

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 121 Health Care
SPONSOR(S): Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 560 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)	10 Y, 0 N	Mitchell	Collins
2) Health Care			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

HB 121 provides that health care providers may be disciplined for failing to disclose the type of license they are practicing under in their advertisements and in their initial patient contact. The bill excludes health care practitioners in hospitals and nursing homes from the requirement.

According to the Department of Health, there are over 340,000 active health care licensees practicing in Florida, with 91 different categories of licensure that are identified in the Medical Quality Assurance Annual Report, 2002-2004.

Currently, each practitioner is subject to the grounds for discipline listed in individual practice acts as well as the general provisions in ch. 456, F.S. Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising. Many of the regulatory boards already have rules regarding what constitutes misleading advertising.

The Legislative findings of the bill state that the area of health care licensure can be extremely confusing to patients, and that health care practitioners can easily mislead patients into believing that they are better qualified than other health care practitioners simply by creating a sham practice designation. The bill states that patients need to be informed of the credentials of the health care practitioners who treat them, and that the public needs to be protected from misleading health care advertising. According to the Department of Health, the bill will help make clear to patients whether the person providing care is a physician, a physician assistant, an advanced registered nurse practitioner, other licensed professional, or an unlicensed assistant.

The bill will have a fiscal impact on health care providers because of the need to change advertisements, notices and office procedures.

The effective date of the bill is July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0121a.hc.doc
DATE: March 4, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill increases requirements on physicians and other health care providers to disclose additional information about their credentials in advertisements and increases the enforcement responsibility of the Department of Health.

B. EFFECT OF PROPOSED CHANGES:

HB 121 provides that health care providers are subject to discipline for failing to include the type of license they are practicing under in their advertisements and initial patient contact. It excludes health care practitioners in hospitals and nursing homes.

The bill amends s. 456.072, F.S., to create additional grounds for discipline for all practitioners while practicing outside of a licensed facility. The grounds for discipline added by the bill is failure to provide in an advertisement, or to a patient before initiating care, the type of license under which the health care practitioner is operating. The licensed facilities exempted in the bill are those licensed under ch. 395, F.S., (hospitals or and ambulatory surgical care centers) and those licensed under ch. 400, F.S. (nursing homes).

HB 121 specifies that a reference to s. 456.072, F.S., relating to grounds for discipline, penalties, and enforcement applicable to health care practitioners, constitutes a general reference under the doctrine of incorporation by reference. This is a bill drafting provision that serves to incorporate the new disciplinary provision the bill establishes in s. 456.072, F.S., into the practice acts of each profession by reference, without having to reenact the sections of each practice act that contain the cross references to the disciplinary provisions in s. 456.072, F.S. According to House Bill Drafting, the rule of construction in Florida is that each cross reference is set at the time of enactment of the provision containing the cross reference. Any changes in the sections that are cross referenced are not incorporated into the provision unless they are reenacted to do so. Without this provision for incorporation by general reference, the argument can be made that the cross references made by the various practice acts to the new disciplinary provision of the bill do not carry the new meaning unless they are reenacted to incorporate the changes.

CURRENT SITUATION

According to the Department of Health, there are over 340,000 active health care licensees practicing in Florida, with 91 different categories of licensure that are identified in the Medical Quality Assurance Annual Report, 2002-2004.

As indicated in the findings of the bill, the area of health care licensure can be extremely confusing to patients. Patients can be misled into believing that the practitioner is better qualified than other health care practitioners because of misleading practice designations. The bill states that patients need to be informed of the credentials of the health care practitioners who treat them and that the public needs to be protected from misleading health care advertising.

Each practitioner is subject to the grounds for discipline listed in individual practice acts as well as Chapter 456, F.S. Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising. Many of the regulatory boards already have rules regarding what constitutes misleading advertising.

The following specific sections of the practice acts of the health care professions include grounds for disciplinary actions and cross references to the general provisions in chapter 456, F.S:

- | | | |
|------------|-------------|-----------------|
| ✓ 457.109; | ✓ 466.028; | ✓ 478.52; |
| ✓ 458.331; | ✓ 467.203; | ✓ 480.046; |
| ✓ 459.015; | ✓ 468.1295; | ✓ 483.825; |
| ✓ 460.413; | ✓ 468.1755; | ✓ 483.901; |
| ✓ 461.013; | ✓ 468.217; | ✓ 484.014; |
| ✓ 462.14; | ✓ 468.365; | ✓ 484.056; |
| ✓ 463.016; | ✓ 468.518; | ✓ 486.125; |
| ✓ 464.018; | ✓ 468.719; | ✓ 490.009; and |
| ✓ 465.016; | ✓ 468.811; | ✓ 491.009, F.S. |

These sections provide disciplinary provisions for the health care professions of: acupuncture; medical practice; osteopathic medicine; chiropractic medicine; podiatric medicine; naturopathy; optometry; nursing; pharmacy; dentistry; midwifery; speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; orthotics, prosthetics and pedorthics; electrolysis; massage practice; clinical laboratory personnel; medical physicists; dispensing of optical devices and hearing aids; physical therapy practice; psychological services; and clinical, counseling, and psychotherapy services.

C. SECTION DIRECTORY:

Section 1. Provides findings and intent of the Legislature.

Section 2. Amends s. 456.072, F.S., to include failure to disclose the type of license they are practicing under in their advertisements and initial patient contact as grounds for discipline. Specifies the doctrine of incorporation by reference.

Section 3. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a fiscal impact on health care providers because of the need to change advertisements, notices and office procedures.

D. FISCAL COMMENTS:

According to the Department of Health, the bill could result in an increased number of complaints regarding failure to fully disclose licensure information that would require investigation and prosecution by the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Each board, or the department when there is no board, has rulemaking authority relating to discipline under current s. 456.079, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The department has expressed concern regarding enforcement. The bill does not designate who must communicate the licensure information, to whom it must be communicated, and in what manner it must be provided. It is unclear what is required of a practitioner who does not have direct patient contact, such as a radiologist or a pathologist.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 4, 2004, the Subcommittee on Health Standards adopted the following amendment to the bill and then reported the bill favorably to the Committee on Health Care as amended:

Amendment #1 – Provides clarifying language that the initial patient contact is the first in-person patient encounter.