



Florida Mental Health
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FMHCA is a chapter of
the [American Mental
Health Counselors
Association](#), the
largest association in
the United States that exclusively
represents clinical mental health
counselors

Proposal: COVID-19 Bill for 2020-2021 Legislative Session

Purpose of Bill:

The bill seeks to revise two statutes that negatively impact the accessibility of mental health counseling for Florida's citizens during the COVID-19 pandemic.

Issue #1: Exclusion of Mental Health Counselors, Marriage and Family Therapists, and Clinical Social Workers from Verbiage in Statutes Referring to Court-Appointed Forensic Evaluations

[F.S. 916.115](#) reads, "To the extent possible, the appointed experts shall have completed forensic evaluator training approved by the department, and each shall be a psychiatrist, licensed psychologist, or physician."

Implications: This statute does not list 491 Board licensees (i.e., Licensed Mental Health Counselors, Licensed Marriage and Family Therapists, and Licensed Clinical Social Workers). Consequently, some jurisdictions do not permit LMHCs, LMFTs, and LCSWs to be appointed to conduct evaluations for the courts, regardless of their individual levels of expertise and training and despite that assessment, diagnosis, and treatment of mental disorders is within the scope of practice of all 491 board licensees by statute. Attorneys sometimes attempt to disqualify 491 board licensees as expert witnesses for not being psychologists, and due process rights of defendants and inmates are sometimes violated with lengthy waits for a forensic evaluation due to a shortage of qualified psychologists/psychiatrists available to conduct such evaluations. This statute was written in 1985, just one year after mental health counselors were first licensed in the State of Florida (1984) and simply needs to be updated.

COVID-19 Connection: Evaluations are even harder to conduct during the pandemic, with some jails restricting access by evaluators, and some evaluators no longer conducting in-person evaluations. Currently, there are 12,262 LCSWs, 2,400 LMFTs, and 13,513 LMHCs in Florida, for a total of 28,175 491 Board licensees, whereas there are only 5,945 licensed psychologists. Revising this statute to include 491 Board licensees will likely remedy this problem.

Solution: Revise F.S. 916.115 to read "To the extent possible, the appointed experts shall have completed forensic evaluator training approved by the department, and each shall be a psychiatrist, **mental health professional licensed under F.S. 490 or F.S. 491**, or physician."

Issue #2: Requirement that Registered Mental Health Counselor, Marriage and Family Therapy, and Clinical Social Work Interns Working in Private Practice Settings Have a Licensed Mental Health Professional on the Premises When Providing Clinical Services (Even if Services are Provided Via Telehealth)

[F.S. 491.005\(1\)\(c\)](#) indicates that for registered interns, "a licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting."

Implications and COVID-19 Connection: Even prior to the COVID-19 pandemic, this provision singled out only one practice setting (i.e., private practice) and did not apply to counselors working in agencies, hospitals, government settings, universities, etc., which are the most popular settings for counselors to work in. The pandemic has made appropriate access to mental health counseling even more vital an issue. The *Tampa Bay Times* [recently reported](#) that the number of people reporting worsened mental health has tripled in connection with the current COVID-19 pandemic, and many of them are struggling to access treatment. Because of the pandemic, 95% of licensed counselors now provide telehealth and 70% of all therapy sessions nationwide are conducted via telehealth, whereas prior to the pandemic only 35% of licensed counselors provided telehealth (according to attached data collected by the American Mental Health Counselors Association from a sample of nearly 600 licensed counselors nationwide in October 2020). Many private practices have closed their doors and are providing services via telehealth only, often from their own home offices. Registered interns in private practice settings who are providing telehealth services are forced to choose between the ethical prerogative of not abandoning their clients and their own livelihood on one hand and adhering to social distancing precautions during a pandemic on the other. Just like interns in agency settings, interns in private practice settings are already required to be under appropriate supervision when practicing, and their supervisors can be accessed by phone, webcam, email, or means other than in-person contact. This statute was clearly not written with telehealth in mind.

Solution: Strike the following sentence from the statute: "A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting."

Connection to AMHCA Code of Ethics:

- The AMHCA *Code of Ethics* affirms the ability of clinical mental health counselors to provide forensic evaluations but also clarifies that they must be competent to perform those evaluations and must adhere to ethical principles when doing so (see page 10 of attached code).
- The AMHCA *Code of Ethics* affirms the importance of provision of distance counseling (see pages 6 and 7 of the attached code).

Connection to FMHCA's Mission and Purpose:

FMHCA's bylaws list several purposes that appear to fit the rationale for this bill:

- Promote the profession of mental health counseling
- Promote legislation that recognizes and advances the profession of mental health counseling
- Provide the public with information concerning the competencies and professional services of mental health counselors; Promote equitable licensure standards for mental health counselors through the state legislature
- Address institutional and social barriers that impede access, equity and success for clients through ongoing advocacy efforts.