

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411 Psychotherapist-Patient Privilege
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary Committee</u>	<u>14 Y, 0 N</u>	<u>Hogge</u>	<u>Hogge</u>
2) <u>Health Care Regulation Committee</u>	<u>9 Y, 0 N</u>	<u>Hamrick</u>	<u>Mitchell</u>
3) <u>Justice Council</u>	<u> </u>	<u> </u>	<u> </u>
4) <u> </u>	<u> </u>	<u> </u>	<u> </u>
5) <u> </u>	<u> </u>	<u> </u>	<u> </u>

SUMMARY ANALYSIS

HB 411 extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice.

The Florida Evidence Code includes a number of privileges. Privileges render certain communications or records inadmissible as evidence. One such privilege under Florida law is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence.

The Legislature has on various occasions expanded the definition of "psychotherapist" to include other practitioners. Currently, "psychotherapist" includes licensed medical doctors, psychologists, clinical social workers, marriage and family therapists, and mental health counselors. Also included are other treatment personnel employed by certain licensed health facilities and engaged primarily in the diagnosis and treatment of mental health and substance abuse conditions.

Fiscal Impact: The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty-The bill could be seen as safeguarding individual liberty by expanding the protections given to certain communications between patients and their mental health professionals.

B. EFFECT OF PROPOSED CHANGES:

This bill extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice. Many advanced nurse practitioners are already included within the current definition of "psychotherapist," and enjoy the privilege as staff of a licensed hospital, mental health facility or substance abuse center.

PRESENT SITUATION

Psychotherapist-Patient Privilege

The Florida Evidence Code contains a number of privileges.¹ Privileges render certain communications or records within a protected relationship inadmissible as evidence in civil and criminal proceedings.

Examples of protected relationships include:

- The relationship between attorney and client;
- Clergy and penitent; and
- Husband and wife.

Another is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence.

Concerning the psychotherapist-patient privilege, the operative language in the Code provides:

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.²

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

The privilege has been extended to various mental health professionals since first incorporated into the Code. Initially limited to psychiatrists, the Legislature has extended the privilege to any person licensed or certified as a psychologist, clinical social worker, marriage and family therapist, or mental health counselor under Florida law and laws of any other state or, as applicable, any nation, and who is engaged in the diagnosis or treatment of a mental or emotional condition.

¹ See Chapter 90, F.S.

² See s. 90.503(2), F.S.

Later, the Legislature extended it to cover treatment personnel of state-licensed hospitals, mental health facilities and substance abuse treatment centers, when those personnel are primarily engaged in mental health diagnosis or treatment; and state-licensed or certified social workers, marriage and family therapists, and mental health counselors, again, only if primarily engaged in mental health treatment or diagnosis.

Florida's psychotherapist-patient privilege may be asserted by 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 the patient's behalf. An assertion of the privilege by the psychotherapist creates a rebuttable presumption that it is made on the patient's behalf.

Advanced Registered Nurse Practitioners

Nursing in Florida is regulated under the Nurse Practice Act, chapter 464, F.S. Under the Nurse Practice Act, nurses licensed in Florida may seek certification as advanced registered nurse practitioners. With this certification, they may "perform acts of medical diagnosis and treatment, prescription, and operation which are identified by" a joint committee of the Board of Nursing and the Board of Medicine.

Advanced registered nurse practitioners perform all duties of a registered nurse, in addition to 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.

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 identifying the medical acts to be performed and the conditions for their performance.³ Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

To be certified as an advanced registered nurse practitioner, a nurse must demonstrate one of the following:

- Successful completion of a course in advanced nursing which is at least one academic year in length and primarily meant to prepare nurses for advanced or specialized practice;
- Certification by an appropriate specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical area.

C. SECTION DIRECTORY:

Section 1. Amends s. 90.503, F.S., to add advanced registered nurse practitioners with a certain scope of practice to the definition of "psychotherapist" for purposes of the application of the psychotherapist-patient privilege.

Section 2. Provides an effective date of July 1, 2006.

³ See s. 464.003 (3)(c), F.S.

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 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 revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES