

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 Criminal Justice

BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senators Baxley and Bracy

SUBJECT: Sexual Misconduct Reporting in Health Care

DATE: March 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 requires each entity licensed by the Agency for Healthcare Administration (AHCA) to enact a policy that requires sexual misconduct reporting in its facility in order to maintain its license.

Pursuant to the policy, any employee, contractor, volunteer, or intern of the licensee who witnesses sexual misconduct involving a patient in the care of the licensee, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct involving a patient in the care of the licensee, must immediately report such misconduct to the licensee, the AHCA's toll-free complaint number, and the appropriate local law enforcement agency. The bill requires the person who reported the sexual misconduct to prepare an independent report, to the best of his or her ability, that describes the nature, location, and time of the incident, and the persons involved. The person who prepares such report must date and sign it and provide it to the licensee.

The bill provides the following penalties for:

- Failure of the licensee to enact or enforce the sexual misconduct policy required is a Class II violation as established in s. 408.813, F.S.;
- A person who is required to make a report and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a first degree misdemeanor;

- A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a required report commits a first degree misdemeanor; and
- A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a third degree felony.

The fiscal impact for the bill is indeterminate at this time. However, health care facilities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Health Care Facility Licensure Requirements

The AHCA is responsible for health facility licensure, inspection, and regulatory enforcement, in addition to the investigation of consumer complaints related to health care facilities and managed care plans.¹ Currently, it is unlawful to provide services that require licensure,² or operate or maintain a provider that offers or provides services that require licensure, without first obtaining a license from the AHCA.³ The Bureau of Health Facility Regulation within the AHCA is tasked with handling the 48,500 licensed health care facilities throughout the state.⁴

The following entities must be licensed by the AHCA:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act;
- Birth centers;
- Abortion clinics;
- Crisis stabilization units;
- Short-term residential treatment facilities;
- Residential treatment facilities;
- Residential treatment centers for children and adolescents;
- Hospitals;
- Ambulatory surgical centers;
- Nursing homes;
- Assisted living facilities;
- Home health agencies;
- Nurse registries;
- Companion services or homemaker services providers;
- Adult day care centers;
- Hospices;

¹ Section 20.42, F.S.

² “Services that require licensure” means those services, including residential services, which require a valid license before those services may be provided in accordance with authorizing statutes and agency rules. Section 408.803(13), F.S.

³ Section 408.804(1), F.S.

⁴ The Agency for Health Care Administration, *About the Agency for Health Care Administration*, available at http://www.fdhc.state.fl.us/Inside_AHCA/index.shtml (last visited March 5, 2019).

- Adult family-care homes;
- Homes for special services;
- Transitional living facilities;
- Prescribed pediatric extended care centers;
- Home medical equipment providers;
- Intermediate care facilities for persons with developmental disabilities;
- Health care services pools;
- Health care clinics;
- Multiphasic health testing centers; and
- Organ, tissue, and eye procurement organizations.⁵

To obtain a license, each applicant must complete and submit an application to the AHCA.⁶ In addition to the application, each applicant and licensee⁷ must complete minimum licensure requirements in order to obtain and maintain a license.⁸ Among those is the requirement for the licensee to inform the client and his or her immediate family or representative of the right to report complaints, abusive, neglectful, or exploitative practices, and Medicaid fraud.

Additionally, the licensee must provide the client with the phone number to call depending on the type of issue experienced. To report a complaint, there is a statewide toll-free telephone number; to report abuse, neglect, or exploitation, the client must call the Department of Children and Families' (DCF) central abuse hotline (hotline); to report suspected Medicaid fraud, the client must call the central Medicaid fraud hotline.⁹

Failure to comply with licensure requirements is considered a violation, and could result in the imposition of an administrative fine. Violations are classified as either I, II, III, or IV, according to the nature of the violation and the gravity of its probable effect on clients. A violation may result in a fine regardless of whether or not the violation is corrected.¹⁰

Sexual Misconduct in Health Care

Sexual misconduct by health care practitioners adversely affects the public welfare and harms patients both individually and collectively. Such misconduct can cause both mental and physical harm to the patient and exploits the relationship between the patient and the health care professional.¹¹ Despite countless protections and policies in place in health care facilities, incidents of sexual abuse continue to occur in these settings.¹² In January 2018, a 23-year-old

⁵ Section 408.802, F.S.

⁶ Section 408.806, F.S.

⁷ "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the AHCA. The licensee is legally responsible for all aspects of the provider operation. Section 408.803(9), F.S.

⁸ Section 408.810, F.S.

⁹ Section 408.810(5), F.S.

¹⁰ Section 408.813, F.S.

¹¹ Federation of State Medical Boards, *Addressing Sexual Boundaries: Guidelines for State Medical Boards*, (May 2006), available at https://www.fsmb.org/siteassets/advocacy/policies/grpol_sexual-boundaries.pdf (last visited March 6, 2019).

¹² CMS.gov, *Protecting the Health and Safety of all Americans*, (March 5, 2019) available at <https://www.cms.gov/blog/protecting-health-and-safety-all-americans> (last visited March 6, 2019).

non-verbal, immobile woman was sexually assaulted and impregnated while under the care of a health care facility in Pensacola, Florida. Physical injuries to the woman and other signs of abuse were noticed and subsequently reported by employees of the school she attended. A lawsuit filed by the woman's family alleged that the health care facility in which she was being treated failed to report injuries to the hotline and failed to seek medical treatment.¹³

Sexual contact with a patient is considered sexual misconduct and is prohibited in the context of the patient-physician relationship.¹⁴ Currently, there are no sexual misconduct reporting requirements within facilities licensed by the AHCA. In contrast, an employee of the DCF who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person engaged in sexual misconduct, is required to immediately report the incident to the DCF's hotline and to the appropriate local law enforcement agency.¹⁵ Any person who fails to make such a report commits a first degree misdemeanor.¹⁶

Florida Abuse Hotline

The hotline is operated by the DCF and serves as the central reporting center for allegations of abuse, neglect, and/or exploitation for all children and vulnerable adults in the state.¹⁷ For purposes of the hotline, a child is any born, unmarried person less than 18 years of age who has not been emancipated by the court and a vulnerable adult is a person 18 years of age or older who has a disability or is suffering from the infirmities of aging.¹⁸ The hotline is tasked with assessing the information provided by the caller and determining if such information meets statutory criteria in order to require the DCF to conduct an investigation.¹⁹

III. Effect of Proposed Changes:

The bill requires each entity licensed by the AHCA to enact a policy requiring the reporting of sexual misconduct in its facility in order to maintain its license.

The bill defines "sexual misconduct" in the same manner as s. 394.4593(1), F.S., to mean any sexual activity between an employee and a patient, regardless of the consent of the patient. An act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee is not prohibited conduct within the definition.

Pursuant to the policy, any employee, contractor, volunteer, or intern of the licensee who witnesses sexual misconduct involving a patient in the care of the licensee, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct

¹³ WBTW News 13, *Lawsuit: Disabled woman sexually assaulted, impregnated at Florida health care facility*, (January 17, 2019), available at <https://www.wbtw.com/news/state-regional/lawsuit-disabled-woman-sexually-assaulted-impregnated-at-florida-health-care-facility/1708513002> (last visited March 6, 2019).

¹⁴ Fla. Admin. Code R. 64B-9.008 (1997). *See* s. 458.329, F.S.

¹⁵ Section 395.4593(5), F.S.

¹⁶ Section 395.4593(6), F.S.

¹⁷ Florida Department of Children and Families, *Abuse Hotline*, available at <https://www.dcf.state.fl.us/service-programs/abuse-hotline/> (last visited March 7, 2019).

¹⁸ Florida Department of Children and Families, *Abuse Hotline: How to Report – Definition for Reporting Abuse*, available at <https://www.dcf.state.fl.us/service-programs/abuse-hotline/report/definitions.shtml> (last visited March 7, 2019).

¹⁹ *Supra*, n 16.

involving a patient in the care of the licensee, must immediately report such misconduct to the licensee, the AHCA's toll-free complaint number, and the appropriate local law enforcement agency.

The bill also requires the person who reported the sexual misconduct to prepare an independent report, to the best of his or her ability, that describes the nature, location, and time of the incident, and the persons involved. The person who prepares such report must date and sign it and provide it to the licensee.

The bill provides the following penalties for:

- Failure of the licensee to enact or enforce the sexual misconduct policy required is a Class II violation as established in s. 408.813, F.S.;²⁰
- A person who is required to make a report and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a first degree misdemeanor;²¹
- A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a required report commits a first degree misdemeanor; and
- A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a third degree felony.²²

Current law requires reports about abuse, neglect, or exploitative practices by a person employed by the licensee to be reported to the DCF's hotline. However, the hotline is only tasked with accepting calls regarding children or vulnerable adults. Therefore, the bill changes this, to require such reports to be made to the AHCA's statewide toll-free complaint number.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation. Section 408.813(2)(b), F.S.

²¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of \$1,000, or both. Sections 775.082 and 775.083, F.S.

²² A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact for the bill is indeterminate at this time. However, private entities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill.

C. Government Sector Impact:

The fiscal impact for the bill is indeterminate at this time. However, public entities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 408.810 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 11, 2019:

The Committee Substitute:

- Requires reports of abusive, neglectful, exploitative practices, and sexual misconduct at a licensed health care facility to be made to the AHCA’s complaint number;
- Specifies that the sexual misconduct that is required to be reported is limited to conduct that occurs on a patient in the care of the licensee;
- Provides that the independent report is required to be completed by the person who made the sexual misconduct report to the best of his or her ability;
- Modifies the effective date of the bill to October 1, 2019; and
- Corrects a drafting error in the title.

- B. **Amendments:**

None.