

From: Irving, Ashleigh Ashleigh.Irving@flhealth.gov 

Subject: RE: Legislative Update

Date: April 12, 2023 at 12:29 PM

To:

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Good morning,

Last month I sent a copy of Senate Bill 1364 related to interstate-mobility and universal-recognition occupational licensing. Since my email, House Bill 1333 has been filed as a companion bill. Some boards have met to discuss the effect of the bill and drafted a letter of opposition. The Board of Dentistry specifically requested their letter be shared with all health care boards. Please find attached letters from the Boards of Medicine, Dentistry, and Osteopathic Medicine.

The House Bill was scheduled for review by the State Administration and Technology Appropriations Subcommittee at 8:00 a.m. this morning where the chairs of the Boards of Dentistry and Medicine spoke on behalf of their board's position.

I originally sent a vague message as the Department does not take a position in support or opposition of any bill, however, I wanted you to be aware of the bill.

The bill creates section 455.2135, Florida Statutes, to establish universal-recognition occupational licensure. This would allow an individual with an occupational health care license in another state to automatically qualify for Florida licensure if certain criteria are met. While this section is created under the umbrella statute for the Department of Business and Professional Regulation, the definition of "board" includes those professions also regulated under chapter 456, Florida Statute, for the Department of Health.

The bill requires a board to issue a license to a person applying to the board if the following apply:

- The person holds a current and valid occupational license or government certification by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a board in this state.
- The person has held the license for at least one year.
- A board for the other licensing entity required the person to pass an examination or meet education, training, or experience standards.
- The license is in good standing.
- The person does not have a disqualifying criminal record as determined by a board in this state.
- The person has not had their license revoked or surrendered because of negligence or intentional misconduct related to their profession.
- The person does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an

investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.

- The person pays all applicable fees in this state.

A health care licensing board would be required to individually review all applications for candidates who apply under the provision of “similar scope of practice.” The board would be required to compare the practice act of another state to determine if it is similar to the profession’s practice act in this state. The scope of practice for licensed professions varies by state. For example, Florida licenses mental health practitioners only at the clinical level and authorizes the diagnosis of mental illness, while other states license at the bachelor’s level and master’s level and restrict the practice.

Boards must also determine if an applicant’s criminal record would be disqualifying based on the additional provisions provided within the bill. Applications must be acted on within 90 days of being complete so this would require additional board meetings to be held. The timeframe of board meetings would likely increase as this would add additional applications to board meeting agendas for review and consideration. To determine if an applicant has a disqualifying criminal record, all health care professions would be required to complete a background screening. To determine actions taken against a health care practitioner in another state, the Department would be required to query the NPDB for each person applying through this pathway.

Like Florida, other states may consider complaints, allegations, and pending investigations as confidential and would unlikely be able to report this information to Florida boards.

The bill requires a board to issue a license to a person based on work experience in another state or the military if the following apply:

- The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The person worked for at least three years in their occupation.
- The person satisfies all of the requirements outlined in subsection 3(a) of the bill.

There may be health care professions that are related to professions the Department regulates and licenses. One example is Medication Aides, who are not licensed in Florida; however, they have a similar scope of practice as a Certified Nursing Assistant. A Medication Aide typically works in assisted living or nursing home settings and are used to administer medications to patients. This bill may allow a person who has experience working as a Medication Aide in another state to be eligible for licensure as a Certified Nursing Assistant. The professional board would be required to review the application to determine if the occupation has a

similar scope of practice in this state.

The bill requires a board to issue a license based on a person holding a private certification and the person's work experience in another state or the military if the following apply:

- The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The person worked for at least two years in their occupation.
- The person holds a current and valid private certification in the lawful occupation.
- The private certification is in good standing.
- The person satisfies all of the requirements outlined in subsection 3(a)5.-9. of the bill.

It is unknown how many private certifications exist that a health care practitioner may obtain. However, one example of this could include a pharmacy technician that has obtained a certification from the Pharmacy Technician Certification Board. This certification is not currently recognized for licensure purposes pursuant to Rule 64B16-26.351, Florida Administrative Code.

The bill authorizes licensure boards to require an applicant to pass a state-specific jurisprudential examination relevant to state laws that regulate their occupation. Currently, only the Boards of Pharmacy, Dentistry, Physical Therapy, Psychology, and Optometry require a jurisprudential examination. If other boards wish to stipulate this requirement, the Department would be required to contract with psychometricians or national exam administrators to develop and administer these examinations.

The bill specifies a 90-day timeframe for the board to provide an applicant with a written decision regarding his or her application upon receipt of a complete application. As drafted, the bill does not provide applicants, nor the Department with tolling provisions available under chapter 120, Florida Statutes. It is unclear if this language would supersede all of the provisions in the Administrative Procedures Act.

The bill allows a person to appeal a board's decision with the Division of Administrative Hearings (DOAH). In an appeal, the board is represented by an assistant attorney general at an hourly rate through an established contract. While appeals to DOAH are an existing right, the additional pathways to licensure that require additional board review are likely to result in additional appeals. This increase in licensure appeals would result in additional costly legal services provided by the Attorney General's office.

The bill specifies that a person who obtains a license is subject to the laws regulating their profession in this state and is under the jurisdiction of the licensing

regulating their profession in this state and is under the jurisdiction of the licensing board in this state.

The bill specifies that a person who obtains a license pursuant to this bill does not make the person eligible to work in another state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

The bill does not prevent the state from entering into a licensing compact or reciprocity agreement with another state or entity.

The bill provides the following emergency powers:

- During a state of emergency declared by the Governor, the Governor may order the recognition of occupational licenses from other licensing entities or from a foreign country as if the licenses were issued in this state.
- The Governor may expand any occupational license's scope of practice and may authorize licensees to provide services in this state in person, telephonically, or by other means for the duration of the emergency.

Pursuant to section 252.36, Florida Statutes, the Governor is responsible for meeting the dangers presented to this state and its people by emergencies. The Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law. An executive order, a proclamation, or a rule must be limited to a duration of not more than 60 days and may be renewed as necessary during the duration of the emergency.

When a state of emergency is declared, the State Surgeon General has the authority to issue an Emergency Order to suspend any statute or rule to prepare for or respond to the emergency. This can include the allowance of out of state health care professionals with unencumbered licenses to render their services in Florida for a certain duration.

The bill requires each board to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by December 31 of each year. The report must include the number of licenses issued, the number of applications submitted which were denied, and the reason for each denial. The current Licensing and Enforcement Information Database System, LEIDS, records the action reason as "Tolled," "Denied," or "Approved." Currently, it would require a manual process to compile deficiency information in relation to denied applications. To provide data reporting on the reason for denial will require a new technology system for universal occupational licenses or substantial modifications to the existing system.

MQA presently prepares an annual report with required reporting of licensing statistical information, per section 456.026, Florida Statutes. This additional report will require the development or enhancement of a database to collect relevant information regarding denials that are not presently reported, as well as data compilation, verification, and analysis to complete the required report.

The bill only references licensing boards, as drafted, which would exclude professions that are regulated by the Department.

Each licensing board would be required to engage in rulemaking to develop and incorporate application forms for this universal-recognition licensure method. As drafted, the bill does not provide for rulemaking authority to implement the provisions of this bill.

Committee weeks will end around April 25th. Both bills have two more committee stops before it reaches the floor of the House and Senate. You may choose to take a position as a board if you'd like or you can choose to remain neutral. If your board does not have a meeting scheduled prior to this date, we could try to schedule a special virtual meeting or you may want to reach out to the associations and organizations for your profession to have further discussion. You may also reach out to your legislators with any questions or concerns. I am here to serve at the direction of the board and look forward to your feedback.

Below are the audio links for some boards that have met to discuss the bill:

Board of Osteopathic Medicine:

<https://ww10.doh.state.fl.us/pub/osteo/Osteo/Audio/2023/04.07.23%20Meeting%20Audio/04.07.23%20Osteo%20GBM%20Audio.mp3>

Board of Dentistry:

https://ww10.doh.state.fl.us/pub/hcpr/Dentistry/2023/April/April_4_2023_Full_Board_Meeting_AUDIO.mp3

Board of Medicine:

https://ww10.doh.state.fl.us/pub/medicine/MQA_Audio/2023/March/Friday,%20March%2031,%202023/

Sincerely,

Ashleigh K. Irving, Executive Director

Department of Health | Division of Medical Quality Assurance | Bureau of Healthcare Practitioner Regulations | Boards of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling, Podiatric Medicine, Opticianry, Athletic Training, Hearing Aid Specialists, Orthotists & Prosthetists, and Genetic Counseling

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MISSION:

To protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.

VISION :

To be the *Healthiest State* in the Nation

VALUES (ICARE) :

Innovation: We search for creative solutions and manage resources wisely.

Collaboration: We use teamwork to achieve common goals & solve problems.

Accountability: We perform with integrity & respect.

Responsiveness: We achieve our mission by serving our customers & engaging our partners.

Excellence: We promote quality outcomes through learning & continuous performance improvement.

NOTE: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your email communication may therefore be subject to public disclosure.

From: Irving, Ashleigh

Sent: Monday, March 6, 2023 11:40 AM

Subject: Legislative Update

Good morning,

Attached please find Senate Bill 1364 which was filed on March 1, 2023. This bill is related to interstate-mobility and universal-recognition occupational licensing. Since the legislative session starts tomorrow and a significant amount of time would have passed before we meet again, I am emailing this to you for your feedback. This bill requires certain agencies, boards, departments, and other governmental entities to issue an occupational license or government certification to persons under certain circumstances. It can also be found online at the senate's website for review at the following link: [Senate Bill 1364 \(2023\) - The Florida Senate \(flsenate.gov\)](https://www.flsenate.gov/bills/2023/sb1364). This bill is interesting and would affect all healthcare boards and department-regulated professions. I find the portion regarding government certification, private certification, and the juris prudence exam particularly fascinating. Please let me know your thoughts. I'm looking forward to hearing your feedback.

Sincerely,

Ashleigh K. Irving, Executive Director

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