

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.)

Prepared By: Children and Families Committee

BILL: SB 1640

INTRODUCER: Senator Rich

SUBJECT: Professional Social Worker Identifications

DATE: February 15, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	Pre-meeting
2.	_____	_____	HA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1640 makes it a first degree misdemeanor for a person to hold himself or herself out to the public as a social worker unless they have completed certain educational requirements, including a bachelor's degree or master's degree in social work or its equivalent from a foreign university or college. It exempts from this requirement persons who used the title "social worker" in their employment prior to the effective date of the bill as long as they remain in the same capacity with the same employer. The bill exempts salaried employees of nursing homes, assisted living facilities, or home health agencies from compliance with the bill until July 1, 2011. It directs the Department of Health to adopt rules to administer these provisions.

This bill creates the following sections of the Florida Statutes: 491.016

II. Present Situation:

The Practice of Social Work

Social services are currently provided by persons using the title "social worker" in a variety of settings including child welfare programs, adoption agencies, schools, hospitals, correctional facilities, nursing homes, and hospices. However, because the title "social worker" has no statutory definition, it is left to the public to discern the qualifications of persons using that title.

According to the National Association of Social Workers (NASW), professional social workers who have a degree in social work and who are bound by a professional code of ethics have consistently demonstrated that they perform significantly better in social service positions than those without such degrees. A national study that measured competencies related to 32 job-related duties found that staff holding Master of Social Work or Bachelor of Social Work degrees were better prepared for child welfare work than their colleagues without social work

education. (Lieberman et al., 1988). In addition, persons with a social work degree have demonstrated lower turnover (Russell, M. 1987), better ability to handle on-the-job stress (Anderson, D.G., 1994), increased effectiveness in service delivery (Olsen, L & Holmes, W. 1982), and higher levels of work commitment (Dhooper, Royse & Royce, 1990). Education appears to be the best predictor of overall performance in social service work (Booz-Allen & Hamilton, 1987). In addition, several accreditation standards (Council on Accreditation, Commission on Accreditation of Rehabilitation Facilities, Joint Commission on Accreditation of Healthcare Organizations) prefer social workers as providers of social services. The Florida Chapter of NASW reports that 27 other states currently regulate the title “social worker” either through a multi-tiered practice act or through title protection.¹

The Practice of Clinical Social Work

Chapter 491, F.S., relating to clinical, counseling, and psychotherapy services provides for the licensure of clinical social workers, marriage and family therapists, and mental health counselors. The practice of clinical social work is defined as:

“the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of clinical social work also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of clinical social work may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.”²

The statute allows clinical social workers to provide services to individuals, including individuals affected by the termination of marriage, and to marriages, couples, families, groups, organizations, and communities. The law restricts the use of specific methods, techniques, or modalities within the practice of clinical social work to clinical social workers appropriately trained in the use of such methods, techniques, or modalities. The definition of “clinical social work” includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

¹ National Association of Social Workers, Florida Chapter, personal communication from Jim Akin, Executive Director, Feb. 28, 2006.

² s. 491.003(7), F.S.

The law also provides that the terms “diagnose” and “treat,” as used in ch. 491, F.S., shall not be construed to permit the performance of any act which clinical social workers are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in ch. 465, F.S., authorizing clinical laboratory procedures pursuant to ch. 483, F.S., or radiological procedures, or use of electroconvulsive therapy.

The practice of clinical social work is regulated by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within the Department of Health. Clinical social workers are licensed by examination and payment of a licensure fee. To be eligible for licensure, the applicant must meet minimum educational and experience requirements. These require that the applicant:

- Has received a doctoral degree or master’s degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the United States Department of Education, the Council on Social Work Education (CSWE), or the Canadian Association of Schools of Social Work; or
- Has received a doctoral degree or master’s degree in social work from a graduate school of social work that has been determined to have been a program equivalent to programs approved by the CSWE by the Foreign Equivalency Determination Service of the CSWE. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

The applicant's graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy and must have included certain clinical coursework and supervised field placement in a clinical setting. The applicant must provide evidence of two years of post-graduate experience under the supervision of a licensed clinical social worker approved by the board. Applicants must also demonstrate knowledge of the laws and rules governing the practice of clinical social work. Pursuant to board rule, this is done by requiring applicants to complete an approved continuing education course.³

Section 491.012, F.S., provides certain protected titles that may not be used unless the individual holds a valid, active license as a clinical social worker or in the case of a registered intern or provisional licensee, appropriate licenses for those activities. These titles are:

- “Licensed clinical social worker,”
- “Clinical social worker,”
- “Licensed social worker,”
- “Psychiatric social worker,”
- “Psychosocial worker,”
- “Registered clinical social worker intern,” and
- “Provisional clinical social worker licensee.”

³Chapter 64B4-3.0035, F.A.C.

Current statute also prohibits any person from describing her or his services using certain terms or any derivative of those terms unless he or she holds an active, valid license under chapter 490, F.S., (Psychological Services) or chapter 491, F.S., or is certified under s. 464.012, F.S., as an advanced registered psychiatric nurse practitioner as determined by the Board of Nursing. The protected terms are:

- “Psychotherapy,”
- “Sex therapy,”
- “Sex counseling,”
- “Clinical social work,”
- “Psychiatric social work,”
- “Marriage and family therapy,”
- “Marriage and family counseling,”
- “Marriage counseling,”
- “Family counseling,” and
- “Mental health counseling.”

This section also prohibits any person from practicing clinical social work in Florida for compensation, unless the person holds a valid, active license to practice clinical social work or is an intern registered pursuant to s. 491.0045, F.S. Although certain persons, such as employees of government agencies acting within the confines of the agency, are exempt from licensure under ch. 491.014, F.S., they are still prohibited from holding themselves out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.⁴

A violation of these provisions is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Section 775.082, F.S., provides that the penalty for a first degree misdemeanor is a definite term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a first degree misdemeanor is a fine not to exceed \$1,000.

Section 817.567, F.S., makes it a first degree misdemeanor to claim either orally or in writing to have an academic degree⁵ or the title associated with the degree unless the person has been awarded that degree from an accredited institution.

The Council on Social Work Education (CSWE) is a national association that sets and maintains policy and program standards for social work education, accredits bachelor’s and master’s degree programs in social work, promotes research and faculty development, and advocates for social work education.⁶

⁴ See s. 491.014, F.S.

⁵ s. 1005.02, F.S., states “Degree” means any educational credential that is generally taken to signify satisfactory completion of the requirements of an undergraduate, graduate, academic, educational, or professional program of study or any honorary credential conferred for meritorious recognition. At the undergraduate level, an institution may not award a degree for a program unless it includes a general education component as established by rule and at least 60 semester hours or 90 quarter hours of study or the equivalent.

⁶Council on Social Work Education, <http://www.cswe.org/>

III. Effect of Proposed Changes:

Senate Bill 1640 makes it a first degree misdemeanor for a person to hold himself or herself out to the public as a social worker either directly or through a governmental or private organization, entity, or agency, regardless of whether they receive compensation, unless they have:

- A bachelor's or master's degree from a institution which has or is actively seeking accreditation from the CSWE; or,
- Completed a social work program determined by the Foreign Equivalency Determination Service of the CSWE to be equivalent to a bachelor's degree or master's degree in social work.

The practical effect of this bill is that "social worker" will be a protected title.

It exempts from this requirement persons who use the title "social worker" in their employment prior to the effective date of the bill, as long as they continuously work for the same employer in the same capacity as before the effective date of the legislation. The bill exempts salaried employees of nursing homes, assisted living facilities, or home health agencies from compliance with the bill until July 1, 2011. Nursing homes, home health and hospices are given longer to comply with SB 1640 because they have positions entitled "social worker" that do not currently require a bachelor's or master's degree in social work and will need to modify their employment qualifications to comply with the bill.

The bill directs the Department of Health to adopt rules pursuant to ch. 120, F.S., to administer this section.

It has an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Commercial speech is protected by the First Amendment. However, a state may regulate commercial speech where 1) the state offers a substantial government interest for the

regulation, 2) the regulation advances the substantial interest, and 3) the interest is narrowly drawn.⁷

Current statute describes the practice of “clinical social work” and prohibits an individual from using certain titles unless licensed to practice under ch. 491, F.S. This bill does not define the practice of “social work,” or distinguish how it differs from the practice of “clinical social work,” nor does it prohibit an individual from practicing “social work.”

In *Abramson v. Gonzalez*, 949 F.2d 1597, the statute which prohibited unlicensed practitioners of psychology from holding themselves out as psychologists was found to place an unconstitutional burden on commercial speech. The court reasoned that “as long as Florida has not restricted the practice of psychology, the state may not prevent the plaintiffs from calling themselves psychologists in their commercial speech.”

In *Strang v. Satz*, 884 F.Supp. 504, the court held that s. 817.567, F.S., which prohibits an individual from claiming to hold academic degrees or titles unless such degrees or titles were conferred by accredited institutions violated the First Amendment in that it was not narrowly tailored to achieve substantial government interest; the state could have required those holding degrees from unaccredited institutions to disclose the fact that the institutions were unaccredited.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may have the effect of increasing costs for some social service agencies if they are employing persons without the required academic degree in positions with the title “social worker.”

A person found guilty of a misdemeanor under this bill could be subject to a fine of up to \$1,000.

C. Government Sector Impact:

The Department of Health reports that this bill will have an impact on the Division of Medical Quality Assurance because the department may be expected to assist law enforcement with the improper and illegal use of the title “social worker.” There may be an increase in complaints referred to the department’s unlicensed activity office for referral to law enforcement.

⁷ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n.*, 447 U.S. 557, 563-64, 100 S.Ct. 2343, 65 L.Ed.2d 342 (1980) as cited in 29 F. Supp.2d 1329

It is unclear whether the exemptions provided in s. 491.014, F.S., will be extended to persons who are employed in a position entitled “social worker” in government agencies, public agencies, private non-profit organizations and academic institutions. Should these exemptions not be extended to the title of “social worker,” there could be a significant fiscal impact on these entities as they would be required to employ persons qualified under the provisions of this bill in positions with a social work title.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill requires that to hold himself or herself out as a “social worker,” an individual must have a degree from an accredited program or one that is “actively seeking accreditation.” The criterion for what constitutes “actively seeking accreditation” is not specified in the bill. Under the 2001 Educational Policy and Accreditation Standards, social work programs working toward accreditation are first in precandidacy and then candidacy. Precandidacy is “a time that a new program and its institutional administration engages in a period of preliminary planning, securing resources, and hiring faculty before submitting an application.” Candidacy is the “first step toward the initial accreditation process.”⁸

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁸ Council on Social Work Education, Handbook of Accreditation Standards and Procedures, 5th ed., 2003, p. 3.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
