The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL:	SB 1250
INTRODUCER:	Senator Latvala
SUBJECT:	Behavioral Health Workforce
DATE:	February 9, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 1250 expands the behavioral health workforce, recognizes the need for additional psychiatrists is of critical state concern, integrates primary care and psychiatry and allows persons with disqualifying offenses that occurred 5 or more years ago to work under the supervision of certain qualified personnel until a final determination regarding the request for an exemption from disqualification is made.

The bill authorizes physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to prescribe controlled substances, but includes certain limitations on such prescribing authority. Specifically, the bill allows the Council on Physician Assistants and the Board of Nursing (BON) to each adopt a formulary to limit the types and amounts of controlled substances that may be prescribed by PAs and ARNPs, respectively, to form a committee, comprised of members recommended by the Board of Medicine, the BON, and the Board of Pharmacy, to establish and recommend the formulary that limits ARNP controlled substance prescribing authority, which the BON must adopt in rule.

The bill amends s. 456.44, F.S., to require a PA or an ARNP, who prescribes any controlled substance for the treatment of chronic nonmalignant pain to register with the Department of Health (DOH) as a controlled substance prescribing practitioner. This new requirement also subjects PAs and ARNPs who are registered as controlled substance prescribing practitioners to meet the statutory practice standards for such prescribing practitioners. Additionally, the bill provides that only a physician may dispense medication or prescribe a controlled substance on the premises of a registered pain management clinic.

The bill makes the process of retaining a patient in a receiving facility, or placing a patient in a treatment facility under the Baker Act more efficient by allowing the psychiatrist providing the first opinion and the psychiatrist or clinical psychologist providing a second opinion to examine

the patient through electronic means. Currently, only the psychiatrist or clinical psychologist providing a second opinion may perform an examination electronically.

The bill corrects current law to exempt persons employed with the Department of Corrections in an inmate substance abuse program are exempt from a fingerprinting and background check requirement, unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled. The current law erroneously states the inverse.

The bill expands who is eligible to be a service provider in a substance abuse program by allowing those persons who have had a disqualifying offense that occurred 5 or more years ago and who have requested an exemption from disqualification to work with adults with substance use disorders.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Behavioral Health Workforce Shortage

The Institute of Medicine (IOM) has chronicled efforts, beginning as early as the 1970s, to deal with workforce issues regarding mental and substance use disorders, but notes that most have not been sustained long enough or been comprehensive enough to remedy the problems.[1] Shortages of qualified workers, recruitment and retention of staff, and an aging workforce have long been cited as problems.[2] Lack of workers in rural areas and the need for a workforce more reflective of the racial and ethnic composition of the U.S. population create additional barriers to accessing care for many.[3] Recruitment and retention efforts are hampered by inadequate compensation,

[1] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues,* January 24, 2013, pg. r, citing the following Institute of Medicine reports: Institute of Medicine, (2006), *Improving the quality of health care for mental and substance-use conditions.*, Washington, DC, National Academies Press; Institute of Medicine, (2003), Greiner, A., & Knebel, E. (Eds.), *Health professions education: A bridge to quality.*, Washington, DC, National Academies Press; Institute of Medicine, (2004), Smedley, B. D., Butler, A. S., Bristow, L. R. (Eds.), *In the nation's compelling interest: Ensuring diversity in the health-care workforce.*, Washington, DC, National Academies Press; and Institute of Medicine, & Eden, J., (2012), *The mental health and substance use workforce for older adults: In whose hands?*, Washington, DC, National Academies Press; *available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjK9-voubzKAhVCVyYKHYx5DHYQFggdMAA&url=https%3A%2F%2Fstore.samhsa.gov%2Fshin%2Fcontent%2FPEP13-RTCBHWORK%2FPEP13-RTC-BHWORK.pdf&usg=AFQjCNGxewm3bHzmpsqu5zeWfUdqYhVpiw&sig2=WC81nKPjgNdMdm00jN20fw (last accessed on February 6, 2016).

[2] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues*, January 24, 2013, pg. 4, *available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjK9-voubzKAhVCVyYKHYx5DHYQFggdMAA&url=https%3A%2F%2Fstore.samhsa.gov%2Fshin%2Fcontent%2FPEP13-RTCBHWORK%2FPEP13-RTC-BHWORK.pdf&usg=AFQjCNGxewm3bHzmpsqu5zeWfUdqYhVpiw&sig2=WC81nKPjgNdMdm00jN20fw (last accessed on February 6, 2016).

[3] *Id.*

which discourages many from entering or remaining in the field.[4] In addition, the misperceptions and prejudice surrounding mental and substance use disorders and those who experience them are imputed to those who work in the field.[5]

Of additional concern, the IOM[6] found that the workforce is unprepared to meet the mental and substance use disorder treatment needs of the rapidly growing population of older adults. The IOM report's data indicate that 5.6 to 8 million older adults, have one or more mental health and substance use conditions which compound the care they need. However, there is a shortage of mental health or substance abuse practitioners who are trained with this population.

The IOM projects that by 2020, there will be 12,625 child and adolescent psychologists needed, but a supply of only 8,312 is anticipated.[7] In 2010, the Substance Abuse and Mental Health Services Administration (SAMHSA) reported that more than two-thirds of primary care physicians who tried to obtain outpatient mental health services for their patients reported they were unsuccessful because of shortages in mental health care providers, health plan barriers, and lack of coverage or inadequate coverage.

As of January 2016, the Health Resources and Services Administration has designed 4,362 Mental Health Professional Shortage Areas, including one or more in each state, the District of Columbia, and each of the territories.[8]

Behavioral Health Practice

In the U.S., states generally require a person to achieve higher levels of education to become a mental health counselor compared to that of a substance abuse counselor. As of 2011, almost all states (98 percent) required a master's degree to qualify as a mental health counselor but 45 percent of states did not require any college degree to qualify as a substance abuse counselor. For behavioral health care disciplines, independent practice requires a master's degree in most states; however, for addiction counselors, data available a decade ago indicated that about 50-55 percent of those certified or practicing in the field held at least a master's degree, 75 percent held a bachelor's degree, and the reminder had either completed some college or held a high school diploma or equivalent degree.[9]

Because of major changes to the field of behavioral health, including the integration of behavioral health and primary care, a push to accelerate the adoption of evidence-based practices, and a model of care that is recovery-oriented, person-centered, integrated, and utilizes multi-disciplinary teams, behavioral health workers are in need of additional pre-service training and continuing education.[10] Behavioral health has moved to a chronic care, public health model

[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.* At 10.
[8] Health Resources and Services Administration, *Data Warehouse, Health Professional Shortage Areas (HPSA)* and *Medically Underserved Areas/Populations (MUA/P),* available at http://datawarehouse.hrsa.gov/topics/shortageAreas.aspx (last accessed on February 6, 2016).
[9] *Supra* note 2.
[10] *Id*. at 4-5.

to define needed services. This model recognizes the importance of prevention, the primacy of long-term recovery as its key construct, and is shaped by those with lived experience of recovery.[11] This new care model will require a diverse, skilled, and trained workforce that employs a range of workers, including people in recovery, recovery specialists, case workers and highly trained specialists.[12] In fact, the movement to include primary care providers into the field of behavioral health has meant that there is currently no consensus as to which health care provider types make up the workforce.[13] Generally, however, the workforce is made up of professionals practicing psychiatry, clinical psychology, clinical social work, advanced practice psychiatric nursing, marriage and family therapy, substance abuse counseling, and counseling[14]

Involuntary Examination and Inpatient Placement under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as the Baker Act[15]), codified in part I of ch. 394, F.S., to address mental health needs in the state.[16] The Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities that examine persons with evidence of mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under the Baker Act.[17] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[18]

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[11] *Id*. at 6.

[12] *Id*.

[13] Congressional Research Service, *The Mental Health Workforce: A Primer*, April 16, 2015, *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjK9voubzKAhVCVyYKHYx5DHYQFgguMAI&url=http%3A%2F%2Ffas.org%2Fsgp%2Fcrs%2Fmisc%2FR43255.pdf&usg=AFQjCNHkmHp_4SMtmCWS7gImwEWxhPGl1g&sig2=5JBwSXTV1PHBeGZJGig0Xw(last accessed on February 6, 2016).

[14] *Id.* At 2 (using the Substance Abuse and Mental Health Services Administration definition).

[15] "The Baker Act" is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. *See* University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, *available at* http://www.library.ufl.edu/spec/pkyonge/baker.htm (last accessed January 21, 2016), and Department of Children and Families and University of South Florida, Department of Mental Health and Law, *Baker Act Handbook and User Reference Guide 2014 (2014)*, *available at* http://myflfamilies.com/service-programs/mentalhealth/baker-act (select "2014 Baker Act Manual) (last accessed January 21, 2016).

[16] Chapter 71-131, s. 1, Laws of Fla.

[17] Section 394.455(32), F.S.

[18] Section 394.463(1), F.S.

Current law provides that an involuntary examination may be initiated if there is reason to believe a person has a mental illness and because of the illness:[19]

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- The person is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.[20] A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer[21] may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination. Health care practitioners may initiate an involuntary examination by executing the *Certificate of a Professional Initiating an Involuntary Examination*, an official form adopted in rule by the DCF.[22] The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.[23] The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:[24]

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure.
- A physician or psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.

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[19] Section 394.463(2)(a)1.-3., F.S.

[20] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. s. 943.10(1), F.S.

[21] The Certificate of a Professional Initiating an Involuntary Examination is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under the Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person. See Florida Department of Children and Families, CF-MH 3052b, incorporated by reference in Rule 65E-.280, F.A.C., and available at http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf. (last visited February 6, 2016).

[22] Section 394.463(2)(a)3., F.S.

[23] *Id.*

[24] *Id.*

- A clinical social worker licensed under ch. 491, F.S.

In 2014, there were 181,471 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.18 percent), followed closely by mental health professionals (47.86 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.96 percent).[25]

Background Screening of Substance Abuse Treatment Provider Staff

Substance abuse treatment programs are licensed by the DCF Substance Abuse Program Office under authority granted in s. 397.401, F.S., which states, "It is unlawful for any person to act as a substance abuse service provider unless it (sic) is licensed or exempt from licensure under this chapter." In order to obtain a license, a provider must apply to the department and submit "sufficient information to conduct background screening as provided in s. 397.451, F.S."[26] According to administrative rule, the required documentation is verification that fingerprinting and background checks have been completed as required by ch. 397, F.S., and ch. 435, F.S.[27]

Section 397.451, F.S., requires that "all owners, directors, and chief financial officers of service providers are subject to level 2 background screening as provided under chapter 435." All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435. Church or nonprofit religious organizations that are exempt from licensure as substance abuse treatment programs must also comply with personnel screening requirements.

Exemptions from personnel screening requirements include:
- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections in a substance abuse service program who have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.[28]

The requirements for level 1 and level 2 screening are found in ch. 435, F.S. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE), a check of the Dru Sjodin National Sex Offender Public Website,[29] and may include criminal records checks through local law enforcement agencies. Level 2 screening is required for all employees in positions

[25] Annette Christy & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: summary of 2014 Data,* available at http://bakeract.fmhi.usf.edu/document/BA_Annual_2014.pdf (last visited February 6, 2016).
[26] Section 397.403, F.S.
[27] Rule 65D-30.003(6)(s), F.A.C.
[28] Section 397.451(2)(c), F.S.
[29] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited February 6, 2016.

designated by law as positions of trust or responsibility, and it includes security background investigations which consist of at least fingerprinting, statewide criminal and juvenile records checks through FDLE, and federal criminal records checks through the Federal Bureau of Investigation (FBI) and may include local criminal records checks through local law enforcement agencies.[30]

Under certain circumstances, DCF may grant an exemption from disqualification as provided in s. 435.07, F.S. These circumstances are:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors prohibited under any of the Florida Statutes cited in the chapter or under similar statutes of other jurisdictions;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30, F.S.

Under s. 435.07, F.S., employees bear the burden of proving, by clear and convincing evidence, they should not be disqualified,[31] and have administrative hearing rights under ch. 120, F.S., for denials. However, DCF may not remove a disqualification for or grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to any felony covered by s. 435.03, F.S., solely by pardon, executive clemency, or restoration of civil rights.[32]

Substance Abuse Treatment Provider Staff

Since many substance abuse treatment programs employ persons who are themselves in recovery, DCF is authorized to grant additional exemptions from disqualification for employees of substance abuse treatment programs.[33] Employees must submit a request for an exemption for disqualification within 30 days after being notified of a pending disqualification. Pending disposition of the exemption request, an employee's employment may not be adversely affected. However, upon disapproval of a request for an exemption the service provider must immediately dismiss the employee from employment.[34]

Physician Assistants

A physician assistant (PA) is a person who has completed an approved medical training program and is licensed to perform medical services, as delegated by a supervising physician.[35] PAs licensure is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH)

[30] Section 435.04(1), F.S.
[31] The employee must set forth sufficient evidence of rehabilitation, such as the circumstances surrounding the criminal incident, the time period that has elapsed since the incident, the nature of the harm to the victim, and the history of the employee since the incident.
[32] Section 435.07(4), F.S.
[33] Section 397.451(4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older; as well as personnel who work exclusively with adults.
[34] Section 397.451.(1)(f), F.S.
[35] Sections 458.347(2)(e) and 459.022(2)(e), F.S.

licenses PAs, and the Florida Council on Physician Assistants (Council) regulates the practice of PAs in conjunction with either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. Currently, 7,987 PAs hold active licenses in Florida.[36]

Licenses are renewed biennially.[37] At the time of renewal, a PA must demonstrate that he or she has met the continuing medical education requirements of 100 hours and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.[38] If a PA is licensed as a prescribing PA, an additional 10 hours of continuing medical education in the specialty areas of his or her supervising physician must be completed.[39]

According to the American Academy of Physician Assistants, all accredited PA educational programs include pharmacology courses, and the average amount of formal classroom instruction in pharmacology is 75 hours.[40] Course topics, include pharmacokintetics, drug interactions, adverse effects, contraindications, indications, and dosage, generally by doctoral-level pharmacologists or clinical pharmacists.[41] Additionally, pharmacology education occurs on all clinical clerkships or rotations.[42]

A PA may only practice under the delegated authority of a supervising physician. A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.[43] Supervision is defined as responsible supervision and control that requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.[44] A physician may not supervise more than four PAs at any time.[45]

Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of advanced registered nurse practitioners (ARNPs) in Florida. Nurses are licensed by DOH and are regulated by the Board of Nursing.[46] There are 22,003 actively licensed ARNPs in Florida.[47]

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[36] Email correspondence with the Department of Health on November 9, 2015. The number of active-licensed PAs include both in-state and out-of-state licensees, as of November 9, 2015.

[37] For timely renewed licenses, the renewal fee is $275 and the prescribing registration fee is $150. Additionally, at the time of renewal, the PA must pay an unlicensed activity fee of $5. See Rules 64B8-30.019 and 64B15-6.013, F.A.C. [43] Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

[38] Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

[39] Rules 64B8-30.005(6) and 64B15-6.0035(6), F.A.C.

[40] American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications, Professional Issues – Issue Brief* (Dec. 2013), (on file with the staff of the Senate Committee on Children, Families & Elder Affairs).

[41] *Id.*

[42] *Id.*

[43] Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C. The term "scope of practice" refers to those tasks and procedures that the supervising physician is qualified by training or experience to support.

[44] Sections 458.347(2)(f) and 459.022(2)(f), F.S.

[45] Sections 458.347(3) and 459.022(3), F.S.

[46] Section 464.004, F.S.

[47] E-mail correspondence with the Department of Health (Nov. 9, 2015). This number includes all active licenses, including out of state practitioners.

In Florida, an ARNP is a licensed nurse who is certified in advanced or specialized nursing practice and may practice as a certified registered nurse anesthetist, a certified nurse midwife, or a nurse practitioner.[48] Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include the performance of advanced-level nursing acts approved by the Board of Nursing, which by virtue of post-basic specialized education, training, and experience are appropriately performed by an ARNP.[49]

Pursuant to s. 464.012(3), F.S., ARNPs may only perform nursing practices delineated in an established protocol filed with the Board of Nursing that is filed within 30 days of entering into a supervisory relationship with a physician and upon biennial license renewal.[50] Florida law allows a primary care physician to supervise ARNPs in up to four offices, in addition to the physician's primary practice location.[51] If the physician provides specialty health care services, then only two medical offices, in additional to the physician's primary practice location, may be supervised.

The supervision limitations do not apply in the following facilities:
- Hospitals;
- Colleges of medicine or nursing;
- Nonprofit family-planning clinics;
- Rural and federally qualified health centers;
- Nursing homes;
- Assisted living facilities;
- Student health care centers or school health clinics; and
- Other government facilities.[52]

To ensure appropriate medical care, the number of ARNPs a supervising physician may supervise is limited based on consideration of the following factors:
- Risk to the patient;
- Educational preparation, specialty, and experience in relation to the supervising physician's protocol;
- Complexity and risk of the procedures;
- Practice setting; and
- Availability of the supervising physician or dentist.[53]

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Act) and classifies controlled

[48] Section 464.003(3), F.S.
[49] Section 464.003(2), F.S.
[50] Physicians are also required to provide notice of the written protocol and the supervisory relationship to the Board of Medicine or Board of Osteopathic Medicine, respectively. See ss. 458.348 and 459.025, F.S.
[51] Sections 458.348(4) and 459.025(3), F.S.
[52] Sections 458.348(4)(e) and 459.025(3)(e), F.S.
[53] Rule 64B9-4.010, F.A.C.

substances into five categories, known as schedules.[54] The distinguishing factors between the different drug schedules are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance. Schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. The Act provides requirements for the prescribing and administering of controlled substances by health care practitioners and proper dispensing by pharmacists and health care practitioners.[55]

As of January 1, 2012, every physician, podiatrist, or dentist, who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain,[56] must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.[57]

Patients being treated with controlled substances for chronic nonmalignant pain must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.[58] Patients at special risk for drug abuse or diversion may require consultation with or a referral to an addiction medicine physician or a psychiatrist.[59] Anyone with signs or symptoms of substance abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.[60]

III. Effect of Proposed Changes:

Section 1 amends s. 394.453, F.S., to provide legislative intent to address a behavioral health workforce shortage in the state. The bill find that there is a need for additional psychiatrists and recommends the establishment of an additional psychiatry program to be offered by one of Florida's medical schools, which shall seek to integrate primary care and psychiatry, and other evolving models of care for persons with mental health and substance use disorders. Additionally, the bill finds that the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation.

Section 2 of s. 394.463, F.S., to remove the requirement that a patient may not be released by a receiving facility by a psychiatric nurse unless the receiving facility is owned or operated by a hospital or health system.

Section 3 amends s. 394.467, F.S., to allow the psychiatrist providing the first opinion and the psychiatrist or clinical psychologist providing a second opinion about the patient's placement to examine the patient electronically.

[54] *See* s. 893.03, F.S.
[55] Sections 893.04 and 893.05, F.S.
[56] "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.
[57] Chapter 2011-141, s. 3, Laws of Fla. (creating ss. 456.44, F.S., effective July 1, 2011).
[58] Section 465.44(3)(d), F.S.
[59] Section 465.44(3)(e), F.S.
[60] Section 456.44(3)(g), F.S.

Section 4 amends s. 397.451, F.S., to clarify that persons employed with the Department of Corrections in an inmate substance abuse program are exempt from fingerprinting and background check requirement, unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled. The current law erroneously states the inverse.

This section also provides that persons who have had a disqualifying offense that occurred 5 or more years ago and who have requested an exemption from disqualification to work with adults with substance abuse disorders must work under the supervision of qualified professionals under chapter 490 or chapter 491 or a master's level certified addiction professional until the agency makes a final determination regarding the request for an exemption from disqualification.

Section 5 amends s. 409.909, F.S., to add psychiatry to the list of primary care specialties to the Statewide Medicaid Residency Program.

Section 6 amends s. 456.44, F.S., to increase access to behavioral health treatment by allowing physician assistants licensed under chapters 458 or chapter 459, F.S., and advanced registered nurse practitioners certified under part I of chapter 464, F.S., to prescribe controlled substances listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, F.S., for the treatment of chronic nonmalignant pain under certain conditions.

Section 7 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care entities may experience some cost savings by allowing additional practitioners to provide treatment and care. Cost savings may be passed on to patients.

C. Government Sector Impact:

The Department of Health will have an indeterminate impact associated with the workload for additional complaints and investigations due to the expanded scope of practice for ARNPs and PAs.

VI. Technical Deficiencies:

The legislative intent language seems to authorize the establishment of an additional psychiatry program to be offered by one of Florida's medical schools currently not offering psychiatry programs. Chapter 394, F.S., would not be the proper authorizing statute for this program.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.453, 394.463, 394.467, 397.451, 409.909, and 456.44.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.