

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 Health Policy

BILL: SB 780

INTRODUCER: Senator Gainer

SUBJECT: Health Care Licensing Requirements

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Brown	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 780 creates s. 456.0231, F.S., to grant physicians who are employees of the U.S. Department of Veterans Affairs (VA) an exemption from Florida’s physician licensure requirements for the purpose of authorizing such physicians to provide medical treatment to veterans in Florida-licensed hospitals without being licensed to do so, if such physicians submit specified proof and an attestation to the Florida Department of Health (DOH).

The bill has an effective date of July 1, 2020.

II. Present Situation:

Regulation of Health Care Practitioners in Florida

The DOH is responsible for the regulation of health care practitioners and certain health care facilities in Florida for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), working in conjunction with 22 boards and six councils, licenses and regulates seven types of health care facilities, and more than 200 license types, in over 40 health care professions.¹ Any person desiring to be a licensed health care professional in Florida must apply to the MQA in writing.² Most health care professions are regulated by a board or council in conjunction with the DOH, and all professions have different requirements for initial licensure and licensure renewal.³

¹ Florida Department of Health, Medical Quality Assurance, *Annual Report and Long Range Plan, 2018-2019*, available at: http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited Feb. 13, 2020).

² Section 456.013, F.S.

³ See chs. 401, 456-468, 478, 480, 483, 484, 486, 490, and 491, F.S.

Licensing of Florida Physicians

The regulation of the practices of medicine and osteopathic medicine fall under chapters 458 and 459, F.S., respectively. The practice acts for both professions establish the regulatory boards, a variety of licenses, the application process with eligibility requirements, and financial responsibilities for the practicing physicians. The boards have the authority to establish, by rule, standards of practice and standards of care for particular settings.⁴ Such standards may include education and training, medication including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.⁵

The current licensure application fee for a medical doctor is \$350 and is non-refundable. Applications must be completed within one year. If a license is approved, the initial license fee is \$355. The entire process may take from two to six months from the time the application is received.⁶

For osteopathic physicians, the current application fee is non-refundable \$200, and if approved, the initial licensure fee is \$305.⁷ Applications must be completed within one year. The entire process may take from two to six months from the time the application is received. If an applicant is licensed in another state, the applicant may request that Florida “endorse” the exam scores of the others states licensing exam. The applicant must demonstrate that the out of state license was issued based on those exam scores. The applicant must also show that the exam was substantially similar to any exam that Florida allows for licensure.⁸

The general requirements for licensure under both practice acts are very similar with the obvious differences found in the educational backgrounds of the applicants. However, the practice acts are not identical in their licensure offerings as shown in the table below which compares some of the contents of the two practice acts. Where the practice acts share the most similarities are the qualifications for licensure. Both the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM) require their respective applicants to meet these minimum qualifications:

- Complete an application form as designated by the appropriate regulatory board.
- Be at least 21 years of age.
- Be of good moral character.
- Have completed at least two years (medical) or three years (osteopathic) of pre-professional post-secondary education.
- Have not previously committed any act that would constitute a violation of this chapter or lead to regulatory discipline.

⁴ Sections 458.331(1)(v) and 459.015(1)(z), F.S.

⁵ *Id.*

⁶ Florida Board of Medicine, *Medical Doctor Unrestricted – Process*, available at: <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Feb. 13, 2020).

⁷ Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Fees*, available at: <https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/#tab-fees> (last visited Feb. 13, 2020).

⁸ Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure – Requirements*, available at: <https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure> (last visited Feb. 13, 2020).

- Have not had an application for a license to practice medicine or osteopathic medicine denied or a license revoked, suspended or otherwise acted upon in another jurisdiction by another licensing authority.
- Must submit a set of fingerprints to the DOH for a criminal background check.
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the applicant’s respective professional association.
- Demonstrate that she or he has successfully completed a resident internship (osteopathic medicine) or supervised clinical training (medical) of not less than 12 months in a hospital approved for this purpose by the applicant’s respective professional association.
- Demonstrate that he or she has obtained a passing score, as established by the applicant’s appropriate regulatory board, on all parts of the designated professional examination conducted by the regulatory board’s approved medical examiners no more than five years before making application to this state; or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than five years after the applicant obtained a passing score on the required examination.⁹

Statutory References for Practice Acts - Licensure		
Medical and Osteopathic Physicians: Chapters 458 and 459, F.S.		
Issue	Medical Physicians	Osteopathic Physicians
Regulatory Board	Board of Medicine s. 458.307, F.S.	Board of Osteopathic Medicine s. 459.004, F.S.
Rulemaking Authority	s. 458.309., F.S.	s. 459.005, F.S.
General Requirements for Licensure	s. 458.311, F.S.	s. 459.0055, F.S.
Licensure Types:		
<i>Restricted License</i>	s. 458.310, F.S.	No provision
<i>Restricted License Certain foreign physicians</i>	s. 458.3115, F.S.	No provision
<i>Licensure by Endorsement</i>	s. 458.313, F.S.	No provision
<i>Temporary Certificate (Approved Cancer Centers)</i>	s. 458.3135, F.S.	No provision
<i>Temporary Certificate (Training Programs)</i>	s. 458.3137, F.S.	No provision
<i>Medical Faculty Certificate</i>	s. 458.3145, F.S.	s. 459.0077, F.S.
<i>Temporary Certificate Areas of Critical Need</i>	s. 458.315, F.S.	s. 459.0076, F.S.
<i>Temporary Certificate Areas of Critical Need – Active Duty Military & Veterans</i>	s. 458.3151, F.S.	s. 459.00761, F.S.
<i>Public Health Certificate</i>	s. 458.316, F.S.	No provision
<i>Public Psychiatry Certificate</i>	s. 458.3165, F.S.	No provision

⁹ See ss. 458.311, F.S. and 459.0055, F.S.

Statutory References for Practice Acts - Licensure Medical and Osteopathic Physicians: Chapters 458 and 459, F.S.		
Issue	Medical Physicians	Osteopathic Physicians
<i>Limited Licenses</i>	s. 458.317, F.S.	s. 459.0075, F.S.
<i>Expert Witness</i>	s. 458.3175, F.S.	s. 459.0066, F.S.
License Renewal	s. 458.319, F.S. \$500/max/biennial renewal	s. 459.008, F.S.
Financial Responsibility <i>Condition of Licensure</i>	s. 458.320, F.S.	s. 459.0085, F.S.
Penalty for Violations	s. 458.327, F.S.	s. 459.013, F.S.

In Florida, to practice medicine an individual must become a licensed medical doctor through licensure by examination¹⁰ or licensure by endorsement.¹¹ Florida does not recognize automatically another state’s medical license or provide licensure reciprocity. Licensure by endorsement requires the medical physician to meet the following requirements:

- Be a graduate of an allopathic United States Medical School recognized and approved by the United States Office of Education (AMG) and completed at least one year of residency training;
- Be a graduate of an allopathic international medical school (IMG) and have a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate and completed an approved residency of at least two years in one specialty area; or
- Be a graduate who has completed the formal requirements of an international medical school except the internship or social service requirements, passed parts I and II of the National Board of Medical Examiners (NBME) or ECFMG equivalent examination, and completed an academic year of supervised clinical training (5th pathway) and completed an approved residency of at least two years in one specialty area.
- And both of the following:
 - Passed all parts of a national examination (the NBME; the Federation Licensing Examination offered by the Federation of State Medical Boards of the United States, Inc.; or the United States Medical Licensing Exam); and
 - Be licensed in another jurisdiction and actively practiced medicine in another jurisdiction for at least two of the immediately preceding four years; or passed a board-approved clinical competency examination within the year preceding filing of the application or; successfully completed a board approved postgraduate training program within two years preceding filing of the application.¹²

Financial Responsibility

As a condition of licensure all Florida-licensed allopathic physicians are required to maintain professional liability insurance or other financial responsibility to cover potential claims for medical malpractice as a condition of licensure, with specified exemptions.¹³ Physicians who perform surgeries in a certain setting or have hospital privileges must maintain professional

¹⁰ Section 458.311, F.S.

¹¹ Section 458.313, F.S.

¹² Florida Board of Medicine, *Medical Doctor-Unrestricted; Licensure by Endorsement*, available at: <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Feb. 13, 2020).

¹³ Section 458.320, F.S.

liability insurance or other financial responsibility to cover an amount not less than \$250,000 per claim.¹⁴ Physicians without hospital privileges must carry sufficient insurance or other financial responsibility in coverage amounts of not less than \$100,000 per claim.¹⁵ Certain physicians who are exempt from the requirement to carry professional liability insurance or other financial responsibility must provide notice to their patients.¹⁶

Florida-licensed osteopathic physicians have similar financial responsibility requirements as allopathic physicians¹⁷. With specified exceptions, the DOH must suspend, on an emergency basis, any licensed allopathic or osteopathic physician who fails to satisfy a medical malpractice claim against him or her within specified time frames.¹⁸

Disciplinary Process: Fines and Sanctions

Chapter 456, F.S., contains the general regulatory provisions for health care professions and occupations under the Division of Medical Quality Assurance (MQA) in the DOH. Section 456.072, F.S., specifies 40 acts that constitute grounds for which disciplinary actions may be taken against a health care practitioner. Section 458.331, F.S., identifies 43 acts that constitute grounds for which disciplinary actions may be taken against a medical physician and s. 459.015, F.S., identifies those acts which are specific to an osteopathic physician. Some parts of the review process are public and some are confidential.¹⁹

Complaints and allegations are received by the MQA unit for determination of legal sufficiency and investigation. A determination of legal sufficiency is made if the ultimate facts show that a violation has occurred.²⁰ The complainant is notified by letter as to the whether the complaint will be investigated and if any additional information is needed. Complaints which involve an immediate threat to public safety are given the highest priority.

The DOH is responsible for reviewing each report to determine if discipline against the provider is warranted.²¹ Authorization for the discipline of allopathic and osteopathic physicians can be found in state law and administrative rule.²² If held liable for one of the offenses, the fines and sanctions by category and by offense are based on whether it is the physician's first, second, or third offense.²³ The boards may issue a written notice of noncompliance for the first occurrence

¹⁴ Section 458.320(2), F.S.

¹⁵ Section 458.320(1), F.S.

¹⁶ Section 458.320(5)(f) and (g), F.S.

¹⁷ Section 459.0085, F.S.

¹⁸ Sections 458.320(8) and 459.0085(9), F.S.

¹⁹ Florida Department of Health, Division of Medical Quality Assurance, *Enforcement Process*, available at: http://www.floridahealth.gov/licensing-and-regulation/enforcement/_documents/enforcement-process-chart.pdf (last updated Nov. 2019) (last visited Feb. 13, 2020).

²⁰ Florida Department of Health, *Consumer Services – Administrative Complaint Process*, available at: <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Feb. 13, 2020).

²¹ See ss. 458.351(5) and 459.026(5), F.S.

²² See ss. 458.307 and 459.004, F.S., for the regulatory boards, and ss. 64B8-8 and 64B15-19, F.A.C., for administrative rules relating to disciplinary procedures.

²³ *Id.*

of a single minor violation.²⁴ The amount of fines assessed can vary depending on the severity of the situation, such as improper use of a substance to concealment of a material fact. A penalty may come in the form of a reprimand, a licensure suspension, or revocation followed by some designated period of probation if there is an opportunity for licensure reinstatement. Other sanctions may include supplemental continuing education requirements which require proof of completion before the license can be reinstated.

Disciplinary Process: Emergency Procedures

When a third report of a professional liability claim has been submitted, within a five-year period, against a licensed physician, the DOH is required to initiate an emergency investigation and the BOM or BOOM must conduct an emergency probable cause hearing to determine if a physician should be disciplined for committing medical malpractice, gross medical malpractice, or repeated medical malpractice.²⁵

Disciplinary Process: Physician's Consent

During an investigation of a complaint, every Florida-licensed physician is deemed to have given his or her consent to the following:²⁶

- To render a handwriting sample to an agent of the DOH and waive any objections to its use as evidence;
- To waive the confidentiality and authorize the preparation and release of medical reports, including symptoms, diagnosis, treatment prescribed, relevant history, and progress, pertaining to his or her mental or physical condition; and
- To waive any objection to the admissibility of the reports as constituting privileged communications.

The DOH may issue subpoenas *duces tecum*, requiring the names and addresses of some or all of the patients of a licensed physician against whom a complaint has been filed pursuant to s. 456.073, F.S.²⁷

Itemized Patient Billing

All licensed allopathic and osteopathic physicians are required, upon request, to provide to a patient an itemized statement of the specific services rendered and the charge for each service.²⁸

Florida Background Checks

Effective January 1, 2013, all applicants for initial physician licensure must undergo a Level 2 background screening²⁹ and use a Livescan provider³⁰ to submit a set of fingerprints to the Florida Department of Law Enforcement (FDLE) for the purpose of conducting a search for any Florida and national criminal history records that may pertain to applicant. The results of the search are returned to the Care Provider Background Screening Clearinghouse and made

²⁴ Sections 64B8-8.011 and 64B15-19.0065, F.A.C. A minor violation is deemed to not endanger the public health, safety, and welfare and does not demonstrate a serious inability to practice.

²⁵ See ss. 458.3311 and 459.0151, F.S.

²⁶ See ss. 458.339 and 459.017, F.S.

²⁷ See ss. 458.343 and 459.019, F.S.

²⁸ See ss. 458.323 and 459.012, F.S.

²⁹ Sections 435.04 and 458.311(1)(g), FS.

³⁰ Section 435.12, F.S.

available to the DOH for consideration during the licensure process. The fingerprints submitted by the applicant are retained by FDLE and the Clearinghouse. All costs for conducting a criminal history background screening are borne by the applicant.³¹

Applicants for physician licensure can use any FDLE-approved Livescan provider to submit their fingerprints. The applicant is fully responsible for selecting the service provider and ensuring the results are reported to the DOH. An applicant must use a DOH form available on its website and take it to the Livescan provider.³²

A physician licensed in Florida must undergo a Level 2 background screening every five years. Effective January 1, 2019, the fee to retain fingerprints within the Clearinghouse is \$43.25, plus minimal service fee. Once fingerprints have been retained by the Clearinghouse, they are good for five years. Clearinghouse renewals can only be requested within a specific timeframe that is based on the retained print expiration date.

VA Practitioners in Florida

Health care practitioners practicing in VA facilities in Florida are not required to be licensed in Florida. In order for a practitioner to practice at any VA facility, the VA requires the practitioner to have an active, unrestricted license from any state.³³ Thus, a VA health care practitioner may treat any veteran in a VA facility located in Florida, regardless of the state of licensure. However, a VA practitioner may not provide medical services to any patient, veteran or otherwise, outside of a VA facility unless he or she holds a Florida license. If a VA practitioner is not licensed in Florida and provides such services outside a VA facility, the practitioner could be prosecuted for the unlicensed practice of a health care practitioner.

VA Background Checks

All VA employees are subject to an evaluation process for the purpose of determining their suitability for work through a background investigation process. The level of investigation is determined by the sensitivity of the position in question, which is then rated as low, moderate, or high risk. At a minimum, VA employees should receive a Tier 1 investigation to verify that the individual is suitable for employment. Most medical facility staff, including physicians, nurses, pharmacists, and laboratory technicians, are required to receive this type of investigation.³⁴

In March 2018, the VA Office of Inspector General published the findings of an investigation conducted to evaluate controls over the adjudication of background investigations at VA medical facilities for the five-year period ending September 30, 2016. The report included the following:³⁵

³¹ Florida Board of Medicine, *Board of Medicine, Medical Doctor – Licensure Requirements*, available at: <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Feb. 13, 2020).

³² *Id.*

³³ U.S. Department of Veterans Affairs, *Navigating the Hiring Process*, available at: <https://www.vacareers.va.gov/ApplicationProcess/NavigatingHiringProcess> (last visited Feb. 13, 2020).

³⁴ VA Office of Inspector General, *Veterans Health Administration, Audit of Personnel Suitability Program*, p. 1, available at: <https://www.va.gov/oig/pubs/VAOIG-17-00753-78.pdf> (last visited Feb. 13, 2020).

³⁵ *Id.* pp. i-ii

- The VA did not provide effective governance of the personnel suitability program necessary to ensure that background investigation requirements were met at medical facilities nationwide;
- While background investigations were required for most medical facility staff, about 6,200 employees who were working at the facilities did not have a background investigation initiated, including health care practitioners who were employed to provide direct patient care to veterans;³⁶
- VA adjudicators had not been reviewing background investigations timely, and suitability program staff were not maintaining official personnel records as required;
- The VA office responsible for evaluating compliance with personnel suitability program requirements, including the background investigation process, lacked sufficient staff to conduct regular oversight;
- The VA personnel suitability program was allowed to operate unmonitored and without assurance that background investigations were properly initiated and adjudicated; and
- The VA could not reliably attest to the suitability of its largest workforce, thereby exposing veterans and employees to individuals who have not been properly vetted.

III. Effect of Proposed Changes:

SB 780 creates s. 456.0231, F.S., to grant physicians who are employees of the VA an exemption from Florida's physician licensure requirements when providing medical treatment to veterans in a Florida-licensed hospital, if such physicians meet certain criteria and furnish specified documentation to the DOH.

The bill defines "physician" as a person who holds an active, unencumbered license to practice allopathic medicine or osteopathic medicine issued by another state; the District of Columbia; or a possession, commonwealth, or territory of the United States.

To be exempt from Florida licensure requirements pertaining to medical doctors under ch. 458, F.S., or osteopathic physicians under ch. 459, F.S., such a physician must submit the following to the DOH:

- Proof that the physician holds an active, unencumbered license to practice allopathic medicine or osteopathic medicine, as applicable, issued by another state; the District of Columbia; or a possession, commonwealth, or territory of the United States;
- Proof of current employment with the VA; and
- An attestation that he or she will only provide medical services:
 - To veterans.
 - Pursuant to his or her employment with the VA.
 - In Florida-licensed hospitals.

The bill requires the DOH to notify the physician within 15 business days after receipt of the proof and attestation described above that the physician is exempt.

The bill authorizes the DOH to adopt rules to administer the bill's provisions.

³⁶ *Id.* p. 4

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 780 may provide an avenue for veterans who do not live near a VA facility and/or face transportation problems with getting to a VA facility, to receive medical services from VA physicians at a Florida-licensed hospital that is more accessible.

C. Government Sector Impact:

The bill may increase the workload on DOH staff due to the need to process the exemptions authorized under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is entitled, “An act relating to health care licensing requirements,” but the bill’s effects are limited to the creation of a licensure *exemption* that may be issued to certain *physicians* to allow them to practice medicine in Florida hospitals without being licensed by the State of

Florida to do so. The bill's title could apply to any licensed health care practitioner or any licensed health care facility and does not seem to adequately represent the bill's effects.

Under the bill, individuals exempt from the licensure requirements of chs. 458 and 459, F.S., will also be exempt from the BOM and BOOM standards of practice. Under current law, the BOM and BOOM have the authority to investigate and discipline licensed physicians. Under the bill, certain physicians will not have a Florida license; therefore, the boards would not have authority or jurisdiction to discipline physicians that are exempt under the bill. If physicians who are exempt under this bill fail to meet the standard of care or cause patient harm, it does not appear that Florida will have the authority to discipline these physicians, and it is unknown if the state or territory where they have an active license would have jurisdiction.

A physician may have a license in multiple states. Under the bill, as long as a physician has an active, unencumbered license in one state or territory, he or she would be able to practice in Florida hospitals, even if there were extensive disciplinary actions in other states. Checking previous disciplinary actions in other states is part of Florida's licensing process, which will not apply under the bill.

There are also a wide range of statutory and regulatory requirements throughout the Florida Statutes that apply only to physicians licensed under Florida law. Examples include provisions on kickbacks, required disclosures to patients, reporting of adverse incidents, and other reporting requirements. Since physicians exempted under the bill would be unlicensed, it appears that they would not be subject to any of those provisions.

Each physician exempted from licensure under the bill will result in a deferral of criminal background checks and fingerprinting, which would normally occur before a physician is allowed to practice in the state outside of a VA facility. Therefore, a physician exempted under the bill who has committed a Florida-licensure disqualifying offense may still be able to practice in Florida hospitals under the bill.

The bill provides that physicians employed by the VA can become exempt from Florida's physician licensure statutes and that the DOH must notify them of their exemption upon the receipt of specified documentation. However, the bill does not provide any circumstances for such an exemption to expire or be revoked for any reason. The bill is silent as to whether an exemption remains in effect after the physician is no longer employed by the VA or is no longer licensed to practice medicine by another state, the District of Columbia, or a possession, commonwealth, or territory of the United States.

The bill provides that as a condition of receiving the exemption, a physician must attest that he or she will only provide medical services to veterans, pursuant to his or her employment with the U.S. Department of Veterans Affairs, in Florida-licensed hospitals. However, because the bill does not authorize the DOH to revoke an exemption for any reason, the physician could technically remain exempt from Florida's physician licensure requirements, regardless of whether he or she abides by the attestation, with no expiration date for the exemption.

On lines 25-39, the bill requires a physician seeking exemption to submit the proof and attestation described above. However, the bill provides no guidance to the DOH regarding what

constitutes such proof or what form the attestation must take. The bill also provides the DOH no specific authority to deny a person the exemption for any reason, including inadequate proof or an inadequate attestation.

VIII. Statutes Affected:

This bill creates section 456.0231 of the Florida Statutes.

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.

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