

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 1680

INTRODUCER: Senator Rodriguez

SUBJECT: Access to Health Care Practitioner Services

DATE: March 29, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1680:

- Exempts physicians from all 40 hours of continuing medical education (CME) at license renewal if the physician completes 120 hours of pro bono service within a biennial licensure period;
- Authorizes the Board of Medicine (BOM) to increase the number of restricted licenses issued, without examination, from 100 to 300, to applicants who meet specified requirements;
- Creates s. 459.0571, F.S., to authorize the Board of Osteopathic Medicine (BOOM) to issue 300 restricted licenses, without examination, to applicants who meet specified requirements;
- Authorizes the BOM and the BOOM to issue an unlimited number of restricted licenses, without examination, to physicians who hold active, unencumbered licenses to practice in Canada and who meet certain criteria;
- Repeals the BOM requirement that applicants for restricted licenses, issued without examination, complete two academic years of pre-professional, postsecondary education, prior to entering medical school, which must include courses in anatomy, biology, and chemistry;
- Repeals the BOM requirement that applicants for restricted licenses, issued without examination, must meet one of three education and postgraduate training scenarios;
- Extends the required contract term for the required employment for allopathic physician applicants for restricted licenses from 24 to 36 months with specified employers;
- Directs osteopathic applicants for restricted licenses to enter into a 36-month required employment contracts to obtain a restricted license with specified employers;
- Creates ss. 458.3105 and 459.00752, F.S., to permit the registration of volunteer retired physicians from Florida, another United State jurisdiction, or Canada to practice medicine, with exceptions, in Florida and provide free services on a volunteer basis, if they meet certain requirements;

- Revises the acceptable examinations for licensure for Canadian physicians with current and active licenses for 10 years to include the Special Purpose Examination (SPEX) of the Federation of State Medical Boards of the United States;
- Directs the Department of Health to waive physician licensure renewal fees if the licensee demonstrates that he or she has provided at least 160 hours of pro bono medical services within the biennial renewal period to:
 - Indigent persons;
 - Medically underserved populations in health professional shortage areas; or
 - Medically underserved areas designated by the U.S. Department of Health and Human Services; and
- Amends the “Access to Healthcare Act” to re-define “low income” as families without insurance and whose family income level is up to 400 percent of the federal poverty level, instead of up to 200 percent as under current law.

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

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Allopathic Physicians

Chapter 458, F.S., governs licensure and regulation of the practice of allopathic medicine by the BOM in conjunction the DOH. The chapter provides, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

Allopathic Licensure by Examination

To be licensed by examination as an allopathic physician, an individual must:⁴

- Be at least 21 years of age;
- Be of good moral character;
- Have not committed an act or offense that would constitute the basis for disciplining a physician under s. 458.331, F.S.;
- Have completed two years of post-secondary education which includes, at a minimum, courses in fields such as anatomy, biology, and chemistry prior to entering medical school;

¹ Section 20.43, F.S.

² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43, F.S.

⁴ Section 458.311(1), F.S.

- Meet one of the following medical education and postgraduate training requirements:
 - Graduated from an allopathic medical school approved by an accrediting agency recognized by the U.S. Office of Education or recognized by a governmental body of a U.S. territorial jurisdiction, and has completed at least one year of approved residency training;
 - Graduated from an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute⁵ as meeting the standards required to accredit U.S. medical schools, and has completed at least one year of approved residency training; or
 - Graduated from an allopathic foreign medical school that has not been certified pursuant to statute;⁶ has an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);⁷ has passed the ECFMG's examination; and has completed an approved residency or fellowship of at least two years in one specialty area that counts towards board certification by the American Board of Medical Specialties;
- Submit to a background screening by the DOH; and
- Have obtained a passing score on:
 - The U.S. Medical Licensing Examination (USMLE);⁸
 - A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX),⁹ or the examination of the National Board of Medical Examiners (NBME) up to the year 2000; or
 - The SPEX exam,¹⁰ if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the U.S. or Canada and has practiced at least 10 years.

⁵ See s. 458.314, F.S. See also e-mail, Paul A. Vazquez, J.D., Executive Director, Florida Board of Medicine, Florida Department of Health (Mar. 25, 2021). See also (on file with the Committee on Health Policy). There currently are no foreign medical schools certified under this section.

⁶ *Id.*

⁷ Section 458.311, F.S., A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination.

⁸ The USMLE is a three-step examination for medical licensure in the U.S. and is owned by the FSMB and the NBME. The USMLE assesses a physician's ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills, that are important in health and disease and that constitute the basis of safe and effective patient care. USMLE was created in response to the need for one path to medical licensure for allopathic physicians in the United States. Before USMLE, multiple examinations, the NBME Parts examination and the FLEX, offered paths to medical licensure. It was desirable to create one examination system accepted in every state, to ensure that all licensed MDs had passed the same assessment standards – no matter in which school or which country they had trained. Today all state medical boards utilize a national examination – USMLE for allopathic physicians, COMLEX-USA for osteopathic physician. See United States Medical Licensing Examination (USMLE), *Who is USMLE? available at* <https://www.usmle.org/about/> (last visited Mar. 24, 2021).

⁹ The Federation of State Medical Boards of the United States, Inc., first gave the “Federation Licensing Examination” (FLEX) March 8, 1973, as a national licensing examination; and it was last given December 1993. *The Examination, available at* <https://sos.ms.gov/ACProposed/00014082b.pdf> (last visited Mar. 25, 2021).

¹⁰ The Special Purpose Examination (SPEX) was first given in 1988 and conceived by the Federation of State Medical Boards (FSMB) for state medical boards to use as an assessment tool when endorsing or granting licensing reciprocity to a physician licensed in another US state or Canadian province. State boards may require SPEX for endorsement of licensure, reinstatement of a license, or reactivation of a license after a period of inactivity. To take the SPEX You must hold, or have held at some point, an active, unrestricted medical license in the U.S. or Canada. Its purpose was later expanded to include

Allopathic License Renewal

Physician licenses are renewed biennially. The current fee for the timely renewal of an active license is \$389.¹¹ This fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.¹² Renewal fees are waived for physicians holding a restricted license or temporary certificate for practice in areas of critical need who submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.¹³

Within each biennial renewal period, a physician must complete 40 hours of CME courses approved by the BOM. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;¹⁴
- A one-hour course on human trafficking addressing both sexual and labor trafficking;¹⁵
- A one-hour course addressing the human immunodeficiency virus and acquired immune deficiency syndrome no later than upon the first biennial licensure renewal;¹⁶
- Two hours of CME relating to the prevention of medical errors;¹⁷ and
- Two hours of CME on prescribing controlled substances.¹⁸

The BOM authorizes up to five hours of the required CME to be fulfilled by the performance of pro bono services to indigent or underserved persons or in areas of critical need.¹⁹ The BOM has approved as pro bono service sites federally-funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with the DOH, and the DOH. The licensee must obtain prior approval for pro bono services to apply them against CME requirements if pro bono services are to be provided to any other entity.

DOH may not renew a license until a licensee complies with all CME requirements.²⁰ The BOM may also take action against a license for failure to comply with CME requirements.

Osteopathic Physicians

Chapter, 459, F.S., governs licensure and regulation of the practice of osteopathic medicine by the BOOM, in conjunction the DOH. The chapter provides, among other things, general

cases in which state boards needed to assess a physician's competence before reinstating or reactivating a lapsed or suspended license.

¹¹ Florida Department of Health, Florida Board of Medicine, Renewal, *Fees, available at*

<https://flboardofmedicine.gov/renewals/medical-doctor-unrestricted/#tab-fees> (last visited Mar. 25, 2021)

¹² Fla. Admin. Code R. 64B8-3.006, (2021). If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

¹³ *Id.*

¹⁴ Section 456.031, F.S.

¹⁵ Section 456.0341, F.S.

¹⁶ Section 456.033, F.S.

¹⁷ Section 456.013(7), F.S.

¹⁸ Section 456.0301, F.S.

¹⁹ Fla. Admin. Code R 64B8-13.005(9), (2021). Indecency is defined as persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

²⁰ Section 456.031, F.S.

licensure requirements, including by examination for medical school graduates and licensure by endorsement requirements.

Osteopathic Licensure

To be licensed as an osteopathic physician, an individual must have:²¹

- Completed at least three years of pre-professional post-secondary education;
- Not committed, or be under investigation in any jurisdiction for, an act or offense that would constitute the basis for disciplining an osteopathic physician, unless the BOOM determines such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against by the licensing authority in any jurisdiction;
- Not received less than a satisfactory evaluation from an internship, residency, or fellowship training program;
- Submitted to a background screening by the DOH;
- Graduated from a medical college recognized and approved by the American Osteopathic Association;
- Successfully completes an internship or a residency of at least 12 months in a program accredited by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education; and
- Obtained a passing score, as established by BOOM rule, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the BOOM, no more than five years prior to applying for licensure.²²

Osteopathic License Renewal

Osteopathic physician licenses are renewed biennially. The current fee for the timely renewal of a license is \$429.²³ This fee applies to limited licenses and temporary certificates for practice in areas of critical need.²⁴ However, the renewal fees are waived if an osteopathic physician holding a limited license or temporary certificate for practice in areas of critical need and submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.²⁵

Within each biennial licensure renewal period, an osteopathic physician must complete 40 hours of CME courses approved by the BOOM. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;²⁶

²¹ Section 459.0055(1), F.S.

²² However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.

²³ Florida Department of Health, Board of Osteopathic Medicine, Renewal, *Fees*, available at <https://floridasosteopathicmedicine.gov/renewals/#tab-fees> (last visited Mar. 25, 2021).

²⁴ Fla. Admin. Code R. 64B15-10.003 (2021). If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

²⁵ *Id.*

²⁶ Section 456.031, F.S.

- A one-hour course on human trafficking addressing both sexual and labor trafficking;²⁷
- A one-hour course addressing the human immunodeficiency virus and acquired immune deficiency syndrome no later than upon the first biennial licensure renewal;²⁸
- Two hours of CME relating to the prevention of medical errors;²⁹
- A one-hour course on profession and medical ethics education;
- A one-hour course on the federal and state laws related to the prescribing of controlled substances;³⁰ and
- Two hours of CME on prescribing controlled substance.³¹

The BOOM authorizes up to 10 hours of the required CME to be fulfilled by the performance of pro bono medical services to indigent or underserved persons or in areas of critical need.³² The BOOM has approved federally-funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with the DOH, and DOH as pro bono sites. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply to the CME requirement.

The DOH may not renew a license until a licensee complies with all CME requirements.³³ The BOOM may also take action against a license for failure to comply with CME requirements.³⁴

Financial Responsibility

Both allopathic and osteopathic physicians must carry malpractice insurance or demonstrate proof of financial responsibility as a condition of licensure or renewal of licensure. A physician may meet this requirement by:

- Maintaining financial liability coverage in an amount of at least \$100,000 per claim, with a minimum annual aggregate of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining financial liability coverage in an amount of at least \$250,000 per claim, with a minimum annual aggregate of at least \$750,000 if the licensee has hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$100,000 per claim, with a minimum aggregate availability of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$250,000 per claim, with a minimum aggregate availability of at least \$750,000 if the licensee has hospital privileges; or

²⁷ Section 456.0341, F.S.

²⁸ Section 456.033, F.S.

²⁹ Section 456.013(7), F.S.

³⁰ Fla. Admin. Code R. 64B15-13.001, (2021).

³¹ Section 456.0301, F.S.

³² Fla. Admin. Code R. 64B15-13.005 (2021). Indigence refers to persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

³³ Section 456.0361, F.S.

³⁴ Section 456.0361(2). F.S.

- Not obtaining malpractice insurance or demonstrating financial ability but agreeing to satisfy any adverse judgments and prominently posting a notice in the reception area to notify all patients of such decision.³⁵

Reporting of Adverse Incidents

Both allopathic and osteopathic physicians are required to report to the DOH, in writing, any adverse incident that occurs in any office.³⁶ An “adverse incident” is an event over which the physician could exercise control, and which is associated with some medical intervention, rather than the condition for which the patient presented and which results in any of the following:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a wrong-site surgical procedure;
- The performance of a wrong surgical procedure; or
- The surgical repair of damage to a patient where the damage is not a recognized specific risk of the procedure and not disclosed to the patient and documented in the informed-consent process.

Physician Licensure for Volunteer and Low-Income Practice

Allopathic Restricted Licenses

Current law authorizes the BOM to issue restricted licenses to practice medicine in this state, without examination, for physicians who contract to practice for 24 months solely in the employ of the state or a federally-funded community health center or migrant health center. An applicant for a restricted license must also:³⁷

- Meet the requirements for licensure by examination; and
- Have actively practiced medicine in another jurisdiction for at least two years of the immediately preceding four years or has completed board-approved postgraduate training within the year preceding submission of the application.

A restricted licensee must take and pass the licensure examination prior to completion of the 24-month practice period.³⁸ A restricted licensee who breaches the terms of his or her contract is prohibited from being licensed as a physician in this state.³⁹ The BOM may issue up to 100 restricted licenses annually.⁴⁰

Osteopathic Limited Licenses

Current law does not authorize the BOOM to issue restricted licenses but authorizes the BOOM to issue limited licenses to certain osteopathic physicians who will only practice in areas of

³⁵ Sections 458.320, F.S., and 459.0085, F.S.

³⁶ Sections 458.351 and 459.026, F.S.

³⁷ Section 458.310, F.S.

³⁸ Section 458.310(3), F.S.

³⁹ Section 458.310(4), F.S.

⁴⁰ Section 458.310(2), F.S.

critical need or in medically underserved areas. A limited license may be issued to an individual who:⁴¹

- Submits the licensure application and required application fee of \$100;
- Provides proof that he or she has been licensed to practice osteopathic medicine in any jurisdiction of the U.S. in good standing for 10 years;
- Has completed 40 hours of CME within the preceding two year period; and
- Will practice only in the employ of public agencies, nonprofit entities, or agencies or institutions in areas of critical need or in medically underserved areas.

If it has been more than three years since the applicant has actively practiced osteopathic medicine, the full-time director of the local county health department must supervise the applicant for at least six months after issuance of the limited license unless the BOOM determines a shorter period will be sufficient.⁴²

The BOOM must review the practice of each physician who holds a limited license at least biennially to ensure that he or she is in compliance with the practice act and rules adopted thereunder.⁴³

Temporary Certificate for Practice in Areas of Critical Need

The BOM and the BOOM may issue a temporary certificates to practice in areas of critical need to an allopathic or osteopathic physician who will practice in an area of critical need. An applicant for a temporary certificate must:⁴⁴

- Be actively licensed to practice medicine in any jurisdiction of the United States;
- Be employed by, or practice in, a county health department, correctional facility, Department of Veterans' Affairs clinic, federally-funded community health care center, or any other agency or institution designated by the State Surgeon General and provides health care to underserved populations; or
- Practice for a limited time to address critical physician-specialty, demographic, or geographic needs for this state's workforce as determined by the Surgeon General.

The BOM and the BOOM are authorized to administer an abbreviated oral examination to determine a physician's competency. A written examination is not required.⁴⁵ The boards may deny the application, issue the temporary certificate with reasonable restrictions, or require the applicant to meet any reasonable conditions of the BOM or BOOM prior to issuing the temporary certificate if it has been more than three years since the applicant has actively practiced and the respective board determines the applicant lacks clinical competency, adequate skills, necessary medical knowledge, or sufficient clinical decision-making.⁴⁶

Fees for the temporary certificate for practice in areas of critical need include a \$300 application fee and \$429 initial licensure fee; however, these fees may be waived if the individual is not

⁴¹ Section 459.0075, F.S., and Fla. Admin. Code R. 64B15-12.005 (2021).

⁴² Section 459.0075(2), F.S.

⁴³ Section 459.0075(5), F.S.

⁴⁴ Sections 458.315, and 459.0076, F.S.

⁴⁵ *Id.*

⁴⁶ Sections 458.315(3)(b) and 459.0076(3)(b), F.S.

compensated for his or her practice.⁴⁷ The temporary certificate is only valid for as long as the Surgeon General determines that critical need remains an issue in this state.⁴⁸ However, the boards must review the temporary certificate holder at least annually to ensure that he or she is in compliance with the practice act and rules adopted thereunder.⁴⁹ A board may revoke or restrict the temporary certificate for practice in areas of critical need if noncompliance is found.⁵⁰

Canadian Medical Licensure – The Canadian Standard

A two-step process is required for an individual to obtain a full Canadian medical license. First, the candidate must obtain from the Medical Council of Canada (MCC) a qualification known as the *Licentiate of the Medical Council of Canada* (LMCC) for medical school graduates who meet the following criteria:

- They have passed the MCC Qualifying Examination (MCCQE) Part I and Part II (or an acceptable clinical assessment deemed comparable to the MCCQE Part II), similar to the USMLE but Canada does not accept the USMLE;⁵¹ and
- They have satisfactorily completed at least 12 months of acceptable postgraduate training or an acceptable equivalent;

The LMCC is not a license to practice medicine. The authority to issue a license is reserved to the Canadian Medical Regulatory Authorities (MRAs) and the requirements to practice as a doctor in Canada are regulated by each provincial and territorial medical regulatory authority, like each state and territory in the U.S.

The LMCC is a part of the *Canadian Standard* for independent practice of medicine, which is step two, and sets the requirements for the award of a full, unrestricted license to practice medicine. Upon receiving the LMCC, candidates are then enrolled in the *Canadian Medical Register*.⁵²

The *Canadian Standard* sets out the academic qualifications that make an applicant eligible for full licensure in every Canadian province and territory. The Federation of Medical Regulatory Authorities of Canada (FMRAC) is a voluntary, member-based organization composed of all 13 provincial and territorial medical regulatory authorities and provides *Model Standards for Medical Registration in Canada* to foster uniformity of purpose and procedure to facilitate labor mobility across Canada.⁵³

⁴⁷ Fla. Admin. Code Rs. 64B8-3.003, and 64B15-10.002 (2021).

⁴⁸ Sections 458.315(3), and 459.0076(3), F.S.

⁴⁹ Sections 458.315(3)(c), and 459.0076(3)(c), F.S.

⁵⁰ *Id.*

⁵¹ Federation of Medical Regulatory Authorities of Canada, *Model Standards for Medical Registration in Canada*, July 2020, available at <https://fmrac.ca/wp-content/uploads/2020/08/FMRAC-Model-Standards-July-2020.pdf> (last visited Mar. 24, 2021).

⁵² The Medical Council of Canada, *The LMCC and the Canadian Medical Register*, available at <https://www.mcc.ca/about/route-to-licensure/?cn-reloaded=1> (last visited Mar. 24 2021).

⁵³ Federation of Medical Regulatory Authorities of Canada, *Model Standards for Medical Registration in Canada*, July 2020, available at <https://fmrac.ca/wp-content/uploads/2020/08/FMRAC-Model-Standards-July-2020.pdf> (last visited Mar. 24, 2021).

Physicians applying for the first time to become licensed to practice medicine in a Canadian jurisdiction may achieve full licensure only if they:⁵⁴

- Have a medical degree from a medical school that, at the time the candidate completed the program, was listed in the World Directory of Medical Schools;⁵⁵
- Are a *Licentiate of the Medical Council of Canada* and enrolled in the *Canadian Medical Registry*;
- Have satisfactorily completed a discipline-appropriate postgraduate training program in medicine and an evaluation by a recognized authority; and
- Have achieved certification from:
 - The College of Family Physicians of Canada; or
 - The Royal College of Physicians and Surgeons of Canada; or
 - The *Collège des médecins du Québec*.

For physicians trained outside of Canada who desire a Canadian medical license, the following additional requirements must be met:

- English language testing with exceptions for undergraduate or post graduate education taken in specific countries;
- Evidence of having been in discipline-specific formal training or discipline-specific independent practice within the last three years and an explanation of any time away from practice;
- Evidence of good character, including professional and ethical behavior, including certificates of good standing from each jurisdiction in which they have ever held a license, medical regulatory authority;
- Evidence that the candidate is both physically and mentally fit to practice; and Passage of Medical Council of Canada Qualifying Examinations (MCCQE) part I international.

The *Canadian Standards* are applicable to physicians applying for the first time to become licensed to practice medicine in a Canadian jurisdiction. A physician may achieve full licensure only if he or she:

- Has a medical degree from:
 - A medical school that, at the time the candidate completed the program, was listed in the World Directory of Medical Schools and includes the Canada *sponsor note*;⁵⁶ or

⁵⁴ For this analysis the *Canadian Standards* will be utilized, rather than referring to each of the 13 provincial and territorial medical regulatory authorities individual requirements and specific nuances.

⁵⁵ World Directory of Medical Schools, available at <https://www.wdoms.org/> (last visited Mar. 24, 2021). The World Directory of Medical Schools' is a list all of the medical schools in the world, with its goal to provide accurate, up-to-date, and comprehensive information on each school. The listing of a medical school in the World Directory does not denote recognition, accreditation, or endorsement by the World Directory or its partner organizations, the World Federation for Medical Education (WFME), the Foundation for Advancement of International Medical Education and Research (FAIMER), or any of the sponsors of the World Directory, except where this is expressly stated either on the website of the World Directory or on the website or other literature of a sponsor.

⁵⁶ The presence of a World Directory of Medical Schools *sponsor note* for Canada indicates that the Medical degrees obtained from that medical school are acceptable to the provincial/territorial medical regulatory authorities in Canada, and therefore acceptable to all medical organizations in Canada. See example Abadan University of Medical Sciences Medical School, Iran, available at <https://search.wdoms.org/home/SchoolDetail/F0006738> (last visited Mar. 25, 2021).

- An osteopathic medicine school in the United States accredited by the American Osteopathic Association Commission on Osteopathic College Accreditation, and the medical school listing must include the Canada *sponsor note*;
- Is a Licentiate of the Medical Council of Canada;
- Has satisfactorily completed a discipline-appropriate postgraduate training program in allopathic medicine and an evaluation by a recognized authority; and
- Has achieved certification from:
 - The College of Family Physicians of Canada;
 - The Royal College of Physicians and Surgeons of Canada; or
 - The Collège des médecins du Québec.

Acceptable medical schools as defined in the Model Standards for Medical Registration in Canada⁵⁷ are:

- A medical school listed in the World Directory of Medical Schools and included in the Canada *sponsor note*, encompassing the time the candidate completed the program;
- A school of osteopathic medicine in the U.S. accredited by the American Osteopathic Association's Commission on Osteopathic College Accreditation; or
- Canadian or U.S. medical school accredited by the Liaison Committee on Medical Education (LCME) or the Committee on Accreditation of Canadian Medical School (CACMS).⁵⁸

Foreign Trained Medical Students and Medical Graduates Practicing in Florida

Certification and Residency Programs

Foreign doctors wishing to practice medicine in Florida must be licensed by the BOM or the BOOM. All doctors, including those trained outside the United States, are required to pass all tests of the USMLE⁵⁹ in order to obtain a Florida medical license. An international medical graduate (IMG) must be certified by the Educational Commission for Foreign Medical Graduates (ECFMG).⁶⁰ The ECFMG certifies internationally trained students for entry into U.S. medical schools and to practice medicine in the U.S. The ECFMG:

- Evaluates the qualifications of international medical graduates (IMGs) and foreign students for entry into U.S. medical schools;
- Evaluates and verifies international medical schools;
- Evaluates and verifies physician credentials related to medical education, training, and licensure;
- Evaluates, and verifies clinical skills of international medical graduates and foreign trained physicians;

⁵⁷Acceptable medical schools as defined in the Model Standards for Medical Registration in Canada, *available at* <https://mcc.ca/services/repository/acceptable-medical-schools-as-defined-in-the-model-standards-for-medical-registration-in-canada/> (last visited Mar. 28, 2021).

⁵⁸ All 17 Canadian medical schools are accredited by the Liaison Committee on Medical Education (LCME) or the Committee on Accreditation of Canadian Medical School (CACMS).

⁵⁹ See note 8.

⁶⁰ The Education Commission for Foreign Medical Graduates (ECFMG) was established in 1956 to promote quality health care for the public by certifying internationally trained students for entry into United States medical schools and to practice medicine in the United States.

- Certifies the readiness of international medical graduates and students for entry into United States medical school through an evaluation of their qualifications; and
- Evaluates the needs of international medical graduates to become acculturated.⁶¹

To become certified by ECFMG, an IMG must pass the USMLE and two separate exams testing clinical knowledge and clinical skills. Once a doctor receives an ECFMG certification, he or she may apply for a residency or fellowship.

Visas for Canadian Physicians to Practice in Florida

Canadians need immigration permission to come to the United States. But, unlike foreign nationals of other countries, Canadians do not need visa stamps in their passports. Rather, Canadians need to receive permission to come to the United States and then present themselves for entry right at the border.

Canadian Physicians Do Not Need to Obtain ECFMG

A physician who graduates from one of the 17 Canadian medical schools accredited by the LCME with an M.D. or a D.O. degree are not considered to be a foreign medical graduate. A physician who graduates from one of these schools does not need to obtain the ECFMG certification, which establishes equivalent medical education and fluency in English, and does not have to complete relevant board examinations.⁶²

The H-1B Visa

The federal Immigration and Nationality Act⁶³ allows U.S. employers to temporarily employ foreign workers in specialty occupations. The H-1B Visa is a temporary, non-immigrant visa status. It is good for three years, extendable up to six years. The Immigration Act of 1990 established a limit of 65,000 foreign nationals who may be issued a visa or otherwise provided H-1B status each federal fiscal year, and the annual limit is often called a quota or a cap. An additional 20,000 H-1B Visas are available to foreign nationals holding a master's or higher degree from U.S. universities. In addition, excluded from the ceiling are all H-1B non-immigrants who work at (but not necessarily for) universities, non-profit research facilities associated with universities, and government research facilities.⁶⁴ The sole exception to this requirement is for physicians recognized as being of national or international renown.⁶⁵

⁶¹ The Educational Commission for Foreign Medical Graduates, *About ECFMG*, available at <https://www.ecfm.org/about/statement-of-values.html> (last visited Mar. 26, 2021).

⁶² Murthy Law Firm, U.S. Immigration Law, *Canadian Physicians and U.S. Immigration Policies* available at <https://www.murthy.com/2019/08/08/canadian-physicians-and-u-s-immigration-policies/> (last visited Mar. 26, 2021).

⁶³ The Immigration and Nationality Act, ss. 212(j)(2) and 101(a)(15)(H)(i)(b) (2021).

⁶⁴ US Citizenship and Immigration Services, *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, available at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion> (last visited Mar. 26, 2021).

⁶⁵ *Id.*

In Canada, a physician is required to successfully complete the MCCQE in order to obtain professional status as a LMCC. This is a prerequisite to independent licensure to practice medicine in the provinces in Canada.⁶⁶

The LMCC used in Canada is not an appropriate or a recognized test credential for H-1B Visa purposes. The LMCC is recognized by all state jurisdictions in terms of granting a license, but U.S. immigration laws require that a Canadian physician have passed all three steps of the USMLE in order to obtain an H-1B visa. One big advantage of an H-1B Visa is that it can normally be obtained in a relatively short period of time.⁶⁷

Permanent Residence

Canadian medical education and Canadian medical training are fully recognized by U.S. immigration laws for green card or permanent resident purposes. This means that, for permanent residents, a Canadian does not need to take any further test credentials. However, permanent residency can often take a significant period of time, sometimes years. Therefore, in terms of creating a quick, smooth transition for a Canadian to come to the U.S., a Canadian physician will need to sit and pass all three steps of the USMLE, thereby gaining eligibility for H-1B Visa, and that in turn creates a platform for proceeding toward permanent residency.⁶⁸

Florida Volunteer Protection Act

The Florida Volunteer Protection Act (FVPA), s. 768.1355, F.S., limits the civil liability for volunteers. Under the FVPA, any person who volunteers to perform any service for any nonprofit organization, without compensation from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization when acting within the scope of any official duties.⁶⁹ The FVPA exempts volunteers from civil liability for any act or omission which results in personal injury or property damage if:⁷⁰

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.

If a volunteer is determined not to be liable pursuant to these provisions, the nonprofit organization for which the volunteer was performing services when the damages were caused is also not liable for the damages to the same extent as the nonprofit organization would not have been liable if the liability limitation under the FVPA had not been provided.⁷¹

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Section 768.1355, F.S. Compensation does not include reimbursement for actual expenses, a stipend under the Domestic Service Volunteer Act of 1973 (i.e. Americorps and SeniorCorps), or other financial assistance that is valued at less than two-thirds of the federal minimum wage.

⁷⁰ Section 768.1355(1), F.S.

⁷¹ Section 768.1355(3), F.S.

Access to Health Care Act

The “Access to Health Care Act” (Act), s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons.⁷² Low-income persons include:

- A person who is Medicaid-eligible;
- A person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level;⁷³ or
- Any eligible client of the DOH who voluntarily chooses to participate in a program offered or approved by the department.

Health care providers under the Act include, among others, allopathic and osteopathic physicians.⁷⁴ The DOH administers the Act through the Volunteer Health Services Program, which works with DOH entities and community and faith-based health care providers to promote access to quality health care for the medically underserved and uninsured.⁷⁵ The Act grants sovereign immunity⁷⁶ to health care providers who execute a contract with a governmental contractor⁷⁷ and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., and have sovereign immunity while acting within the scope of duties required under the Act.⁷⁸ Therefore, the state will defend a health care provider covered under the Act in any action alleging harm or injury, and any recovery would be limited to \$200,000 for one incident and a total of \$300,000 for all recoveries related to one incident.

A contract under the Act must pertain to volunteer, uncompensated services for which the provider may not receive compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.⁷⁹

The Act establishes several contractual requirements for government contractors and health care providers, including:

- The contractor retains the right to dismissal or termination of any health care provider delivering services under the contract;⁸⁰

⁷² Section 766.1115, F.S.

⁷³ The federal poverty level is \$12,880 for a single person and \$26,500 for a family of four. U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2021*, (Jan. 15, 2021), available at <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 25, 2021).

⁷⁴ Section 766.1115(3)(d), F.S.

⁷⁵ Department of Health, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/index.html> (last visited Mar. 25, 2021).

⁷⁶ The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent. Article X, s. 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment.

⁷⁷ A governmental contractor is the DOH, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity. Section 766.1115(3)(c), F.S.

⁷⁸ Section 766.1115(4), F.S.

⁷⁹ Section 766.1115(3)(a), F.S.

⁸⁰ Section 766.1115(4)(a), F.S.

- The contractor retains access to the patient records of any health care provider delivering services;⁸¹
- The health care worker must report adverse incidents to the contractor;
- The health care worker must report information on treatment outcomes to the contractor;⁸²
- The contractor or the health care provider must make patient selection and initial referrals;⁸³ and
- The health care provider is subject to supervision and regular inspection by the contractor.⁸⁴

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.⁸⁵

In state fiscal year 2019-2020, 13,340 licensed health care professionals (plus an additional 8,591 clinic staff volunteers) provided 421,412 health care services under the Act.⁸⁶ The clinics and organizations who participate in the program report that a total of 879,467 hours were donated at a value of approximately \$183 million.⁸⁷ Since February 15, 2000, 12 claims have been filed against the Volunteer Health Services Program.⁸⁸

III. Effect of Proposed Changes:

The bill:

- Exempts physicians from BOM and the BOOM rules requiring 40 hours of continuing medical education (CME) for licensure renewal if:
 - The physician has received prior board approval for his or her pro bono service project; and
 - Upon completion, submits to the DOH proof that he or she has completed at least 120 hours of pro bono services on the project;
- Authorizes the BOM to increase the number of restricted licenses that it may issue, without examination, from 100 to 300;
- Creates s. 459.0571, F.S., to authorize the BOOM to issue 300 restricted licenses, without examination;
- Authorizes the BOM and the BOOM to issue an unlimited number of restricted licenses, without examination, to physicians who hold an active, unencumbered license to practice in Canada;
- Requires applicants for restricted licenses without application to meet all of the following:
 - Submit an application to the DOH;
 - Is at least 21 years of age;

⁸¹ Section 766.1115(4)(b), F.S.

⁸² Section 766.1115(4)(c), F.S.

⁸³ Section 766.1115(4)(d), F.S.

⁸⁴ Section 766.1115(4)(f), F.S.

⁸⁵ Section 766.1115(5), F.S.

⁸⁶ Department of Health, *Volunteer Health Care Provider Program Annual Report, Fiscal Year 2019-2020*, (Dec. 2020), available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHCPPAnnualReport19-20.pdf> (last visited Mar. 25 2021).

⁸⁷ *Id.* at p. 5.

⁸⁸ *Id.* at p. 23.

- Is of good moral character;
- Has not committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a physician;
- Has submitted to the DOH fingerprints fees for the criminal background check of the applicant. A Canadian applicant must provide the board a printed or electronic copy of his or her fingerprint-based, national Canadian criminal history records check, conducted within six months after the date of application.
- Repeals the BOM requirement that applicants for restricted licenses without examination have completed two academic years of pre-professional, postsecondary education, prior to entering medical school, which must include courses in anatomy, biology, and chemistry;
- Repeals the BOM requirement that applicants for restricted licenses without examination must meet one of the following education and postgraduate training requirements:
 - Is a graduate of medical school recognized by an agency recognized by the U.S. Office of Education or within a territorial jurisdiction of the U.S. recognized by the government of that jurisdiction; and
 - If the language of instruction was not English, then demonstrate competency in English with a passing score on the Test of Spoken English of the Educational Testing Service or a similar test approved by BOM rule; and
 - Have completed an approved one year residency; or
 - Is a graduate of an foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314, F.S.;⁸⁹
 - If the language of instruction was not English, then demonstrates competency in English, by providing an ECFMG English proficiency certificate or a passing score on the Test of Spoken English of the Educational Testing Service or a similar test approved by BOM rule; and
 - Have completed an approved one year residency; or
 - Is a graduate of an foreign medical school which has not been certified pursuant to s. 458.314, F.S.;⁹⁰
 - Has had his or her medical credentials evaluated by the ECFMG;
 - Holds an active, valid certificate issued by the ECFMG;
 - Has passed the examination utilized by the ECFMG; and
 - Has completed an approved residency or fellowship of at least two years in one specialty area which must counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.
 - Extends the required contract term for the required employment for allopathic applicants for restricted licenses from 24 to 36 months; requires osteopathic applicants for restricted licenses to enter into a 36-month employment contract to obtain a restricted license; and required both allopathic and osteopathic employment contracts to be with:
 - The state, a federally-funded community health center, or a migrant health center;
 - A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or
 - A health care provider in a health professional shortage area or medically underserved area designated by the U.S. Department of Health and Human Services.

⁸⁹ *Id.*

⁹⁰ *Id.*

- Repeals the legislative mandate for the BOM to designate other areas of critical need where these restricted licensees may practice but authorizes the BOM and the BOOM to do so if needed.
 - Requires allopathic restricted licensees and osteopathic restricted licensees to take and pass the USMLE before the end of the required contracted period and become a fully licensed Florida physician.
 - Creates ss. 458.3105 and 459.00752, F.S., for the registration of volunteer retired physicians, which:
 - Permits a retired physician to practice in Florida under the supervision of a non-retired physician who holds an active, unencumbered license, if the retired physician meets all of the following:
 - Submits an application to the BOM and BOOM on a the DOH form within two years after the date his or her license changing from active to retired status;
 - Provides proof to the DOH that he or she has actively practiced for at least three of the last five years preceding the date his or her license changing from active to retired status;
 - Has held an active license to practice, and maintained that license in good standing in Florida or in at least one other jurisdiction of the U.S. or Canada for at least 20 years;
 - Contracts with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in health professional shortage areas or medically underserved areas designated by the U.S. Department of Health and Human Services;
 - Provides medical services only within the specialty that he or she practiced before retirement and:
 - Does not perform surgery; or
 - Prescribe controlled substances.
 - Requires the physician to biennially apply to the BOM or the BOOM, as appropriate, for renewal of his or her registration by demonstrating to the appropriate board compliance with the above requirements;
 - Requires the DOH to waive all application, licensure, unlicensed activity and renewal fees for qualified physicians;
 - Authorizes the BOM and the BOOM to deny, revoke, or impose restrictions or conditions on a registration for any violation of chs. 456, 458, or 459, F.S., or associated rules; and
 - Authorizes the BOM and the BOOM to deny or revoke the registration of any registrant for noncompliance.
- Revises the acceptable examinations for licensure for Canadian physicians with current and active licenses for 10 years to include the SPEX of the Federation of State Medical Boards of the United States.
- Directs the DOH to waive a physician's licensure renewal fees if the licensee demonstrates in a manner prescribed by DOH rule that he or she has provided at least 160 hours of pro bono medical services within the biennial renewal period, to:
 - Indigent persons;
 - Medically underserved populations in health professional shortage areas; or
 - Medically underserved areas designated by the United States Department of Health and Human Services; and

- Amends the “Access to Healthcare Act” to re-define “low income” in s. 766.1115(3)(e)2., F.S., as a family without health insurance and whose family income is 400 percent or less of the federal poverty level, instead of 200 percent or less as under current law.

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:

Article VI, paragraph 2, of the United States Constitution, commonly referred to as the Supremacy Clause, provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . anything in the Constitution or Laws of any State to the Contrary notwithstanding.” Art. I, s. 8, par. 4, of the U.S. Constitution also gives Congress the power “[t]o establish an uniform Rule of Naturalization.”

The bill allows Canadian physicians to obtain restricted Florida licenses, without examination. However, in order to come to Florida and work, they must obtain an H-1B Visa, which requires such physicians to take and pass all three parts of the USMLE. This may create a conflict with preemption.⁹¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁹¹ Arizona v. United States, 567 U.S. 387 (2012).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides an unlimited number of Canadian physicians with restricted licenses may practice in Florida but does not require financial responsibility for medical malpractice claims, CME, or the reporting of adverse incidents to the DOH.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.013, 458.310, 458.311, 458.319, 459.008, and 766.1115.

This bill creates the following sections of the Florida Statutes: 458.3105, 459.00751, and 459.00752.

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.