

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1568

INTRODUCER: Senator Rodriguez

SUBJECT: Department of Health

DATE: March 29, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke/Rossitto Van-Winkle	Brown	HP	<b>Pre-meeting</b>
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1568 address numerous health care-related issues regulated by the Department of Health (DOH).

The bill updates the “Targeted Outreach for Pregnant Women Act of 1998.” The bill also amends statutes regulating several types of health care practitioners. The bill:

- Updates ch. 467, F.S., relating to midwifery, by removing duplicative or obsolete language and duplicative rulemaking authority and clarifying language regarding preceptorships, approval of midwifery programs, and minimum standards.
- Amends ss. 490.003, 490.005, and 490.051, F.S., to clarify the educational requirements for psychologists applying for licensure by examination or endorsement;
- Amends s 491.005, regarding mental health counselors to update educational requirements and authorize a licensed mental health professional to be available by phone or other electronic methods when clinical services are being provided by a registered intern by telehealth methods; and
- Amends ss. 460.406, 468.803, 483.824, 490.005, F.S., to deletes references to the term “regional” and replace it with the term “institutional” to conform with the U.S. Department of Education accreditation nomenclature for approving educational institutions.

SB 1568 amends and creates multiple sections of the Florida statutes related to the DOH’s regulation of Onsite Sewage Treatment and Disposal Systems (OSTDS). The bill:

- Amends s. 381.0061, F.S., as amended by s. 41 of ch. 2020-150, Laws of Florida to strike DOH’s authority to assess fines related to OSTDS and septic tank contracting. The regulation of these programs will transfer to the Department of Environmental Protection (DEP) on July 1, 2021.<sup>1</sup>

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<sup>1</sup> Chapter 2020-150, Laws of Fla.

- Creates s. 381.00635, F.S., to authorize the DOH to issue an order requiring a correction to improper conditions of any private or public water system not covered or included in the Florida Safe Drinking Water Act<sup>2</sup> which constitutes a nuisance or menace to public health.
- Amends s. 381.0064, F.S., as amended by s. 42 of ch. 2020-150, Laws of Florida to eliminate a cross-reference which will become obsolete when regulation of OSTDS transfers to the DEP on July 1, 2021.
- Amends s. 381.0067, F.S., to eliminate DEP authority over public and private water systems not included in the Florida Safe Drinking Water Act, the regulation of which is retained by the DOH.
- Amends s. 381.0101, F.S., as amended by s. 44 of ch. 2020-150, Laws of Florida to retain the requirement that onsite evaluations of OSTDS be done by certified environmental health professionals.

The bill also amends s. 381.986, F.S., related to the medical use of marijuana to:

- Allow the DOH to collect samples of marijuana and marijuana delivery devices from a medical marijuana treatment center (MMTC) for specified testing. Currently, the DOH may only collect samples of edibles.
- Expand MMTC recall requirements to all marijuana products, rather than only edibles.
- Provide an exception from criminal laws for DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices.

The bill provides an effective date of July 1, 2021.

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<sup>2</sup> Part VI of ch. 403, F.S.

## II. Present Situation:

### Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.<sup>3</sup> Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.<sup>4</sup>



Until July 1, 2021, the DOH administers OSTDS programs, develops statewide rules, and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.<sup>5</sup> DOH regulations focus on construction standards and setback distances. The DOH also conducts research to evaluate performance, environmental health, and public health effects of OSTDSs. Innovative OSTDS products and technologies must be approved by the DOH.<sup>6</sup>

<sup>3</sup> DOH, *Septic System Information and Care*, available at <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited March 25, 2021); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited March 25, 2021) (showing the graphic provided in the analysis.)

<sup>4</sup> *Id.*

<sup>5</sup> Section 381.0065(3), F.S.

<sup>6</sup> Section 381.0065(3), F.S.

The DOH and the DEP have an interagency agreement that standardizes procedures and clarifies responsibilities between them regarding the regulation of OSTDSs.<sup>7</sup> The DEP has jurisdiction over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless the DOH grants a variance).<sup>8</sup> In all other circumstances, the DOH regulates OSTDSs.

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.<sup>9</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>10</sup> For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.<sup>11</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>12</sup>

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.<sup>13</sup> This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.<sup>14</sup>

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “nutrient-reducing” septic systems).<sup>15</sup> The DOH publishes on its website approved products and resources on advanced systems.<sup>16</sup> Determining which advanced system is the best option can depend on site-specific conditions.

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<sup>7</sup> *Interagency Agreement between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems* (Sept. 30, 2015), available at [https://floridadep.gov/sites/default/files/HOHOSTDS\\_9\\_30\\_15.pdf](https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf)

<sup>8</sup> *Id.* at 6-13; s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, available at <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited March 25, 2021).

<sup>9</sup> DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited March 25, 2021).

<sup>10</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> p. 59 (last visited March 25, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf> (last visited March 25, 2021) See Fla. Admin. Code R. 64E-6.006(2).

<sup>14</sup> University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited March 25, 2021).

<sup>15</sup> DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf> (last visited March 25, 2021).

<sup>16</sup> DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html> (last visited March 25, 2021).

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.<sup>17</sup> Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DOH.<sup>18</sup>

The Blue-Green Algae Task Force made the following recommendations relating to OSTDSs:

- The DEP should develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health.
- More post-permitting septic tank inspections should take place.
- Protections for vulnerable areas in the state should be expanded.
- Additional funding to accelerate septic to sewer conversions.<sup>19</sup>

### **Chapter 2020-150, Laws of Florida**

In 2020, the Legislature passed ch. 2020-150, Laws of Florida to respond to recommendations from the Blue-Green Algae Task Force. Regarding OSTDSs, the law:

- Transfers the regulation of OSTDSs from the DOH to the DEP.
- Directs the DEP to adopt rules to locate OSTDSs by July 1, 2022:
  - These rules will take into consideration conventional and advanced OSTDS designs, impaired water bodies, wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and the recommendations of an OSTDS technical advisory committee;
  - Once those rules are adopted, they will supersede the existing statutory requirements for setbacks.
- To meet the requirements of a TMDL, the law requires DEP to implement a fast-track approval process for the use in this state of American National Standards Institute 245 systems approved by NSF International before July 1, 2020.
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and the Legislature regarding the regulation of OSTDSs.
- Requires local governments to develop OSTDS remediation plans within BMAPs if the DEP determines that OSTDSs contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.<sup>20</sup>

### **Targeted Outreach for Pregnant Women**

The Targeted Outreach for Pregnant Women Act (TOPWA) was enacted by the Florida Legislature in 1998. The TOPWA program is designed to establish targeted outreach to high-risk pregnant women who may not be receiving proper prenatal care, who suffer from substance abuse problems, or who may be infected with the human immunodeficiency virus (HIV). The

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<sup>17</sup> Section 381.00655, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf) (last visited March 25, 2021).

<sup>20</sup> Analysis of CS/CS/SB 712 (Feb. 24, 2020), available at <https://www.flsenate.gov/Session/Bill/2020/712/Analyses/2020s00712.ap.PDF> (last visited, March 25, 2021).

goal of the program is to provide these high-risk pregnant women with referrals for information and services.

In 2019, there were 453 HIV-exposed births in Florida. Without proper care for both mother and newborn, each of these births risks vertical transmission. The TOPWA supports outreach programs aimed at preventing vertical HIV transmission and other health issues by linking high-risk pregnant women with services that can help them have healthier pregnancies and deliveries and can aid them in ensuring their newborn gets a healthy start.<sup>21</sup>

Many of the women targeted by TOPWA programs would not otherwise receive prenatal care or know their HIV status. In 2019, there were seven TOPWA programs in Florida. The TOPWA programs, which are funded through General Revenue (GR) dollars and grant funds from the federal Centers for Disease Control and Prevention (CDC), provided services to 7,703 women from January 2016 to July 2020. Women living with HIV made up just under 10 percent of TOPWA program enrollments.<sup>22</sup>

If a pregnant woman tests positive for HIV, medical interventions and prevention, such as the following, can greatly reduce her risk of transmitting the virus to her baby during childbirth:

- Antiretroviral medication to the mother;
- Delivery by caesarian section;
- Avoiding breastfeeding; and
- Antiretroviral medication to the newborn.<sup>23</sup>

### **Chiropractic Licensure**

The “practice of chiropractic medicine” is a non-combative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and treatment of the human body to restore the normal flow of nerve impulse which produces normal function and health by chiropractic physicians using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by the Council on Chiropractic Education.

Section 460.406, F.S., requires:

- An applicant matriculating in a chiropractic college after July 1, 1990, to hold a bachelor’s degree awarded by a college or university accredited by a regional accrediting agency recognized and approved by the U.S. Department of Education; and
- An applicant after July 1, 2000, to complete, prior to matriculating in a chiropractic college, a bachelor’s degree from a college or university accredited by a regional accrediting agency recognized and approved by the U.S. Department of Education.

The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published in that year omit references to “regional” and “national” accreditation. The letter specifies that “[b]ecause the Department holds all accrediting agencies

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<sup>21</sup> Section 381.0045(2), F.S.

<sup>22</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis* (Mar, 12, 2021) (on file with the Senate Committee on Health Policy.)

<sup>23</sup> *Id.*

to the same standards, distinctions between regional and national accrediting agencies are unfounded.” Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.

### **Nurse Midwifery**

“Midwifery” is the practice of supervising the conduct of a normal labor and childbirth, with the informed consent of the parent; the practice of advising the parents as to the progress of the childbirth; and the practice of rendering prenatal and postpartal care.<sup>24</sup>

Chapter 467, F.S., is the Midwifery Practice Act. Any person who seeks to practice midwifery in Florida must be at least 21 years of age and:

- Licensed under s. 464.012, F.S., as an APRN nurse midwife; or
- Licensed as a midwife under ch. 467, F.S.

Section 467.009, F.S., governs midwifery programs and education and training requirements which are a minimum of three years in an approved program. An applicant must have:

- A high school diploma or the equivalent.
- Taken at least three college-level credits such as math and English.

It is unclear under current law whether both a high school diploma and three college level credits are required for admission, or whether one or the other will satisfy the admission requirement.

Section 467.009, F.S., also requires a student midwife, during training, to undertake the care of 50 women in each of the prenatal, intrapartal, and postpartal periods, and observe an additional 25 women in the intrapartal period under the supervision of a preceptor, but the same women need not be seen through all periods. Prenatal, intrapartal, and postpartal periods are not defined and the statute is unclear as to whether this requires 150 patients prenatal, intrapartal, and postpartal periods, or just 50 in any one of the three phases of pregnancy and delivery. The statute is also unclear as to whether the two references to intrapartal care and observation may be the same patient or require different patient contacts.

Section 467.009, F.S., uses the terms, “applicant” and “student midwife” interchangeably, which is inaccurate. These sections frame standards for admission, education, and clinical training in the context of student requirements. Preceptors direct, teach, supervise, and evaluate the learning experiences of the student midwife and may be physicians, licensed midwives, or a certified nurse midwife, who have a minimum of three years professional experience.<sup>25</sup> Persons with previous midwifery education, RNs, and LPNs may have a reduced training period, but in no case less than two years.

Chapter 467.009, F.S., does not include any provisions explicitly allowing a new midwifery program to be provisionally approved nor does it provide guidance to schools regarding the circumstances under which the DOH may rescind the approval of program.

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<sup>24</sup> Section 467.003(8), F.S.

<sup>25</sup> Section 467.003(12), F.S.

Section 467.011, F.S., licensure by examination, requires the DOH to:

- Administer the licensure examination to test the proficiency of applicants in the core competencies required to practice midwifery as specified in s. 467.009, F.S.;
- Develop, publish, and make available to interested parties at a reasonable cost a bibliography and guide for the examination; and
- Issue a license to practice midwifery to an applicant who has graduated from an approved midwifery program, successfully completed the examination, and paid a licensure fee.

The DOH no longer administers midwifery examinations, and, pursuant to s. 456.017(c), F.S., the DOH has approved the use of a national examination for midwives seeking to become licensed.<sup>26</sup>

In lieu of examination, an applicant may apply for a license by endorsement based on verification that the applicant holds a current valid license to practice in another jurisdiction that has equivalent or more stringent licensure requirements than those in Florida.<sup>27</sup>

A midwife may only accept and provide care for those women who are expected to have a normal pregnancy, labor, and delivery and must ensure that:

- The patient has signed an informed consent form; and
- If the patient is delivering at home, the home is safe and hygienic.

The statute does not define “normal delivery,” “low risk pregnancy,” or “high risk pregnancy.”

A midwife licensed under ch. 467, F.S., may administer the following:

- Prophylactic ophthalmic medication;
- Oxygen;
- Postpartum oxytocin;
- Vitamin K;
- Rho immune globulin (human); and
- Local anesthetic and other medications prescribed by practitioner.<sup>28</sup>

A midwife’s care of mothers and infants throughout the prenatal, intrapartal, and postpartal periods must be in conformity with DOH rules and the public health laws of this state. The midwife must:

- Prepare a written plan of action with the family to ensure continuity of medical care throughout labor and delivery and to provide for immediate medical care if an emergency arises;
- Instruct the patient and family regarding the preparation of the environment and ensure availability of equipment and supplies needed for delivery and infant care;
- Instruct the patient in the hygiene of pregnancy and nutrition as it relates to prenatal care;
- Maintain equipment and supplies;

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<sup>26</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis -Midwifery* (July 16, 2020) (on file with the Senate Committee on Health Policy.)

<sup>27</sup> Section 467.0125, F.S.

<sup>28</sup> Section 467.015, F.S.



- Determine the progress of labor and, when birth is imminent, be immediately available until delivery is accomplished and must:
  - Maintain a safe and hygienic environment;
  - Monitor the progress of labor and the status of the fetus;
  - Recognizing early signs of distress or complications; and
  - Enact the written emergency plan when indicated;
- Remain with the postpartal mother until the conditions of the mother and the neonate are stabilized; and
- Instill into each eye of the newborn infant a prophylactic in accordance with s. 383.04, F.S.

Section 467.0125, F.S., also includes provisions for licensure by endorsement and temporary certification of a midwife who is qualifying for endorsement to practice in an area of critical need. This statute defines the term “area of critical need” differently from every other profession which has temporary certification that allows practice in an area of critical need. In addition, the current provisions for temporary certification of midwives require revocation if the area in which they practice loses its designation as an area of critical need.

Section 467.205, F.S., provides that any accredited or state-licensed institution of higher learning, public or private, may provide midwifery education and training. The statute sets out the DOH approval requirements for programs desiring to conduct an approved midwifery education program. Under the application and recertification process:

- The applicant must submit evidence of the program’s compliance with the requirements in s. 467.009, F.S.
- The DOH must survey the organization applying for approval. If the department is satisfied that the program meets the requirements of s. 467.009, F.S., it must approve the program.
- The DOH must certify whether each approved midwifery program complies with the standards developed under s. 467.009, F.S., at least every three years.
  - If the DOH finds that an approved program no longer meets the required standards, it may place the program on probation until such time as the standards are restored.
  - If a program fails to correct these conditions within a specified period of time, the department may rescind the approval.
  - Any program having its approval rescinded has the right to reapply.
- Provisional approval of a new program may be granted pending the licensure results of the first graduating class.

### **Practice of Orthotics, Prosthetics, and Pedorthics**

The practice of Orthotics, Prosthetics, and Pedorthics is governed by part XIV of ch. 468, F.S., and all three professions have to do with evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.<sup>29</sup>

Section 468.803, F.S., provides minimum qualifications for licensure to practice orthotics, prosthetics, and pedorthics. Each profession includes the requirement of completion of a program from a “regionally accredited” institution. The U.S. Department of Education issued a letter of

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<sup>29</sup> Section 468.80, F.S.

guidance on February 26, 2020, specifying that final regulations published that year omit references to “regional” and “national” accreditation. The letter specifies, “Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded.” Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.

Section 468.803 (2)(a), F.S., requires an applicant for licensure to as submit to the DOH, along with the application, the fingerprint forms and to pay the cost of the state and national criminal history checks. The DOH no longer collects forms or fees from applicants to process the initial criminal history check for licensure. Applicants are required to complete fingerprinting electronically through independent vendors and provide an originating agency identifier number specific to the profession for the results to be submitted to the DOH. If a criminal history is indicated, the Board of Orthotists and Prosthetists will review the application for consideration of licensure.<sup>30</sup>

### **Clinical Lab Personnel**

Part I of ch. 483, F.S., regulates clinical laboratory personnel. “Clinical laboratory personnel” includes a clinical laboratory director, supervisor, technologist, blood gas analyst, or technician who performs or is responsible for laboratory test procedures, but the term does not include trainees, persons who perform screening for blood banks or plasmapheresis centers, phlebotomists, or persons employed by a clinical laboratory to perform manual pretesting duties or clerical, personnel, or other administrative responsibilities.<sup>31</sup>

Section 483.824(2), F.S., requires the doctoral degree held by a clinical laboratory director be from a regionally-accredited institution in a chemical, physical, or biological science.

The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to “regional” and “national” accreditation. The letter specifies, “[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded.” Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.<sup>32</sup>

### **Psychologists**

Chapter 490, F.S., regulates the practice of psychology by psychologists. “Psychologist” is a person licensed by examination under s. 490.005(1), F.S., or endorsement under s. 490.006, F.S.

Section 390.003, F.S., defines a “doctoral-level psychological education” and “doctoral degree in psychology” as of July 1, 1999, to include a Psy.D., an Ed.D. in psychology, or a Ph.D. in

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<sup>30</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 15, 2020) (on file with the Senate Committee on Health Policy.)

<sup>31</sup> Section 483.803(4), F.S.

<sup>32</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis - Clinical Lab Personnel* (July 16, 2020) (on file with the Senate Committee on Health Policy.)

psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated:

- Had institutional accreditation from an agency recognized and approved by the U.S. Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and
- Had programmatic accreditation from the American Psychological Association.

Section 490.005, F.S., provides that any person desiring to be licensed by examination as a psychologist must apply to the DOH to take the licensure examination. The DOH will license each applicant who the Board of Psychology (BOP) certifies has:

- Completed an application and submitted a fee;
- Submitted proof satisfactory to the BOP that the applicant has received:
  - Doctoral-level psychological education; or
  - The equivalent of a doctoral-level psychological education, from a program at a school or university located outside the U.S.;
  - Had at least two years or 4,000 hours of experience in the field of psychology; and
  - Passed the licensing examination.

Section 490.0051, F.S., also requires the DOH to issue a provisional psychology license to each applicant who the BOP certifies has:

- Completed the application form and paid the fee;
- Earned a doctoral degree in psychology as defined in s. 490.003(3); and
- Met any additional requirements established by BOP rule.

Provisional licensees must practice under the supervision of a licensed psychologist until the provisional licensee receives a license or a letter from the DOH stating that he or she is licensed as a psychologist. A provisional license expires 24 months after the date it is issued and may not be renewed or reissued.

### **Mental Health Professionals**

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.<sup>33</sup>

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for

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<sup>33</sup> Section 491.0046, F.S.

which he or she is seeking licensure before commencing the practicum, internship, or field experience.<sup>34</sup>

Section 491.005(1), F.S., relates to licensure by examination for social workers. Section 491.005(3), F.S., relates to licensure by examination for marriage and family therapists. Section 491.005(4), F.S., relates to licensure by examination for mental health counselors.

### ***Marriage and Family Therapy – Minimum Educational Requirements***

During the 2020 Legislative Session, s. 491.0045, F.S., was amended to revise the minimum requirements for licensure as a marriage and family therapist to include graduation from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP). The minimum requirement for licensure revision was effective July 1, 2020.

Currently, there are six universities in Florida with a marriage and family program that is not accredited by either COAMFTE or CACREP, they are: Carlos Albizu, Jacksonville University, Palm Beach Atlantic University, St. Thomas University, University of Miami, and University of Phoenix. As a result, students who are presently enrolled in a marriage and family program at one of the specified universities will not meet minimum requirements for Florida licensure upon graduation, although the programs did meet the requirements at the time of enrollment.<sup>35</sup>

### ***Registered Interns – Licensed Professional on Premises***

As documented in the DOH Annual Report and Long-Range Plan, Fiscal Year 2018-2019, there are 13,474 registered mental health interns in Florida. To qualify as a registered intern, the applicant must have completed a master's or doctoral degree in a clinical counseling field and a practicum including face-to-face psychotherapy (clinical-level therapy sessions) under direct supervision of a licensed practitioner. Some registered interns may also complete internships prior to graduation. Registered interns routinely provide counseling and psychotherapy including the use of methods to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders, behavioral disorders, interpersonal relationships, and addictions.

Psychotherapy and counseling may be provided in a variety of settings. Registered interns provide services at facilities including, but not limited to:

- Crisis Centers – e.g. suicide prevention programs, shelters for abuse victims, child endangerment response;
- Inpatient and outpatient behavioral health centers;
- Private practice settings;
- Hospitals;
- Hospice; and
- Rehabilitation centers.

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<sup>34</sup> Section 491.0045, F.S.

<sup>35</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis - Mental Health Professionals* (July 15, 2020) (on file with the Senate Committee on Health Policy.)

Registered interns are required to complete 1,500 face-to-face psychotherapy hours prior to applying for full licensure. The face-to-face psychotherapy hours must be completed within five years. Registered interns are a force multiplier to increase the number of educated and prepared mental health practitioners to manage growing mental health concerns and currently provide these services in a variety of face-to-face settings.

In accordance with s. 491.005, F.S., registered interns are required to have a licensed professional on the premises during counseling sessions. The licensed professional is not required to be in the counseling room observing the session, but must be on the premises to provide oversight, guidance, and evaluation. This provision ensures that registered interns have a licensed professional readily available, if necessary, during a therapeutic session and to restrict registered interns from operating an independent practice without direct oversight available.

In response to the COVID-19 pandemic, the board revised Rule 64B4-2.002 of the Florida Administrative Code, defining supervision, to authorize registered interns to provide face-to-face psychotherapy by electronic methods (telehealth) if the intern establishes a written telehealth protocol and safety plan with their qualified supervisor. The protocol must include a provision that the supervisor remain readily available during electronic therapy sessions and that the registered intern and their qualified supervisor have determined that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient, is necessary to protect the health, safety, or welfare of the patient, and does not violate any existing statutes.<sup>36</sup>

### ***Regional Accreditation***

The minimum qualifications for licensure specified in s. 491.005(3), F.S. includes the requirement of completion of a graduate program from a “regionally accredited body recognized by the Commission on Recognition of Postsecondary Accreditation.” The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to “regional” and “national” accreditation. The letter specifies, “Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded.” Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.<sup>37</sup>

### ***Department Examination***

The DOH has discontinued the practice of conducting examinations or purchasing examinations for licensure. Applicants are presently responsible for coordinating the completion of an examination with an approved vendor and submitting passing scores to the board to meet minimum qualifications. Current statutory references to the department collecting fees for examinations or conducting examinations is not consistent with current practice.<sup>38</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

## **Medical Marijuana**

### ***Amendment 2***

On November 4, 2016, Amendment 2 was voted into law and established Article X, section 29 of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients who medically use marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs) and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the DOH.

### ***Implementation***

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.<sup>39</sup> The bill revised the Compassionate Medical Cannabis Act of 2014<sup>40</sup> in s. 381.986, F.S., to implement Article X, section 29 of the State Constitution.

### ***Testing Marijuana and Exemption from Criminal Offenses***

Pursuant to section 381.986(8)(11)d., F.S., the DOH may select a random sample from edibles available for purchase in an MMTC's DOH-approved dispensing facility for testing. The DOH must test the random samples for potency, safety for human consumption, accuracy of Tetrahydrocannabinol (THC) and Cannabidiol (CBD) labeling.

MMTCs are required to recall all edibles, including all edibles made from the same batch of marijuana, which fail to meet potency requirements, which are unsafe for human consumption, or for which the labeling of the THC and CBD concentration is inaccurate.

Presently, the DOH and its employees are not expressly exempt from criminal prosecution under ss. 893.13, 893.135, and 893.147, F.S., when acquiring, possessing, testing, transporting, and disposing of marijuana and delivery devices under certain circumstances when acting within the scope of their duties.<sup>41</sup>

## **III. Effect of Proposed Changes:**

### **Onsite Sewage Treatment and Disposal Systems**

SB 1568 amends and creates multiple sections of the Florida statutes related to the DOH regulation of OSTDS. The bill:

- Amends s. 381.0061, F.S., as amended by s. 41 of ch. 2020-150, Laws of Florida to strike DOH's authority to assess fines related to OSTDS and septic tank contracting. The regulation of these programs will transfer to the DEP on July 1, 2021.<sup>42</sup>

<sup>39</sup> Chapter 2017-232, Laws of Fla.

<sup>40</sup> Chapter 2014-157, Laws of Fla.

<sup>41</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).

<sup>42</sup> Chapter 2020-150, Laws of Fla.

- Creates s. 381.00635, F.S., to authorize the DOH to issue an order requiring a correction to improper conditions of any private or public water system not covered or included in the Florida Safe Drinking Water Act<sup>43</sup> which constitutes a nuisance or menace to public health.
- Amends s. 381.0064, F.S., as amended by s. 42 of ch. 2020-150, Laws of Florida to eliminate a cross-reference which will become obsolete when regulation of OSTDS transfers to the DEP on July 1, 2021.
- Amends s. 381.0067, F.S., to eliminate DEP authority over public and private water systems not included in the Florida Safe Drinking Water Act, the regulation of which is retained by the DOH.
- Amends s. 381.0101, F.S., as amended by s. 44 of ch. 2020-150, Laws of Florida to retain the requirement that onsite evaluations of OSTDS be done by certified environmental health professionals.

### **Targeted Outreach for Pregnant Women**

SB 1568 amends s. 381.0045, F.S., to:

- Add pregnant women who are suffering from mental health problems to the list of outreach targets;
- Encourage high risk pregnant women to get tested for other sexually transmissible diseases, as well as HIV, per DOH rule;
- Provide pregnant women with information on:
  - The need for antiretroviral medications, deleting reference to a single type of antiretroviral (AZT), for themselves and their newborn; and
  - How to access antiretroviral medications after discharge from the hospital;
- Link women to mental health services; and
- Require additional follow up for HIV-exposed newborns to determine final HIV status and ensure continued linkages to care, if needed.

### **Chiropractic Licensure**

The bill amends s. 460.406, F.S., to delete references to the term “regional” and replaces it with the term “institutional” to conform with the U.S. Department of Education accreditation nomenclature for approving educational institutions.

### **Nurse Midwifery**

The bill:

- Amends the definition of “preceptor” to clearly define that role in the midwifery education process. Specifically, it explicitly states that a preceptor may not supervise an individual as a midwifery student unless the student has been enrolled in an approved midwifery program;
- Defines “pre-licensure course” to mean a course of study, offered by an approved midwifery program and approved by the DOH, which an applicant for licensure must complete before a license may be issued and which provides instruction in the laws and rules of this state and demonstrates the student’s competency to practice midwifery;

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<sup>43</sup> Part VI of ch. 403, F.S.

- Clarifies language to promote consistency in terminology and that midwifery programs must incorporate all required standards, guidelines, and education objectives;
- Clarifies that both of the following may be required for admission to a midwifery program:
  - A high school diploma or the equivalent; and
  - Three college-level credits in math and English or demonstration of competency in communication and computation.
- Requires that clinical training include all of the following:
  - Care for 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor, and
  - Observation of an additional 25 women in the intrapartal period before qualifying for a license.
  - Training in a hospital and alternate birth settings or both; and
  - Assessment and differentiation between a high risk and low risk pregnancy.
- Amends s. 467,011, F.S., to require the following for the issuance of a midwifery license:
  - Application and fee;
  - Graduation from:
    - An approved midwifery program.
    - A medical or midwifery program offered in another jurisdiction whose graduation requirements were equivalent to or exceeded those required in Florida;
  - Completion of a pre-licensure course offered by an approved midwifery program; and
  - A passing score on the examination specified by the DOH.
- Amends s. 467.0125, F.S., to repeal the abbreviated oral examination to determine the applicant's competency without a written examination for temporary certificates and clarifies criteria for obtaining a license by endorsement and temporary certificate to practice in areas of critical need. The bill does not define "areas of critical need" directly for temporary certificates, but requires the applicant to:
  - Specify that he or she will only practice in one or more of the following areas:
    - A county health department;
    - A correctional facility;
    - A Department of Veterans' Affairs clinic;
    - A community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Service Act; or
    - Any other agency or institution that is approved by the State Surgeon General that provides health care to meet the needs of an underserved populations in this state; and those specific areas;
  - Practice only under the supervision of a physician, an APRN certified nurse midwife or a midwife licensed under ch. 467, F.S., who has a minimum of three years professional experience; and
  - Voluntarily relinquish the temporary certificate, or report a new practice area of critical need to the DOH, if his or her current practice area ceases to be an area of critical need.
- Amends s. 467.205, F.S., to update the DOH's approval process of midwifery programs to allow midwifery programs to be provisionally approved for five years. This conforms to the five-year period provisional licensure period the Department of Education's Commission for Independent Education uses when seeking accreditation status. The DOH will be able to give provisional approval to a new program who has meet all requirements except for showing their students have an 80-percent passage rate on the national exam. Programs provisionally



approved will have five years to demonstrate the required exam approval rate after they are preliminary approved. This time period should allow completion the three-year education program for at least one cohort of students, and for those students to take the exam before the DOH tries to determine the passing rate.<sup>44</sup>

### **Practice of Orthotics, Prosthetics, and Pedorthics**

The bill amends part XIV of ch. 468, F.S., to update the statute and reflect current procedures for applicants to obtain a criminal history check and the method of transmission to the DOH for review.

The bill deletes references to the term “regionally accredited” and replaces it with the term “institutionally accredited” or simply references the programmatic accrediting body to conform with the United States Department of Education accreditation nomenclature for approving educational institutions.<sup>45</sup>

### **Clinical Lab personnel**

The bill amends s. 483.824, F.S., to delete the reference to the term “regionally” accredited institution.

### **Psychologists**

The bill amends ss. 490.003, 490.005, and 490.005, F.S., to clarify the educational requirements for psychologists applying for licensure by examination or endorsement. Under the bill, psychologists may obtain a doctoral degree from:

- An American Psychological Association (APA) accredited program; or
- An institution accredited from an agency recognized by the United States Department of Education or Association of Universities and colleges of Canada.

### **Mental Health Counselors**

The bill amends 491.005, to:

- Authorize programs not yet accredited by COAMFTE or CACREP a period of five years to become accredited;
- Authorize a licensed mental health professional to be available by phone or other electronic methods when clinical services are being provided by a registered intern by telehealth methods;
- Delete references to the term “regional” in s. 491.005(3), F.S., and replaces it with the term “institutional” to conform with the United States Department of Education accreditation nomenclature for approving educational institutions; and
- Deletes current statutory references to the DOH collecting fees for examinations or conducting examinations.

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<sup>44</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis - Midwifery* (July 16, 2020) (on file with the Senate Committee on Health Policy.)

<sup>45</sup> Department of Health, *Senate Bill 1568 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 15, 2020) (on file with the Senate Committee on Health Policy.)

- Make technical changes to s. 464.018, F.S.

### **Medical Marijuana**

The bill also amends s. 381.986, F.S., related to the medical use of marijuana to:

- Allow the DOH to collect samples of marijuana and marijuana delivery devices from a MMTC for specified testing. Currently, the DOH may only collect samples of edibles.
- Expand MMTC recall requirements to all marijuana products, rather than only edibles.
- Provide an exception from criminal laws for DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices.

The bill provides an effective date of July 1, 2021.

#### **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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.0045, 460.406, 464.018, 467.003, 467.009, 467.011, 467.0125, 467.205, 468.803, 483.824, 490.003, 490.005, 490.0051, 491.005, 381.0061, 381.0064, 381.0067, 381.0101, and 381.986.

This bill creates section 381.00635 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.