

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 653 Health Care Fraud

SPONSOR(S): Health Care Appropriations Subcommittee; Health & Human Services Quality Subcommittee; Cruz

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Poche	Calamas
2) Health Care Appropriations Subcommittee	14 Y, 0 N, As CS	Clark	Pridgeon
3) Health & Human Services Committee	18 Y, 0 N	Poche	Gormley

SUMMARY ANALYSIS

The bill alters current restrictions that prevent an individual who has been convicted of certain felonies, or plead guilty or no contest to certain felonies, from applying for an initial or renewal license, certification, or registration to become a health care professional. However, the bill provides exceptions to the license, certification or registration prohibitions. Currently, a person who has been convicted of, or plead guilty or no contest to, certain felonies cannot apply for a license, certificate or registration to become a health care professional within 15 years of the conviction or plea. The bill creates a tiered timeframe for applying for a license, certificate, or registration, depending on the degree of the violation: the lesser the felony or plea, the less time must pass between the felony or plea and the date of application.

The bill provides additional exceptions to licensing prohibitions in s. 456.0635, F.S. An individual convicted of certain felonies, or who plead guilty or no contest to certain felonies, may seek a license, certificate or registration if the individual successfully completed a pretrial intervention or drug diversion program. The bill excludes from the licensing prohibitions an applicant who was enrolled in an educational or training program, recognized by the Department of Health (DOH), on or before July 1, 2009 and applied for initial licensure after July 1, 2012. The bill allows an individual convicted of, or who plead guilty or no contest to, certain felonies under federal law to apply for a license, certificate, or registration if the violation occurred more than 15 years from the date of application. Lastly, the bill allows an individual to regain a renewal license, certificate or registration, denied under the provisions of the bill, by complying with the criteria established by the applicable board, or the DOH, for initial licensure. However, if an individual was denied a renewal license, certificate or registration under the provisions of section 24 of chapter 2009-223, Laws of Florida, the individual is not required to retake and pass any examination required for initial licensure.

The bill changes the title of s. 456.0635, F.S. from "Medicaid fraud" to "health care fraud", and expands the duty of a licensed practitioner to report an allegation of health care fraud. The bill also renders the surrender of a license due to an allegation of health care fraud or the anticipation of an allegation of health care fraud a permanent revocation of the license.

The bill has an indeterminate, but likely insignificant, fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Health Licensing Activities

The Department of Health (DOH) is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture);
- Chapter 458 (medical practice);
- Chapter 459 (osteopathic medicine);
- Chapter 460 (chiropractic medicine);
- Chapter 461 (podiatric medicine);
- Chapter 462 (naturopathy);
- Chapter 463 (optometry);
- Chapter 464 (nursing);
- Chapter 465 (pharmacy);
- Chapter 466 (dentistry);
- Chapter 467 (midwifery);
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics);
- Chapter 478 (electrolysis);
- Chapter 480 (massage practice);
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists);
- Chapter 484 (dispensing of optical devices and hearing aids);
- Chapter 486 (physical therapy practice);
- Chapter 490 (psychological services); or
- Chapter 491 (clinical, counseling, and psychotherapy services).

The Division of Medical Quality Assurance is responsible for the preceding boards and professions within the DOH.¹ Chapter 456² and the practice acts regulating health care professions under the regulatory jurisdiction of the DOH contain provisions establishing grounds for which disciplinary action may be taken against licensed health care practitioners.

Medicaid Fraud

Medicaid fraud in the practice of a health care profession is prohibited.³ Licensed health care practitioners must report any allegation of Medicaid fraud to the DOH.⁴ The Legislature created s. 456.0635, F.S., in 2009 with the enactment of CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida.⁵ The bill, in part,:

¹ S. 20.43(3)(g), F.S.

² S. 456.072, F.S.

³ S. 456.0635(1), F.S.

⁴ S. 456.0635(3), F.S.

⁵ This specific section of CS/CS/CS/SB 1986 was published in section 24 of chapter 2009-223, Laws of Fla.

- Increased the Medicaid program's authority to address fraud, particularly as it relates to home health services.
- Increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida.
- Created disincentives for abusive Medicaid billing by increasing the administrative penalties, posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website, and creating additional criminal felonies for committing health care fraud, and among other anti-fraud provisions.

Specifically, the law requires each board within the jurisdiction of the DOH, or the DOH if there is no board, to refuse to issue or renew a license, certificate, or registration if the applicant has been:

- Convicted of, entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, F.S.,⁶ ch. 817, F.S.,⁷ ch. 893, F.S.,⁸ 21 U.S.C. ss. 801-970,⁹ or 42 U.S.C. ss. 1395-1396,¹⁰ unless the sentence and any subsequent probation ended more than 15 years prior to the date of application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

Since s. 456.0635, F.S., became effective, through January 12, 2012, boards and the DOH have denied, or caused to have withdrawn, 336 initial applications for licensure.¹¹ Of the total number of initial licensure denials or withdrawals, 262 were applications for Certified Nursing Assistant, 17 were applications for Licensed Practical Nurse, and 15 were applications for Registered Nurse. Also, 109 renewal denials have been issued in the same time period.¹² Of the total number of renewal denials, 30 were for renewal of Certified Nursing Assistant, 27 were for renewal of Registered Nurse, and 19 were for renewal of Licensed Practical Nurse.

Section 456.036, F.S., contains general provisions related to licensure and delinquent licenses of health care practitioners. Each board, or the DOH if there is no board, is required to charge fees for renewal of an active or inactive or license status.¹³ The law outlines the procedure for changing from an inactive license status to an active license status.¹⁴ The law also determines delinquency of a license, outlines the process a licensee must follow to bring current a delinquent license, and requires a fee to be paid to bring current a delinquent license.¹⁵ Lastly, the law provides the DOH with rule-making authority to ensure that licensees who have a delinquent, inactive or retired license status are competent to practice under the license upon application to change to an active license status.¹⁶

⁶ Chapter 409, F.S., relates to social and economic assistance.

⁷ Chapter 817, F.S., relates to fraudulent practices.

⁸ Chapter 893, F.S., relates to drug abuse prevention and control.

⁹ This section of the U.S. Code relates to federal controlled substance regulations.

¹⁰ This portion of the U.S. Code relates to public health, welfare, Medicare and Medicaid issues.

¹¹ Florida Department of Health, *456.0635 Status Report- January 12, 2012*, received Jan. 13, 2012 (on file with Health and Human Services Quality subcommittee staff).

¹² *Id.*

¹³ S. 456.036(3), F.S.

¹⁴ S. 456.036(4) and (5), F.S.

¹⁵ S. 456.036(5), (6), and (7), F.S.

¹⁶ S. 456.036(8) through (12), F.S.

Effect of Proposed Changes

The bill changes all references to Medicaid fraud in s. 456.0635, F.S., to health care fraud. As a result, the bill will require licensed health care practitioners to report allegations of health care fraud, rather than only allegations of Medicaid fraud. Also, the acceptance of a license by a licensing authority, offered by a licensee as a result of allegations of, or anticipation of allegations of, health care fraud, will be considered permanent revocation of the licensee.

The bill relaxes the current licensure exclusions by creating a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the date of application for licensure. The bill prohibits the department, and the boards within the department, to allow any person to sit for an examination or issue a new license, certificate, or registration to any applicant, if the applicant:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, ch. 817, or ch. 893, F.S., or a similar felony offense committed in another state or jurisdiction, unless the applicant or candidate successfully completed a drug court program for the felony and provides proof that the plea was withdrawn or the charges were dismissed, or unless the sentence and any related period of probation for such conviction or plea ended:
 - For felonies of the **first or second degree**, more than **15 years** before the date of application;
 - For felonies of the **third degree**, more than **10 years** before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.¹⁷; and
 - For felonies of the **third degree under s. 893.13(6)(a), F.S.**, more than **5 years** before the date of application.
- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

In addition, the bill prohibits the department, and the boards within the department, to renew a license, certification, or registration if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration. The same exceptions to the restrictions on initial licensure, certification, or registration apply for renewal applications; however, the renewal applicant or candidate must show that she or he is currently enrolled in a drug court program, rather than showing successful completion, as required of initial applicants, above.

The bill eliminates reference to the federal Medicare program in s. 465.0635(2)(c), F.S.. regarding termination for cause from that program as grounds for denying initial application for, or renewal of, a license, certification, or registration. According to AHCA, the phrase "termination for cause" does not exist in the federal Medicare program.¹⁸

The bill provides that the terms of disqualification for felony convictions or pleas of guilty or no contest of the specified violations do not apply to applicants for initial licensure or certification who were enrolled in a recognized training or education program as of July 1, 2009 and who applied for initial licensure after July 1, 2012.

¹⁷ S. 893.13(6)(a), F.S., states:

"It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

¹⁸ Telephone conference between AHCA analyst and Health and Human Services Quality subcommittee staff on January 12, 2012.

Lastly, the bill allows a person denied renewal of a license, certificate or registration under the provisions listed above to regain the license, certificate or registration by meeting the criteria established by the board or the DOH for initial licensure, certification or registration. However, if a person was denied renewal under the provisions of section 24 of chapter 2009-223, Laws of Florida, between July 1, 2009 and June 30, 2012, prior to enactment of the provisions of this bill, he or she will not be required to retake and pass any examinations required for initial licensure, certification or registration. This provision will impact, at least, the 109 applicants identified by the DOH as being denied renewal of a license due to the current law, enacted by the applicable section of the Laws of Florida, and any other applicants who are denied renewal of a license, certification or registration through June 30, 2012.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.0635, F.S., relating to Medicaid fraud; disqualification for license, certificate, or registration.

Section 2: Amends s. 456.036, F.S., relating to licenses; active and inactive status; delinquency.

Section 3: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOH anticipates an overall increase in workload that can be absorbed within existing department resources. Additionally, DOH will experience a non-recurring cost associated with rulemaking and modifications to the COMPAS licensure system, however these costs can be absorbed within current resources and budget authority.¹⁹

There is an indeterminate fiscal impact on AHCA to the extent that the Agency is asked by the DOH or the boards to compile background information on applicants for licensure, certification or registration; however, the impact is insignificant and can be absorbed within current Agency resources.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁹ Florida Department of Health, *HB 653 Bill Analysis, Economic Statement, and Fiscal Note*, page 6 (January 6, 2012).

²⁰ Telephone conference between AHCA Legislative Affairs analyst, AHCA Inspector General and Health Care Appropriations Subcommittee staff on January 26, 2012.

The bill will allow individuals who wish to become a licensed, certified, or registered health care professional, who would otherwise be disqualified due to the current provision of s. 456.0635, F.S., the opportunity to obtain a license, certification, or registration to work in the health care field. The addition of licensed health care professionals to the job market will allow employers to fill open positions with qualified individuals, leading to the availability of qualified, licensed care to more members of the public.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides the Department of Health with necessary and appropriate rulemaking authority sufficient to implement the provisions of this bill.²¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Health and Human Services Quality Subcommittee adopted a strike-all amendment for HB 653. The strike-all amendment made the following changes to the bill:

- Removed a reference to completion of a pre-trial intervention or drug diversion program for a specified felony violation as a requirement for an exception to the exclusion provision for initial licensure, certification or registration;
- Required an applicant or candidate to successfully complete a drug court program for a specified felony and provide proof that a guilty or no contest plea was withdrawn, or charges dismissed, before becoming eligible for initial licensure, certification, or registration;
- Removed reference to offenses committed since July 1, 2009 from consideration for renewal of a license, certification, or registration;
- Removed reference to enrollment in a pre-trial intervention or drug diversion program for a specified violation as a requirement for an exception to the exclusion provision for renewal of a license, certificate, or registration; and

²¹ S. 456.004, F.S.

- Required an applicant or candidate to be enrolled in a drug court program that allows for withdrawal of a guilty or no contest plea to a specified felony upon successful completion of the program in order to be eligible for renewal of a license, certificate, or registration.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

On February 13, 2012, the Health Care Appropriations Subcommittee adopted one amendment to CS/HB 653. The amendment is a technical amendment clarifying that the bill prohibits the department, and the boards within the department, to renew a license if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration.

The bill was reported favorably as a committee substitute to the committee substitute. The analysis reflects the committee substitute to the committee substitute.