 of the last 6 years without being subject to disciplinary action.

Section 87. Amends s. 491.009, F.S., relating to discipline of psychotherapists, to provide that DOH has jurisdiction to discipline a person who is a certified master social worker.

Section 88. Amends s. 491.0145, F.S., relating to certified master social workers, to prohibit DOH from adopting any rules that would allow a person who was not licensed as a certified master social worker in accordance with chapter 491, F.S., on January 1, 1990, to become licensed. In effect, this would prevent any additional applicants from being granted the designation.

Section 89. Creates s. 491.0146, F.S., to provide that all licenses to practice as a certified master social worker issued pursuant to chapter 491, F.S., and valid on October 1, 2002, remain in full force and effect.

Section 90. Amends s. 491.0147, F.S., relating to psychotherapists, to provide that there is no civil or criminal liability arising from the disclosure of otherwise confidential communications by a licensed psychotherapist or certified master social worker when there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the psychotherapist or master social worker only communicates the information to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

Section 91. Amends s. 817.505, F.S., relating to patient brokering, to revise the definition of "health care provider or health care facility" to include any person or entity licensed, certified or registered with DOH.

Section 92. Amends s. 817.567, F.S., relating to making false claims of academic degrees or title, to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agencies the "United States Department of Education, the Council for Higher Education Accreditation, or a successor organization."

Section 93. Amends s. 1009.992, F.S., relating to the Florida Higher Education Loan Authority Act, to revise the definition of "institution" to change a reference to "Commission on Recognition of Postsecondary Accreditation" to its successor agencies the "United States Department of Education, the Council for Higher Education Accreditation, or a successor organization."

Section 94. Amends s. 468.711, F.S., relating to athletic trainers, to delete a requirement that continuing education approved by the Board of Athletic Trainers include standard first aid.

Section 95. Amends s. 468.723, F.S., relating to athletic training, to eliminate an exemption to the athletic trainer licensure act for a person employed as a teacher apprentice trainer or a teacher athletic trainer.

Section 96. Amends s. 1012.46, F.S., relating to athletic trainers, to provide that a school district employee who is a first responder and who administers first aid and similar care may not hold himself or herself out to the school district or public as a licensed athletic trainer. Requirements for a teacher athletic trainer are revised to clarify that the person must be a licensed athletic trainer and meet certification standards as a teacher to be used by a school district.

Section 97. Creates an undesignated section of law, to provide an alternative licensure path which allows a person aged not less than 85 years on July 1, 2004, who at the time of retirement from the practice of medicine, was in good standing with the Florida Board of Medicine, to have his or her license reinstated, without examination, to solely practice medicine as part of a clinical study that has been reviewed and approved by an institutional review board. Such applicant must not have been out of the practice of medicine for more than 15 years at the time of license reactivation. The board must, by rule, set the reactivation fee, not to exceed $300. The provisions creating the alternative medical licensure path expire June 30, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 98. Amends s. 466.0135, F.S., relating to the practice of dentistry, to authorize the Board of Dentistry to allow up to 2 hours credit for a course on practice management.

Section 99. Repeals ss. 456.033, and 456.034, F.S., which provide continuing education requirements on HIV/AIDS; s. 458.313, F.S., which provides requirements for medical physician licensure by endorsement; s. 458.3147, F.S., which requires the admission of any Florida resident to any medical school in the State University system who is a student at or graduate of any of the U.S. military academies and who has command approval to apply to medical school before assignment to the medical corps of the U.S. military; s. 458.316, F.S., which provides requirements for the issuance of a public health certificate to practice medicine; s. 458.3165, F.S., which provides requirements for the issuance of a public psychiatry certificate; s. 458.317, F.S., which provides requirements for the issuance of limited licenses to practice medicine in Florida; s. 468.711(3), F.S., which provides requirements for licensed athletic trainers to complete continuing education on HIV/AIDS; and s. 480.044(1)(h), F.S., which provides a statutory fee cap no greater than $100 for massage therapy apprentices as set by the Board of Massage of Therapy.

Section 100. Provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

CNAs will be subject to a renewal application fee of $20 or more than $50 biennially. As of December 31, 2003, there were 294,132 certified nursing assistants registered in the State of Florida. DOH strongly believes there are not that many certified nursing assistants who will renew their certificate. Estimated revenues are based on 150,000 paying a $20 fee beginning in FY 2005-2006. Biennial expenditures for the CNA program are currently estimated at almost $3 million.

Disciplined health care practitioners will be subject to a fee of $25 per month or portion of a month set forth in the final disciplinary order to complete the length of term of the probation, suspension, or practice restriction imposed by the final order to defray the costs of monitoring the licensee's compliance with the order.

Osteopathic medical residents will be subject to a registration renewal fee not greater than $300 as set by the Board of Osteopathic Medicine.

Retired physicians who reactivating their licenses to practice only in conjunction with a clinical study reviewed and approved by an institutional review board will be subject to a reactivation fee of not more than $300.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health will incur costs to implement the bill.

The Department of Health reports that the requirement that a board has to have positive cash balance before a wall certificate may be issued at initial licensure will result in an estimated annual cost savings of $34,134. DOH assumes the same number of initial licensees in FY 2002-2003 (21,604) for those boards projected to be in a deficit for FY 2004-2005 and FY 2005-2006. The cost for a wall certificate is $1.58.

The Department of Health notes that the posting of examination scores on the Internet in lieu of mailing the scores to each applicant will result in an estimated annual cost savings of $4,500. This estimate is based on eliminating postage, envelopes, paper, and hours for staff time in mailing examination scores to 2,000 initial licensees each year.

The Department of Health has indicated that by authorizing a $25 per month fee to cover the costs of monitoring a licensee's compliance with a disciplinary order it will have increased revenue. DOH reports that the average number of new final orders each month is 100 with an average monitoring time of 24 months. The estimated revenues assume the same numbers for future years. Revenues would increase each month through the end of FY 2005-2006 and would level off at $555,000 for subsequent years if the assumptions were realized.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On page 42, lines 9-24, the bill provides that for final disciplinary orders entered on or after July 1, 2004, health care practitioner regulatory boards or DOH are required to assess a nonrefundable fee to defray the costs of monitoring a licensed health care practitioner's compliance with the order in the amount of $25 per month or portion of month set forth in the final order to complete the length of term or the probation, suspension, or practice restrictions imposed by the final order. The assessment must be included in the terms of the final order. The board or DOH if there is no board may elect to assess the same fee to offset other costs of monitoring compliance with the terms imposed by a final order that does not include probation, suspension, or practice restriction.

It is unclear for purposes of the $25 per month fee for monitoring what constitutes "discipline." It is unclear whether a person who has practice restrictions imposed due to an impairment based on a physical or mental condition would be subject to the $25 per month fee for monitoring. The $25 per month fee for monitoring a *disciplined* licensee is *in addition to other discipline including fines and investigation and prosecution costs* which may be assessed under current statutory provisions. The $25 per month fee does not take into account the specific circumstances involved in a case or require DOH or the board to justify the assessment for the actual cost of monitoring, therefore, in some cases the fee may be more and in others significantly less. The income of the licensed health care practitioners range from salaries of certified nursing assistants to medical doctors.

Sections 76 and 79 eliminate a provision that allows physical therapy candidates who have failed the examination in three attempts to sit two additional times for reexamination after completion of additional educational or training requirement prescribed by the Board of Physical Therapy. It is unclear whether a transition period is needed to allow those candidates who have already commenced board-approved education or training to remain eligible to sit two additional times for reexamination.

VIII. Amendments:

None.