

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 781 Psychotherapist-Patient Privilege
SPONSOR(S): Ross
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1594 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	23 Y, 0 N	Mitchell	Collins
2) Judiciary			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 781 revises the definition of "psychotherapist" in the psychotherapist-patient privilege section of the Florida Evidence Code, s. 90.503, F.S., to include advanced registered nurse practitioners (ARNPs) whose primary scope of practice is the diagnosis or treatment of mental health and substance abuse conditions.

The bill provides ARNPs who are practicing as psychiatric mental health nurses with the same protections regarding confidential communications with patients as those provided to other mental health professionals. Currently, persons authorized to practice medicine; licensed or certified psychologists; licensed or certified clinical social workers, marriage and family therapists, and mental health counselors are provided psychotherapist-patient privileges under s. 90.503, F.S. Also included are other treatment personnel who are employed by facilities licensed under chapters 394, 395, or 397, F.S., and who are primarily engaged in the diagnosis and treatment of mental health and substance abuse conditions.

Section 90.503, F.S., of the Florida Evidence Code, provides a rule of evidence known as psychotherapist-patient privilege. This privilege makes communications or records made for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence, although the privilege may be waived.

This bill extends the psychotherapist-patient privilege to cover communications with and records of licensed advanced registered nurse practitioners who are certified in the mental health field and who are engaged in clinical practice primarily involving mental health treatment.

The effective date of the bill is July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0781a.hc.doc
DATE: March 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

HB 781 amends s. 90.503, F.S., of the Florida Evidence Code, to revise the definition of "psychotherapist" to include an advanced registered nurse practitioner (ARNP) for purposes of the psychotherapist-patient privilege, when the ARNP is engaged in a clinical practice that primarily involves the treatment of mental or emotional conditions, including substance abuse.

The bill provides advanced registered nurse practitioners who are practicing as psychiatric mental health nurses with the same protections regarding confidential communications with patients as those that are currently provided to other mental health professionals. The mental health professionals who are currently granted this privilege include: persons who are authorized to practice medicine; licensed or certified psychologists; licensed or certified clinical social workers, marriage and family therapists, and mental health counselors; and other treatment personnel who are employed by facilities licensed under chapters 394, 395, or 397, F.S., and who are primarily engaged in the diagnosis and treatment of a mental or emotional condition, including alcoholism and other drug addiction.

The effective date of the bill is July 1, 2004.

CURRENT SITUATION

Florida Rules of Evidence: Psychotherapist-Patient Privilege

Chapter 90, F.S., is cited as the "Florida Evidence Code." Section 90.501, F.S., provides that except as otherwise provided by the chapter, any other statute, or the Constitution of the United States or of the State of Florida, no person in a legal proceeding has a privilege to: refuse to be a witness; refuse to disclose any matter; refuse to produce any object or writing; or prevent another from being a witness, from disclosing any matter, or from producing any object or writing.

The Florida Evidence Code recognizes the lawyer-client privilege, the psychotherapist-patient privilege, the sexual assault counselor-victim privilege, the domestic violence advocate-victim privilege, the husband-wife privilege, the clergy privilege, the accountant-client privilege, the journalist's privilege, and the trade secret privilege.

The psychotherapist-patient privilege, s. 90.503(2), F.S., provides that:

- A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between

the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist.

- This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

The term “psychotherapist”, as used under the privilege, s. 90.503(1), F.S., includes:

- Any person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
- A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under Florida law, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism or other drug addiction; and
- Treatment personnel of Florida-licensed hospitals, mental health facilities, and substance abuse treatment centers, who are engaged primarily in the diagnosis or treatment of a mental condition, including alcoholism or other drug addiction.

Under s. 90.503(3), F.S., the psychotherapist-patient privilege may be asserted by the patient or patient’s attorney on behalf of the patient, by a guardian or conservator of the patient, or by the personal representative of the estate of a deceased patient. It may also be asserted by the psychotherapist, but only on behalf of the patient and such assertion of the privilege by the psychotherapist raises a rebuttable presumption that it is made on the patient’s behalf.

Advanced Registered Nurse Practitioners

Advanced registered nurse practitioners perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses.

Chapter 464, F.S., requires the Board of Nursing to adopt rules authorizing advanced registered nurse practitioners to perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee. Advanced registered nurse practitioners may perform medical acts under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance. Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

The Board of Nursing and the Board of Medicine have filed identical administrative rules setting forth standards for the protocols which establish obligations on medical physicians, osteopathic physicians, and dentists who enter into protocol relationships with advanced registered nurse practitioners (Rules 64B-4.0120 and 64B-35.002, F.A.C.) The Board of Osteopathic Medicine and the Board of Dentistry are not required to adopt administrative rules regarding the standards for advanced registered nurse practitioner protocols.

C. SECTION DIRECTORY:

Section 1. Amends s. 90.503, F.S., to add certain advanced registered nurse practitioners to “psychotherapist-patient” privilege.

Section 2. Provides an effective date of the bill of July 1, 2004.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Provided for under existing rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES