

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1405 Acupuncture
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee		Osborne	McElroy
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Acupuncture is a form of health care based on traditional Chinese medical concepts and modern “oriental” techniques for the purpose of the promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture involves the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body and the use of electroacupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies.

The Board of Acupuncture (Board) within the Department of Health (DOH) is responsible for the licensure and regulation of acupuncturists in the state. There are 2,672 acupuncturists currently licensed to practice in Florida.

HB 1405 significantly revises the acupuncture practice act which regulates the practice and licensure of acupuncture in Florida. The bill updates terminology throughout the practice act to use contemporary terminology, creates “acupuncture assistant” as an unlicensed profession, and creates a scope of practice for acupuncturists.

The bill revises the educational requirements for a person seeking initial licensure as an acupuncturist. The bill adds practice management to the list of subjects which may be included in continuing education courses.

The bill exempts a person acting in the capacity or guest instructor or guest practitioner from the prohibition on the unlicensed practice of acupuncture.

The bill has an indeterminant negative fiscal impact on state government, and no impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Licensure and Regulation of Acupuncture

Acupuncture is a form of health care based on traditional Chinese medical concepts and modern “oriental” techniques for the purpose of the promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture involves the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body and the use of electroacupuncture, Qi Gong,¹ oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies.²

There are 2,672 acupuncturists currently licensed to practice in Florida.³

Board of Acupuncture

The Board of Acupuncture (Board) within the Department of Health (DOH) is responsible for the licensure and regulation of acupuncturists. The Board consists of seven members appointed by the Governor and confirmed by the Florida Senate. The board must include five licensed acupuncturists and two laypersons who have never been acupuncturists or members of a closely related profession.⁴

Licensure Requirements

To be licensed to practice acupuncture, a person must apply to DOH and meet all of the following criteria:⁵

- Be at least 21 years of age, have good moral character, and the ability to communicate in English;
- Have completed 60 college credits from an accredited post-secondary institution;
- Have completed a four-year course of study in acupuncture and oriental medicine which meets the standards set by the Board and includes, at a minimum, courses in western anatomy, physiology, pathology, and biomedical terminology, first aid, and cardiopulmonary resuscitation (CPR);⁶ and
- Pay the required fees set by the Board.

In addition to meeting all of the criteria listed above, an applicant must also meet one of the following requirements:⁷

- Has successfully completed a board-approved national certification;
- Is actively licensed to practice in a state with examination requirements that are substantially equivalent to, or more stringent than, Florida’s requirements; or
- Passes an examination administered by DOH.⁸

¹ Qi Gong is the Chinese system of energy cultivation which uses posture, movement, exercises, breathing, meditation, visualization, and conscious intent to move, cleanse, or purify Qi (vital energy) to promote, maintain and restore health and to prevent disease. See, Rule 64B1-4.006, F.A.C.

² S. 457.102(1), F.S.

³ Department of Health, *License Verification Look-up*. Available at <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited January 29, 2024).

⁴ S. 457.103, F.S.

⁵ S. 457.105, F.S.

⁶ Individuals who were enrolled in a course of study prior to August 1, 1997 were eligible for licensure upon completion of a two-year course of study which adhered to Board-established standards. See, s. 457.105(2)(b), F.S.

⁷ S. 457.105, F.S.

Acupuncturists are required to renew their license to practice biennially. As a condition of licensure renewal, a licensed acupuncturist is required to complete a minimum of 30 hours of continuing education per biennium.⁹ Continuing education programs must be in acupuncture or oriental medicine subjects, including, but not limited to, anatomy, biological sciences, adjunctive therapies, sanitation and sterilization, emergency protocols, and diseases.¹⁰ The Board is responsible for evaluating and approving all continuing education courses.¹¹

Scope of Practice

Current law does not expressly outline a scope of practice for acupuncturists. Acupuncturists are licensed to practice acupuncture, which is defined in s. 457.102, F.S., as a form of primary health care, based on traditional Chinese medical concepts and modern oriental medical techniques, that employs acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

Acupuncture includes, but is not limited to, the insertion of acupuncture needles and the application of moxibustion¹² to specific areas of the human body and the use of electroacupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies. Current law allows the Board discretion in defining these terms.¹³

Current law describes an acupuncturist's prescriptive authority which authorizes an acupuncturist to prescribe, administer, and use needles and other devices used in the practice of acupuncture and oriental medicine.¹⁴

Prohibited Acts

Current law prohibits the following in regard to the licensed practice of acupuncture:¹⁵

- The practice acupuncture unless the person is licensed under the acupuncture practice act;
- The use, in connection with his or her name or place of business, any title or description of services which incorporates the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "oriental medical practitioner"; the letters "L.Ac.," "R.Ac.," "A.P.," or "D.O.M."; or any other words, letters, abbreviations, or insignia indicating or implying the practice of acupuncture, unless the person is licensed under the acupuncture practice act;
- Presenting as his or her own the license of another;
- Knowingly giving false or forged evidence to the board or a member thereof;
- The use or attempted use of a license that has been suspended, revoked, or placed on inactive or delinquent status;
- The employ of any person who is not licensed pursuant to the acupuncture practice act to engage in the practice of acupuncture; or
- The concealing of information relating to any violation of the acupuncture practice act.

A person who violates this section commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083, F.S.¹⁶

⁸ The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination consisting of the Foundation of Oriental Medicine Module, the Acupuncture with Point Location Module, the Biomedicine Module and the Chinese Herbology Module is the Board-approved licensure examination. See, 64B1-3.004, F.A.C.

⁹ S. 457.107, F.S., and Rule 64B1-7.0015, F.A.C.

¹⁰ S. 457.107, F.S.

¹¹ Rule 64B1-6.005, F.A.C.

¹² Moxibustion is an external treatment based in traditional Chinese medicine. The practice involves the burning moxa, an herb, adjacent to specific acupuncture points. See, Deng, H., & Shen, X. *The mechanism of moxibustion: ancient theory and modern research*. (2013). Evidence-based complementary and alternative medicine <https://doi.org/10.1155/2013/379291>

¹³ S. 457.102(1), F.S.; see also, 64B1-3.001, F.A.C.

¹⁴ S. 457.102(7), F.S.

¹⁵ S. 457.116, F.S.

Effect of the Bill

HB 1405 significantly revises the acupuncture practice act which regulates the practice and licensure of acupuncture in Florida.

HB 1405 revises the definition of acupuncture to align with modern nomenclature used to describe the practice. The bill deletes references to “Chinese,” and “oriental,” medicine and replaces them with “Eastern” medicine. The bill defines “Eastern medicine” as a primary health care system of medicine that includes differential diagnoses and treatment principles, modalities, procedures, and techniques employing acupuncture; traditional and contemporary Eastern medicine; herbal medicine; adjunctive therapies; biological sciences; and medical assessments, examinations, and evaluations for the promotion, maintenance, and restoration of health and the prevention of human disease. The bill makes conforming changes throughout the acupuncture practice act.

The bill creates “acupuncture assistant” as an unlicensed profession. An acupuncture assistant is an unlicensed person who has completed an accredited certification program approved by the Board for the purpose of assisting a licensed acupuncturist. An acupuncture assistant may check on patients and remove acupuncture needles, but may not alter an acupuncture plan of care or insert acupuncture needles. The bill authorizes the Board to specify additional activities and duties appropriate for an acupuncture assistant through rule.

Licensure Requirements

HB 1405 revises the educational requirements for licensure as an acupuncturist. Effective July 1, 2026, the bill requires an individual complete a minimum of 90 college credits leading to a bachelor’s degree from a college or university which is accredited by an accrediting agency recognized and approved by the US Department of Education, or a foreign college, university, or institution program.

The bill specifies that the required four-year course of study in acupuncture must be from an accredited program, and effective July 30, 2030, such course of study must terminate with the completion of a doctoral degree in acupuncture that is recognized and approved by the US Department of Education.¹⁷

The bill revises the licensure pathways for individuals who have completed a board-approved national certification or have been licensed to practice acupuncture in another US state.

The bill adds “practice management” to the list of subjects which may be included in Board-approved continuing education courses. The bill defines “practice management” as the development or mechanics of establishing and managing an office, including enhancement of patient care, risk management, cybersecurity, cost containment, health care documentation, and insurance coding, billing, and claims processing. The bill specifies that up to six hours of practice management continuing education courses may be applied toward a licensee’s biennial continuing education requirement.

The bill expressly states that a person licensed to practice acupuncture may not advertise or practice as a physician, an osteopathic physician, or a chiropractic physician, unless he or she maintains an active license to practice in such profession.

Scope of Practice

HB 1405 creates a new section of statute outlining the scope of practice for acupuncturists and acupuncture assistants.

¹⁶ S. 457.116(2), F.S.; The punishment for such a misdemeanor consists of up to 60 days of imprisonment and a fine up to \$500; see, ss. 775.082 and 775.083, F.S.

¹⁷ The US Department of Education does not directly approve and recognize specific educational programs. Rather, the US Department of Education recognizes accrediting agencies that evaluate and accredit specific programs. See, US Department of Education, *Accreditation in the United States*. Available at <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited January 30, 2024).

Under the bill, the scope of practice for an acupuncturist includes, but is not limited to, the following:

- Examination, evaluation, analysis, diagnosis, management, and treatment services;
- The use and ordering of testing procedures, diagnostic imaging, and laboratory tests; and
- The stimulation of points, areas of the body, and tissues within the body using acupuncture and Eastern medicine, herbal medicine therapies, nutritional substances, point injection, sterile solutions, qi, medical instruments, and other devices or means, as defined by Board rule.

The bill directs the Board to periodically revise the use of acupuncture point injection therapies in rule based on national standards of practice.

The bill expands an acupuncturist's prescriptive authority to include medical devices, the use of diagnostic laboratory tests and imaging procedures, and acupuncture point injection therapies which include the injection of botanical and herbal medicines, nutritional substances, or sterile solutions that are used in the practice of acupuncture and Eastern medicine.

Prohibited Acts

The bill exempts a person acting in the capacity of guest instructor or guest practitioner from the prohibition on the unlicensed practice of acupuncture. The bill directs the Board to establish rules to implement this provision, including exemption for teaching approved courses and practicing acupuncture in response to a declared disaster or emergency.

The bill also establishes title protection, adding "acupuncture physician" to the list of titles which may not be used by a person who is not licensed to practice acupuncture to describe oneself or place of business.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 457.102, F.S., relating to definitions.
Section 2: Amends s. 457.105, F.S., relating to licensure qualifications and fees.
Section 3: Creates s. 457.106, F.S., relating to scope of practice for acupuncturists and acupuncture assistants.
Section 4: Amends s. 457.107, F.S., relating to renewal of licenses; continuing education.
Section 5: Amends s. 457.116, F.S., relating to prohibited acts; penalty.
Section 6: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Sufficient rule-making authority exists to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill currently requires that the course of study in acupuncture be recognized and approved by the US Department of Education, however, the US Department of Education does not recognize individual course of study, and instead recognizes accrediting agencies which evaluate and accredit individual programs.¹⁸

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹⁸ See, US Department of Education, *Accreditation in the United States*. Available at <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited January 30, 2024).