

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 Appropriations

BILL: CS/CS/SB 768

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Rodriguez

SUBJECT: Department of Health

DATE: March 2, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle and Looke	Brown	HP	Fav/CS
2.	Howard	Money	AHS	Recommend: Favorable
3.	Howard	Sadberry	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 768 addresses numerous health care-related issues regulated by the Department of Health (DOH). The bill:

- Updates the “Targeted Outreach for Pregnant Women Act of 1998”;
- Amends section 381.0303, Florida Statutes., to specify that for pediatric special needs shelters, the DOH is the lead agency to coordinate local medical and health care providers for the staffing and management of the shelters and is the decision-making authority for determining the medical supervision in each special needs shelter;
- Allows the DOH to collect samples of marijuana and marijuana delivery devices, in general, from a medical marijuana treatment center (MMTC) for specified testing, rather than only samples of edibles;
- Expands MMTC recall requirements to all marijuana products and delivery devices, rather than only edibles;
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation* to transfer its initial application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member of the *Pigford v. Glickman* or *In Re Black Farmers Litigation* and is not awarded that license;
- Provides an exception from criminal laws for the DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices;

- Amends statutes regulating several types of health care professions, including allopathic and osteopathic physicians, nurses, midwives, psychologists, orthotists, prosthetists, clinical lab personnel, chiropractors, mental health counselors, clinical social workers, and marriage and family therapists;
- Revises the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives;
- Authorizes the administrative services organization representing all Healthy Start Coalitions under section 409.975(4) to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting;
- Amends sections 460.406, 468.803, 483.824, and 490.005, Florida Statutes, to delete 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 health care-related educational institutions;
- The bill revises the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians; and
- Amends section 766.314, Florida Statutes, authorizing the Florida Birth-Related Neurological Injury Compensation Association (NICA) to collect and enforce physician assessments in circuit court, if necessary, and requires the NICA to notify the DOH and the appropriate board of any unpaid final judgments against a physician within a specific timeframe.

The bill is projected to have an insignificant negative fiscal impact on the DOH, however, the agency can absorb this impact within existing resources.

The bill provides an effective date of July 1, 2022, except as otherwise provided.

II. Present Situation:

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 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. While there were no known perinatal HIV transmissions in 2019, the Department of Health (DOH) does not have a definitive status on roughly 25 percent of the 453 HIV-exposed births.

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.¹

Many of the women targeted by TOPWA programs may not otherwise receive prenatal care or know their HIV status. In 2021, there were eight TOPWA programs in Florida.² 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.³

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.

The DOH has developed a GR-funded program, Baby Rxpress, which provides a six-week course of antiretroviral (ARV) medication to HIV-exposed newborns at no cost to the mother. In 2019, this program filled 304 prescriptions to 264 HIV-exposed newborns at a cost of \$10,801.96, or \$40.92 per baby.⁴

Special Needs Shelter Program

Section 381.0303, F.S., was enacted in 2000 to create the Special Needs Shelter Program to provide for the operation and closure of special needs shelters (shelters). The shelters are designed for persons with a physical impairment, mental impairment, cognitive impairment, or sensory disability who, during periods of evacuation or emergency, require sheltering assistance to have a safe and secure place to go during an emergency or disaster. In s. 381.0303(1), F.S., the Legislature designates the DOH, through its county health departments, as the lead agency for coordinating and recruiting health care practitioners to staff the shelters during emergencies or disasters.⁵

In s. 381.0303(2), F.S., the Legislature delineates the responsibilities for the shelters as follows:

¹ Section 381.0045(2), F.S.

² Florida Department of Health, Diseases and Conditions, AIDS, Prevention, *TOWPA Map*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/prevention/documents/topwa/TOPWAProviderMap2021.pdf> (last visited Nov. 2, 2021).

³ Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis* (July 23, 2021) (on file with the Senate Committee on Health Policy).

⁴ *Id.*

⁵ Section 381.0303(1), F.S.

- The DOH has the lead responsibility for coordinating local medical and health care providers, the American Red Cross, and other interested parties and in developing a plan for the staffing and medical management of the shelters;
- The DOH's local Children's Medical Services (CMS) offices have responsibility for the coordination of local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of the shelters;
- The county health departments, in conjunction with the local emergency management agencies, have lead responsibility for the coordination and recruitment of the health care practitioners to staff local shelters;
- Local emergency management agencies have responsibility for the designation and operation of the shelters during an emergency or disaster and the closure of the facilities following the event; and
- The local county health department, local CMS office, and local emergency management agency are jointly responsible for deciding who is responsible for the medical supervision in each shelter.⁶

According to the DOH, this shared lead responsibility between the DOH, through its local county health departments, and CMS, through its local offices was, in large part, due to the large local CMS workforce of health care practitioners with specialized training and experience in the provision of services for children with special needs. Through a series of program and organizational changes at the DOH, toward a more effective operation and cost savings, the CMS workforce has been reduced by more than 70 percent since 2018. Due to this change in the CMS workforce, the DOH advises that the CMS is unable to fulfill its responsibilities under s. 381.3030, F.S.⁷

Medical Marijuana

Amendment 2

On November 4, 2016, Amendment 2 was approved by the statewide electorate and established Art. X, s. 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
- MMTCs and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the DOH.

⁶ Section 381.0303(2), F.S.

⁷ Department of Health, 2022 *Senate Bill 768 Fiscal Analysis* (July 23, 2021) (on file with the Senate Committee on Health Policy).

Implementation

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁸ The bill revised the Compassionate Medical Cannabis Act of 2014⁹ 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 s. 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, and 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.¹⁰

Additional Disclosure for Physician Licensure and Renewal

Section 456,039, F.S., requires each physician,¹¹ chiropractor, and podiatrist seeking initial licensure, or license renewal, in Florida, in addition to normal required licensure information, to submit the following to the DOH:

- Name of each medical school attended, including dates of attendance, graduation, and a description of all graduate medical education completed, except continuing education (CE) requirements;
- Name of each hospital where the applicant has privileges;
- Primary practice address;
- Specialty board certifications, if any;
- Date applicant began practicing medicine;
- Medical school faculty appointments currently held and whether the applicant has had the responsibility for graduate medical education within the past 10 years;
- Any criminal offenses, felony or misdemeanor, of which the applicant has been found guilty, regardless of whether adjudication was withheld, or to which the applicant has pled guilty or nolo contendere, including those committed in another jurisdiction which would constitute a felony or misdemeanor in Florida;

⁸ Chapter 2017-232, Laws of Fla.

⁹ Chapter 2014-157, Laws of Fla.

¹⁰ Department of Health, *Senate Bill 1568 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).

¹¹ See ss. 458.345 and 459.021, F.S., Registered medical and osteopathic, residents are exempt from the requirement of 456.039, F.S.

- Any final professional disciplinary action within the previous 10 years in Florida or any other jurisdiction, or by any specialty board, similar national organization, licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home;
- Any claim or action for damages in Florida, in another jurisdiction or in a foreign country, for personal injury alleged to have been caused by error, omission, or negligence in the performance of licensee's professional services; and
- Fingerprints.

Any change in the above information must be updated within 45 days after the occurrence of an event or change in status that is required to be reported. The DOH compiles this information and submits it to the practitioner profile of the applicant.¹²

Educational Institution Accreditation

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 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, 2021.¹³

Nursing

Licensure by Examination

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the DOH¹⁴ and are regulated by the Board of Nursing (BON).¹⁵ Currently, a person desiring to practice nursing in the state of Florida must obtain a Florida license by examination, endorsement¹⁶ or have a multistate license.¹⁷

¹² Section 456.041, F.S.

¹³ U.S. Department of Education, Office of the Under Secretary, *Final Accreditation and State Authorization Regulations*, February 26, 2020, (on file with the Senate Committee on Health Policy).

¹⁴ Section 464.008, F.S.

¹⁵ The BON is composed of 13 members appointed by the Governor and confirmed by the Senate who serve four-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.

¹⁶ Section 464.009, F.S., provides the requirements for licensure by endorsement, and requires an applicant to submit an application and fee, passing a criminal background screening, and 1) Hold a valid license to practice professional or practical nursing in another state or territory of the United States which, when issued, met or exceeded those in Florida at that time; 2) Meet the requirements for licensure in Florida and having successfully completed an examination in another state which is substantially equivalent to the examination in Florida; or 3) Have actively practiced nursing in another state, jurisdiction, or territory of the United States for two of the preceding three years without having his or her license acted against by the licensing authority of any jurisdiction.

¹⁷ Section 464.0095, F.S., A "Multistate license" is a license to practice as a registered nurse (RN) or a licensed practical/vocational nurse (LPN/VN) issued by another Nurse Licensure Compact state's licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN) must, among other requirements:

- Graduate from an approved program or its equivalent as determined by the BON;¹⁸
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;¹⁹ and
- Pass the National Council Licensure Examination (NCLEX).²⁰

Any applicant who fails the NCLEX three consecutive times, regardless of the jurisdiction where the examination is taken, must complete a board-approved remedial course before the applicant will be approved to re-take the NCLEX. After taking the remedial course, the applicant may be approved to retake the examination up to three additional times before the applicant must retake remediation. The applicant must apply for reexamination within six months after completion of remediation.²¹

If an applicant who graduates from an approved program does not take the licensure examination within six months after graduation, he or she must enroll in and successfully complete a BON-approved licensure examination preparatory course. The applicant is responsible for all costs associated with the course and may not use state or federal financial aid for such costs. The BON is directed to, by rule, establish guidelines for licensure examination preparatory courses.²²

Disciplinary Actions

Once an individual is licensed to practice nursing in Florida, he or she has a professional responsibility to practice nursing at a minimum level of competency to ensure the safety of the public. The safe practice of nursing also requires that a nurse not commit any of the hundreds of acts that would constitute grounds for the denial of a license, disciplinary action, or even criminal prosecution, as set out under ss. 456.072(2), 464.0095, and 464.018, F.S.

Section 464.018(1)(c)-(e), F.S., as currently written, uses the modifying phrase, “regardless of adjudication;” but where the phrase is placed in subsections (c) and (d) verses subsection (e) has a significant impact on its application in law.

In s. 464.018(1)(e), F.S., the placement of the phrase, “regardless of adjudication,” only applies to licensees “having been found guilty of,” offenses listed in s. 435.04, F.S., or an offense of domestic violence under s. 741.20, F.S. “Regardless of adjudication” does not apply to those “entering a plea of guilty or nolo contendere to” listed offenses. This interpretation could result in those licensees entering a plea of nolo contendere or guilty and not being found guilty (i.e. adjudication is withheld), therefore not being subject to professional disciplinary action.

¹⁸ Section 464.008(1)(c), F.S.

¹⁹ Section 464.008(1)(b), F.S.

²⁰ Section 464.008(2), F.S.

²¹ Section 464.008(3), F.S.

²² Section 464.008 (4), F.S.

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.²³

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 be:

- Licensed under s. 464.012, F.S., as an Advanced Practice Registered Nurse (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 patients 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.²⁴ 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.

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.;

²³ Section 467.003(8), F.S.

²⁴ Section 467.003(12), 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.²⁵

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 midwifery in another jurisdiction that has equivalent or more stringent licensure requirements than those in Florida.²⁶

A midwife may accept and provide care only 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 a practitioner.²⁷

A midwife’s care of mothers and infants throughout the prenatal, intrapartal, and postpartal periods must be in conformity with the DOH rules and the health laws of Florida. 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;
- 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;

²⁵ Department of Health, *Senate Bill 678 2022 Agency Legislative Bill Analysis -Midwifery* (July 23, 2021) (on file with the Senate Committee on Health Policy).

²⁶ Section 467.0125, F.S.

²⁷ Section 467.015, F.S.

- Recognize 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 a 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 DOH 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 DOH 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.²⁸

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 evaluate, measure, design, fabricate, assemble, fit, adjust, service, or provide the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.²⁹

Section 468.803, F.S., provides minimum qualifications for licensure to practice orthotics, prosthetics, and pedorthics. An applicant must be 18 years of age or older and must:

- Submit an application and fee;
- Submit fingerprint forms and the cost of the state and national criminal background checks;
- Be of good moral character;

²⁸ Section 467.205, F.S.

²⁹ Section 468.80, F.S.

- Have completed a one year residency or internship in orthotics or prosthetics approved by the Board of Orthotists and Prosthetists (BOAP); and
- Meet the following degree requirements to take the appropriate BOAP-approved examination:
 - *Orthotist*: A bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the BOAP.
 - *Prosthetist*: A bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the BOAP; and
- Pass the BOAP-approved examination.

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.³⁰

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

Psychologists

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

Section 490.003, 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 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 (APA).

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;

³⁰ Section 483.803(4), F.S.

- 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.³¹

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 which he or she is seeking licensure before commencing the practicum, internship, or field experience.³²

Clinical Social Workers

Section 491.005(1), F.S., relates to licensure by examination for clinical social workers. The DOH must issue a license to an applicant as a clinical social worker if the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) certifies that the applicant:

- Has submitted an application and appropriate fees;

³¹ Section 491.0046, F.S.

³² Section 491.0045, F.S.

- Has earned a doctoral degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the U.S. Department of Education, or a master's degree in social work from a graduate school of social work which:
 - Was accredited by the Council on Social Work Education (CSWE);
 - Was accredited by the Canadian Association of Schools of Social Work (CASSW); or
 - Has been determined to be an equivalent program to programs approved by the CSWE by the Foreign Equivalency Determination Service of the CSWE;
 - Completed all of the following coursework:
 - A supervised field placement during which the applicant provided clinical services directly to clients; and
 - Twenty-four semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, with a minimum of one course in psychopathology and no more than one course in research;
- Has completed at least two post graduate years of clinical social work experience under the supervision of a licensed clinical social worker or the equivalent supervisor as determined by the Board;³³
- Has passed a theory and practice examination; and
- Demonstrates, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapists

Section 491.005(3), F.S., relates to licensure by examination for marriage and family therapists. The DOH must issue a license to an applicant as a marriage and family therapist if the Board certifies that the applicant has:

- Submitted an application and appropriate fee;
- A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a:
 - Program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (CAMFTE); or
 - Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP);
- Documentation of the completion of graduate courses approved by the Board;³⁴
- Completed at least two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services:
 - At the post-master's level; and
 - Under the supervision of a licensed marriage and family therapist with at least five years of experience, or the equivalent, and whom the Board determines is a qualified supervisor;

³³ Section 491.005(1)(c), F.S. An individual who intends to practice in Florida to satisfy clinical experience requirements must register with the DOH pursuant to s. 491.0045, F.S., before commencing practice.

³⁴ Section 491.005(3)(b), F.S. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant must provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

- Passed a theory and practice examination provided by the DOH;³⁵
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.³⁶

The required master's degree must have been earned at an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by:

- The Commission on Recognition of Postsecondary Accreditation (CORPA);
- A member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant attended and graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CORPA.³⁷

The applicant has the burden of establishing that all above requirements for licensure are met.

An applicant who has a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in an institution fully accredited by the CAMFTE, and recognized by the U.S. Department of Education.

To satisfy the clinical experience requirements, an individual who intends to practice in Florida must register with the DOH before he or she may commence practice.

A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

The DOH must issue a dual license to persons licensed as psychologists, clinical social workers, mental health counselors, and psychiatric advanced practice registered nurses, if the candidate has:

- A valid, active license for at least three years; and
- Passed the examination provided by the DOH for marriage and family therapy.

Mental Health Counselors

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by:

³⁵ See s. 491.004(5), F.S., and Fla. Admin. Code R. 64B4-3.003(2)(c) and 3, (2021). The DOH no longer provides the theory and practice examination for Marriage and Family Therapists. The examination used is the one developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB). The minimum passing score is established by that provider as well.

³⁶ See Fla. Admin. Code R. 64B4-3.0035, (2021).

³⁷ *Id.* Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists.

- A regional accrediting body recognized by the Council for Higher Education Accreditation (CHEA) or its successor;
- A publicly recognized member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, was officially recognized by the government of the country in which it is located as an institution or program, to train students to practice as mental health counselors that maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CHEA or its successor.

The DOH must issue a license to an applicant as a mental health counselor if the Board certifies that the applicant has:

- Submitted an application and appropriate fees;
- Earned a minimum of a master's degree from:
 - A mental health counseling program accredited by the CACREP³⁸ which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
 - A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:
 - Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours, of graduate-level coursework in 11 specified content areas;³⁹ or
 - A minimum of one graduate level course emphasizing the diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience; or
 - An equivalent program to the two previously described options, as determined by the Board, including at least 700 hours of university-sponsored supervised clinical practicum, internship, or field work, that includes at least 280 hours of direct client services, as required by the CACREP accrediting standards for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement;

³⁸ Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited Nov. 20, 2021).

³⁹ See s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

- Had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a Board qualified supervisor;⁴⁰
- Passed a theory and practice examination provided by the DOH;⁴¹ and
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.⁴²

Beginning July 1, 2025, an applicant for mental health counseling licensure must have a master's degree from a program that is accredited by the CACREP which consists of at least 60 semester hours or 80 quarter hours.

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting. Section 491.005, F. S., contains the same provision for registered clinical social worker interns.

Recent Legislative History of Section 491.005, F.S.

The current program accreditation and licensure requirements in s. 491.005, F.S., for social workers, marriage and family therapists and mental health counselors were enacted during the 2020 legislative session.

As of July 1, 2020, an applicant seeking licensure under current s. 491.005(4), F.S., as a mental health counselor was required to have a master's degree from a program accredited by the CACREP beginning July 1, 2025. Until July 1, 2025, mental health counseling students in programs related to the practice of mental health counseling that were not accredited by the CACREP could still obtain a license as a mental health counselor by satisfying the additional statutory requirements in s. 491.005(4), F.S., which required coursework and practicum, internship, or fieldwork consisting of at least 60 semester hours or 80 quarter hours and meeting other specific requirements. This window of time also gave those non-CACREP accredited programs time to apply for and obtain CACREP accreditation.

However, for marriage and family therapy licensure candidates, the current s. 491.005(3), F.S., contains no similar window of time for students to obtain licensure, or programs to obtain

⁴⁰ Section 491.005(4), F.S., An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045, F.S., before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the Board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement.

⁴¹ See s. 491.004(5), F.S., and Fla. Admin Code R. 64B4-3.003(2)(b) and 3, (2021). The DOH no longer provides the theory and practice examination for mental health counselors. The examination used is the National Clinical Mental Health Counseling Examination (NCMHCE), clinical simulation examination developed by the National Board for Certified Counselors (NBCC). Applicants for licensure by endorsement may use the National Counselor Examination for Licensure and Certification (NCE) if the exam was taken prior to the year 2000. The minimum passing score is established by the test provider.

⁴² Fla. Admin. Code R. 64B4-3.0035, (2021).

CAMFTE or CACREP accreditation. On July 1, 2020, students who had satisfied the previous requirements of s. 491.005(3), F.S., for licensure in programs not accredited by the CAMFTE, or who were in a Florida program not accredited by the CACREP, became immediately unable to obtain a license to practice marriage and family therapy without seeking a variance from the Board.

Currently, there are six universities in Florida with a marriage and family program that are not accredited by either the 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 the student's enrollment.⁴³

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. s. 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.⁴⁴

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 applicable board to meet minimum qualifications. Current statutory references to the DOH collecting fees for examinations or conducting examinations is not consistent with current practice.⁴⁵

Florida Birth-Related Neurological Injury Compensation Association (NICA)

In 1988, the Florida Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA), to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries.⁴⁶ If an infant suffers such an injury, and the physician participates in NICA and delivers obstetrical services in connection with the

⁴³ Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis - Mental Health Professionals* (July 23, 2021) (on file with the Senate Committee on Health Policy.)

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Chapter 88-1, ss. 60-75, Laws of Fla., was enacted by the Legislature to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics. The intent of the Legislature is to provide compensation, on a no-fault basis, for a limited class of high costs catastrophic injuries, specifically birth-related neurological injuries, that result in unusually high costs for custodial care and rehabilitation. Section 766.301, F.S.

birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury, with exceptions.⁴⁷ Although the benefits paid under the Florida Birth-Related Neurological Injury Compensation Plan (the Plan) are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.⁴⁸

A "birth-related neurological injury" is an injury to the brain or spinal cord of a live infant who weighs at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant who weighs at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.⁴⁹ Such an injury addressed by this statute renders the infant permanently and substantially mentally and physically impaired.⁵⁰

The NICA is an independent association, and was created by the Legislature to manage the Plan. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on the NICA's board are appointed by the Chief Financial Officer for staggered terms of three years or until their successor is appointed, but there is no limit on the number of terms a director may serve.⁵¹ The five-member board of directors of NICA administers the Plan.⁵² The board of directors is composed of:

- One citizen representative;
- One representative of participating physicians;
- One representative of hospitals;
- One representative of casualty insurers; and
- One representative of physicians other than participating physicians.⁵³

The duties of the NICA board of directors include:

- Administering the Plan;
- Administering the funds collected on behalf of the Plan;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan;
- Reinsuring the risks of the Plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name;
- Exercising all powers necessary or convenient to effect any or all of the purposes for which the Plan was created;
- Entering into such contracts as are necessary or proper to administer the Plan;
- Employing or retaining such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan;

⁴⁷ Section 766.31(1), F.S.

⁴⁸ See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

⁴⁹ Section 766.302(2), F.S.

⁵⁰ *Id.*

⁵¹ Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.

⁵² Sections 766.315(1) and (2), F.S.

⁵³ Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.

- Taking such legal action as may be necessary to avoid payment of improper claims; and
- Indemnifying any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.⁵⁴

Annually, the NICA must furnish audited financial reports to:

- Any Plan participant upon request;
- The OIR; and
- The Joint Legislative Auditing Committee.⁵⁵

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.⁵⁶

Rare Disease Advisory Council

Section 20.03, F.S., defines an advisory council as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.052, F.S., requires that each advisory council established may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose, and such a council must be terminated by the Legislature when it is no longer necessary.⁵⁷ An advisory body may not be created unless:

- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for four-year staggered terms; and
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

The section also requires that:

- The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.
- Unless an exemption is otherwise specifically provided by law, all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency are public meetings under s. 286.011, F.S. Minutes, including a record of all votes cast, must be maintained for all meetings.
- If an advisory body, commission, board of trustees, or other collegial body that is adjunct to an executive agency is abolished, its records must be appropriately stored, within 30 days after the effective date of its abolition, by the executive agency to which it was adjunct, and

⁵⁴ Section 766.315(4), F.S.

⁵⁵ Section 766.315(5)(e), F.S.

⁵⁶ *Id.*

⁵⁷ The agency to which an advisory body is adjunct must advise the Legislature at the time the advisory body ceases to be essential to the furtherance of a public purpose.

any property assigned to it must be reclaimed by the executive agency. The advisory body, commission, board of trustees, or other collegial body may not perform any activities after the effective date of its abolition.

The Rare Disease Advisory Council was established in ch. 2021-122, L.O.F.⁵⁸, creating s. 381.99 F.S.⁵⁹ The Council is created adjunct to the DOH for the purpose of providing recommendations on ways to improve health outcomes for individuals with rare diseases. The bill defines a rare disease as a disease that affects fewer than 200,000 people in the United States.

The advisory council is composed of the following members:⁶⁰

The Governor is required to appoint members to the Council as follows:

- A representative of the Department of Health.
- A representative of the Agency for Health Care Administration.
- A representative of the Office of Insurance Regulation.
- A representative of the Department of Education.
- One geneticist practicing in this state.
- One registered nurse or advanced practice registered nurse who is licensed and practicing in this state with experience treating rare diseases.
- One hospital administrator from a hospital in this state that provides care to individuals diagnosed with rare diseases.
- A pharmacist who is licensed and practicing in this state who has experience with drugs that are used to treat rare diseases.
- A representative of the biotechnology industry.
- A representative of health insurance companies.

The President of the Senate is required to appoint members to the Council as follows:

- A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.
- A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.
- An individual who is 18 years of age or older who has a rare disease.
- An individual who is a caregiver of an individual with a rare disease.

A representative of an organization operating in this state which provides care or other support to individuals with rare disease.

The Speaker of the House of Representatives is required to appoint members to the Council as follows:

- A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.
- A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.
- An individual who is 18 years of age or older who has a rare disease.

⁵⁸ Chapter 2021-122

⁵⁹ Section 381.99, F.S.

⁶⁰ Section 381.99(2), F.S.

- An individual who is a caregiver of an individual with a rare disease.
- A representative of an organization operating in this state which provides care or other support to individuals with rare disease.

Members of the Council must be appointed by September 1, 2021, and are appointed for four-year terms except that Governor's appointees are initially appointed to a two-year term to stagger the appointments. The Council is required to hold its initial meeting by October 1, 2021, and may meet upon the call of the chair or upon the request of the majority of its members thereafter. The Council is authorized to meet electronically.

Healthy Start

Healthy Start is a free home visiting program that provides education and care coordination to pregnant women and families of children under the age of three. The goal of the program is to lower risk factors associated with preterm birth, low birth weight, infant mortality and poor developmental outcomes.⁶¹

Responsibility for coordination of Healthy Start resides with the local Healthy Start Coalitions. There are currently 33 coalitions, organized as non-profit agencies which serve all 67 counties.⁶² The coalitions are overseen by the DOH.

In 2001, the Agency for Health Care Administration (AHCA), in collaboration with the DOH and the Healthy Start Coalition Association, developed a 1915(b) waiver to provide additional funds for Healthy Start services in order to increase the state's capacity to improve maternal and child health outcomes. The waiver, known as MomCare, was approved, and beginning July 1, 2001, Healthy Start services became eligible for Medicaid reimbursement for pregnant women and children up to age three who are enrolled in Medicaid.⁶³

In 2011, the Legislature directed the AHCA to contract with an administrative services organization representing all Healthy Start Coalitions in order to continue the MomCare waiver services of care coordination, and other services. All managed care plans were also required to contract with the Healthy Start Coalitions in their regions in order to coordinate services provided to pregnant women and infants.⁶⁴

Healthy Start MomCare Network

The Healthy Start MomCare Network, Inc. (MomCare) is an administrative service organization representing all Healthy Start Coalitions under the provisions of s. 409.975(4)(a), F.S. MomCare is tasked with implementing services provided to Medicaid recipients during pregnancy and after delivery, and contracts with the AHCA and the coalitions to establish specific programs and

⁶¹ Department of Health (DOH), *Healthy Start*, available at <http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/index.html> (last visited February 28, 2022).

⁶² Florida Association of Healthy Start Coalitions, *Healthy Start Health Plan Contact List*, available at <https://www.healthystartflorida.com/wp-content/uploads/2021/01/HS-CONNECT-REFFERAL-AND-COORDINATION-CONTACT-INFORMATION-Update-12-2-20.pdf> (last visited Mar. 22, 2021).

⁶³ DOH, *Healthy Start Standards and Guidelines*, available at <http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/documents/chapter-1-the-healthy-start-system-2008.pdf> (last visited Mar. 22, 2021).

⁶⁴ Chapter 2011-134, s. 16, Laws of Fla.

procedures to improve pregnancy outcomes and infant health among Medicaid recipients. In addition, MomCare coordinates with managed care plans in providing care for Healthy Start participants.⁶⁵

NICA Funding

The initial funding for the Plan is derived from an appropriation of \$20 million by the Legislature at the time the Plan was created⁶⁶ and annual assessments paid by physicians and hospitals.⁶⁷ A participating physician is required to pay a \$5,000 fee each year for coverage which runs January 1 through December 31.⁶⁸ All licensed Florida physicians pay a mandatory fee of \$250, regardless of specialty. Hospitals pay \$50 for each live birth during the previous calendar year. Certain exemptions apply to all of these categories, including resident physicians, retired physicians, government physicians, and facilities.⁶⁹ In 2019, NICA collected \$26,989,960 in hospital and physician assessments. In 2020, NICA collected \$27,000,000.⁷⁰

Section 766.314, F.S., requires the OIR to maintain a \$20 million reserve in the Insurance Regulatory Trust Fund. If the assessments collected and the appropriation of funds provided by ch. 88-277, s. 41, Laws of Florida, to the Plan from the trust fund are insufficient to maintain the Plan on an actuarially sound basis, the OIR is authorized to transfer an additional amount up to \$20 million to the NICA from the Insurance Regulatory Trust Fund reserve.⁷¹

Obsolete Statutory References and Provisions

Currently, s. 766.314, F.S., contains numerous references to the Department of Business and Professional Regulation (DBPR) as the agency housing the Florida Board of Medicine and the Florida Board of Osteopathic Medicine. All medical boards were moved to the DOH in the early 2000s. The DOH accepted all of the responsibilities in this statute when the boards moved; however, the statute still indicates that these functions should be performed by the DBPR. In addition, the statute contains obsolete language related to how the initial NICA assessment was collected in 1988. This language is no longer needed.

"Following Year" Assessments

The statute requires the DBPR to collect the initial NICA assessment (fee) from all applicants. The statute also requires that if a license is being issued between October 1 and December 31, the DBPR is to collect the fee for the following year.

Currently, the DOH is not collecting the “following year” fees from individuals licensed during the specified period. Every licensee pays the initial NICA assessment (ranging from \$0 to \$5,000) at the time of application. The “following year” fees have been collected directly by

⁶⁵ Florida Healthy Start, *Healthy Start MomCare Network*, available at <https://www.healthystartflorida.com/about-us/healthy-start-momcare-network/> (last visited Mar. 21, 2021).

⁶⁶ Section 766.314(5)(b), F.S.

⁶⁷ Section 766.314, F.S.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Turner Consulting, Inc., *Proposed Increase in Parental Award – Section 766.31 (1) (b) (1)*, *Florida Statutes* (Jan. 14, 2020).

⁷¹ Section 766.314(5)(b), F.S.

NICA since the boards were moved to the DOH. NICA requires fees to be paid by January 31 of the calendar year.

Data Sharing with NICA

The statute requires the DBPR to provide a listing in a computer-readable format of the names and addresses of physicians licensed under chs. 458 and 459, F.S., as often “as determined to be necessary.”

Currently, the DOH provides NICA with a list of newly licensed physicians each month, including their license numbers, the date they were licensed, and the fees collected. Any additional information that NICA may need can be downloaded from the DOH’s website. This coincides with the transfer of those fees collected by the DOH to NICA, allowing NICA to reconcile the amount received with the fees listed in the monthly report.

III. Effect of Proposed Changes:

Targeted Outreach for Pregnant Women

The bill 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 human immunodeficiency virus (HIV), per the Department of Health (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.

Special Needs Shelters

The bill amends s. 381.0303, F.S., and removes Children’s Medical Services (CMS) from responsibility for coordinating local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of pediatric special needs shelters. The bill instead specifies that the DOH has the sole lead-agency responsibility in the coordination of local medical and health care providers for the staffing and management of pediatric special needs shelters and is the decision-making authority for determining the medical supervision in each special needs shelter. Under the bill, the DOH will no longer share that duty with CMS.

Medical Marijuana Sampling and Testing

The bill 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 and delivery devices, rather than only edibles; and Provide an exception from criminal laws for the DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices; and
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation* to transfer its application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member of the *Pigford v. Glickman* or *In Re Black Farmers Litigation* and is not awarded that license.

Additional Disclosure Requirement for Physician Licensure and Renewal

The bill amends s. 456.039, F.S., requiring each physician seeking licensure, or license renewal, under chs, 458 or 459, F.S., to provide, in addition to the other requirements, proof of payment of the Neurological Injury Compensation Association (NICA) assessment required under s. 766.314, F.S., if applicable.

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.

Nursing Licensure and Disciplinary Actions

The bill amend s. 464.008, F.S., and deletes the requirement that graduates from an approved nursing program who do not take the licensure examination within six months after graduation, must successfully complete and pay for a board-approved licensure examination preparatory course.

The bill also amends s. 464.018(1)(e), F.S., and moves the placement of the phrase, “regardless of adjudication,” after the phrase “[h]aving been found guilty of, or entered a plea of nolo contendere or guilty to”, to clarify that “regardless of adjudication” does not apply only to guilty pleas but to any plea to offenses listed in ss. 435.04, F.S., or 741.28, F.S.

Midwifery

The bill amends s. 467.003(12) to clearly define “preceptor” in the midwifery education process. Specifically, the bill provides that a preceptor may not supervise an individual as a midwifery student unless the student has been enrolled in an approved midwifery program.

The bill defines “prelicensure course” to mean a course of study, offered by an accredited 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 Florida

and demonstrates the student's competency to practice midwifery. The bill clarifies language to promote consistency in terminology and that midwifery programs must incorporate all required standards, guidelines, and education objectives.

The bill also clarifies that both a high school diploma or the equivalent and three college-level credits in math and English or demonstration of competency in communication and computation may be required for admission to a midwifery program. The bill amends s. 467.009, F.S., and requires, for the accreditation and approval of midwifery programs, that a program's clinical training must include all of the following:

- Care for 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor;
- Observation of an additional 25 women in the intrapartal period before qualifying for a license;
- Training in a hospital or alternate birth settings or both; and
- Assessment and differentiation between a high-risk and low-risk pregnancy.

The bill amends s. 467.011, F.S., to require the following for the issuance of a midwifery license:

- Application and fee;
- Graduation from:
 - An accredited and 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 precicensure course offered by an accredited and approved midwifery program; and
 - A passing score on the examination specified by the DOH.

The bill 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 the criteria for obtaining a license by endorsement and temporary certificate to practice in areas of critical need. The bill does not specifically define "areas of critical need" 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 U.S. 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;
 - 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; or
 - Areas of critical need determined by the state Surgeon General, which areas include, but are not be limited to, health professional shortage areas designated by the U.S. Department of Health and Human Services.
- Practice only under the supervision of a physician, an Advanced Practice Registered Nurse (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.

The bill amends s. 467.205, F.S., to update the DOH's approval process of midwifery programs to allow such programs to be provisionally approved for five years. This conforms to the five-year period provisional licensure period the Florida Department of Education's Commission for Independent Education uses when seeking accreditation status. For private institutions, the bill adds to the Council for Higher Education Accreditation (CHEA), an accrediting agency approved by the U.S. Department of Education, as an institutional accrediting agency for direct-entry midwifery education programs and its licensing or provisional licensing by the Commission for Independent Education. The DOH will be able to give provisional approval to a new program that has met all requirements except for showing its 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.

The bill requires the DOH to certify every three years whether each approved midwifery program is compliant and has maintained compliance with the requirements of s. 467.009, F.S., or has lost its accreditation status. The DOH must provide its finding to the program in writing and may place the program on probationary status for a specified period of time, not to exceed three years. If a program on probationary status does not come into compliance or regain its accreditation status within the specified time, the DOH may rescind the program's approval.

Practice of Orthotics, Prosthetics, and Pedorthics

The bill amends part XIV of ch. 468, F.S., to reflect current procedures for applicants to obtain a criminal history check and the method of transmission to the DOH for review. The DOH no longer collects fingerprint 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 BOAP will review the application for consideration of licensure.⁷²

The bill also amends the educational requirements for orthotists and prosthetists. The orthotist and prosthetists acceptable bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from an accredited college or university must now also specifically be recognized by the Commission on Accreditation of Allied Health Education Programs.

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 U.S. Department of Education accreditation nomenclature for approving educational institutions.⁷³

⁷² Department of Health, *Senate Bill 768 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy).

⁷³ Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy).

Clinical Lab Personnel

The bill amends s. 483.824(2), F.S., to delete the reference to the term “regionally” and replace it with “institutionally” in regard to the accredited institution at which a clinical laboratory director is required to have earned a doctoral degree in a chemical, physical, or biological science.

Psychologists

The bill amends ss. 490.003, 490.005, and 490.0051, F.S., to clarify definitions and the educational requirements for psychologists applying for licensure by examination or provisional licensure.

The bill defines a “doctoral degree from an APA accredited program” as a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated had both an 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 (APA).

The bill further defines “doctoral degree in psychology” as a Psy.D., an Ed.D. in psychology, or a Ph.D. in 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.

The bill requires psychologists applying for licensure to have obtained a doctoral degree from:

- An APA accredited program; or
- The equivalent of a degree from an APA-accredited program from a school or university located outside the United States which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology.

Provisional licensure applicants must have earned a degree from an APA accredited program. Lack of a degree from an APA-accredited program would be grounds for denial of licensure under the bill.

Mental Health Professionals

The bill amends s. 491.005, F.S., effective upon the bill becoming law, to create three pathways to licensure for applicants for a marriage and family therapy license to meet the minimum educational requirements by one of the following methods:

- A minimum of a master’s degree in marriage and family therapy from a college or university that is accredited by the Commission on Accreditation for Marriage and Family Therapy Education (CAMFTE);

- A minimum of a master’s degree with an emphasis in marriage and family therapy from a college or university that is accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) and graduate courses approved by the board; or
- A minimum of a master’s degree with an emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university.

The bill updates the education requirements for marriage and family therapists, including current law’s obsolete reference to accreditation by Commission on Recognition of Postsecondary Accreditation (CORPA), which was dissolved in 1997. The bill replaces the CORPA with the CHEA or its successors.

The bill deletes references to the term “regional” in s. 491.005(3), F.S., and replaces it with the term “institutional” to conform to the U.S. Department of Education accreditation nomenclature for approving educational institutions and deletes obsolete statutory references to the DOH collecting fees for examinations or conducting examinations.

Rare Disease Advisory Council

The bill amends s. 381.99, F.S., revising the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives.

Healthy Start Coalitions

The bill amends s. 383.216, F.S., authorizing the administrative services organization representing all Healthy Start Coalitions under s. 409.975(4) to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting.

Florida Birth-Related Neurological Injury Compensation Association (NICA)

The bill amends s. 766.314, F.S., deleting references to the Department of Business and Professional Regulation (DBPR) and revising the frequency and content of certain reports which the DOH must submit to the NICA. The bill eliminates unnecessary and obsolete language regarding the initial fees collected in 1988.

The bill deletes obsolete language and updates provisions to conform to current law. The bill authorizes the NICA to enforce the collection of physician assessments in circuit court under certain circumstances and requires the NICA to notify the DOH and the appropriate regulatory board of any unpaid final judgments against a physician within seven days of the issuance of a final judgment.

The bill updates the provisions regarding data sharing with the NICA to reflect current DOH practice and requires the DOH to continue providing NICA with an electronic monthly report of

physicians licensed in the previous month, including their license numbers, the date they were licensed, and the fees collected.

The bill amends s. 766.31, F.S., revising the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians.

The bill provides an effective date of July 1, 2022, except as otherwise provided.

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:

The Department of Health (DOH) indicates it will experience a non-recurring workload increase associated with updating online applications and websites; limited costs associated with rule making; limited costs associated with updating licensure databases

and the License and Enforcement System; and minimal costs associated with testing from medical marijuana treatment centers (MMTCs). According to the DOH, current resources are adequate to absorb these costs.⁷⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0045, 381.0303, 381.986, 381.99, 383.216, 456.039, 460.406, 464.008, 464.018, 467.003, 467.009, 467.011, 467.0125, 467.205, 468.803, 483.824, 490.003, 490.005, 490.0051, 491.005, 766.31, and 766.314.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:

The committee substitute:

- Revises the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives;
- The bill revises the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians;
- The bill authorizes the administrative services organization representing all Healthy Start Coalitions under s. 409.9075(4), to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting; and
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation* to transfer its initial application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member

⁷⁴ Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis- Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy)

of the Pigford v. Glickman or In Re Black Farmers Litigation and is not awarded that license.

CS by Health Policy on January 26, 2022:

The CS:

- Removes the underlying bill's provisions relating to emergency medical services;
- Requires allopathic and osteopathic physicians who apply to the DOH for Florida licensure to provide proof of payment of any NICA assessments, as applicable;
- Requires NICA to inform the DOH and the applicable regulatory board of an unpaid final judgment against a physician within seven days of the final judgment;
- Removes authority granted by the underlying bill for counseling interns to provide services via telehealth under certain conditions; and
- Makes technical corrections to the underlying bill's provisions relating to practitioner education requirements for numerous practitioner types.

B. Amendments:

None.