

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

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BILL: SB 976

INTRODUCER: Senator Harrell

SUBJECT: Certification of Individuals Who Provide Child and Adult Protective Services

DATE: April 11, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Sneed</u>	<u>Money</u>	<u>AHS</u>	<b>Favorable</b>
3.	_____	_____	<u>FP</u>	_____

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## I. Summary:

SB 976 amends s. 415.101, F.S., to require the Department of Children and Families (DCF) to approve a third-party credentialing entity to certify Adult Protective Services (APS) program staff. This change will require all current and future APS staff to be credentialed by a third-party credentialing entity.

The bill also creates an explicit right to a ch. 120, F.S., administrative hearing for certain child welfare professionals who receive an adverse determination by a third-party credentialing entity. The bill details timelines and requirements to request the administrative hearing.

The bill will have a significant negative fiscal impact on state government. See Section V.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Third-Party Credentialing Entities

In 2011, the Legislature required the Department of Children and Families (DCF) to authorize third-party entities to develop and provide a process for child welfare professionals to become certified.<sup>1</sup> The law required the DCF to approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs.<sup>2</sup> A third-party credentialing entity must be a nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.<sup>3</sup> To be approved by the DCF, a third-party credentialing entity must:

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<sup>1</sup> Chapter 2011-163, L.O.F.; codified as s. 402.40, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 402.40(2)(g), F.S.

- Establish professional requirements and standards that applicants must achieve;
- Develop and apply core competencies and examination instruments according to nationally recognized certification and psychometric standards;
- Maintain a professional code of ethics and a disciplinary process that apply to all persons holding child welfare certification;
- Maintain a database, accessible to the public, of all persons holding child welfare certification, including any history of ethical violations;
- Require annual continuing education for persons holding child welfare certification;
- Administer a continuing education provider program;
- Review the findings and all relevant records involving the death of a child or other critical incident following completion of any reviews by the department, the inspector general, or the Office of the Attorney General; and
- Maintain an advisory committee, including representatives from each region of the department, each sheriff's office providing child protective services, and each community-based care lead agency, who shall be appointed by the organization they represent.<sup>4</sup>

### ***Child Welfare Certifications***

Child protective investigators, case managers, and licensing specialists are all child welfare professionals currently required to obtain a valid child welfare credential.<sup>5</sup> An approved third-party credentialing entity is responsible for the internal monitoring of all training, certification activities, and the certification status of every Child Welfare Professional<sup>6</sup> employed by the DCF, sheriffs' office, and community-based care lead agency.<sup>7</sup> Child welfare certifications are valid for a two-year period.<sup>8</sup>

The DCF contracts with the Florida Certification Board (FCB) to provide the third-party credentialing service for Child Welfare Professionals.<sup>9</sup> The current number of valid credentials is approximately 3,280 for child protective investigators, 4,880 for case managers, and 615 for licensing specialists, a total of 8,775.<sup>10</sup>

### ***The Florida Certification Board***

Currently, the DCF has only approved the FCB as a third-party credentialing entity for child welfare certifications. However, the FCB is larger than just child welfare certifications; it designs, develops and manages programs for over 30 health and human services professions and certifies more than 20,000 professionals statewide, including those in the child welfare, mental health, addiction and health fields, by ensuring that they meet education, training, experience and testing criteria.<sup>11</sup>

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<sup>4</sup> Section 402.40(3), F.S.

<sup>5</sup> Rule 65C-33.002, F.A.C.

<sup>6</sup> Rule 65C-33.001(5), F.A.C.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The Department of Children and Families, 2023 Agency Bill Analysis, *SB 976*, p. 2, February 28, 2023 (on file with Committee for Children, Families, and Elder Affairs). (hereinafter cited as "DCF Bill Analysis")

<sup>10</sup> *Id.*

<sup>11</sup> The Florida Certification Board, *About Us*, available at <https://flcertificationboard.org/about/> (last viewed March 28, 2023).

Current law is silent as to any ch. 120, F.S., administrative hearing rights in relation to the denial, revocation, or suspension of a child welfare certification.

### ***Chapter 120 Administrative Hearings***

In 1974, the Legislature created ch. 120, F.S., establishing the Administrative Procedures Act (APA),<sup>12</sup> to outline a comprehensive administrative process by which agencies exercise authority granted to them by the Legislature.<sup>13</sup> The APA details processes and procedures related to topics such as:

- Meetings, hearings, and workshops.<sup>14</sup>
- Rulemaking.<sup>15</sup>
- Declaratory statements.<sup>16</sup>
- Mediation of disputes.<sup>17</sup>
- Investigations.<sup>18</sup>
- Licensing.<sup>19</sup>
- Agency final orders.<sup>20</sup>

The APA serves to protect the citizens of Florida from unauthorized rules that could otherwise be in effect by providing state agencies a uniform procedure for enacting rules, issuing orders, and allowing citizens to challenge an agency's action or decision.<sup>21</sup> Agency action is broadly defined to include a rule or its equivalent, an order or its equivalent, and the denial of a petition to adopt a rule or to issue an order.<sup>22</sup>

### **Adult Protective Services**

Chapter 415, F.S., authorizes comprehensive protective services for Florida's elderly and abused adults.<sup>23</sup> The DCF Adult Protective Services (APS) program is required to investigate allegations

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<sup>12</sup> Chapter 1974-310 s. 1, L.O.F.; codified as Chapter 120, F.S.

<sup>13</sup> Florida Administrative Law Central Online Network, Publications, *A Pocket Guide to Florida's Administrative Procedure Act*, p2022, available at <https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last viewed March 31, 2023) (hereinafter cited as "APA Pocket Guide")

<sup>14</sup> Section 120.525, F.S.

<sup>15</sup> Section 120.54, F.S.

<sup>16</sup> Section 120.565, F.S.

<sup>17</sup> Section 120.573, F.S.

<sup>18</sup> Section 120.62, F.S.

<sup>19</sup> Section 120.60, F.S.

<sup>20</sup> Sections 120.53 and 120.533, F.S.

<sup>21</sup> APA Pocket Guide, p. 1

<sup>22</sup> *Id.*

<sup>23</sup> Section 415.101, F.S.

of abuse,<sup>24</sup> neglect,<sup>25</sup> and exploitation<sup>26</sup> of vulnerable adults<sup>27</sup> and vulnerable adults in need of services.<sup>28</sup>

Upon a report of alleged abuse, neglect, or exploitation, the central abuse hotline (hotline) makes an assessment of an individual's need for protective services.<sup>29</sup> The hotline must determine if the report requires an immediate, 24-hour, or next-working-day response priority.<sup>30</sup> For reports requiring an immediate onsite protective investigation, the hotline must immediately notify the department's designated protective investigative staff responsible for protective investigations to ensure prompt initiation of an onsite investigation.<sup>31</sup> This investigation initiates an assessment of individual need for protective services.<sup>32</sup> Services provided by APS include the following:

- On-site investigation of reports of alleged abuse, neglect, exploitation or self-neglect;
- Determination of immediate risk to the victim and provision of necessary emergency services;
- Evaluation of the need for and provision of protective supervision; and
- Provision of on-going protective services.<sup>33</sup>

Pursuant to the Florida Community Care for Disabled Adults Act,<sup>34</sup> the APS program also assists vulnerable disabled adults to live dignified and reasonably independent lives in their own homes

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<sup>24</sup> Section 415.102(1), F.S., defines "abuse" to mean any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

<sup>25</sup> Section 415.102(16), F.S., defines "neglect" to mean the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

<sup>26</sup> Section 415.102(8), F.S., defines "exploitation" to mean (1) a person who stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or (2) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

<sup>27</sup> Section 415.102(28), F.S., defines "vulnerable adult" to mean a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

<sup>28</sup> Section 415.102(29), F.S., defines "vulnerable adult in need of services" to mean a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

<sup>29</sup> See generally s. 415.103, F.S.

<sup>30</sup> Section 415.103(1)(b), F.S.

<sup>31</sup> Section 415.103(2), F.S.

<sup>32</sup> The Department of Children and Families, *About Adult Protective Services*, available at <https://www.myflfamilies.com/services/abuse/adult-protective-services/about-adult-protective-services> (last viewed March 28, 2023) (hereinafter cited as "DCF APS Webpage")

<sup>33</sup> *Id.*

<sup>34</sup> See ss. 410.602 through 410.606, F.S.

or in the homes of relatives or friends so that they may be assured the least restrictive environment suitable to their needs.<sup>35</sup>

Subject matter experts within the APS program, in collaboration with partner state agencies and the National Adult Protective Services Association, developed all current APS staff training programs.<sup>36</sup> Each position has performance expectations and failure to meet performance standards will result in disciplinary actions that can result in or escalate to termination based on severity and response.<sup>37</sup>

Currently, the DCF reports 520 current APS program staff members who provide adult protective services and there is no requirement for APS program staff to obtain certification through a third-party credentialing entity.<sup>38</sup>

### III. Effect of Proposed Changes:

The bill amends s. 415.101, F.S., to require the Department of Children and Families (DCF) to approve a third-party credentialing entity to certify Adult Protective Services (APS) program staff. This change will require the DCF to identify and contract with a third-party credentialing entity to develop and administer a certification program for current and future APS program staff.

The bill amends s. 402.40, F.S., to create an explicit right to a ch. 120, F.S., administrative hearing for a Child Welfare Professional in relation to the denial, revocation, or suspension of a child welfare certification by a third-party credentialing entity. A Child Welfare Professional may request an administrative hearing to review an adverse determination within 30 days after completing any appeals process provided by the third-party credentialing entity or the DCF. This change has the potential to increase the number of administrative hearings the DCF must attend in relation to actions taken by a credentialing entity against a child welfare professional's credential.

The bill provides that the DCF may review any decision by a third-party credentialing entity to deny, revoke, or suspend a child welfare certification or otherwise impose sanctions on an individual who is certified.

The bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>35</sup> The Department of Children and Families, *About Adult Protective Services*, available at <https://www.myflfamilies.com/services/abuse/adult-protective-services/about-adult-protective-services> (last viewed March 28, 2023).

<sup>36</sup> The Department of Children and Families, 2023 Agency Bill Analysis, *SB 976*, p. 2, February 28, 2023 (on file with Committee for Children, Families, and Elder Affairs). (hereinafter cited as "DCF Bill Analysis")

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**Administrative Hearings**<sup>39</sup>

The bill has a significant yet indeterminate fiscal impact on the Department of Children and Families due to the bill's provisions which allow a child welfare professional, who receives an adverse determination from a third party credentialing entity, to request an administrative hearing. This provision may require the department to participate in an increased number of ch. 120, F.S., proceedings, however, the number of proceedings is unknown at this time.

**Credential Costs**

The bill has a significant negative fiscal impact on the department due to the bill's provisions which require third party credentialing of Adult Protective Services (APS) staff. According to the department, the estimated recurring cost to implement third party credentialing of all APS is \$156,520. The estimated nonrecurring cost to implement third party credentialing of APS in year-one is \$233,600.<sup>40</sup>

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<sup>39</sup> The Department of Children and Families, 2023 Agency Bill Analysis, *SB 976*, p. 4, February 28, 2023 (on file with Committee for Children, Families, and Elder Affairs). (hereinafter cited as "DCF Bill Analysis")

<sup>40</sup> *Id.*

The DCF bases the estimate on the current fee structure for the Child Welfare certification program as administered by the Florida Certification Board:

- Provisional Application fee: \$107.50
- Test fee: \$107.50
- Upgrade Application fee: \$107.50
- Certification fee: \$107.50
- Biennial Renewal fee: \$215

The total nonrecurring cost to credential all APS staff is calculated as follows:

- Provisional application fee + test fee + upgrade application fee + certification fee = \$430 per employee
- \$430 x 520 APS employees (if fully staffed) = **\$233,600**

The DCF estimates a 40 percent turnover rate among child welfare professionals. The total recurring costs associated with certifying new employees due to turnover and the biennial renewal fee for stable positions is calculated as follows:

- $520 \times 0.4 = 208$  new employees each year due to turnover (40%)
- $208 \times \$430 = \$89,440$
- $312 \times \$215 = \$67,080$  biennial renewal fee for stable employees
- $\$89,440 + \$67,080 = \mathbf{\$156,520}$

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.40 and 415.101.

#### 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.