

MASSAGE THERAPY LAWS AND RULES - LEGAL UPDATE 2011 (10 CE Hours)

Objectives

- ▶ List the organizations responsible for regulating massage therapy in Florida.
- ▶ Name the two primary legal documents regulating massage therapy in Florida.
- ▶ Discuss the qualifications and responsibilities of the Board of Massage Therapy.
- ▶ List changes to electronic health records associated with 2009-172.
- ▶ List the incentives and disincentives prohibiting Medicaid fraud in the health care professions.
- ▶ Explain the requirements of 2010-211 regarding medical record releases.
- ▶ Describe the responsibilities of apprentices and sponsors in an approved apprenticeship training program.
- ▶ Describe the requirements for instructors and massage therapy students training in colonies irrigation.
- ▶ List the laws and guidelines governing establishments of massage therapy and requirements for the premises.
- ▶ List the changes in Chapter 64B7 FAC that became effective in 2010.

Introduction

This chapter discusses recent legislative changes that affect practitioners of massage therapy. As this is an ongoing process, it is a good idea to get acquainted with a number of web sites that provide up-to-date information about your legal responsibilities as a professional in the field. Most of the information in this chapter is drawn from the following governmental web sites, which provide current and historical information regarding the legislative process and results:

- ◆ Florida Senate web site: <http://www.flsenate.gov>
- ◆ Florida House web site: <http://www.myfloridahouse.gov>
- ◆ Florida Department of State: <http://election.dos.state.fl.us>

You will also find it valuable to check the Florida Department of Health Massage Therapy Web Page to learn about professional updates and alerts in the field of massage therapy, at:

- ◆ <http://www.doh.state.fl.us/mqa/massage/index.html>

Massage therapy regulation

The Florida Department of Health (FDH), through its Division of Medical Quality Assurance (MQA), oversees licensure requirements for practitioners of massage therapy. MQA's three key business processes

are licensure, enforcement and information. The Florida Board of Massage Therapy, created within the Florida Department of Health, consists of seven members appointed by the Governor and confirmed by the Florida Senate. Board members administer and enforce the law regulating massage therapy, encompassed primarily in Chapter 480, Florida Statutes (FS). The Board is also empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities. These rules are contained in Chapter 64B7, Florida Administrative Code (FAC). These two documents are the primary regulating instruments for massage therapy in Florida:

- ◆ Chapter 480, Florida Statutes: Massage Therapy http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0480/0480.html
- ◆ Rules: Chapter 64B7, Florida Administrative Code <https://www.flrules.org/gateway/Organization.asp?OrgNo=64b7>

While most of the legal requirements associated with massage therapy are addressed in these documents, other laws regulating its practice are found in these, and other, statute chapters.

- ◆ Chapter 112, Florida Statutes: Public Officers and Employees: General Provisions
- ◆ Chapter 119, Florida Statutes: Public Records
- ◆ Chapter 120, Florida Statutes: Administrative Procedure Act
- ◆ Chapter 408, Florida Statutes: Health Care Administration
- ◆ Chapter 456, Florida Statutes: Health Professions and Occupations: General Provisions

Because Chapter 480 Florida Statutes and Chapter 64B7 FAC are so central to massage practice, they are reproduced here in their entirety. The other chapters are excerpted in part, as necessary, to emphasize legislative changes, which are summarized. While this chapter highlights many of the legislative changes in massage therapy in recent years, it does not address all changes. Please refer directly to the Statutes and Florida Administrative Code for the complete and current version of the laws and rules.

Statutory changes affecting massage therapy law occur regularly, with minor changes occurring some years, and sweeping changes in others. This chapter will review select legislative changes affecting Massage Therapy practice, focusing on the past three years, beginning with the most recent legislative session, in 2011. The first part of the chapter addresses changes in the Florida Statutes, the second discusses changes in the Florida

Administrative Code, and the third reviews recent announcements and frequently asked questions regarding massage therapy in Florida.

Notes pertaining to the development of the law in specific subject areas are detailed in the History sections, referred to at points throughout the text. Each corresponds to a section of the Florida Statutes or Florida Administrative Code, with citations to the section and chapter number of the creating act and each subsequent amendatory act in the Laws of Florida.

This chapter fulfills ten continuing education hours addressing recent legal updates for Massage Therapy professionals. The chapter will also provide links to review legislative changes in more detail, and direct you to a variety of massage therapy resources for further information.

PART I: Florida Statutes – Laws

The Florida Statutes (found at <http://www.leg.state.fl.us/STATUTES/>) are a permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are updated annually by laws that create, amend, or repeal statutory material. Legislative changes to the Florida Statutes effective up to and including January 1, 2012, are treated as current for publication of the 2011 Florida Statutes. This means that some material in the 2011 edition may not take effect up to or until January 1, 2012. All information presented here is currently in effect unless otherwise noted.

The sections below highlight legislative revisions of primary relevance to massage therapists from the Florida Statutes for the 2009, 2010, and 2011 legislative sessions, but it is not a complete list of all changes. For example, many revisions to Chapter 112 and Chapter 119 FS are of a technical nature, for the purposes of revising laws to delete expired or obsolete language and correct cross-references and grammatical errors, among other functions. While these laws alter existing massage therapy regulations, they do not require any action on the part of practitioners, so have not been included. For further information or detail regarding recent legislative changes, refer to the links and web sites noted in the chapter.

New laws are listed first by their new number (the year the legislation was passed – 2009, 2010, or 2011), then a dash, then the next number in a sequence, beginning with “1” at the start of the session, then by their title, then by their previous bill number (HB for House, and SB for Senate). The title and links are followed by summaries of the amended

statutes, and selected portions of the revised text of the statute, which will be printed with strikethroughs and underscores to show recent changes in the wording (CODING: Words stricken are deletions; words underlined are additions). For the complete text of the new law, use the chapter number link.

**TITLE XXIX Public health
Chapter 408 F.S. – Health care
administration**

See complete text at <http://www.flsenate.gov/Laws/Statutes/2010/Chapter408>

**2009-172 Electronic health records (SB
162)**

This law makes revisions to a number of provisions in Florida law regarding patient medical records and health information technology.

- ♦ The law clarifies that a patient's records held by a hospital may be disclosed without the consent of the patient, or his or her legal representative, to health care practitioners and providers currently involved in the care or treatment of the patient. The law also authorizes a clinical laboratory to provide laboratory results without patient consent to other health care practitioners and providers involved in the care or treatment of the patient for use in connection with the treatment of the patient.
- ♦ The law repeals the authority of the State Long-Term Care Ombudsman Council and local long-term care ombudsman councils to access patient records held by a hospital without patient consent. The state and local councils will continue to have access to patient records held by long-term care facilities and hospital records by obtaining patient consent.
- ♦ The law creates the Florida Electronic Health Records Exchange Act and defines several common health information technology terms such as "electronic health record," "certified electronic health record technology," and "identifiable health record." The law provides civil immunity for a health care provider who, in good faith, releases or accesses a patient's health record without the patient's consent for the treatment of an emergency medical condition when the provider is unable to obtain the patient's consent due to the patient's condition. In addition, the law requires the Agency for Health Care Administration (agency) to create, by July 1, 2010, a universal patient authorization form that may be used by a health care provider for the release of a patient's health records.
- ♦ The law creates a rebuttable presumption that the release of a patient's health record

is appropriate when a health care provider exchanges the health record upon receipt of a valid authorization form. The law states that the provider in such a circumstance does not violate a right of confidentiality, is immune from civil liability for releasing or accessing the patient's health records, and is deemed to not have violated or waived any privilege protected under statutory or common law. The law also states that anyone who forges a signature on an authorization form or obtains an authorization form or health record of another person under false pretenses may be liable for compensatory damages plus attorney's fees and costs.

See complete revised text at Ch_2009-172.pdf or <http://laws.flrules.org/2009/172>

- ♦ An act relating to electronic health records; amending s. 395.3025, F.S.; expanding access to a patient's health records in order to facilitate the exchange of data between certain health care facility personnel, practitioners, and providers and attending physicians; deleting the exemption that allows long-term ombudsman councils to have access to certain nursing home patient records;
- ♦ Creating s.408.051, F.S.; creating the "Florida Electronic Health Records Exchange Act"; providing definitions; authorizing the release of certain health records under emergency medical conditions without the consent of the patient or the patient representative; providing for immunity from civil liability; providing duties of the Agency for Health Care Administration with regard to the availability of specified information on the agency's Internet website; requiring the agency to develop and implement a universal patient authorization form in paper and electronic formats for the release of certain health records; providing procedures for use of the form; providing penalties; providing for certain compensation and attorney's fees and costs;
- ♦ Creating s. 408.0512, F.S.; requiring the Agency for Health Care Administration to operate an electronic health record technology loan fund, subject to a specific appropriation; requiring the agency to adopt rules related to standard terms and conditions for the loan program;

WHEREAS, the use of electronic health information technology has been proven to benefit consumers by increasing the quality and efficiency of health care delivery throughout the state, and

WHEREAS, clear and concise standards for sharing privacy-protected medical information among authorized health

care providers will enable providers to have cost-effective access to the medical information needed to make sound decisions about health care, and

WHEREAS, maintaining the privacy and security of identifiable health records is essential to the adoption of procedures for sharing of electronic health records among health care providers involved in the treatment of patients, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida: Section 1. Subsection (4) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.

4. Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:
 - a. Licensed facility personnel, attending physicians, or other health care practitioners and providers currently involved in the care or treatment of the patient for use only in connection with the treatment of the patient.
 - b. Licensed facility personnel only for administrative purposes or risk management and quality assurance functions.
 - c. The agency, for purposes of health care cost containment.
 - d. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.
 - e. The agency upon subpoena issued pursuant to s. 456.071, but the records obtained thereby must be used solely for the purpose of the agency and the appropriate professional board in its investigation, prosecution, and appeal of disciplinary proceedings. If the agency requests copies of the records, the facility shall charge no more than its actual copying costs, including reasonable staff time. The records must be sealed and must not be available to the public pursuant to s. 119.07(1) or any other statute providing access to records, nor may they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the agency or the appropriate regulatory board. However, the agency must make available, upon written request by a practitioner against whom probable

cause has been found, any such records that form the basis of the determination of probable cause.

- f. The Department of Health or its agent, for the purpose of establishing and maintaining a trauma registry and for the purpose of ensuring that hospitals and trauma centers are in compliance with the standards and rules established under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and for the purpose of monitoring patient outcome at hospitals and trauma centers that provide trauma care services.
- g. The Department of Children and Family Services or its agent, for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable adults.
- h. A local trauma agency or a regional trauma agency that performs quality assurance activities, or a panel or committee assembled to assist a local trauma agency, or a regional trauma agency in performing quality assurance activities. Patient records obtained under this paragraph are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- i. Organ procurement organizations, tissue banks, and eye banks required to conduct death records reviews pursuant to s. 395.2050.
- j. The Medicaid Fraud Control Unit in the Department of Legal Affairs pursuant to s. 409.920.
- k. The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717.
- l. A regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

Section 2. Section 408.051, Florida Statutes, is created to read:

408.051 Florida Electronic Health Records Exchange Act. –

1. **SHORT TITLE.** – This section may be cited as the “Florida Electronic Health Records Exchange Act.”
2. **DEFINITIONS.** – As used in this section, the term:
 - a. “Electronic health record” means a record of a person’s medical treatment which is created by a licensed health care provider and stored in an

interoperable and accessible digital format.

- b. “Qualified electronic health record” means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such information from, other sources.
- c. “Certified electronic health record technology” means a qualified electronic health record that is certified pursuant to s. 3001(c)(5) of the Public Health Service Act as meeting standards adopted under s. 3004 of such act which are applicable to the type of record involved, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals.
- d. “Health record” means any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.
- e. “Identifiable health record” means any health record that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.
- f. “Patient” means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.
- g. “Patient representative” means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient’s health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient’s surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient’s surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child.

3. **EMERGENCY RELEASE OF IDENTIFIABLE HEALTH RECORD.** – A health care provider may release or access an identifiable health record of a patient without the patient’s consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), when the health care provider is unable to obtain the patient’s consent or the consent of the patient representative due to the patient’s condition or the nature of the situation requiring immediate medical attention. A health care provider who in good faith releases or accesses an identifiable health record of a patient in any form or medium under this subsection is immune from civil liability for accessing or releasing an identifiable health record.
4. **UNIVERSAL PATIENT AUTHORIZATION FORM.** –
 - a. By July 1, 2010, the agency shall develop forms in both paper and electronic formats which may be used by a health care provider to document patient authorization for the use or release, in any form or medium, of an identifiable health record.
 - b. The agency shall adopt by rule the authorization form and accompanying instructions and make the authorization form available on the agency’s website, pursuant to s. 408.05.
 - c. A health care provider receiving an authorization form containing a request for the release of an identifiable health record shall accept the form as a valid authorization to release an identifiable health record. A health care provider may elect to accept the authorization form in either electronic or paper format or both. The individual or entity that submits the authorization form containing a request for the release of an identifiable health record shall determine which format is accepted by the health care provider prior to submitting the form.
 - d. An individual or entity that submits a request for an identifiable health record is not required under this section to use the authorization form adopted and distributed by the agency.
 - e. The exchange by a health care provider of an identifiable health record upon receipt of an authorization form completed and submitted in accordance with agency instructions creates a rebuttable presumption that the release of the identifiable health record was appropriate. A health care provider that releases an identifiable health record in

reliance on the information provided to the health care provider on a properly completed authorization form does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record under this subsection.

- f. A health care provider that exchanges an identifiable health record upon receipt of an authorization form shall not be deemed to have violated or waived any privilege protected under the statutory or common law of this state.
- 5. **PENALTIES.** – A person who does any of the following may be liable to the patient or a health care provider that has released an identifiable health record in reliance on an authorization form presented to the health care provider by the person for compensatory damages caused by an unauthorized release, plus reasonable attorney's fees and costs:
 - a. Forges a signature on an authorization form or materially alters the authorization form of another person without the person's authorization; or
 - b. Obtains an authorization form or an identifiable health record of another person under false pretenses.

2011-61 Medicaid (SB 2144)

This is primarily a law associated with the General Appropriations Act (GAA) for the 2011-12 fiscal year and contains various statutory revisions to conform to budget adjustments in the area of health care.

Among its changes, it amends 408.815, F.S., modifying the requirements for the denial of an application for a license or license renewal requests; provides mitigating circumstances for consideration for any application subject to denial; and provides criteria for the extension of a license that has been denied, revoked or set to terminate.

See complete revised text at <http://laws.flrules.org/2011/61>

- ♦ Amends 408.815, F.S.; requiring that the Agency for Health Care Administration deny an application for a license or license renewal of an applicant, a controlling interest of the applicant, or any entity in which a controlling interest of the applicant was an owner or officer during the occurrence of certain actions; authorizing the agency to consider certain mitigating circumstances; authorizing the agency to extend a license expiration date under certain circumstances;

Section 2. Section 408.815, Florida Statutes, is amended to read:

408.815 License or application denial; revocation.

1. In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest:
 - a. False representation of a material fact in the license application or omission of any material fact from the application.
 - b. An intentional or negligent act materially affecting the health or safety of a client of the provider.
 - c. A violation of this part, authorizing statutes, or applicable rules.
 - d. A demonstrated pattern of deficient performance.
 - e. The applicant, licensee, or controlling interest has been or is currently excluded, suspended, or terminated from participation in the state Medicaid program, the Medicaid program of any other state, or the Medicare program.
2. If a licensee lawfully continues to operate while a denial or revocation is pending in litigation, the licensee must continue to meet all other requirements of this part, authorizing statutes, and applicable rules and must file subsequent renewal applications for licensure and pay all licensure fees. The provisions of ss. 120.60(1) and 408.806(3)(c) do shall not apply to renewal applications filed during the time period in which the litigation of the denial or revocation is pending until that litigation is final.
3. An action under s. 408.814 or denial of the license of the transferor may be grounds for denial of a change of ownership application of the transferee.
4. Unless an applicant is determined by the agency to satisfy the provisions of subsection (5) for the action in question, the agency shall deny an application for a license or license renewal based upon any of the following actions of an applicant, a controlling interest of the applicant, or any entity in which a controlling interest of the applicant was an owner or officer when the following actions occurred:
 - a. A conviction or enters a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, Medicaid fraud, Medicare fraud, or insurance fraud, unless the sentence and any subsequent period of probation for such convictions or plea

ended more than 15 years before prior to the date of the application; or

- b. Termination for cause from the Medicare program or a state Medicaid program, unless the applicant has been in good standing with the Medicare program or a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or
- c. Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from the federal Medicare program or from any other state Medicaid 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.

5. For any application subject to denial under subsection (4), the agency may consider mitigating circumstances as applicable, including, but not limited to:
 - a. Completion or lawful release from confinement, supervision, or sanction, including the terms of probation, and full restitution;
 - b. Execution of a compliance plan with the agency;
 - c. Compliance with an integrity agreement or compliance plan with another government agency;
 - d. Determination by any state Medicaid program or the Medicare program that the controlling interest or entity in which the controlling interest was an owner or officer is currently allowed to participate in the state Medicaid program or the Medicare program, directly as a provider or indirectly as an owner or officer of a provider entity;
 - e. Continuation of licensure by the controlling interest or entity in which the controlling interest was an owner or officer, directly as a licensee or indirectly as an owner or officer of a licensed entity in the state where the action occurred;
 - f. Overall impact upon the public health, safety, or welfare; or
 - g. Determination that a license denial is not commensurate with the prior action taken by the Medicare or state Medicaid program. After considering the circumstances set forth in this subsection, the agency shall grant the license, with or without conditions, grant a provisional license for a period of no more than the licensure cycle, with or without conditions, or deny the license.

6. In order to ensure the health, safety, and welfare of clients when a license has been denied, revoked, or is set to terminate, the agency may extend the license expiration date for up to 30 days for the sole purpose of allowing the safe and orderly discharge of clients. The agency may impose conditions on the extension, including, but not limited to, prohibiting or limiting admissions, expedited discharge planning, required status reports, and mandatory monitoring by the agency or third parties. When imposing these conditions, the agency shall consider the nature and number of clients, the availability and location of acceptable alternative placements, and the ability of the licensee to continue providing care to the clients. The agency may terminate the extension or modify the conditions at any time. This authority is in addition to any other authority granted to the agency under chapter 120, this part, and authorizing statutes but creates no right or entitlement to an extension of a license expiration date.

Chapter 408: Part II: Health care licensing: General provisions (ss. 408.801-408.832)

Massage Therapists should especially be acquainted with Part II of Chapter 408, which regulates health care licensing. Known as the "Health Care Licensing Procedures Act," it was created to standardize basic licensing requirements across a number of professions and health providers. There have been substantial changes to the Act in the past three years. The section is reproduced below, with recent revisions relevant to Massage Therapists highlighted in bold:

Part II – Health care licensing: General provisions

408.801 – Short title; purpose.

1. This part may be cited as the "Health Care Licensing Procedures Act."
2. The Legislature finds that there is unnecessary duplication and variation in the requirements for licensure by the agency. It is the intent of the Legislature to provide a streamlined and consistent set of basic licensing requirements for all such providers in order to minimize confusion, standardize terminology, and include issues that are otherwise not adequately addressed in the Florida Statutes pertaining to specific providers.

1408.802 Applicability.

The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

1. Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102.
2. Birth centers, as provided under chapter 383.
3. Abortion clinics, as provided under chapter 390.
4. Crisis stabilization units, as provided under parts I and IV of chapter 394.
5. Short-term residential treatment facilities, as provided under parts I and IV of chapter 394.
6. Residential treatment facilities, as provided under part IV of chapter 394.
7. Residential treatment centers for children and adolescents, as provided under part IV of chapter 394.
8. Hospitals, as provided under part I of chapter 395.
9. Ambulatory surgical centers, as provided under part I of chapter 395.
10. Mobile surgical facilities, as provided under part I of chapter 395.
11. Private review agents, as provided under part I of chapter 395.
12. Health care risk managers, as provided under part I of chapter 395.
13. Nursing homes, as provided under part II of chapter 400.
14. Assisted living facilities, as provided under part I of chapter 429.
15. Home health agencies, as provided under part III of chapter 400.
16. Nurse registries, as provided under part III of chapter 400.
17. Companion services or homemaker services providers, as provided under part III of chapter 400.
18. Adult day care centers, as provided under part III of chapter 429.
19. Hospices, as provided under part IV of chapter 400.
20. Adult family-care homes, as provided under part II of chapter 429.
21. Homes for special services, as provided under part V of chapter 400.
22. Transitional living facilities, as provided under part V of chapter 400.
23. Prescribed pediatric extended care centers, as provided under part VI of chapter 400.
24. Home medical equipment providers, as provided under part VII of chapter 400.
25. Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of chapter 400.
26. Health care services pools, as provided under part IX of chapter 400.
27. Health care clinics, as provided under part X of chapter 400.
28. Clinical laboratories, as provided under part I of chapter 483.
29. Multiphasic health testing centers, as provided under part II of chapter 483.
30. Organ, tissue, and eye procurement organizations, as provided under part V of chapter 765.

408.803 – Definitions.

As used in this part, the term:

1. "Agency" means the Agency for Health Care Administration, which is the licensing agency under this part.
2. "Applicant" means an individual, corporation, partnership, firm, association, or governmental entity that submits an application for a license to the agency.
3. "Authorizing statute" means the statute authorizing the licensed operation of a provider listed in s. 408.802 and includes chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765.
4. "Certification" means certification as a Medicare or Medicaid provider of the services that require licensure, or certification pursuant to the federal Clinical Laboratory Improvement Amendment (CLIA).
5. "Change of ownership" means:
 - a. An event in which the licensee sells or otherwise transfers its ownership to a different individual or entity as evidenced by a change in federal employer identification number or taxpayer identification number; or
 - b. An event in which 51 percent or more of the ownership, shares, membership, or controlling interest of a licensee is in any manner transferred or otherwise assigned. This paragraph does not apply to a licensee that is publicly traded on a recognized stock exchange. A change solely in the management company or board of directors is not a change of ownership.
6. "Client" means any person receiving services from a provider listed in s. 408.802.
7. "Controlling interest" means:
 - a. The applicant or licensee;
 - b. A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; or
 - c. A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.

The term does not include a voluntary board member.
8. "License" means any permit, registration, certificate, or license issued by the agency.
9. "Licensee" means an individual, corporation, partnership, firm, association,

governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.

10. "Moratorium" means a prohibition on the acceptance of new clients.
11. "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802.
12. "Services that require licensure" means those services, including residential services, that require a valid license before those services may be provided in accordance with authorizing statutes and agency rules.
13. "Voluntary board member" means a board member or officer of a not-for-profit corporation or organization who serves solely in a voluntary capacity, does not receive any remuneration for his or her services on the board of directors, and has no financial interest in the corporation or organization.

408.804 – License required; display.

1. It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.
2. A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

408.805 – Fees required; adjustments.

Unless otherwise limited by authorizing statutes, license fees must be reasonably calculated by the agency to cover its costs in carrying out its responsibilities under this part, authorizing statutes, and applicable rules, including the cost of licensure, inspection, and regulation of providers.

1. Licensure fees shall be adjusted to provide for biennial licensure under agency rules.
2. The agency shall annually adjust licensure fees, including fees paid per bed, by not more than the change in the Consumer Price Index based on the 12 months immediately preceding the increase.
3. An inspection fee must be paid as required in authorizing statutes.
4. Fees are nonrefundable.
5. When a change is reported that requires issuance of a license, a fee may be assessed. The fee must be based on the

- actual cost of processing and issuing the license.
6. A fee may be charged to a licensee requesting a duplicate license. The fee may not exceed the actual cost of duplication and postage.
7. Total fees collected may not exceed the cost of administering this part, authorizing statutes, and applicable rules.

408.806 – License application process.

1. An application for licensure must be made to the agency on forms furnished by the agency, submitted under oath, and accompanied by the appropriate fee in order to be accepted and considered timely. The application must contain information required by authorizing statutes and applicable rules and must include:
 - a. The name, address, and social security number of:
 1. The applicant;
 2. The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider;
 3. The financial officer or similarly titled person who is responsible for the financial operation of the licensee or provider; and
 4. Each controlling interest if the applicant or controlling interest is an individual.
 - b. The name, address, and federal employer identification number or taxpayer identification number of the applicant and each controlling interest if the applicant or controlling interest is not an individual.
 - c. The name by which the provider is to be known.
 - d. The total number of beds or capacity requested, as applicable.
 - e. The name of the person or persons under whose management or supervision the provider will operate and the name of the administrator, if required.
 - f. If the applicant offers continuing care agreements as defined in chapter 651, proof shall be furnished that the applicant has obtained a certificate of authority as required for operation under chapter 651.
 - g. Other information, including satisfactory inspection results, that the agency finds necessary to determine the ability of the applicant to carry out its responsibilities under this part, authorizing statutes, and applicable rules.
 - h. An affidavit, under penalty of perjury, as required in s. 435.05(3), stating compliance with the provisions of this section and chapter 435.
2. a. The applicant for a renewal license must submit an application that must be received by the agency at least 60 days but no more than 120 days before the expiration of the current license. An application received more than 120 days before the expiration of the current license shall be returned to the applicant. If the renewal application and fee are received prior to the license expiration date, the license shall not be deemed to have expired if the license expiration date occurs during the agency's review of the renewal application.
- b. The applicant for initial licensure due to a change of ownership must submit an application that must be received by the agency at least 60 days prior to the date of change of ownership.
- c. For any other application or request, the applicant must submit an application or request that must be received by the agency at least 60 days but no more than 120 days before the requested effective date, unless otherwise specified in authorizing statutes or applicable rules. An application received more than 120 days before the requested effective date shall be returned to the applicant.
- d. The agency shall notify the licensee by mail or electronically at least 90 days before the expiration of a license that a renewal license is necessary to continue operation. The failure to timely submit a renewal application and license fee shall result in a \$50 per day late fee charged to the licensee by the agency; however, the aggregate amount of the late fee may not exceed 50 percent of the licensure fee or \$500, whichever is less. If an application is received after the required filing date and exhibits a hand-canceled postmark obtained from a United States post office dated on or before the required filing date, no fine will be levied.
3. a. Upon receipt of an application for a license, the agency shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.
- b. Requested information omitted from an application for licensure, license renewal, or change of ownership, other than an inspection, must be filed with the agency within 21 days after the agency's request for omitted information or the application shall be deemed incomplete and shall be

withdrawn from further consideration and the fees shall be forfeited.

c. Within 60 days after the receipt of a complete application, the agency shall approve or deny the application.

4. a. Licensees subject to the provisions of this part shall be issued biennial licenses unless conditions of the license category specify a shorter license period.

b. Each license issued shall indicate the name of the licensee, the type of provider or service that the licensee is required or authorized to operate or offer, the date the license is effective, the expiration date of the license, the maximum capacity of the licensed premises, if applicable, and any other information required or deemed necessary by the agency.

5. In accordance with authorizing statutes and applicable rules, proof of compliance with s.

408.810 must be submitted with an application for licensure.

6. The agency may not issue an initial license to a health care provider subject to the certificate-of-need provisions in part I of this chapter if the licensee has not been issued a certificate of need or certificate-of-need exemption, when applicable. Failure to apply for the renewal of a license prior to the expiration date renders the license void.

7. a. An applicant must demonstrate compliance with the requirements in this part, authorizing statutes, and applicable rules during an inspection pursuant to s. 408.811, as required by authorizing statutes.

b. An initial inspection is not required for companion services or homemaker services providers, as provided under part III of chapter 400, or for health care services pools, as provided under part IX of chapter 400.

c. If an inspection is required by the authorizing statute for a license application other than an initial application, the inspection must be unannounced. This paragraph does not apply to inspections required pursuant to ss. 383.324, 395.0161(4), 429.67(6), and 483.061(2).

d. If a provider is not available when an inspection is attempted, the application shall be denied.

8. The agency may establish procedures for the electronic notification and submission of required information, including, but not limited to:

- Licensure applications.
- Required signatures.

- Payment of fees.
- Notarization of applications.

Requirements for electronic submission of any documents required by this part or authorizing statutes may be established by rule. As an alternative to sending documents as required by authorizing statutes, the agency may provide electronic access to information or documents.

408.8065 – Additional licensure requirements for home health agencies, home medical equipment providers, and health care clinics.

- An applicant for initial licensure, or initial licensure due to a change of ownership, as a home health agency, home medical equipment provider, or health care clinic shall:
 - Demonstrate financial ability to operate, as required under s. 408.810(8) and this section. If the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses, and the applicant provides independent evidence that the funds necessary for startup costs, working capital, and contingency financing exist and will be available as needed, the applicant has demonstrated the financial ability to operate.
 - Submit pro forma financial statements, including a balance sheet, income and expense statement, and a statement of cash flows for the first 2 years of operation which provide evidence that the applicant has sufficient assets, credit, and projected revenues to cover liabilities and expenses.
 - Submit a statement of the applicant's estimated startup costs and sources of funds through the break-even point in operations demonstrating that the applicant has the ability to fund all startup costs, working capital 1costs, and contingency financing 2requirements. The statement must show that the applicant has at a minimum 3 months of average projected expenses to cover startup costs, working capital 1costs, and contingency financing 2requirements. The minimum amount for contingency funding may not be less than 1 month of average projected expenses.

All documents required under this subsection must be prepared in accordance with generally accepted accounting principles and may be in a compilation form. The financial statements must be signed by a certified public accountant.

- For initial, renewal, or change of ownership licenses for a home health agency, a home medical equipment provider, or a health care clinic, applicants and controlling interests who are nonimmigrant aliens, as described in 8 U.S.C. s. 1101, must file a surety bond of at least \$500,000, payable to the agency, which guarantees that the home health agency, home medical equipment provider, or health care clinic will act in full conformity with all legal requirements for operation.

- In addition to the requirements of s. 408.812, any person who offers services that require licensure under part VII or part X of chapter 400, or who offers skilled services that require licensure under part III of chapter 400, without obtaining a valid license; any person who knowingly files a false or misleading license or license renewal application or who submits false or misleading information related to such application, and any person who violates or conspires to violate this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

408.807 – Change of ownership.

Whenever a change of ownership occurs:

- The transferor shall notify the agency in writing at least 60 days before the anticipated date of the change of ownership.
- The transferee shall make application to the agency for a license within the timeframes required in s. 408.806.
- The transferor shall be responsible and liable for:
 - The lawful operation of the provider and the welfare of the clients served until the date the transferee is licensed by the agency.
 - Any and all penalties imposed against the transferor for violations occurring before the date of change of ownership.
- Any restriction on licensure, including a conditional license existing at the time of a change of ownership, shall remain in effect until the agency determines that the grounds for the restriction are corrected.
- The transferee shall maintain records of the transferor as required in this part, authorizing statutes, and applicable rules, including:
 - All client records.
 - Inspection reports.
 - All records required to be maintained pursuant to s. 409.913, if applicable.

408.808 – License categories.

- STANDARD LICENSE.** – A standard license may be issued to an applicant at the time of initial licensure, license renewal,

or change of ownership. A standard license shall be issued when the applicant is in compliance with all statutory requirements and agency rules. Unless sooner revoked, a standard license expires 2 years after the date of issue.

2. **PROVISIONAL LICENSE.** – An applicant against whom a proceeding denying or revoking a license is pending at the time of license renewal may be issued a provisional license effective until final action not subject to further appeal. A provisional license may also be issued to an applicant applying for a change of ownership. A provisional license must be limited in duration to a specific period of time, up to 12 months, as determined by the agency.
3. **INACTIVE LICENSE.** – An inactive license may be issued to a health care provider subject to the certificate-of-need provisions in part I of this chapter when the provider is currently licensed, does not have a provisional license, and will be temporarily unable to provide services but is reasonably expected to resume services within 12 months. Such designation may be made for a period not to exceed 12 months but may be renewed by the agency for up to 12 additional months upon demonstration by the licensee of the provider's progress toward reopening. However, if after 20 months in an inactive license status, a statutory rural hospital, as defined in s. 395.602, has demonstrated progress toward reopening, but may not be able to reopen prior to the inactive license expiration date, the inactive designation may be renewed again by the agency for up to 12 additional months. For purposes of such a second renewal, if construction or renovation is required, the licensee must have had plans approved by the agency and construction must have already commenced pursuant to s. 408.032(4); however, if construction or renovation is not required, the licensee must provide proof of having made an enforceable capital expenditure greater than 25 percent of the total costs associated with the hiring of staff and the purchase of equipment and supplies needed to operate the facility upon opening. A request by a licensee for an inactive license or to extend the previously approved inactive period must be submitted to the agency and must include a written justification for the inactive license with the beginning and ending dates of inactivity specified, a plan for the transfer of any clients to other providers, and the appropriate licensure fees. The agency may not accept a request that is submitted after initiating closure, after any suspension of service, or after notifying

clients of closure or suspension of service, unless the action is a result of a disaster at the licensed premises. For the purposes of this section, the term "disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade, which renders the provider inoperable at the premises. Upon agency approval, the provider shall notify clients of any necessary discharge or transfer as required by authorizing statutes or applicable rules. The beginning of the inactive license period is the date the provider ceases operations. The end of the inactive license period shall become the license expiration date. All licensure fees must be current, must be paid in full, and may be prorated. Reactivation of an inactive license requires the approval of a renewal application, including payment of licensure fees and agency inspections indicating compliance with all requirements of this part, authorizing statutes, and applicable rules.

4. **OTHER LICENSES.** – Other types of license categories may be issued pursuant to authorizing statutes or applicable rules.

408.809 – Background screening; prohibited offenses.

1. Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:
 - a. The licensee, if an individual.
 - b. The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.
 - c. The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.
 - d. Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.
 - e. Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require
2. Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651 satisfies the requirements of this section if the person subject to screening has not been unemployed for more than 90 days and such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency.
3. All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect to the offenses specified in s. 435.04 and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the

him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee's behalf.

4. In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

- a. Any authorizing statutes, if the offense was a felony.
- b. This chapter, if the offense was a felony.
- c. Section 409.920, relating to Medicaid provider fraud.
- d. Section 409.9201, relating to Medicaid fraud.
- e. Section 741.28, relating to domestic violence.
- f. Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- g. Section 817.234, relating to false and fraudulent insurance claims.
- h. Section 817.505, relating to patient brokering.
- i. Section 817.568, relating to criminal use of personal identification information.
- j. Section 817.60, relating to obtaining a credit card through fraudulent means.
- k. Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- l. Section 831.01, relating to forgery.
- m. Section 831.02, relating to uttering forged instruments.
- n. Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- o. Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
- p. Section 831.30, relating to fraud in obtaining medicinal drugs.
- q. Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04

must be rescreened by July 31, 2015. The agency may adopt rules to establish a schedule to stagger the implementation of the required rescreening over the 5-year period, beginning July 31, 2010, through July 31, 2015. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person.

5. The costs associated with obtaining the required screening must be borne by the licensee or the person subject to screening. Licensees may reimburse persons for these costs. The Department of Law Enforcement shall charge the agency for screening pursuant to s. 943.053(3). The agency shall establish a schedule of fees to cover the costs of screening.

6. a. As provided in chapter 435, the agency may grant an exemption from disqualification to a person who is subject to this section and who:

1. Does not have an active professional license or certification from the Department of Health; or
2. Has an active professional license or certification from the Department of Health but is not providing a service within the scope of that license or certification.

b. As provided in chapter 435, the appropriate regulatory board within the Department of Health, or the department itself if there is no board, may grant an exemption from disqualification to a person who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department and that person is providing a service within the scope of his or her licensed or certified practice.

7. The agency and the Department of Health may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, chapter 435, and authorizing statutes requiring background screening and to implement and adopt criteria relating to retaining fingerprints pursuant to s. 943.05(2).

8. There is no unemployment compensation or other monetary liability on the part of, and no cause of action for damages arising against, an employer that, upon notice of a disqualifying offense listed under chapter 435 or this section, terminates the person against whom the report was issued, whether or not that person has filed for an exemption with the Department of Health or the agency.

408.810 – Minimum licensure requirements.

In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

1. An applicant for licensure must comply with the background screening requirements of s. 408.809.
2. An applicant for licensure must provide a description and explanation of any exclusions, suspensions, or terminations of the applicant from the Medicare, Medicaid, or federal Clinical Laboratory Improvement Amendment (CLIA) programs.
3. Unless otherwise specified in this part, authorizing statutes, or applicable rules, any information required to be reported to the agency must be submitted within 21 calendar days after the report period or effective date of the information, whichever is earlier, including, but not limited to, any change of:
 - a. Information contained in the most recent application for licensure.
 - b. Required insurance or bonds.
4. Whenever a licensee discontinues operation of a provider:
 - a. The licensee must inform the agency not less than 30 days prior to the discontinuance of operation and inform clients of such discontinuance as required by authorizing statutes. Immediately upon discontinuance of operation by a provider, the licensee shall surrender the license to the agency and the license shall be canceled.
 - b. The licensee shall remain responsible for retaining and appropriately distributing all records within the timeframes prescribed in authorizing statutes and applicable rules. In addition, the licensee or, in the event of death or dissolution of a licensee, the estate or agent of the licensee shall:
 1. Make arrangements to forward records for each client to one of the following, based upon the client's

choice: the client or the client's legal representative, the client's attending physician, or the health care provider where the client currently receives services; or

2. Cause a notice to be published in the newspaper of greatest general circulation in the county in which the provider was located that advises clients of the discontinuance of the provider operation. The notice must inform clients that they may obtain copies of their records and specify the name, address, and telephone number of the person from whom the copies of records may be obtained. The notice must appear at least once a week for 4 consecutive weeks.
5. a. On or before the first day services are provided to a client, a licensee must inform the client and his or her immediate family or representative, if appropriate, of the right to report:
 1. Complaints. The statewide toll-free telephone number for reporting complaints to the agency must be provided to clients in a manner that is clearly legible and must include the words: "To report a complaint regarding the services you receive, please call toll-free (phone number)."
 2. Abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free (phone number)."
 3. Medicaid fraud. An agency-written description of Medicaid fraud and the statewide toll-free telephone number for the central Medicaid fraud hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report suspected Medicaid fraud, please call toll-free (phone number)."

The agency shall publish a minimum of a 90-day advance notice of a change in the toll-free telephone numbers.

- b. Each licensee shall establish appropriate policies and procedures for providing such notice to clients.
6. An applicant must provide the agency with proof of the applicant's legal right to occupy the property before a license may be issued. Proof may include, but

need not be limited to, copies of warranty deeds, lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.

7. If proof of insurance is required by the authorizing statute, that insurance must be in compliance with chapter 624, chapter 626, chapter 627, or chapter 628 and with agency rules.
8. Upon application for initial licensure or change of ownership licensure, the applicant shall furnish satisfactory proof of the applicant's financial ability to operate in accordance with the requirements of this part, authorizing statutes, and applicable rules. The agency shall establish standards for this purpose, including information concerning the applicant's controlling interests. The agency shall also establish documentation requirements, to be completed by each applicant, that show anticipated provider revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the provider, and an applicant's access to contingency financing. A current certificate of authority, pursuant to chapter 651, may be provided as proof of financial ability to operate. The agency may require a licensee to provide proof of financial ability to operate at any time if there is evidence of financial instability, including, but not limited to, unpaid expenses necessary for the basic operations of the provider.
9. A controlling interest may not withhold from the agency any evidence of financial instability, including, but not limited to, checks returned due to insufficient funds, delinquent accounts, nonpayment of withholding taxes, unpaid utility expenses, nonpayment for essential services, or adverse court action concerning the financial viability of the provider or any other provider licensed under this part that is under the control of the controlling interest. Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation is a separate offense.
10. The agency may not issue a license to a health care provider subject to the certificate-of-need provisions in part I of this chapter if the health care provider has not been issued a certificate of need or an exemption. Upon initial licensure of any such provider, the authorization contained in the certificate of need shall be considered fully implemented and merged into the license and shall have no force and effect upon termination of the license for any reason.

408.811 – Right of inspection; copies; inspection reports; plan for correction of deficiencies.

1. An authorized officer or employee of the agency may make or cause to be made any inspection or investigation deemed necessary by the agency to determine the state of compliance with this part, authorizing statutes, and applicable rules. The right of inspection extends to any business that the agency has reason to believe is being operated as a provider without a license, but inspection of any business suspected of being operated without the appropriate license may not be made without the permission of the owner or person in charge unless a warrant is first obtained from a circuit court. Any application for a license issued under this part, authorizing statutes, or applicable rules constitutes permission for an appropriate inspection to verify the information submitted on or in connection with the application.
 - a. All inspections shall be unannounced, except as specified in s. 408.806.
 - b. Inspections for relicensure shall be conducted biennially unless otherwise specified by authorizing statutes or applicable rules.
2. Inspections conducted in conjunction with certification, comparable licensure requirements, or a recognized or approved accreditation organization may be accepted in lieu of a complete licensure inspection. However, a licensure inspection may also be conducted to review any licensure requirements that are not also requirements for certification.
3. The agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the agency, including records requested during an offsite review.
4. A deficiency must be corrected within 30 calendar days after the provider is notified of inspection results unless an alternative timeframe is required or approved by the agency.
5. The agency may require an applicant or licensee to submit a plan of correction for deficiencies. If required, the plan of correction must be filed with the agency within 10 calendar days after notification unless an alternative timeframe is required.
6. a. Each licensee shall maintain as public information, available upon request, records of all inspection reports pertaining to that provider that have been filed by the agency unless those reports are exempt from or contain information that is exempt from s. 119.07(1) and s. 24(a), Art. I of the

State Constitution or is otherwise made confidential by law. Effective October 1, 2006, copies of such reports shall be retained in the records of the provider for at least 3 years following the date the reports are filed and issued, regardless of a change of ownership.

b. A licensee shall, upon the request of any person who has completed a written application with intent to be admitted by such provider, any person who is a client of such provider, or any relative, spouse, or guardian of any such person, furnish to the requester a copy of the last inspection report pertaining to the licensed provider that was issued by the agency or by an accrediting organization if such report is used in lieu of a licensure inspection.

408.812 – Unlicensed activity.

1. A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.
2. The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.
3. It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.
4. Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.
5. When a controlling interest or licensee has an interest in more than one provider

and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

6. In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.
7. Any person aware of the operation of an unlicensed provider must report that provider to the agency.

408.813 – Administrative fines; violations.

As a penalty for any violation of this part, authorizing statutes, or applicable rules, the agency may impose an administrative fine.

1. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the agency for payment of the fine.
2. Violations of this part, authorizing statutes, or applicable rules shall be classified according to the nature of the violation and the gravity of its probable effect on clients. The scope of a violation may be cited as an isolated, patterned, or widespread deficiency. An isolated deficiency is a deficiency affecting one or a very limited number of clients, or involving one or a very limited number of staff, or a situation that occurred only occasionally or in a very limited number of locations. A patterned deficiency is a deficiency in which more than a very limited number of clients are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same client or clients have been affected by repeated occurrences of the same deficient practice but the effect of the deficient practice is not found to be pervasive throughout the provider. A widespread deficiency is a deficiency in

which the problems causing the deficiency are pervasive in the provider or represent systemic failure that has affected or has the potential to affect a large portion of the provider's clients. This subsection does not affect the legislative determination of the amount of a fine imposed under authorizing statutes. Violations shall be classified on the written notice as follows:

- a. Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine as provided by law for a cited class I violation. A fine shall be levied notwithstanding the correction of the violation.
- b. Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation.
- c. Class "III" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. The agency shall impose an administrative fine as provided in this section for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, a fine may not be imposed.
- d. Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a provider or to required reports, forms, or documents that do not have the potential of negatively affecting

clients. These violations are of a type that the agency determines do not threaten the health, safety, or security of clients. The agency shall impose an administrative fine as provided in this section for a cited class IV violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, a fine may not be imposed.

408.814 – Moratorium; emergency suspension.

1. The agency may impose an immediate moratorium or emergency suspension as defined in s. 120.60 on any provider if the agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client.
2. A provider or licensee, the license of which is denied or revoked, may be subject to immediate imposition of a moratorium or emergency suspension to run concurrently with licensure denial, revocation, or injunction.
3. A moratorium or emergency suspension remains in effect after a change of ownership, unless the agency has determined that the conditions that created the moratorium, emergency suspension, or denial of licensure have been corrected.
4. When a moratorium or emergency suspension is placed on a provider or licensee, notice of the action shall be posted and visible to the public at the location of the provider until the action is lifted.

408.815 – License or application denial; revocation.

1. In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest:
 - a. False representation of a material fact in the license application or omission of any material fact from the application.
 - b. An intentional or negligent act materially affecting the health or safety of a client of the provider.
 - c. A violation of this part, authorizing statutes, or applicable rules.
 - d. A demonstrated pattern of deficient performance.
 - e. The applicant, licensee, or controlling interest has been or is currently excluded, suspended, or terminated from participation in the state Medicaid

- program, the Medicaid program of any other state, or the Medicare program.
2. If a licensee lawfully continues to operate while a denial or revocation is pending in litigation, the licensee must continue to meet all other requirements of this part, authorizing statutes, and applicable rules and must file subsequent renewal applications for licensure and pay all licensure fees. The provisions of ss. 120.60(1) and 408.806(3)I shall not apply to renewal applications filed during the time period in which the litigation of the denial or revocation is pending until that litigation is final.
3. An action under s. 408.814 or denial of the license of the transferor may be grounds for denial of a change of ownership application of the transferee.
4. In addition to the grounds provided in authorizing statutes, the agency shall deny an application for a license or license renewal if the applicant or a person having a controlling interest in an applicant has been:
 - a. Convicted of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 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 prior to the date of the application;
 - b. Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years; or
 - c. Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from the federal Medicare program or from any other state Medicaid 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.

408.816 – Injunctions.

1. In addition to the other powers provided by this part, authorizing statutes, and applicable rules, the agency may institute injunction proceedings in a court of competent jurisdiction to:
 - a. Restrain or prevent the establishment or operation of a provider that does not have a license or is in violation of any provision of this part, authorizing statutes, or applicable rules. The agency may also institute injunction

proceedings in a court of competent jurisdiction when a violation of this part, authorizing statutes, or applicable rules constitutes an emergency affecting the immediate health and safety of a client.

- b. Enforce the provisions of this part, authorizing statutes, or any minimum standard, rule, or order issued or entered into pursuant thereto when the attempt by the agency to correct a violation through administrative sanctions has failed or when the violation materially affects the health, safety, or welfare of clients or involves any operation of an unlicensed provider.
- c. Terminate the operation of a provider when a violation of any provision of this part, authorizing statutes, or any standard or rule adopted pursuant thereto exists that materially affects the health, safety, or welfare of a client.

Such injunctive relief may be temporary or permanent.

2. If action is necessary to protect clients of providers from immediate, life-threatening situations, the court may allow a temporary injunction without bond upon proper proofs being made. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should be issued, the court, pending the determination on final hearing, shall enjoin the operation of the provider.

408.817 – Administrative proceedings.

Administrative proceedings challenging agency licensure enforcement action shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

408.818 – Health care trust fund.

Unless otherwise prescribed by authorizing statutes, all fees and fines collected under this part, authorizing statutes, and applicable rules shall be deposited into the Health Care Trust Fund, created in s. 408.16, and used to pay the costs of the agency in administering the provider program paying the fees or fines.

408.819 – Rules.

The agency is authorized to adopt rules as necessary to administer this part. Any licensed provider that is in operation at the time of adoption of any applicable rule under this part or authorizing statutes shall be given a reasonable time under the particular circumstances, not to exceed 6 months after the date of such adoption, within which to comply with such rule, unless otherwise specified by rule.

408.820 – Exemptions.

Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

1. Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102, are exempt from s. 408.810(5)-(10).
2. Birth centers, as provided under chapter 383, are exempt from s. 408.810(7)-(10).
3. Abortion clinics, as provided under chapter 390, are exempt from s. 408.810(7)-(10).
4. Crisis stabilization units, as provided under parts I and IV of chapter 394, are exempt from s. 408.810(8)-(10).
5. Short-term residential treatment facilities, as provided under parts I and IV of chapter 394, are exempt from s. 408.810(8)-(10).
6. Residential treatment facilities, as provided under part IV of chapter 394, are exempt from s. 408.810(8)-(10).
7. Residential treatment centers for children and adolescents, as provided under part IV of chapter 394, are exempt from s. 408.810(8)-(10).
8. Hospitals, as provided under part I of chapter 395, are exempt from s. 408.810(7)-(9).
9. Ambulatory surgical centers, as provided under part I of chapter 395, are exempt from s. 408.810(7)-(10).
10. Mobile surgical facilities, as provided under part I of chapter 395, are exempt from s. 408.810(7)-(10).
11. Health care risk managers, as provided under part I of chapter 395, are exempt from ss. 408.806(7), 408.810(4)-(10), and 408.811.
12. Nursing homes, as provided under part II of chapter 400, are exempt from ss. 408.810(7) and 408.813(2).
13. Assisted living facilities, as provided under part I of chapter 429, are exempt from s. 408.810(10).
14. Home health agencies, as provided under part III of chapter 400, are exempt from s. 408.810(10).
15. Nurse registries, as provided under part III of chapter 400, are exempt from s. 408.810(6) and (10).
16. Companion services or homemaker services providers, as provided under part III of chapter 400, are exempt from s. 408.810(6)-(10).
17. Adult day care centers, as provided under part III of chapter 429, are exempt from s. 408.810(10).
18. Adult family-care homes, as provided under part II of chapter 429, are exempt from s. 408.810(7)-(10).
19. Homes for special services, as provided under part V of chapter 400, are exempt from s. 408.810(7)-(10).

20. Transitional living facilities, as provided under part V of chapter 400, are exempt from s. 408.810(10).
21. Prescribed pediatric extended care centers, as provided under part VI of chapter 400, are exempt from s. 408.810(10).
22. Home medical equipment providers, as provided under part VII of chapter 400, are exempt from s. 408.810(10).
23. Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of chapter 400, are exempt from s. 408.810(7).
24. Health care services pools, as provided under part IX of chapter 400, are exempt from s. 408.810(6)-(10).
25. Health care clinics, as provided under part X of chapter 400, are exempt from s. 408.810(6), (7), and (10).
26. Clinical laboratories, as provided under part I of chapter 483, are exempt from s. 408.810(5)-(10).
27. Multiphasic health testing centers, as provided under part II of chapter 483, are exempt from s. 408.810(5)-(10).
28. Organ, tissue, and eye procurement organizations, as provided under part V of chapter 765, are exempt from s. 408.810(5)-(10).

408.821 – Emergency management planning; emergency operations; inactive license.

1. A licensee required by authorizing statutes to have an emergency operations plan must designate a safety liaison to serve as the primary contact for emergency operations.
2. An entity subject to this part may temporarily exceed its licensed capacity to act as a receiving provider in accordance with an approved emergency operations plan for up to 15 days. While in an overcapacity status, each provider must furnish or arrange for appropriate care and services to all clients. In addition, the agency may approve requests for overcapacity in excess of 15 days, which approvals may be based upon satisfactory justification and need as provided by the receiving and sending providers.
3. a. An inactive license may be issued to a licensee subject to this section when the provider is located in a geographic area in which a state of emergency was declared by the Governor if the provider:
 1. Suffered damage to its operation during the state of emergency.
 2. Is currently licensed.
 3. Does not have a provisional license.
 4. Will be temporarily unable to provide services but is reasonably expected to resume services within 12 months.

- b. An inactive license may be issued for a period not to exceed 12 months but may be renewed by the agency for up to 12 additional months upon demonstration to the agency of progress toward reopening. A request by a licensee for an inactive license or to extend the previously approved inactive period must be submitted in writing to the agency, accompanied by written justification for the inactive license, which states the beginning and ending dates of inactivity and includes a plan for the transfer of any clients to other providers and appropriate licensure fees. Upon agency approval, the licensee shall notify clients of any necessary discharge or transfer as required by authorizing statutes or applicable rules. The beginning of the inactive licensure period shall be the date the provider ceases operations. The end of the inactive period shall become the license expiration date, and all licensure fees must be current, must be paid in full, and may be prorated. Reactivation of an inactive license requires the prior approval by the agency of a renewal application, including payment of licensure fees and agency inspections indicating compliance with all requirements of this part and applicable rules and statutes.

4. The agency may adopt rules relating to emergency management planning, communications, and operations. Licensees providing residential or inpatient services must utilize an online database approved by the agency to report information to the agency regarding the provider's emergency status, planning, or operations.

408.831 – Denial, suspension, or revocation of a license, registration, certificate, or application.

1. In addition to any other remedies provided by law, the agency may deny each application or suspend or revoke each license, registration, or certificate of entities regulated or licensed by it:
 - a. If the applicant, licensee, or a licensee subject to this part which shares a common controlling interest with the applicant has failed to pay all outstanding fines, liens, or overpayments assessed by final order of the agency or final order of the Centers for Medicare and Medicaid Services, not subject to further appeal, unless a repayment plan is approved by the agency; or
 - b. For failure to comply with any repayment plan.

2. In reviewing any application requesting a change of ownership or change of the licensee, registrant, or certificateholder, the transferor shall, prior to agency approval of the change, repay or make arrangements to repay any amounts owed to the agency. Should the transferor fail to repay or make arrangements to repay the amounts owed to the agency, the issuance of a license, registration, or certificate to the transferee shall be delayed until repayment or until arrangements for repayment are made.
3. This section provides standards of enforcement applicable to all entities licensed or regulated by the Agency for Health Care Administration. This section controls over any conflicting provisions of chapters 39, 383, 390, 391, 394, 395, 400, 408, 429, 468, 483, and 765 or rules adopted pursuant to those chapters.

408.832 – Conflicts.

In case of conflict between the provisions of this part and the authorizing statutes governing the licensure of health care providers by the Agency for Health Care Administration found in s. 112.0455 and chapters 383, 390, 394, 395, 400, 429, 440, 483, and 765, the provisions of this part shall prevail.

TITLE XXXII REGULATION OF PROFESSIONS AND OCCUPATIONS

Chapter 456 – Health professions and occupations: General provisions

See complete text at <http://www.flsenate.gov/Laws/Statutes/2010/Chapter456>

2009-223 Health care – Human services appropriations(SB 1986)

The law amends multiple sections of law to establish a plan for a medical home pilot project, address health care fraud and abuse, and decrease and streamline regulation of health care entities. Among its amendments:

- ◆ The law requires Agency for Health Care Administration (AHCA) to develop a plan for a new pilot Medicaid services delivery system based on a medical home concept. A medical home is a patient-centered model of care that provides a personal health care professional, usually a physician, who coordinates and facilitates access to medical care.
- ◆ The law creates disincentives to commit Medicaid fraud or abuse, including the following provisions:
 - ◆ Increasing the administrative penalties for committing Medicaid fraud;
 - ◆ Establishing additional licensure penalties for providers who improperly law Medicaid;
 - ◆ Adding fraud-related criminal offenses which disqualify an applicant from health care licensure;

- ◆ Creating additional criminal felonies and increasing the criminal penalties for existing offenses.
- ◆ The law creates incentives for persons to report Medicaid fraud with the following provisions:
 - ◆ Offering monetary rewards for persons who report Medicaid fraud to the authorities;
 - ◆ Removing a disincentive to pursue an action under the Florida False Claims Act; and
 - ◆ Providing civil immunity for persons who report suspected Medicaid fraud.
- ◆ The law makes findings and designates Miami-Dade County as a “health care fraud crisis area” related to home health agencies, home medical equipment providers and health care clinics. It requires additional proof of financial ability to operate, and surety bonds under certain circumstances, to obtain a license as one of these providers. The law imposes a one-year moratorium on initial and change of ownership home health agency licenses in Miami-Dade and Broward Counties, with an exception. The law also prohibits AHCA from renewing a home health agency license in Miami-Dade County if AHCA has administratively sanctioned the agency in the last two years for specified activity. The law creates new criminal penalties, by making the following offenses third degree felonies:
 - ◆ Offering services requiring licensure as a home medical equipment provider, or health care clinic, or offering skilled services requiring licensure as a home health agency, without a license;
 - ◆ Knowingly submitting false or misleading licensure information to AHCA; and
 - ◆ Conspiracy to violate the provisions of the enhanced licensure requirements in s. 408.8065, F.S.
- ◆ The law gives law enforcement and the Medicaid program additional authority to prevent and penalize fraud and abusive billing, including the following provisions:
 - ◆ Requiring prior authorization and increased documentation for certain home health services;
 - ◆ Making sanctions and ‘for cause’ contract termination mandatory for certain provider activity;
 - ◆ Requiring Medicaid to eliminate medically unnecessary billing; and
 - ◆ Requiring two pilot projects to monitor and manage home health services.
- ◆ In addition, the law makes other changes to the Medicaid program, including the following provisions:
 - ◆ Reduces the surplus requirements of Medicaid prepaid plans to match those

- ◆ required by the Office of Insurance Regulation for commercial plans; and
- ◆ Allows prepaid plans owned by federally qualified health clinics to provide behavioral health services to Medicaid recipients.

Is this relevant to you?

According to Section 456.0635, enacted July 1, 2009, health care boards or the department shall refuse to issue a license, certificate or registration and shall refuse to admit a candidate for examination if the applicant has been:

1. Convicted or plead guilty or nolo contendre to a felony violation of: chapters 409, 817, or 893, Florida Statutes; or 21 U.S.C. ss. 801-970 or 42 U.S.C. ss 1395-1396, unless the sentence and any probation or pleas ended more than 15 years prior to the application. Chapter 893 F.S. encompasses all drug charges in the state, meaning that a license will be denied for a felony conviction associated with a drug charge.
2. Terminated for cause from Florida Medicaid Program (unless the applicant has been in good standing for the most recent five years).
3. Terminated for cause by any other State Medicaid Program or the Medicare Program (unless the termination was at least 20 years prior to the date of the application and the applicant has been in good standing with the program for the most recent five years).

For more information, see the full text of the law and the following links referenced in the law:

- ◆ 21 United States Code, Chapter 13 (ss. 801-970) pertaining to controlled substances under federal law <http://fsmta.org/fsmta.org/wp-content/uploads/2009/10/usc-title21-chpt13.pdf>
- ◆ 42 United States Code, Chapter 42 (ss. 1395-1396) pertaining to public health and welfare <http://fsmta.org/fsmta.org/wp-content/uploads/2009/10/usc-title42-subchpt18.pdf>
- ◆ Florida Statutes, Chapter 409 Social and Economic Assistance http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0409/0409ContentsIndex.html&StatuteYear=2010&Title=%3E2010-%3EChapter%20409
- ◆ Florida Statutes, Chapter 817 Fraudulent Practices http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0817/0817ContentsIndex.html&StatuteYear=2010&Title=%3E2010-%3EChapter%20817

- ♦ Florida Statutes, Chapter 893 Drug Abuse Prevention And Control http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0893/0893ContentsIndex.html&StatuteYear=2010&Title=%3E2010-%3EChapter%20893

See complete revised text at Ch_2009-223.pdf or <http://laws.flrules.org/2009/223>

- ♦ Creating s.456.0635, F.S.; prohibiting Medicaid fraud in the practice of health care professions; requiring the Department of Health or boards within the department to refuse to admit to exams and to deny licenses, permits, or certificates to certain persons who have engaged in certain acts; requiring health care practitioners to report allegations of Medicaid fraud; specifying that acceptance of the relinquishment of a license in anticipation of charges relating to Medicaid fraud constitutes permanent revocation of a license;
- ♦ Amending s. 456.072, F.S.; creating additional grounds for the Department of Health to take disciplinary action against certain applicants or licensees for misconduct relating to a Medicaid program or to health care fraud;
- ♦ Amending s. 456.074, F.S.; requiring the Department of Health to issue an emergency order suspending the license of a person who engages in certain criminal conduct relating to the Medicaid program;

Section 24. Section 456.0635, Florida Statutes, is created to read:

456.0635 Medicaid fraud; disqualification for license, certificate, or registration.

1. Medicaid fraud in the practice of a health care profession is prohibited.
2. Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue or renew a license, certificate, or registration to any applicant if the candidate or applicant or any principle, officer, agent, managing employee, or affiliated person of the applicant, has been:
 - a. Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 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 conviction or pleas ended more than fifteen years prior to the date of the application;
 - b. Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida

- Medicaid program for the most recent five years;
- c. 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 five years and the termination occurred at least 20 years prior to the date of the application.
- 3. Licensed health care practitioners shall report allegations of Medicaid fraud to the department, regardless of the practice setting in which the alleged Medicaid fraud occurred.
- 4. The acceptance by a licensing authority of a candidate's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging Medicaid fraud or similar charges constitutes the permanent revocation of the license.

Section 25. Paragraphs (ii), (jj), (kk), and (ll) are added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.

1. The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
 - i. Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.
 - jj. Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.
 - kk. Being terminated from the state Medicaid program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.
 - ll. Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.

Section 26. Subsection (1) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.

1. The department shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to:
 - a. A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396; or.
 - b. A misdemeanor or felony under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

2010-211 Controlled substances (SB 2272)

2010-211 increases the regulation of pain management clinics, and physicians who practice in them, by the Department of Health (Department). It requires the prescription drug monitoring program to report additional information to law enforcement.

The department may obtain patient records from massage establishments without written authorization from the patient in certain circumstances if the department finds reasonable cause to believe that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act.

Revised text at Ch_2010-211.pdf or <http://laws.flrules.org/2010/211>

- ♦ amending s. 456.057, F.S.; providing that the Department of Health is not required to attempt to obtain authorization from a patient for the release of the patient's medical records under certain circumstances; authorizing the department to obtain patient records without authorization or subpoena if the department has probable cause to believe that certain violations have occurred or are occurring;

456.037 Business establishments; requirements for active status licenses; delinquency; discipline; applicability.

This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments include, but are not limited to, dental laboratories, electrology facilities, massage establishments, and pharmacies, and pain-management clinics required to be registered under s. 458.3265 or s. 459.0137.

Section 2. Paragraph (a) of subsection (9) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished.

9. a. 1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.
2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate,

reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.
4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

Chapter 480 F.S. - Massage practice

No changes were made to Chapter 480 in 2009-2011. Because of its relevance to your

practice, the complete chapter is reproduced here.

The Massage Practice Act

480.031 – Short title.

This act shall be known and may be cited as the "Massage Practice Act."

480.032 – Purpose.

The Legislature recognizes that the practice of massage is potentially dangerous to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage in this state; however, restrictions shall be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

480.033 – Definitions.

As used in this act:

1. "Board" means the Board of Massage Therapy.
2. "Department" means the Department of Health.
3. "Massage" means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.
4. "Massage therapist" means a person licensed as required by this act, who administers massage for compensation.
5. "Apprentice" means a person approved by the board to study massage under the instruction of a licensed massage therapist.
6. "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.
7. "Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage.
8. "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage or to operate an establishment.

9. "Board-approved massage school" means a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state.

480.034 – Exemptions.

1. Nothing in this act shall modify or repeal any provision of chapters 458-464, inclusive, or of chapter 476, chapter 477, or chapter 486.
2. Athletic trainers employed by or on behalf of a professional athletic team performing or training within this state shall be exempt from the provisions of this act.
3. The state and its political subdivisions are exempt from the registration requirements of this act.
4. An exemption granted is effective to the extent that an exempted person's practice or profession overlaps with the practice of massage.

480.035 – Board of Massage Therapy.

1. The Board of Massage Therapy is created within the department. The board shall consist of seven members, who shall be appointed by the Governor and whose function it shall be to carry out the provisions of this act.
2. Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments will be subject to confirmation by the Senate.
3. The Governor may at any time fill vacancies on the board for the remainder of unexpired terms. Each member of the board shall hold over after the expiration of her or his term until her or his successor has been duly appointed and qualified. No board member shall serve more than two terms, whether full or partial.
4. The board shall, in the month of January, elect from its number a chair and a vice chair.
5. The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chair of the board shall have the authority to call other meetings at her

or his discretion. A quorum of the board shall consist of not less than four members.

6. Board members shall receive per diem and mileage as provided in s. 112.061 from the place of residence to the place of meeting and return.
7. The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

480.036 – Accountability of board members.

Each board member shall be held accountable to the Governor for the proper performance of all duties and obligations of such board member's office. The Governor shall cause to be investigated any complaints or unfavorable reports received concerning the actions of the board or its individual members and shall take appropriate action thereon, which may include removal of any board member for malfeasance, misfeasance, neglect of duty, commission of a felony, incompetency, or permanent inability to perform official duties.

480.039 – Investigative services.

The department shall provide all investigative services required in carrying out the provisions of this act.

480.041 – Massage therapists; qualifications; licensure; endorsement.

1. Any person is qualified for licensure as a massage therapist under this act who:
 - a. Is at least 18 years of age or has received a high school diploma or graduate equivalency diploma;
 - b. Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and
 - c. Has received a passing grade on an examination administered by the department.
2. Every person desiring to be examined for licensure as a massage therapist shall apply to the department in writing upon forms prepared and furnished by the department. Such applicants shall be subject to the provisions of s. 480.046(1). Applicants may take an examination administered by the department only upon meeting the requirements of this section as determined by the board.
3. Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage.
4. The board shall adopt rules:
 - a. Establishing a minimum training program for apprentices.

- b. Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033(6), by massage therapists.
- c. Specifying licensing procedures for practitioners desiring to be licensed in this state who hold an active license and have practiced in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

480.0415 – License renewal.

The board shall prescribe by rule the method for renewal of biennial licensure which shall include continuing education requirements not to exceed 25 classroom hours per biennium. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the criteria for continuing education courses held in a classroom setting.

480.042 – Examinations.

1. The board shall specify by rule the general areas of competency to be covered by examinations for licensure. These rules shall include the relative weight assigned in grading each area, the grading criteria to be used by the examiner, and the score necessary to achieve a passing grade. The board shall ensure that examinations adequately measure an applicant's competency. Professional testing services may be utilized to formulate the examinations.
2. The board shall ensure that examinations comply with state and federal equal employment opportunity guidelines.
3. The department shall, in accordance with rules established by the board, examine persons who file applications for licensure under this act in all matters pertaining to the practice of massage. A written examination shall be offered at least once yearly and at such other times as the department shall deem necessary.
4. The board shall adopt rules providing for reexamination of applicants who have failed the examination.
5. All licensing examinations shall be conducted in such manner that the applicant shall be known to the department by number until her or his examination is completed and the proper grade determined. An accurate record of each examination shall be made; and that record, together with all examination papers, shall be filed with the State Surgeon General and shall be kept for reference and inspection.

for a period of not less than 2 years immediately following the examination.

480.043 – Massage establishments; requisites; licensure; inspection.

1. No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the board.
2. The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.
3. Any person, firm, or corporation desiring to operate a massage establishment in the state shall submit to the department an application, upon forms provided by the department, accompanied by any information requested by the department and an application fee.
4. Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.
5. If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the board under subsection (2), the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.
6. If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (2), the department shall grant the license under such restrictions as it shall deem proper as soon as the original licensing fee is paid.
7. a. Once issued, no license for operation of a massage establishment may be transferred from one owner to another.
b. A license may be transferred from one location to another only after inspection and approval by the board and receipt of an application and inspection fee set by rule of the board, not to exceed \$125.
c. A license may be transferred from one business name to another after approval by the board and receipt of an application fee set by rule of the board, not to exceed \$25.
8. Renewal of license registration for massage establishments shall be accomplished pursuant to rules adopted by the board. The board is further authorized to adopt

rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

9. The board is authorized to adopt rules governing the periodic inspection of massage establishments licensed under this act.

480.044 – Fees; disposition.

1. The board shall set fees according to the following schedule:
 - a. Massage therapist application and examination fee: not to exceed \$250.
 - b. Massage therapist initial licensure fee: not to exceed \$150.
 - c. Establishment application fee: not to exceed \$200.
 - d. Establishment licensure fee: not to exceed \$150.
 - e. Biennial establishment renewal fee: not to exceed \$150.
 - f. Biennial massage therapist licensure renewal fee: not to exceed \$200.
 - g. Massage therapist reexamination fee: not to exceed \$250.
 - h. Fee for apprentice: not to exceed \$100.
 - i. Colonics examination fee: not to exceed \$100.
 - j. Colonics reexamination fee: not to exceed \$100.
 - k. Application and reactivation for inactive status of a massage therapist license fee: not to exceed \$250.
 - l. Renewal fee for inactive status: not to exceed \$250.
2. The department shall impose a late fee not to exceed \$150 on a delinquent renewal of a massage establishment license.
3. The board may establish by rule an application fee not to exceed \$100 for anyone seeking approval to provide continuing education courses and may provide by rule for a fee not to exceed \$50 for renewal of providership.
4. The department is authorized to charge the cost of any original license or permit, as set forth in this chapter, for the issuance of any duplicate licenses or permits requested by any massage therapist or massage establishment.
5. All moneys collected by the department from fees authorized by this act shall be paid into the Medical Quality Assurance Trust Fund in the department and shall be applied in accordance with the provisions of s. 456.025. The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

480.046 – Grounds for disciplinary action by the board.

1. The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

- a. Attempting to procure a license to practice massage by bribery or fraudulent misrepresentation.
- b. Having a license to practice massage revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
- c. Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.
- d. False, deceptive, or misleading advertising.
- e. Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.
- f. Making deceptive, untrue, or fraudulent representations in the practice of massage.
- g. Being unable to practice massage with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon probable cause, authority to compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, shall constitute an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage with reasonable skill and safety to clients.
- h. Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.
- i. Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform.

- j. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform.
- k. Violating a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.
- l. Refusing to permit the department to inspect the business premises of the licensee during regular business hours.
- m. Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.
- n. Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the board, may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.
- o. Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

2. The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

3. The board shall have the power to revoke or suspend the license of a massage establishment licensed under this act, or to deny subsequent licensure of such an establishment, in either of the following cases:

- a. Upon proof that a license has been obtained by fraud or misrepresentation.
- b. Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the establishment so licensed.

4. Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120.

480.0465 – Advertisement.

Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in any newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(6), the license number of a licensed massage therapist who is an

owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

480.047 – Penalties.

- 1. It is unlawful for any person to:
 - a. Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.
 - b. Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage in this state at a board-approved massage school.
 - c. Permit an employed person to practice massage unless duly licensed as provided herein.
 - d. Present as his or her own the license of another.
 - e. Allow the use of his or her license by an unlicensed person.
 - f. Give false or forged evidence to the department in obtaining any license provided for herein.
 - g. Falsely impersonate any other licensee-holder of like or different name.
 - h. Use or attempt to use a license that has been revoked.
 - i. Otherwise violate any of the provisions of this act.
- 2. Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

480.0485 – Sexual misconduct in the practice of massage therapy.

The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

480.049 – Civil proceedings.

As cumulative to any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this act or the lawful rules or orders of the department.

480.052 – Power of county or municipality to regulate massage.

A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

PART II: Florida administrative code (FAC) – Rules

The Florida Administrative Code is the official compilation of administrative rules for the state of Florida. The Department of State oversees the publishing of the FAC and the monthly supplements. The online, unofficial version of the FAC is updated weekly on the department's e-rulemaking website. You can find that information at the following Web Site.

- ♦ Florida Administrative Weekly and Florida Administrative Code (FAC): <https://www.flrules.org>

What is a Rule? According to Chapter 120, Florida Statutes, Administrative Procedure Act (A.P.A.): Rule means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.

Chapter 64B7: Board of Massage

Significant changes were made to the Florida Administrative Code in recent years, with the bulk of changes affecting massage therapy enacted in 2010.

64B7-24: Organization

<https://www.flrules.org/gateway/RuleNo.asp?title=ORGANIZATION&ID=64B7-24.008>

64B7-24.008 Probable cause determination; Probable cause panel.

- 1. The determination as to whether probable cause exists to believe that a violation of the provisions of Chapter 456 or 480, F.S., or of the rules promulgated thereunder, has occurred shall be made by a probable cause panel of two members to be selected by the chairman of the Board.
- 2. The Chairman shall be permitted to appoint one former Board member to serve on the Board's probable cause panel.

64B7-24.0091 Attendance of meetings by board members.

Unexcused absences of a board member are absences not due to the following situations:

1. Medical problems of a board member or a board member's family including but not limited to illness, surgery, emergency care and/or hospitalization;
2. Death of a family member and/or attendance at the family member's funeral;
3. Any conflict, extraordinary circumstance, or event approved by the chairman of the board.

64B7-24.016 Time for payment of civil penalties.

In cases where the Board imposes a civil penalty for violation of Chapter 456 or 480, F.S., or the rules promulgated thereunder, the penalty shall be paid within thirty (30) days of its imposition by order of the Board, or as otherwise directed by the Board.

64B7-24.017 Board business.

1. For the purposes of Section 456.011(4), F.S., the Board defines "other business involving the Board" as,
 - a. All regularly scheduled meetings of Board committees, and
 - b. Whenever a board member has been requested by the State Surgeon General or the Department staff to participate in a meeting or in the preparation, administration, or grading of the examination.
 - c. Meetings or business at the direction or request of the Board.
2. Meetings or participation by telephone do not constitute other board business.
3. Documentation of requests, authorizations, or notices for meetings under the terms of this rule shall be kept at the Board office.

64B7-25 Examination

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-25>

64B7-25.001 Examination Requirements.

1. The Department shall issue a license to a person who:
 - a. Pays to the Department the fee set out in subsection 64B7-27.002(1), F.A.C.;
 - b. Submits a completed application on form DH-MQA 1115, "Application For Licensure," (Rev. 10/09). The form and the attached instructions are incorporated herein by reference and may be obtained from the Board Office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at http://www.doh.state.fl.us/mqa/massage/ma_lic_req.html;
 - c. Completes a course of study at a massage school approved by the Board pursuant to Rule Chapter 64B7-32,

F.A.C.; or completes an approved apprenticeship program in accordance with Rule Chapter 64B7-29, F.A.C.;

- d. Completes the HIV/AIDS course requirement in Rule 64B7-25.0012, F.A.C.;
- e. Passes a national examination approved by the Board;
- f. Completes a course relating to the prevention of medical errors as required by subsection 456.013(7), F.S.
2. The Board approves the following examinations:
 - a. National Certification Board for Therapeutic Massage and Bodywork Examination;
 - b. National Certification Examination for Therapeutic Massage;
 - c. National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork;
 - d. The Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards.
3. Any Board-approved examination may be offered in the Spanish language.

64B7-25.0011 Colonic irrigation application deadline.

An applicant for the colonic irrigation examination or for re-examination must file in the Board office a completed application (incorporated herein by reference and entitled State of Florida Application for Licensure Massage Therapy, form # BMT2, (revised 7/2000), instructions attached and available at the Board office), including proof of completion of an approved course of study or an apprenticeship, at least 45 days prior to the examination date. The examination or re-examination fee must accompany the application.

64B7-25.0012 HIV/AIDS course required for initial licensure.

As a condition to granting an initial license, the applicant is required to complete a 3-hour educational course approved by the Board on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS). Courses that have received Board approval are sponsored by: the Department of Health, Division of Health Quality Assurance, the American Red Cross, or directly by the Board approved massage schools.

64B7-25.0025 Security and monitoring procedures for licensure examination.

The Board adopts by reference Department of Health, Rule 64B-1.010, F.A.C., as its rule governing examination security and monitoring.

64B7-25.004 Endorsements.

1. The Department shall issue a license by endorsement to a person who:
 - a. Pays to the Department the initial licensure fee set forth in subsection 64B7-27.008(2), F.A.C.; and
 - b. Submits a completed application on form DH-MQA 1115, "Application For Licensure," (Rev. 10/09), adopted and incorporated by reference in Rule 64B7-25.001, F.A.C.; and
 - c. Is currently licensed and has practiced massage under the laws of another state, and was required, in order to be so licensed to meet standards of education or apprenticeship training substantially similar to, equivalent to, or more stringent than those required for licensure by Florida law and these rules; and
 - d. Demonstrates that his out-of-state license was issued upon the satisfactory completion of an examination comparable to the examination approved by the Board; and
 - e. Has no outstanding or unresolved complaints filed against him or her in the jurisdiction of licensure.
- f. Completes a current curriculum course from a Board approved school covering the Florida Statutes and rules related to massage therapy.
- g. Completes the HIV/AIDS course requirement in Rule 64B7-25.0012, F.A.C.
- h. Completes a course relating to the prevention of medical errors as required by Section 456.013(7), F.S.

2. The Department may interview an applicant for licensure by endorsement to determine whether he qualifies for such endorsement.

64B7-25.006 Expiration of incomplete applications.

If an applicant fails to submit all items necessary for his/her application to be considered complete within one year from the date the application is first received by the Department, the application shall expire and the applicant's file shall be closed.

64B7-26 Massage establishments

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-26>

64B7-26.001 Definitions.

1. The term "owner" means the sole proprietor, partnership, limited partnership or corporation that operates the massage establishment.
2. The term "establishment" means a site or premises, or portion thereof, wherein a licensed massage therapist practices massage for compensation.

3. The term "business name" means the name under which the owner applies for the establishment license to provide massage therapy, if different from the name of the owner.

64B7-26.002 Licensure of massage establishments.

1. Each establishment, shall obtain a license from the Department as required by Section 480.043(1), F.S., by submitting a completed form BMT3 (Rev. 4/08), Massage Establishment Licensure Application, incorporated herein by reference, together with the fee set forth in Rule 64B7-27.003, F.A.C. The form and the attached instructions may be obtained from the Board office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at http://www.doh.state.fl.us/mqa/massage/ap_business.pdf.
2. The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a corporation, the application shall be submitted in the name of the corporation and shall be signed by an authorized corporate representative.
3. An owner may operate an establishment under a name other than the name of the owner, provided such name is submitted to the Board on the application for licensure. Any advertisement by the establishment of massage therapy must include the business name, and must comply with Rule 64B7-33.001, F.A.C.
4. The applicant shall submit proof confirming property damage and bodily injury liability insurance coverage for the proposed establishment. If the establishment is operated under a business name, the proof of insurance shall include both the name of the owner and the business name.

64B7 26.003 Massage establishment operations.

1. Facilities, Each establishment shall meet the following facility requirements:
 - a. Comply with all local building code requirements.
 - b. Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand drying device such as a wall mounted electric blow dryer, and waste receptacle.
 - c. Maintain toilet facilities in a common area of the establishment. Establishments located in buildings housing multiple businesses under

one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within three hundred (300) feet of the massage establishment.

- d. If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain clean shower facilities on the premises.
2. Personnel. A licensed massage therapist must be on the premises of the establishment if a client is in a treatment room for the purpose of receiving massage therapy.
3. Safety and sanitary requirements. Each establishment shall:
 - a. Provide for safe and unobstructed human passage in the public areas of the premises; provide for removal of garbage and refuse; and provide for safe storage or removal of flammable materials.
 - b. Maintain a fire extinguisher in good working condition on the premises. As used herein "good working condition" means meeting the standards for approval by the State Fire Marshal. Such standards are presently contained in Chapter 69A 21, F.A.C.
 - c. Exterminate all vermin, insects, termites, and rodents on the premises.
 - d. Maintain all equipment used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. Unless clean sheets, towels, or other coverings are used to cover the massage table for each client, "regular application," as used herein, means after the massage of each client. If clean coverings are used for each client, then "regular application" shall mean at least one time a day and also whenever oils or other substances visibly accumulate on the massage table surface.
 - e. Maintain a sufficient supply of clean drapes for the purpose of draping each client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels and linens. As used herein "drapes" means towels, gowns, or sheets.
 - f. Maintain lavatories for hand cleansing and/or a chemical germicidal designed to disinfect and cleanse hands without the use of a lavatory in the treatment room itself or within 20 feet of the treatment area.

- g. Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated.

4. Financial responsibility and insurance coverage. Each establishment shall maintain property damage and bodily injury liability insurance coverage. The original or a copy of such policy shall be available on the premises of the establishment.

64B7-26.004 Inspection upon application for license.

Upon receipt of an application for a massage establishment license, employees of the Department shall cause an inspection to be made of the site. Such inspection shall be to confirm that the site is to be utilized for "massage" as defined by Section 480.033(4), Florida Statutes, and that the criteria enunciated in Rule 64B7-26.003, F.A.C., are satisfied.

64B7-26.005 Periodic inspections.

The Department shall make periodic inspections of all massage establishments licensed in this state no less than once each year. Such inspection shall include, but not be limited to, whether the establishment is in compliance with Rule 64B7-26.003, F.A.C., governing the establishment's operation facilities, personnel, safety, sanitary requirements, and a review of existing insurance coverage.

64B7-26.007 Transfer of massage establishment license.

1. When there is no change of ownership or location, the owner may change the business name of the establishment. The owner shall apply for a change of business name by submitting a completed Application for Licensure-Massage Establishment, Form BMT3, effective 1/98, incorporated herein by reference, accompanied by the application fee provided in subsection 64B7-27.003(2), F.A.C. When a massage establishment business name is changed, without a change in ownership or location, a new establishment inspection is not required.
2. When there is no change of ownership, the owner of a massage establishment may transfer the license from one location to another. The owner shall apply for a change of location by submitting a completed Application for Licensure-Massage Establishment, accompanied by the application fee provided in subsection 64B7-27.003(3), F.A.C. A massage establishment license may not be transferred from one location to another until after inspection by the department.

64B7-26.010 Sexual activity prohibited.

1. Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
2. No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
3. No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.
4. As used in this rule, "sexual activity" means any direct or indirect physical contact by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this subsection, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred. Nothing herein shall be interpreted to prohibit a licensed massage therapist, duly qualified under Rule 64B7-31.001, F.A.C., from practicing colonic irrigation.

64B7-27 Fee schedule

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-27>

64B7-27.002 Application for licensure; fees.

The application fee for licensure shall be a \$50 nonrefundable application fee.

64B7-27.003 Massage establishment.

1. The application fee for licensure of an establishment shall be \$150.00.
2. The application fee for change of the business name of an establishment is \$25.00.
3. The application and inspection fee for transfer of an establishment from one location to another shall be \$125.00.

64B7-27.004 Re-examination.

The re-examination fees shall be:

1. The fee to retake the Board approved national examination shall be the same fee as the original examination.
2. The fee to retake the colonics examination shall be the same fee as the original colonics examination.

64B7-27.005 Apprentice.

The apprentice application fee shall be one hundred dollars (\$100.00).

64B7-27.006 Biennial renewal fee for massage therapist.

The fee for biennial renewal of a massage therapist's license shall be \$100.00.

64B7-27.007 Biennial renewal fee for massage establishments.

The fee for biennial renewal of a massage establishment license shall be \$100.00.

64B7-27.008 Initial fee for licensure.

1. Any person who is initially licensed pursuant to Rule 64B7-25.001, F.A.C., shall pay a fee of \$100.00.
2. Any person who is initially licensed pursuant to Rule 64B7-25.004, F.A.C., shall pay a fee of \$100.00.

64B7-27.010 Renewal fee for inactive license.

The fee for renewal of an inactive license shall be \$100.00.

64B7-27.012 Licensure of establishment fee.

The fee for licensure of an establishment shall be \$100.00.

64B7-27.014 Duplicate license fees.

The fee for the issuance of a duplicate massage therapist license shall be twenty-five dollars (\$25.00). The fee for the issuance of a duplicate massage establishment license shall be twenty-five dollars (\$25.00).

64B7-27.015 Delinquency fee.

The delinquency fee shall be \$150.00.

64B7-27.016 Change in status fee.

The change in status fee shall be \$50.00.

64B7-27.017 Unlicensed activity fee.

In addition to the initial license fee and in addition to the license renewal fee, a fee of \$5.00 shall be collected from each applicant or licensee as applicable to fund efforts to combat unlicensed activity.

64B7-27.018 Fee for retired status license.

The fee for placing a license in retired status shall be \$50.00.

64B7-27.019 Fee for reactivation of retired status license.

The fee for reactivation of a retired status license shall be the same renewal fee that would be imposed on an active status licensee for all biennial licensure periods during which the licensee was on retired status.

64B7-28 Biennial license renewal

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-28>

64B7-28.001 Biennial renewal of massage therapist's license.

1. All license renewals for massage therapists shall meet the requirements as set forth in Chapters 456 and 480, F.S., these rules, and the rules of the Department of Health. All massage therapists shall renew their licenses on or before August 31, of each biennial year, according to the fee schedule as set forth in Chapter 64B7-27, F.A.C.
2. No license shall be renewed unless the licensee submits confirmation on a department form that the licensee has completed an education course on HIV/AIDS which meets the requirements of Section 456.034, F.S. If the licensee has not submitted confirmation which has been received and recorded by the Board, the department shall not renew the license. The Board approves courses that have been approved by regulatory Boards or Councils under the Division of Medical Quality Assurance, the Agency for Health Care Administration, the Department of Health, the American Red Cross, or directly by the Board, and courses sponsored or presented by Board-approved Massage Schools.
3. No license shall be renewed unless the licensee submits confirmation in writing to the Florida Board of Massage Therapy that the licensee has completed an education course of at least 2 hours relating to prevention of medical errors as part of the licensure and renewal process. The course must include a study of root-cause analysis, error reduction and prevention, and patient safety. The 2-hour course shall count toward the total number of continuing education hours required for renewal.

64B7-28.0015 Place of practice defined.

1. The reporting requirements of Section 456.035, F.S., require each licensee to provide to the Board a current mailing address and a "place of practice." The current mailing address and place of practice may be one and the same, or may be two different addresses if the licensee does not receive mail at his or her place of practice.
2. "Place of practice" shall mean:
 - a. A massage establishment maintained by the licensed massage therapist; or
 - b. The massage establishment at which the licensed massage therapist provides massage therapy; or
 - c. The medical office at which the licensed massage therapist provides massage therapy; or
 - d. If the licensed massage therapist practices at more than one location, one such location as selected by the licensed massage therapist;

- e. If the licensed massage therapist provides massage therapy only at the location of clients, the place of practice is the residence address of the therapist.

64B7-28.002 Biennial renewal of massage establishment license.

All license renewals for massage establishments shall meet the requirements as set forth in Chapter 480, F.S., and these rules. All massage establishments shall renew their licenses on or before August 31 of each biennial year, according to the fee schedule as set forth in Rule 64B7-27.007, F.A.C., and the insurance coverage requirements of subsection 64B7-26.002(4), F.A.C. If, however, the massage establishment does not renew its license timely, the license shall be considered delinquent. If a massage establishment is operating with a delinquent license, said establishment is in violation of Section 480.047(1)(b), F.S., and is subject to the criminal penalties as provided for in Section 480.047(2), F.S. In order to renew a delinquent license, the massage establishment shall pay the late fee for delinquent renewal in the amount of seventy-five dollars (\$75.00) as set forth in Section 480.044(2), F.S., and the biennial renewal fee as specified in Rule 64B7-27.007, F.A.C.

64B7-28.003 Biennial period, year defined.

Biennial period shall mean September 1 of each odd-numbered year and ending August 31 of each odd-numbered year. Biennial year shall mean every odd-numbered year.

64B7-28.0041 Inactive status and renewal of inactive status.

1. Any licensee may elect at the time of biennial license renewal to place the license into inactive status by filing with the Department a completed application for inactive status as set forth in Section 456.036, F.S., and the appropriate fee required by Rule 64B7-27.010, F.A.C.
2. Inactive licenses must be renewed biennially including payment of the renewal fee set forth in Rule 64B7-27.010, F.A.C.
3. An inactive license can be reactivated at any time provided the licensee meets the requirements of Rule 64B7-28.0042, F.A.C.
4. An inactive licensee who elects to change to active status shall not be permitted to return to inactive status until the next biennial renewal period.

64B7-28.0042 Requirements for reactivation of an inactive license.

An inactive license shall be reactivated upon demonstration that the licensee has paid the reactivation fee set forth in Rule 64B7-27.011,

F.A.C., and has complied with the following requirements:

1. As a condition to the reactivation of an inactive license, a massage therapist must submit proof of having completed the appropriate continuing education requirements as set forth in Rule 64B7-28.009, F.A.C.
2. However, any licensee whose license has been inactive for more than two consecutive biennial licensure cycles and who has not practiced for two out of the previous four years in another jurisdiction shall be required to appear before the Board and establish the ability to practice with the care and skill sufficient to protect the health, safety, and welfare of the public. At the time of such appearance, the licensee must:
 - a. Show compliance with subsection (1) above;
 - b. Account for any activities related to the practice of massage therapy in this or any other jurisdiction during the period that the license was inactive and establish an absence of malpractice or disciplinary actions pending in any jurisdiction;
 - c. Prove compliance with Section 456.065, F.S., and subsection 64B7-28.001(2), F.A.C.
3. The Department shall not reactivate the license of any massage therapist who has:
 - a. Committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a licensee pursuant to Section 480.046, F.S.
 - b. Failed to comply with the provisions of Section 456.034, F.S., and subsections 64B7-28.001(2) and (3), F.A.C.

64B7-28.0043 Delinquent status license.

1. The failure of any license holder to either renew the license or elect inactive status before the license expires shall cause the license to become delinquent.
2. The delinquent status licensee must affirmatively apply for active or inactive status during the licensure cycle in which the license becomes delinquent. The failure by the delinquent status licensee to cause the license to be renewed or made inactive before the expiration of the licensure cycle in which the license became delinquent shall render the license null and void without further action by the Board or the Department.
3. The delinquent status licensee who applies for license renewal or inactive status shall:
 - a. Apply to the department for either license renewal as required by Section 480.0415, F.S., or inactive status as required by Section 456.036, F.S.

- b. Pay to the Board either the license renewal fee as set forth in Rule 64B7-27.006, F.A.C., or the inactive status fee as set forth in Rule 64B7-27.010, F.A.C.; the delinquency fee as set forth in Rule 64B7-27.015, F.A.C., and the change of status fee as set forth in Rule 64B7-27.016, F.A.C., if applicable; and
- c. If renewal is elected, demonstrate compliance with the continuing education requirements found in Rule 64B7-28.009, F.A.C.

64B7-28.0044 Retired status and reactivation of retired status license.

1. A licensee may place an active or inactive license in retired status at any time. If the license is placed in retired status at the time of renewal the licensee shall pay the retired status fee set forth in Rule 64B7-27.018, F.A.C. If the licensee chooses to place the license in retired status at any time other than at the time of license renewal the licensee shall pay a change of status processing fee of \$50.00 and the retired status fee.
2. A licensee may reactivate a retired status license at any time, subject to meeting the following requirements:
 - a. Paying the reactivation fee described at Rule 64B7-27.019, F.A.C.;
 - b. Demonstrating satisfaction of the continuing education requirements that would have been imposed on an active status licensee under this title for each licensure biennial period in which the licensee was on retired status.

64B7-28.007 Exemption of spouses of members of Armed Forces from licensure renewal provisions.

A licensee who is the spouse of a member of the Armed Forces and was caused to be absent from Florida for a period of at least six consecutive months because of the spouse's duties with the armed forces and who at the time the absence became necessary was in good standing with the Board of Massage and entitled to practice massage in Florida shall be exempt from all licensure renewal provisions under these rules. The licensee must show satisfactory proof of the absence and the spouse's military status.

64B7-28.008 Display of licenses.

1. Each licensed practitioner shall conspicuously display a current license issued by the Department, or photo copy thereof, at each location at which he or she practices.
2. Each apprentice shall conspicuously display his or her apprentice certificate issued by the Board office, in the establishment for which it has been issued.

3. The owner of each massage establishment shall conspicuously display a current establishment license issued by the Department on the premises.

64B7-28.009 Continuing education.

1. Every massage practitioner licensed pursuant to Chapter 480, F.S., shall be required for renewal to complete one continuing education hour for each month or part of a month that shall have elapsed since the issuance of the license for which renewal is sought, up to a maximum requirement of 24 hours for the renewal period. Such courses shall have been approved for continuing education credit pursuant to Rule 64B7-28.010, F.A.C., and shall have been completed within the renewal period preceding the date renewal is due. Every massage practitioner must obtain the continuing education required for biennial renewal of the massage therapist's license as set forth in Rule 64B7-28.001, F.A.C. Graduates of a Board approved massage school who received two hours of education in Chapters 480 and 456, F.S., and Rule Chapter 64B7, F.A.C., and two (2) hours of professional ethics prior to initial licensure shall not be required to complete additional continuing education in the same subject matter for initial renewal of the license.
2. All continuing education requirements may be met by correspondence/home study courses, tape and/or video cassette courses, provided the course requires passing a test to be graded by the provider and the passing score is verified by the provider of the course. Video cassette courses shall not exceed 5 hours per subject and must meet the requirements of Rule 64B7-28.010, F.A.C. The vendor and the licensee shall verify in writing that all requirements of paragraph 64B7-28.010(2)(c) or (d), F.A.C., have been met. Such verification/validation shall clearly indicate the course is a "correspondence/home study course/tape or videocassette course" and that the licensee passed the course in order to be accepted as proof of attendance.
3. Effective for the biennium beginning September 1, 2001, the continuing education contact hours shall be in the following areas:
 - a. At least 12 continuing education hours shall be relevant to and focus on massage therapy techniques, which may include history of massage therapy, human anatomy, physiology, kinesiology, and/or pathology. As of September 1, 2007, the 12 continuing education hours shall be taken via live classroom instruction which includes hands-on instruction or demonstration, 6 hours of which may be performed

as pro bono services pursuant to Rule 64B7-28.0095, F.A.C.

- b. Except as provided in subsection 64B7-28.009(1), F.A.C., two hours must be obtained in a course relating to the prevention of medical errors, two hours must cover instruction in professional ethics and two hours must cover instruction in the laws and rules of massage therapy, including Chapters 480 and 456, F.S., and Rule Chapter 64B7, F.A.C. Up to 4 hours of continuing education credit for professional ethics and laws and rules may be earned on an hour for hour basis by physically attending Board meetings, provided that:
 1. The licensee signs in with the Executive Director of the Board prior to the beginning of the meeting;
 2. The licensee remains in continuous attendance at the meeting;
 3. The licensee signs out of the meeting with the Executive Director of the Board in a pre-arranged time and manner.
 4. The licensee does not have a related discipline or licensure matter on the agenda for the same meeting day.
- c. The remaining hours may include courses on communications with clients and other professionals, insurance relating to third party payment or reimbursement for services, psychological dynamics of the client-therapist relationship, risk management, including charting, documentation, record keeping, or infection control (other than the HIV/AIDS course required by Section 456.034, F.S.), or massage practice management. The remaining hours may also include up to 4 hours credit for adult cardio-pulmonary resuscitation (CPR), provided the course is sponsored by the American Red Cross, the American Heart Association or the American Safety and Health Institute, or is instructed by persons certified to instruct courses for those organizations.
4. The licensee shall retain, for not less than four years, such receipts, vouchers or certificates as are necessary to document completion of the continuing education stated on the renewal application.
5. At the end of each biennium, the Board will audit a number of randomly selected licensees to assure that the continuing education requirements have been met. Within 21 days of a request from the Board or Department, the licensee must provide written documentation that the continuing education requirements have been met.

64B7-28.0095 Continuing education for pro bono services.

1. Up to 6 hours of continuing education per biennium in satisfaction of paragraph 64B7-28.009(3)(a), F.A.C., may be awarded for the performance of pro bono services to the indigent, underserved populations or in areas of critical need within the state where the licensee practices. The standard for determining indigence shall be that recognized by the Federal Poverty income guidelines produced by the United States Department of Health and Human Services.
2. In order to receive credit under this rule, the licensee must receive prior approval from the Board by submitting a formal request for approval, which must include the following information:
 - a. The type, nature and extent of services to be rendered;
 - b. The location where the services will be rendered;
 - c. The number of patients expected to be served; and
 - d. A statement indicating that the patients to be served are indigent, underserved or in an area of critical need.
3. Credit shall be given on an hour per hour basis.
4. Approval for pro bono services is only granted for the biennium for which it is sought. The licensee must request approval for each biennium they wish to receive credit for pro bono services.

64B7-28.010 Requirements for board approval of continuing education programs.

1. For the purpose of renewing or reactivating a license credit will be approved for programs which are offered by providers whose programs are approved by the Board. In order to receive Board approval to provide one or more programs, an applicant shall:
 - a. Submit a completed Massage Continuing Education Programs Provider Registration Application, BMT-B, and Supplemental Program/Instructor Information, BMT-C, incorporated herein by reference, and a non-refundable application fee of \$250.00. The forms will be effective 12-13-05, copies of which may be obtained from the Board office at: 4052 Bald Cypress Way, BIN #C06, Tallahassee, Florida 32399-3256.
 - b. Sign and abide by written agreement to:
 1. Provide an identifiable person to be responsible for ensuring that each program presented under their Board of Massage Therapy provider registration number meets

program requirements set forth in subsection (2) below.

2. Retain a "sign-in-sheet" with the signature of participants and copies of any promotional materials for at least 4 years following the course.
3. Provide each participant with a certificate of attendance verifying the program has been completed. The certificate shall not be issued until completion of the program and shall contain the provider's name and registration number, title of program and program number, instructor, date, number of contact hours of credit, the licensee's name and license number.
4. Notify the Board of any significant changes relative to the maintenance of standards as set forth in these rules.

2. Each continuing education program presented for license renewal credit or to satisfy initial licensure requirements shall:

- a. Meet the standards of subsection 64B7-28.009(2), paragraph (3)(a), (b) or (c), F.A.C.;
- b. Have stated learning objectives;
- c. Be instructed by a person who meets at least one of the following criteria:
 1. Holds a minimum of a bachelor's degree from a college or university which is accredited by a regional accrediting body recognized by the U.S. Department of Education or a substantially equivalent accrediting body of a foreign sovereign state, with a major in a subject directly related to the content of the program to be offered, or
 2. Has graduated from a school of massage or an apprenticeship program which has a curriculum equivalent to requirements in this state and was approved by a state licensing authority, a nationally recognized massage therapy association, or a substantially equivalent accrediting body, or the Board, and has completed three years of professional experience in the practice of massage, and
 - a. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or
 - b. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or
- c. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject, or

3. Is licensed as a massage therapist in another state or foreign sovereign state having standards of education or apprenticeship training substantially similar to or more stringent than those required for licensure in Florida and has practiced massage therapy for a minimum of 10 years, and
 - a. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or
 - b. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or
 - c. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject, or
4. Has taught at a school of massage which has a curriculum equivalent to requirements in this state and was approved by a state licensing authority, a nationally recognized massage therapy association, or a substantially equivalent accrediting body, or the Board for a minimum of two years, and
 - a. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or
 - b. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or
 - c. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject, or
5. Provided, however, that approved courses in areas other than massage theory, history, and techniques may be instructed by a person who meets at least one of the following criteria:
 1. Holds a minimum of a bachelor's degree from a college or university which is accredited by a regional accrediting body recognized by the U.S. Department of Education or a substantially equivalent accrediting body of a foreign sovereign state, with a major in a subject directly related to the content of the program to be offered, or
 2. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or
 3. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group, or at a massage therapy school, or
 4. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject.
6. The Board retains the right and authority to audit and/or monitor programs given by any provider. The Board will reject individual programs given by a provider if the provider has disseminated any false or misleading information in connection with the continuing education program, or if the program provider has failed to conform to and abide by the written agreement and rules of the Board.
7. One hour of continuing education is defined as no less than 50 uninterrupted minutes of learning.
8. Presenters/moderators/instructors of courses shall not receive credit for courses they present.
9. A provider of Board approved programs must submit a completed application for supplemental courses, form # BMT-B and C, to the Board office prior to offering such courses for credit. The submitted information must also identify any new continuing education instructor and show that such instructor meets the criteria set forth in this rule. Whenever an instructor and his/her course have obtained approval by the Board, the instructor may teach the course at any time, in whole or in part, so long as the materials being taught do not deviate from the course materials originally approved, there is no change of instructor, and the documentation of attendance clearly indicates the original

course approval number and the hours of credit given for this version of the course. Therefore, the number of continuing education hours awarded for the course may be the original number of hours approved, or less. An increase of the number of continuing education hours awarded will require submission of form # BMT-B for approval of a course.

7. A provider of Board approved programs must revise and update all course materials that are affected by changes occurring during the biennial renewal period. The Board will rescind approval of any program that is found to be obsolete, erroneous, and/or outside the scope of practice, or if the Board determines the program provider has violated the Board's rules or Chapter 456 or 480, F.S. The revised course materials must be submitted with the biennial renewal form and renewal fee.

8. Provider registration numbers must be renewed biennially on or before August 31 of the biennial renewal year. The provider must return the renewal form provided by the department together with a renewal fee of \$250.00. If the renewal form and renewal fee are not received by the department on or before August 31 of the biennial year, the provider must submit a new application for approval of any continuing education programs offered for license renewal or initial licensure requirements, and, if any programs are approved, receive a new provider registration number.

9. The following courses, that meet the criteria for approval under this section, are approved by the Board:

- a. Organized and accepted courses of study offered by providers approved by the National Certification Board for Therapeutic Massage and Bodywork;
- b. Organized courses offered by a Board Approved Massage School;
- c. Continuing education courses offered by or sponsored by the Florida Board of Massage Therapy;
- d. Continuing education courses sponsored by the Florida State Massage Therapy Association; and
- e. Continuing education courses sponsored by the American Massage Therapy Association or the American Massage Therapy Association Florida Chapter.

64B7-29 Apprenticeship

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-29>

64B7-29.001 Definitions.

1. "Apprentice" means a person meeting the qualifications stated in Rule 64B7-29.002,

F.A.C., studying massage under the "direct supervision" of a "sponsoring massage therapist".

2. "Sponsoring massage therapist" means a licensed massage therapist whose record with the Department indicates compliance with Chapters 456 and 480, F.S., and the rules promulgated thereunder. Further, a "sponsoring massage therapist" must have been engaged in the actual practice of massage for at least three (3) years prior to his "sponsorship".
3. "Sponsorship" means the willingness of a "sponsoring massage therapist" to assume the responsibility for the "direct supervision" of only one apprentice by execution of the Sponsor's Apprentice Application.
4. "Direct supervision" means the control, direction, instruction, and regulation of an apprentice at a "qualified massage establishment" during the working hours of the establishment.
5. "Qualified massage establishment" means a licensed massage establishment which, in addition to meeting the requirements of Chapter 64B7-26, F.A.C., is equipped with the following:
 - a. Tables.
 - b. Linen and storage areas.
 - c. Colonic equipment (required if colonic irrigation is taught).
 - d. Sterilization equipment if non-disposable colonic attachments are utilized.
 - e. Hydro-therapy equipment, which must include cold packs and hot packs. Such equipment shall be that which is generally acceptable in the massage profession.
 - f. Textbooks and teaching materials on the following subjects:
 1. Physiology,
 2. Anatomy,
 3. Theory of Massage,
 4. Hydro-therapy,
 5. Statutes and Rules on Massage Practice,
 6. Colonic Irrigation (if colonic equipment is present).

64B7-29.002 Qualification.

Persons seeking to be apprentices shall meet the following requirements:

1. The applicant must have secured the sponsorship of a sponsoring massage therapist.
2. The applicant must complete the application furnished by the Department and pay the fee set forth in Rule 64B7-27.005, F.A.C.
3. The applicant may not be enrolled simultaneously as a student in a Board-approved massage school.

64B7-29.003 Apprenticeship training program.

1. All apprenticeship training shall be conducted by the licensed sponsoring massage therapist, in a qualified massage establishment licensed pursuant to Section 480.043, F.S.
2. Apprenticeship training shall be 12 months in duration and shall be completed within 24 months of commencement. The apprentice shall complete within the first quarter of the apprenticeship training program:
 - a. 100 hours of study in Physiology,
 - b. 100 hours of study in Anatomy, and
 - c. 15 hours of study in Statutes and Rules of Massage Practice.
3. Course of Study for Apprentices, which incorporates that required in (2)(a), shall be as follows:
 - a. 300 hours of Physiology.
 - b. 300 hours of Anatomy.
 - c. 20 hours of Theory and History of Massage.
 - d. 50 hours of Theory and Practice of Hydro-Therapy.
 - e. 5 hours of Hygiene.
 - f. 25 hours of Statutes and Rules of Massage Practice.
 - g. 50 hours of Introduction to Allied Modalities.
 - h. 700 hours of Practical Massage.
 - i. 3 hours of Board-approved HIV/AIDS instruction.
4. The sponsoring massage therapist shall maintain at the establishment a daily record of hours completed by the apprentice in each of the areas listed in subsection (3) above. This record shall be available for inspection during regular business hours and shall be inspected by a representative of the Department at least once within 12 months from the commencement of the apprenticeship.
5. The sponsoring massage therapist shall submit to the Department, quarterly, on a form furnished by the Department, the number of hours of each subject listed above taught to his apprentice. A copy of the Massage Apprenticeship Quarterly Report Hours of Training Completed Form prepared and furnished by the Department of Health can be obtained by writing to: Department of Health, Board of Massage, 4052 Bald Cypress Way, Bin C06, Tallahassee, Florida 32399-3256. If quarterly reports are not submitted to the Department as required herein, the Board will review the apprenticeship and the apprenticeship shall be terminated.
6. A graduate of a board-approved massage school who enters the apprenticeship training program, at any time after he has taken the initial licensure examination or

subsequent re-examinations thereafter, must complete the entire program as required above prior to taking subsequent re-examinations. Any applicant who enters the apprenticeship training program and terminates the program is prohibited from taking the licensure examination for 1 year from the date of termination. An individual may be exempted from this provision if he terminates the apprenticeship training program and subsequently completes a program at a board-approved massage school.

64B7-29.004 Termination.

1. If an apprentice terminates his apprenticeship, the sponsoring massage therapist shall so notify the Department, on a form furnished by the Department, within ten (10) days.
2. If any violation of Chapter 480 or 456, F.S., or rules set forth in Chapter 64B7, F.A.C., is found subsequent to Department inspection of the "qualified massage establishment" as defined under Rule 64B7-29.001, F.A.C., the apprenticeship shall be tolled until such time as the violation(s) is corrected or disposition in the case is made. If the disposition of the case resulted in disciplinary action by the Board, the Board will require that the "sponsor" and the "apprentice" appear before the Board for the purpose of determining compliance with the apprenticeship training program requirements of Rule 64B7-29.003, F.A.C.

64B7-29.005 Extension of apprenticeship.

An apprenticeship may be extended under the following conditions:

1. Apprenticeships completed prior to an examination date may, upon notification by the sponsoring massage therapist to the Department, automatically be extended until the date examination results are released.
2. If an applicant fails the first examination after his apprenticeship is completed, the Department may grant an extension of the apprenticeship with the concurrence of the sponsoring massage therapist.
 - a. The apprentice must appear at the next scheduled examination for licensure.
 - b. The extension of the apprenticeship shall expire upon written notification by the Department that the apprentice has failed the re-examination or on the date of the scheduled examination, should the applicant fail to appear.

64B7-29.006 Change of sponsoring massage therapist.

If for any reason the sponsoring massage therapist is no longer able to sponsor an apprentice, the sponsoring massage therapist

shall so notify the Department, on a form furnished by the Department, within ten (10) days. If the apprentice desires to remain in the apprenticeship program he or she must secure the sponsorship of another sponsoring massage therapist. The apprentice shall receive credit for training received from the prior sponsoring massage therapist.

64B7-29.007 Colonics training through apprenticeship.

A massage practitioner shall instruct another individual in colonics only under the following conditions:

1. The trainee must be either:
 - a. Licensed to practice massage under Chapter 480, F.S.,
 - b. Approved as an apprentice under Chapter 64B7-29, F.A.C., or
 - c. A student in a Board-approved massage school.
2. The instructor, hereafter called sponsor, must be currently licensed under Chapter 480, F.S., and authorized to practice colonics under Chapter 64B7-31, F.A.C. The sponsor must have been actively engaged in the practice of colonics for a minimum of 3 years.
3. The training shall take place in a massage establishment licensed under Chapter 480, F.S., which contains the following equipment:
 - a. Colonic equipment.
 - b. Disposable colonic attachments or sterilization equipment for non-disposable attachments.
4. The licensee or apprentice who will receive colonics instruction must receive advance approval for such instruction from the Department. Such approval may be obtained in the following manner:
 - a. If the applicant is a currently licensed massage practitioner or a student at a Board-approved massage school, application for "colonics only" apprenticeship on forms provided by the Department must be submitted. The applicant will be required to submit the apprentice fee as set forth in Rule 64B7-27.005, F.A.C.
 - b. An unlicensed applicant for apprenticeship training may apply for colonics training approval, in addition to course work required under Rule 64B7-29.003, F.A.C.
5. The apprentice shall complete colonics training within 24 months of approval by the Department.
6. The sponsor shall certify training is complete on a Colonics Apprenticeship Report form provided by the Department when the apprentice has completed 100 hours of training in the subject, including 45 hours of clinical practicum as required by subsection 64B7-31.001(2), F.A.C.

The form BOM-1 is hereby incorporated by reference and will be effective 7-3-97, copies of which may be obtained from the Board office at the 4052 Bald Cypress Way, Tallahassee, Florida 32399-3256.

64B7-30 Discipline

<https://www.flrules.org/gateway/ChapterHome.aspx?Chapter=64B7-30>

64B7-30.001 Misconduct and negligence in the practice of massage therapy.

The following acts shall constitute the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent similar massage therapist as being acceptable under similar conditions and circumstances:

1. Administering treatment in a negligent manner.
2. Violating the confidentiality of information or knowledge concerning a client.
3. Offering massage therapy at a sports event, convention or trade show without obtaining the written approval of the owner or property manager of the site at which the sports event, convention or trade show is held.
4. Failure to explain expected draping techniques to a client. As used in this rule, draping means towels, gowns, sheets or clothing.
5. Failure to appropriately drape a client. Appropriate draping of a client shall include draping of the buttocks and genitalia of all clients, and breasts of female clients, unless the client gives specific informed consent to be undraped.

64B7-30.002 Disciplinary guidelines.

1. When the Board finds that an applicant, apprentice, or licensee whom it regulates under Chapter 480, F.S., has committed any of the acts set forth in Sections 480.0485, 480.046, 480.047 and 456.072, F.S., it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines after consideration of the aggravating and mitigating factors set forth in subsection (3) of this rule:

(a) 480.046(1)(a) Licensee	First offense: Suspension and \$250.00 fine. Subsequent offense: \$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine; second offense: \$10,000.00 fine and suspension of license; subsequent offense: \$10,000.00 fine and revocation of the license.
Applicant	Denial of licensure. If the offense is for fraud or making a false or fraudulent representation, denial of licensure and a \$10,000.00 fine.
456.072(1)(h)	Revocation through error of Department or Board.
(b) 480.046(1)(b) or 456.072(1)(f)	Licensee: Impose discipline consistent with penalty or actions imposed in other jurisdiction. Applicant: Deny licensure.
(c) 480.046(1)(c) or 456.072(1)(c) Misdemeanors	First offense: \$250.00 fine; second offense: \$500.00 fine and probation; third offense: \$500.00 fine and suspension.
Felonies	First offense: \$500.00 fine and probation; second offense: \$500.00 fine and suspension; third offense: \$1,000.00 fine and suspension.
Crimes relating to assault, battery, abuse or which otherwise cause bodily harm, prostitution or solicitation for prostitution	\$1,000.00 fine and revocation.
(d) 480.046(1)(d)	First offense: \$500.00 fine and reprimand; second offense: \$750.00 fine and probation; third offense: \$1,000.00 fine and suspension. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and reprimand; second offense: \$10,000.00 fine and probation; third offense: \$10,000.00 fine and suspension.
(e) 480.046(1)(e) or 456.072(1)(j)	First offense: \$1,000.00 fine and suspension; second offense: \$1,000.00 fine and revocation for a minimum of two (2) years; third offense: permanent revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and suspension; second offense: \$10,000.00 fine and revocation for a minimum of two (2) years; third offense: \$10,000.00 fine and permanent revocation.
(f) 480.046(1)(f) or 456.072(1)(a) or (m)	First offense: \$500.00 fine and reprimand; second offense: \$500.00 fine and probation; third offense: \$1,000.00 fine and suspension. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine; subsequent offense: \$10,000.00 fine and revocation.
F(g) 480.046(1)(g)	First offense: probation; second offense: suspension; third offense: revocation.
(h) 480.046(1)(h)	First offense: \$1,000.00 fine and probation; Second offense: \$1,000.00 fine and suspension; Third offense: \$1,000.00 fine and revocation.
(i) 480.046(1)(i) or 456.072(1)(o)	First offense: \$1,000.00 fine and probation; second offense: \$1,000.00 fine and suspension; third offense: \$1,000.00 fine and revocation.
(j) 480.046(1)(j) or 456.072(1)(p)	First offense: \$250.00 fine and probation; second offense: \$500.00 fine and suspension; third offense: \$1,000.00 fine and revocation.
(k) 480.046(1)(o) or 456.072(1)(cc)	Unless an offense specifically set forth below, first offense: \$250.00 fine; subsequent offense: \$250.00 fine and probation.
1. 480.0485	\$1,000.00 fine and revocation.
2. 480.047(1)(a) – violator's license delinquent	\$100.00 fine for first month and \$50.00 for each succeeding month or part thereof and reprimand. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and a reprimand.
3. 480.047(1)(a) – violator's license suspended or inactive	Revocation. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and revocation of license.
4. 480.047(1)(b) – violator's license delinquent	\$100.00 fine for first month and \$50.00 for each succeeding month or part thereof and reprimand. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and a reprimand.
5. 480.047(1)(b) – violator's license suspended or inactive	Revocation. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and revocation.
6. 480.047(1)(c)	First offense: \$1,000.00 fine and revocation; subsequent offense: \$1000.00 fine and revocation for minimum of two (2) years.
7. 480.047(1)(d) Licensee	First offense: \$1,000.00 fine; second offense:\$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine; second offense: \$10,000.00 fine and revocation.

Applicant	First offense: denial of licensure; subsequent offense: denial of licensure and prohibition on reapplication for 2-5 years. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and denial of licensure; subsequent offense: \$10,000.00 fine and denial of licensure and prohibition on reapplication for 2-5 years.
8. 480.047(1)(e)	1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and revocation of license.
\$9. 480.047(1)(f) Licensee	First offense: \$1,000.00 fine and probation; second offense: \$1,000.00 fine and suspension; third offense: \$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and probation; second offense: \$10,000.00 fine and suspension; third offense: \$10,000.00 fine and revocation.
Applicant	First offense: denial of licensure; subsequent offense: denial of licensure and prohibition on reapplication for 2-5 years. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and denial of licensure; subsequent offense: \$10,000.00 fine, denial of licensure and prohibition on reapplication for 2-5 years.
10. 480.047(1)(g) Licensee	First offense: \$1,000.00 fine and probation; subsequent offense: \$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and probation; subsequent offense: \$10,000.00 fine and revocation.
Applicant	First offense: denial of licensure; subsequent offense: denial of licensure and prohibition on reapplication for 2-5 years. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine, denial of licensure and prohibition on reapplication for 2-5 years.
11. Failure to respond to continuing education audit	First offense: \$500.00 fine and suspension; subsequent offense: \$500.00 fine and revocation.
12. Any violation of Rule 64B7-26.010, F.A.C.	First Offense: \$1000.00 fine and probation to \$2,500.00 fine and revocation. Second offense: \$5,000.00 fine and revocation.
(l) 480.046(1)(1)	First offense: \$500 fine and suspension; second offense: \$1,000.00 fine and suspension; suspension; third offense: \$1,000.00 fine and revocation.
(m) 480.046(1)(m)	First offense: \$250.00 fine and reprimand; second offense: \$500.00 fine and suspension; third offense: \$1,000.00 fine and revocation.
(n) 480.046(1)(n) 1. Establishment license delinquent	\$100.00 fine for the first month and \$50.00 for each succeeding month or part thereof and reprimand. If the offense is for raud or making a false or fraudulent representation, the penalty is \$10,000.00 fine and reprimand.
2. Establishment license suspended – site owned by massage therapist	First offense: Suspension of owner's massage therapy license; subsequent offense: revocation of licensed owner's massage therapy license. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and suspension of owner's massage therapy license; subsequent offense: \$10,000.00 fine and revocation of the owner's massage therapy license.
(o) 456.072(1)(g) false report to Department regarding violation	first offense: \$500.00 fine and suspension; subsequent offense: \$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation: first offense: \$10,000.00 fine and suspension; subsequent offense: \$10,000.00 fine and revocation.
F(p) 456.072(1)(i) – failure to report violator	First offense: \$500.00 fine and reprimand; subsequent offense: \$1,000.00 fine and suspension. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and reprimand; subsequent offense: \$10,000.00 fine and suspension.
(q) 456.072(1)(l) – filing a false report required by law	First offense: \$500.00 fine and probation; subsequent offense: \$1,000.00 fine and revocation. If the offense is for fraud or making a false or fraudulent representation, first offense: \$10,000.00 fine and probation; subsequent offense: \$10,000.00 fine and revocation.
(r) 456.072(1)(n) – influencing client for financial gain	First offense: \$500.00 fine and probation; subsequent offense \$1,000.00 fine and revocation.
(s) 456.072(1)(r) – interfering with an investigation or inspection	First offense: \$500.00 fine and probation; subsequent offense: \$1,000.00 fine and revocation.
(t) 456.072(1)(b) – intentionally violating a rule of the Board or intentionally violating a rule of the Board or Department	First offense: \$1,000.00 fine and suspension; subsequent offense: \$1,000.00 fine and revocation.
(u) 456.072(1)(k) – failure to perform any legal obligation placed on licensee	First offense: \$250.00 fine; second offense: \$500.00 fine; subsequent offense: \$1,000.00 fine.

(v)1. 456.072(1)(q) or 480.046(1)(k) – violating any Board or Department order or failure to comply with a lawfully issued subpoena of the Department.	First offense: \$250.00 fine and probation; Second offense: \$500.00 fine and probation; Third offense: \$1,000.00 fine and suspension.
2. Violation of a Board order entered in a previous disciplinary case, including citation final orders.	\$1000.00 fine and suspension until compliant with previous order. If the offense is for fraud or making a false or fraudulent representation, the fine is \$10,000.00 and suspension until compliant with the previous final order.
(w) 456.072(1)(u) engaging or attempting to engage a patient or client in verbal or physical sexual activity.	Verbal first offense: \$1,000.00 fine and probation; subsequent offense: verbal or physical, \$1,000.00 fine and revocation. Physical: \$1,000.00 fine and revocation.
(x) 456.072(1)(w) failing to report to the Board within thirty (30) days after the licensee has been found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction	First offense: \$500.00 fine if non-violent, non-sexual and non-felony; second offense: \$5,000.00 fine and suspension; third offense: \$1,000.00 fine and revocation. If a crime of violence, sexual crime or felony, first offense: \$1,000.00 fine and suspension; subsequent offense: \$1,000.00 fine and revocation.
(y) 456.072(1)(w) failing to report to the Board in writing on or before October 1, 2001, any convictions, findings of guilt or pleas of nolo contendere that occurred prior to July 1, 1999, and not previously reported to the Board	If the crime is non-violent, non-sexual and non-felony: \$500.00 fine. If a crime of violence, sexual crime, or felony: \$1,000.00 fine and revocation.
(z) 456.072(1)(x) using information about people involved in motor third offense: \$500.00 fine and revocation vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports for the purpose of commercial or any other solicitation whatsoever of the people involved in such accidents.	First offense: \$500.00 fine and probation; second offense: \$500.00 fine and suspension;
(aa) 456.072(1)(gg), F.S.	First offense: Suspension until compliant up to suspension until compliant with program followed by up to 5 years probation with conditions. Second or subsequent offense: suspension until compliant with program and up to five years probation with conditions, or revocation, and up to \$2,000.00 fine.

2. If an establishment licensed pursuant to Chapter 480, F.S., is found to have obtained such license by fraud or misrepresentation, the usual action of the Board shall be revocation of the license and prohibition of reapplication by the holder of the license for a period of two years.
3. Based upon consideration of aggravating or mitigating factors, present in an individual case, the Board may deviate from the penalties for the violations charged. The Board shall consider as aggravating or mitigating factors the following:
 - a. The danger to the public;
 - b. The length of time since the violation;
 - c. The number of times the licensee has been previously disciplined by the Board;
 - d. The length of time licensee has practiced;
 - e. The actual damage, physical or otherwise, caused by the violation;
 - f. The deterrent effect of the penalty imposed;
 - g. The effect of the penalty upon the licensee's livelihood;
 - h. Any effort of rehabilitation by the licensee;
 - i. The actual knowledge of the licensee pertaining to the violation;
 - j. Attempts by licensee to correct or stop violation or refusal by licensee to correct or stop violation;
 - k. Related violations against licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
 - l. Actual negligence of the licensee pertaining to any violation;
 - m. Penalties imposed for related offenses under subsections (1) and (2) above;
 - n. Any other mitigating or aggravating circumstances.
4. When the Board finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it shall enter an order imposing one or more of the following penalties:
 - a. Refusal to certify, or to certify with restrictions, an application for a license.
 - b. Suspension or permanent revocation of a license.
 - c. Restriction of practice.
 - d. Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense.
 - e. Issuance of a reprimand.

- f. Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify. Those conditions shall include requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- g. Corrective action.
5. The provisions of subsections (1) through (4) above are not intended and shall not be construed to limit the ability of the Board to informally dispose of disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.
6. The provisions of subsections (1) through (4) above are not intended and shall not be construed to limit the ability of the Board to pursue or recommend the Department pursue collateral, civil or criminal actions when appropriate.
7. In any proceeding where the Board is authorized to take disciplinary action, the Board will also impose costs of investigation and prosecution as authorized by Section 456.072(4), F.S.
8. Whenever the Board, in accordance with this rule, imposes a monetary fine against a respondent in an Administrative Complaint, it shall also impose a suspension of the respondent's license until the fine is paid. However, to enable the respondent to pay the monies fine, the Board shall stay the imposition of the suspension for the same time period as specified, in accordance with Rule 64B7-24.016, F.A.C., for payment of the monies fine. If the fine is paid within the specified time, then the order of suspension shall not take effect; if the fine is paid after the order of suspension has taken effect, then the suspension shall be lifted.
9. For the purposes of Sections 480.033(4) and 480.047(1)(a), F.S., "Compensation" is defined as the payment of money or its equivalent; the receipt or delivery of property; the performance of a service; or the receipt or delivery of anything of value, to the person giving a massage in exchange for massage services.

64B7-30.004 Citations.

1. Definitions. As used in this rule:
 - a. "Citation" means an instrument which meets the requirements set forth in Section 456.077, F.S., and which is served upon a subject in the manner provided in Section 456.077, F.S., for the purpose of assessing a penalty in an amount established by this rule;
- b. "Subject" means the licensee, applicant, person, partnership, corporation, or other entity alleged to have committed a violation designated in this rule.
2. In lieu of the disciplinary procedures contained in Section 456.072, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint which is the basis for the citation.
3. The Board hereby designates the following as citation violations, which shall result in a penalty as specified below:
 - a. Refusing to allow the department to inspect the business premises of the licensee during regular business hours as required by Section 480.046(1) (I), F.S., shall result in a penalty of \$500.00.
 - b. Failing to display a license or certificate as required by Rule 64B7-28.008, F.A.C., shall result in a penalty of \$250.00.
 - c. Failing to keep the equipment and premises of a massage establishment in a clean and sanitary condition as required by Section 480.046(1) (m), F.S., shall result in a penalty of \$250.00.
 - d. Failing to maintain property damage and bodily injury liability insurance coverage as required by subsection 64B7-26.003(4), F.A.C., shall result in a penalty of \$250.00.
 - e. Failure to include the license number of either the massage therapist or the massage establishment in advertisements as required by Section 480.0465, F.S., shall result in a penalty of \$250.00.
 - f. Practicing with a delinquent license in violation of Section 480.047(1)(a), F.S., when the license, has become delinquent automatically for failure to renew, so long as the license is reactivated within 30 days of becoming delinquent, shall result in a penalty of \$250.00. Practice for more than 30 days after a license has become delinquent shall not be a citation violation.
 - g. Violations of Rule 64B7-28.009, F.A.C., by licensees provided that the violation did not involve bribery or fraudulent misrepresentation, shall result in a penalty of \$25.00 per hour for each hour of deficit of the continuing education hour requirement, and completion of the required continuing education.
 - h. First-time failure of the licensee to satisfy continuing education

requirements established by the Board; Fine of \$250.00, and one hour of continuing education for each hour not completed or completed late. These continuing education hours are to be completed within 90 days of the date of citation issuance.

- i. Failure of a massage therapist to notify the Board of a change of address as required by Section 456.035(1), F.S., shall result in a penalty of \$250.00.
- j. False, misleading or deceptive advertising by advertising massage therapy services under a name under which a license has not been issued in violation of Section 480.046(1)(d), F.S., shall result in a penalty of \$250.00.
- k. Violating Section 456.072(1)(h), F.S., by tendering a check that is dishonored by the institution upon which it is drawn shall result in a penalty of \$250.00.
- l. First time failure to comply with the HIV/AIDS continuing education requirements of Section 456.034, F.S., or the medical errors continuing education requirements of Section 456.013(7), F.S., shall result in a penalty of \$250.00 for each deficient course requirement, in addition to the requirement to make up the coursework within 90 days of the date the citation is filed.
- m. Failing to identify to a patient verbally or in writing, which may include wearing of a name tag, that a licensee is practicing as a licensed massage therapist, in violation of Section 456.072(1)(t), F.S., shall result in a penalty of \$100.00.
4. In addition to the fines imposed herein, the costs of investigation and prosecution for each offense shall be assessed in the citation.
5. All fines and costs imposed in a citation shall be paid within 90 days of the date the citation is filed.

64B7-30.005 Mediation.

Pursuant to Section 456.078, F.S., the Board designates first time violations of the following as appropriate for mediation:

1. Violation of Section 480.047(1)(a), F.S., by practicing on a delinquent license.
2. Failure to timely respond to a continuing education audit in violation of subsection 64B7-28.009(5), F.A.C.

64B7-30.006 Notice of noncompliance.

Pursuant to Sections 120.695 and 456.073(3), F.S., the Board designates the following as minor violations for which a notice of noncompliance may be issued for the first violation thereof:

1. Failure to provide written notice of licensee's current mailing address and place of practice in violation of Rule 64B7-28.015, F.A.C.
2. Failure to obtain continuing education in HIV/AIDS in violation of Section 456.034, F.S.
3. Failure to have proof of insurance available at an establishment as required by subsection 64B7-26.003(4), F.A.C.
4. Failure to include license number or numbers in any advertisement as required by Section 480.0465, F.S.

64B7-30.007 Probable cause panel.

The determination of probable cause shall be made by the probable cause panel of the board. The probable cause panel shall consist of two members, and may include a former board member. The chair of the board shall appoint the panel members.

64B7-30.008 Probationary conditions and definitions.

1. **Indirect Supervision.** Whenever a license is placed on probation or otherwise restricted in such a manner as to require the respondent to practice under indirect supervision, the term indirect supervision does not require that the monitoring practitioner practice on the same premises as the respondent; however, the monitor shall practice within a reasonable geographic proximity to the respondent, which shall be within 20 miles unless otherwise authorized by the Board, and shall be readily available for consultation.
2. **Direct Supervision.** Whenever a license is placed on probation or otherwise restricted in such a manner as to require the respondent to practice under direct supervision, the term direct supervision requires that the respondent practice only if the supervisor is on the premises.
3. **Provisions governing all supervised or monitored practitioners.**
 - a. The supervisor/monitor shall be furnished with copies of the Administrative Complaint, Final Order, Stipulation (if applicable), and other relevant orders.
 - b. The respondent shall not practice without a supervisor/monitor unless otherwise ordered. The respondent shall appear at the next meeting of the Board with his proposed supervisor/monitor unless otherwise ordered.
 - c. After the next meeting of the Board, the respondent shall only practice under the supervision of the supervisor/monitor. If for any reason the approved supervisor/monitor is unwilling or unable to serve, the respondent and the supervisor/monitor shall immediately notify the Executive Director of the

Board, and the respondent shall cease practice until a temporary supervisor/monitor is approved. The Chairman of the Board shall approve a temporary supervisor/monitor who shall serve in that capacity until the next meeting of the Board, at which time the Board shall accept or reject a new proposed supervisor/monitor. If the Board rejects the proposed supervisor, the respondent shall cease practice until the Board approves a new supervisor/monitor.

- d. The supervisor/monitor must be a licensee under Chapter 480, F.S., in good standing and without restriction or limitation on his license. In addition, the Board shall reject any proposed supervisor/monitor on the basis that he or she has previously been subject to any disciplinary action against his/her license. The supervisor/monitor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board. The Board will also reject any proposed supervisor/monitor whom the Board finds has violated the Board's rules or Chapter 456 or 480, F.S.
4. For purpose of determining the dates when reports are due, the date the Final Order is filed shall constitute the beginning of the quarter.
 - a. All quarterly reports shall be provided to the Board office no later than three months from the filing date of the Final Order.
 - b. All semiannual reports shall be provided to the Board office no later than six months from the filing date of the Final Order.
 - c. All annual reports shall be provided to the Board office no later than twelve months from the filing date of the Final Order.

64B7-31 Coloni irrigation

<https://www.flrules.org/gateway/ChapterHome.aspx?Chapter=64B7-31>

64B7-31.001 Colon hydrotherapy.

1. **Intent.**
 - a. The Board of Massage finds that the colon hydrotherapy procedures, while falling directly within the scope of Chapter 480, F.S., presents a substantial danger to the public if performed by incompetent practitioners.
 - b. The Board of Massage further finds that a significant proportion of licensees do not perform the colonic procedure and further that a significant proportion of those desiring to enter the profession do not intend to engage in the practice of colonic irrigation.

- c. This rule is promulgated to ensure that only those who have been determined duly qualified to practice colon hydrotherapy may do so in an effort to protect the health, safety and welfare of the public.
- 2. Prior to the practice of colon hydrotherapy, any licensed massage therapist, or apprentice shall be required to present certification to the Board of successful completion of examination by a Board approved massage school after completion of a supervised classroom course of study in colonic irrigation or in the case of a duly authorized apprenticeship training program, evidence of having completed 100 hours of colonic irrigation training, including a minimum of 45 hours of clinical practicum with a minimum of 20 treatments given.
- 3. Prior to the practice of colonic irrigation, any licensed massage therapist, or apprentice shall be required to successfully complete and pass the National Board for Colon Hydrotherapy Examination (NBCHT) which is approved by the Board.
- 4. Any licensed massage therapist whose license has been in an inactive or retired status for more than two consecutive biennial licensure cycles shall be required to successfully complete and pass the NBCHT, prior to resuming the practice of colonic irrigation.
- 5. Any applicant for massage therapist licensure or licensed massage therapist, who in conjunction with previous massage therapist licensure was certified to practice colonic irrigation, shall be required to successfully complete and pass the NBCHT prior to practicing colon hydrotherapy.

64B7-32 Board approved massage school

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-32>

64B7-32.001 Definitions.

For the purposes of this rule chapter a “classroom hour” shall be defined as no less than 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the faculty of the school.

64B7-32.002 Documentation of graduation from a board approved massage school.

In order to be acknowledged as a graduate of a Board approved massage school as referred to in subsection 480.033(9), F.S., the Board’s administrative office must receive an official transcript documenting the applicant’s training. Such transcript must document to the satisfaction of the Board that the applicant has successfully completed a course of study in

massage which met the minimum standards for training and curriculum as delineated in this rule chapter. A transcript indicating passing grades in all courses, and including dates of attendance, and stating the date of successful completion of the entire course of study, is evidence of successful completion. If the transcript does not specifically state that the student successfully completed the entire course of study, the transcript must be accompanied by a diploma or certificate of completion indicating the dates of attendance and completion.

64B7-32.003 Minimum requirements for board approved massage schools.

- 1. In order to receive and maintain Board of Massage Therapy approval, a massage school, and any satellite location of a previously approved school, must:
 - a. Meet the requirements of and be licensed by the Department of Education pursuant to Chapter 1005, F.S., or the equivalent licensing authority of another state or county, or be within the public school system of the State of Florida; and
 - b. Offer a course of study that includes, at a minimum, the 500 classroom hours listed below, completed at the rate of no more than 6 classroom hours per day and no more than 30 classroom hours per calendar week:

Course of study	Classroom hours
Anatomy and Physiology	150
Basic Massage Theory and History	100
Clinical Practicum	125
Allied Modalities	15
Theory and Practice of Hydrotherapy	15
Florida Laws and Rules (Chapters 456 and 480, F.S. and Chapter 64B7, F.A.C.)	10
Professional Ethics	4
HIV/AIDS Education	3
Medical Errors	2

- c. Apply directly to the Board of Massage Therapy and provide the following information:
 - 1. Sample transcript and diploma;
 - 2. Copy of curriculum, catalog or other course descriptions;
 - 3. Faculty credentials; and
 - 4. Proof of licensure by the Department of Education.
- 2. All faculty members of the massage therapy school must meet the minimum

requirements of the Department of Education.

- 3. Board of Massage Therapy approval shall be withdrawn if the massage school:
 - a. Modifies its curriculum to fall below the minimum standards set out in this rule, or fails to require its students to complete the minimum standards in order to graduate;
 - b. Submits to the Board of Massage Therapy on behalf of an applicant for licensure documents containing information the school, through its owner, manager, instructors, or other employees or agents, knows to be false;
 - c. Violates any standard applicable to the school pursuant to licensure by the Department of Education;
 - d. Violates any applicable rule herein.
- 4. A Board of Massage Therapy-approved school must notify the Board of Massage Therapy within 90 days of:
 - a. Changes in curriculum;
 - b. Changes in faculty or staff, including submission of the credentials of new faculty; and
 - c. Changes in address.
- 5. Any change in ownership of a Board of Massage Therapy approved school must be approved by the Board of Massage Therapy.

64B7-32.004 Standards for transfer of credit.

Hours credited through transfer credit will not be recognized by the Board unless the following transfer standards are met:

- 1. The school shall be provided with a certified transcript from a school licensed by the Department of Education pursuant to Chapter 1005, F.S., or the equivalent licensing authority for another county, state, or country, or be within the public school system of the State of Florida.
- 2. Courses for which credit is granted shall parallel in content and intensity to the courses presently offered by the school.
- 3. Documentation of previous training shall be included in each student’s permanent file.

64B7-32.005 Minimum standards for colonics training.

- 4. Any course of study in colonics shall be in addition to the minimum 500 classroom hours provided in Rule 64B7-32.003, F.A.C., above. The course must include a minimum of 100 classroom hours of colonics training and may only follow completion of the 500 hour requirement except that Board approved massage schools may include the additional 100 hours of colonic training at any time during the basic course curriculum.

2. No course of study in colonics shall be offered except by a Board approved massage school, or an independent provider approved by the Board for colonics training only.
3. Applicants for licensure as a colonics provider shall meet the criteria established by Rule 64B7-28.010, F.A.C.
4. Prior to licensure as a colonics provider applicants shall submit a proposed curriculum to the Board for approval. Such curriculum shall include but not be limited to:
 - a. 50 hours of classroom theory, anatomy, physiology, pathology of the colon and digestive system and principles of colon hygiene.
 - b. 45 hours of practical experience, including procedure, history, clinical records and contra-indication.
 - c. 5 hours of sterilization techniques and familiarization with the types and makes of colonic irrigation equipment commonly used in the trade.
5. Colonics training shall be conducted only at a licensed massage establishment or Board approved school.
6. Providers approved by the Board for colonics training only shall meet the criteria established by paragraph 64B7-32.003(1)(a), F.A.C.

64B7-33 Advertisement

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-33>

64B7-33.001 Advertisement.

1. Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services.
2. Any advertisement of massage services in any advertising medium as defined herein shall include the license number of each licensed massage therapist and each licensed massage establishment whose name appears in the advertisement.
3. For purposes of this rule, “advertising medium” means: any newspaper, airwave or computer transmission, telephone directory listing other than an in-column listing consisting only of a name, address, and telephone number, business card, handbill, flyer, sign other than a building directory listing all building tenants and their room or suite numbers, or other form of written advertising.
4. No provision herein shall be construed to prohibit the use of a properly registered corporate or fictitious name, if registered according to Florida Law.

PART III: Announcements and frequently asked questions

Licensing and renewal

A notice for renewal is mailed to each licensee at the last address provided to the Board. Failure to receive this notification does not relieve the licensee of the responsibility of meeting the renewal or continuing education requirements.

By renewing and submitting the appropriate renewal fees, you are acknowledging compliance with all requirements for renewal. You are responsible for retaining proof of all earned continuing education hours for a period of four (4) years. All massage therapists renewing active licenses are subject to audit and may be asked to show proof of appropriate continuing education.

You should renew as soon as possible when you receive the renewal notice. All renewal applications, with the appropriate fees, must be postmarked on or before the expiration date of the license in order to be considered timely.

Massage therapists are not permitted to practice without proof of current licensure. If you do not have your new license by the expiration date your employer may verify your license at the Health Licensee and Continuing Education Providers Information website. If your license renewal is in progress the status will not be available on the website. You will need to contact the Board at (850) 488-0595 to verify that your renewal application, with the proper fee, has been received and validated. However, you should be allowed to continue working.

If there have been any changes in either the location or the ownership of a massage establishment, you may download the application and submit when completed, along with the appropriate fees to the Board office. Any deletion or addition of an owners' name to or from a massage establishment is considered a change of ownership. (You can not indicate a change of ownership or location of a massage establishment on a renewal notice).

Effective 6/2/10, any Board of Massage Therapy approved exam may be offered in the Spanish language [from 64B7-25.001 Examination Requirements, FAC].

1. The Department shall issue a license to a person who:
 - a. Pays to the Department the fee set out in subsection 64B7-27.002(1), F.A.C.;
 - b. Submits a completed application on form DH-MQA 1115, “Application For Licensure,” (Rev. 10/09). The form and the attached instructions are incorporated herein by reference and may be obtained from the Board Office at 4052 Bald Cypress Way, Bin C-06,

Tallahassee, Florida 32399 or from the website located at http://www.doh.state.fl.us/mqa/massage/ma_lic_req.html;

- c. Completes a course of study at a massage school approved by the Board pursuant to Rule Chapter 64B7-32, F.A.C.; or completes an approved apprenticeship program in accordance with Rule Chapter 64B7-29, F.A.C.;
- d. Completes the HIV/AIDS course requirement in Rule 64B7-25.0012, F.A.C.;
- e. Passes a national examination approved by the Board;
- f. Completes a course relating to the prevention of medical errors as required by subsection 456.013(7), F.S.

2. The Board approves the following examinations:
 - a. National Certification Board for Therapeutic Massage and Bodywork Examination;
 - b. National Certification Examination for Therapeutic Massage;
 - c. National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork;
 - d. The Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards.
3. Any Board-approved examination may be offered in the Spanish language.

Q: Can I fax my change of address to you or may I leave my change of address on your voice mail or can you take a change of address over the telephone?

A: Because of recent changes in Florida law, you now have the option of submitting your change of address you may write a letter requesting the change that includes the type of address to be changed and faxing it to (850) 487-9626. You will need your current license number and the control number from the license for security reasons. Remember a change of location for a massage establishment requires the completion of an application and submission of the appropriate fees.

Q: Is a massage establishment license needed for a licensed massage therapist to perform massage therapy in a acupuncturist, chiropractor, dentist, physical therapist or podiatrist's office?

A: Yes.

Q: May I indicate a change of business location on my renewal notice?

A: No, you must submit a complete application to the Board in order to change the location of your business. Any address change reflected

on your renewal notice will be considered a change in mailing address only.

Q: I am ready to renew my license however, the co-owner of this establishment is no longer affiliated with the business, may I reflect this change on my renewal notice?

A: No, any addition to or deletion of owners' name to or from a massage establishment is considered a change in the ownership of that establishment and you must submit a complete application to the Board for a new license number to be issued.

Massage establishments

IMPORTANT INFORMATION FROM THE BOARD:

1. If you plan on opening a massage establishment or move a current establishment you must apply for a license.
2. You may not offer massages in an establishment until it has been inspected AND the new license has been issued.
3. It takes approximately 45 days to process non-problematic applications, complete the inspection and issue the new license. Please plan accordingly.
4. If your establishment fails the inspection your license will be denied by the Department of Health and you will have to re-apply.
5. Licensure of a massage establishment cannot be transferred to a different owner. The new owner must apply for a new license and the old owner should request an administrative voluntary relinquishment of the current license in writing to the Board of Massage Therapy office at: 4052 Bald Cypress Way, Bin C06, Tallahassee, FL 32399-3252.
6. You must submit proof of property damage and bodily injury liability insurance coverage.
7. Section 480.052, F.S. Power of county or municipality to regulate massage. A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

To apply for a massage establishment or to move existing establishments please see the application at the Florida Board of Massage Therapy Web Site.

Q: Is insurance coverage necessary for a massage establishment?

A: Yes, the applicant must submit proof confirming property damage and bodily injury

liability insurance coverage for the proposed establishment. Only the licensed massage therapist who is the owner of the establishment may use insurance from a professional association to satisfy this requirement for massage establishment licensure.

Q: When will my massage establishment be inspected? Will the inspector call first?

A: The inspector may visit the facility at anytime during this period unannounced as the Board of Massage has no control over when inspections occur.

Q: I have received a notice for renewal of my massage establishment license, however I am no longer in business. How do I notify the Board?

A: Write out of business across your license or your renewal notice and mail it to the Board office.

Massage establishment inspection authority is outlined in CHAPTER 480.043, F.S., AND 64 B 7-26.004 & 26.005 F.A.C. The inspection process requires satisfactory validation of the following items:

1. Current establishment license. [480.043(1), F.S.]
2. Establishment license conspicuously displayed. [64B7-28.008(3), F.A.C.]
3. Employed person(s) duly licensed. [480.047(1) (c), F.S.]
4. Each Massage Therapist's license conspicuously displayed. [64B7-28.008(1), F.A.C.]
5. If advertisement is visible at this establishment, must meet requirements of 480.0465, F.S.
6. Establishment complies with local building code requirements. [64B7-26.003(1) (a), F.A.C.]
7. Public premise areas provided with safe and unobstructed human passages. [64B7-26.003(3) (a), F.A.C.]
8. Garbage and refuse removal provided. [64B7-26.003(3) (a), F.A.C.]
9. Safe storage/removal of flammable materials provided. [64B7-26.003(3) (a), F.A.C.]
10. Premise fire extinguisher maintained in good working condition. (Sprinkler system not acceptable substitute.) [64B7-26.003(3) (b), F.A.C.]
11. Exterminate all vermin, insects, termites and rodents on premises. [64B7-26.003(3) (c), F.A.C.]
12. Safe/sanitary massage equipment maintained. [64B7-26.003(3) (d), F.A.C.]
13. Regular use of cleaners and bacterial agents or clean table covering utilized for each client. [64B7-26.003(3) (d), F.A.C.]
14. Maintain a sufficient supply of clean drapes for the purpose of draping each

client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels and linens. As used herein "drapes" means towels, gowns, or sheets. [64B7-26.003(3) (e), F.A.C.]

15. Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. [64B7-26.003(1) (b), F.A.C.]
16. Toilet facility fixtures/components clean, in good repair. [64B7-26.003(3) (g), F.A.C.]
17. Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated. [64B7-26.003(3) (g), F.A.C.]
18. Toilet facility on premises or in same building within 300 feet of establishment. [64B7-26.003(1) (c), F.A.C.]
19. Lavatory in treatment room or within 20 feet for cleansing hands or chemical germicidal designed for use without lavatory. [64B7-26.003(3) (f), F.A.C.]
20. Proof of current property damage and bodily injury liability coverage maintained on premises. [64B7-26.003(4), F.A.C.]
21. Clean/adequate shower facilities if whirlpool bath/sauna/steam cabinet and/or steam room on premise. [64B7-26.003(1) (d), F.A.C.]
22. Massage therapist not supervising more than one apprentice. [64B7-29.001(3), F.A.C.]

Colonic irrigation

23. Licensed massage therapist or apprentice licensee properly certified to perform colonic irrigation. [64B7-31.001(2), F.A.C.]
24. Colonic irrigation equipment maintained in sanitary and safe working condition. [64B7-26.003(3) (d), F.A.C.]

Apprentice program (inspection if appropriate)

25. Apprentice certificate or provisional license conspicuously displayed. [64B7-28.008(2), F.A.C.]*
26. Apprentice under supervision of licensed sponsoring massage therapist. [64B7-29.003(1), F.A.C.]
27. Record of apprentice hours maintained and available for inspection. [64B7-29.003(4), F.A.C.]

Establishment equipment required in addition to 64B7-26 for apprentice program*

28. Tables for massages. [64B7-29.001(5) (a), F.A.C.]

- 29. Linen and storage area. [64B7-29.001(5)(b), F.A.C.]
- 30. Colonic equipment if colonic irrigation taught. [64B7-29.001(5)(c), F.A.C.]
- 31. Sterilization equipment if non-disposable colonic attachments are utilized. [64B7-29.001(5)(d), F.A.C.]
- 32. Hydrotherapy equipment including hot/cold packs. [64B729.001(5)(e), F.A.C.]
- 33. Appropriate textbooks and teaching materials. [64B7-29.001(5)(f)(1-6), F.A.C.]

Continuing education

Q: I have completed more hours for this biennium than was necessary. May I carry the balance over to the next renewal period?

A: No, all hours must be earned within your renewal period and cannot be carried over to the next biennium.

Q: I have received my renewal notice and have not completed my required continuing education hours. May I mail in my renewal and complete my hours later?

A: No, you must complete all contact hours before you renew your license. You may face disciplinary action for not completing the mandatory continuing education requirement.

Q: Will I have to show proof that I have earned all of my contact hours, if I have an active license?

A: All massage therapists licenses are subject to random audit. If audited, you must submit copies of certificates of attendance to the Board as proof of completion of an approved continuing education courses.

Q: What are current continuing education requirements?

A: Every massage therapist is required to complete:

- ♦ One (1) hour of continuing education for each month or partial month that has elapsed since the issuance of the license for which renewal is sought, up to a maximum of 24 hours for the renewal period.
- ♦ Twelve (12) of the continuing education hours shall be taken via live classroom instruction which includes hands-on instruction or demonstration, six (6) hours of which may be performed as pro bono services pursuant to rule 64B7-28.0095, F.A.C. These continuing education hours shall be relevant to and focus on massage therapy techniques, which may include history of massage therapy, human anatomy & physiology, kinesiology, and/or pathology.
- ♦ Two (2) hours must cover instruction in professional ethics. Note: If you are a new licensee and this is your first renewal, you

are not required to complete this course for renewal.

- ♦ Two (2) hours must cover instruction in the prevention of medical errors.
- ♦ Two (2) hours must cover instruction in Florida Laws and Rules (Chapter 480 and 456, Florida Statutes, and Rule Chapter 64B7, Florida Administrative Code. Note: If you are a new licensee and this is your first renewal, you are not required to complete this course for renewal.
- ♦ In addition to the hours required above, a course in HIV/AIDS is also required for renewal. It can be for any number of hours.

The remaining hours may include courses on:

- ♦ Communications with clients and other professionals;
- ♦ Insurance relating to third party payment or reimbursement for services;
- ♦ Psychological dynamics of the client-therapist relationship;
- ♦ Risk management, including charting, documentation, record keeping, or infection control (other than the HIV/AIDS course required by section 456.034, F.S.), or massage practice management
- ♦ Four (4) hours credit for adult cardio-pulmonary resuscitation (CPR) provided the course is sponsored by the American Red Cross, the American Heart Association or the American Safety and Health Institute, or is instructed by persons certified to instruct courses for those organizations.

All courses must be obtained through a Board of Massage Therapy Approved Provider.

Board meetings

Q: How can I become a Board member?

A: Board members are appointed by the Governor and confirmed by the Senate. You may apply by contacting the Governor's Appointment Office at (850) 488-2183.

Q: Who can attend Board meetings?

A: All Board meetings are open to the public and you are encouraged to attend.

Services

Q: Can massage therapists provide body wrapping services?

A: Yes, a licensee under Chapter 480, F.S., has always been able to provide the skin beautification and body wrapping services. New legislation was passed that a person does not have to be a licensed massage therapist to perform body wraps. But it is required to take a twelve (12) hour course and then register as a body wrapper under the Board of Cosmetology. A registered person will only be able to use pre-soaked wrap material and will not be allowed to apply oils or creams

directly on the body. Unlike licensed massage therapists who are able to use their bare hands when applying oils and creams on their clients.

Q: Is a massage therapy license required to perform reflexology and reiki?

A: Yes.

Minimum requirements for certification in colonic irrigation (colonics):

In order to become eligible for certification in colonic irrigation (Colonics) you must either hold a valid Florida Massage Therapist License or have submitted an application for licensure as a massage therapist. (Please note that the colonics certification will not be issued unless a license to practice massage therapy has been approved.)

If currently licensed to practice massage therapy in Florida, the following is required:

- ♦ Successful completion of a course of study in colonics at a Florida Board Approved Massage Therapy School, which is approved to offer colonics, or completion of a Board approved apprenticeship program in the area of colonics;
- ♦ Must submit an application to the board and fee for certification in colonics; and
- ♦ Must pass the National Board for Colon Hydrotherapy (NBCHT) examination.

If not currently licensed to practice massage therapy in Florida, the following is required:

- ♦ Must be at least 18 years of age or have received a high school diploma or graduate equivalency diploma (GED);
- ♦ Completed a course of study at a Florida Board of Massage Therapy Approved School (pdf - 78kb) which has an approved course of study in colonics or completed a board approved apprenticeship program in the area of colonics;
- ♦ Must pass the National Board for Colon Hydrotherapy (NBCHT) (pdf - 1.5mb) examination;
- ♦ Must have completed a 2-hour course on the prevention of medical errors.

NOTE - If this was not a part of the curriculum at the Board of Massage Therapy Approved School, it can be obtained through a Board approved Continuing Education Provider; and

- ♦ Must submit an application and fee for licensure as a massage therapist and certification in Colonic Irrigation.

MASSAGE THERAPY LAWS AND RULES - LEGAL UPDATE 2011 (10 CE HOURS)

Select the best answer for each question and complete your test online at www.elitecme.com.

1. All of the following agencies are responsible for massage therapy regulation in Florida, except:
 - a. Florida Department of Health
 - b. American Massage Therapy Association
 - c. Division of Medical Quality Assurance
 - d. Florida Board of Massage Therapy
2. In Chapter 408, Part II, Section 408.803, "Definitions," the term "Controlling interest" means all the following, except:
 - a. The applicant or licensee
 - b. A voluntary board member
 - c. A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider
 - d. A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee
3. In Chapter 408, Part II, Section 408.808, a Provisional License is limited to a period of what length of time?
 - a. Up to 6 months
 - b. Up to 12 months
 - c. Up to 16 months
 - d. Up to 24 months

4. Chapter 408, Part II, Section 408.811, specifies all the following about inspections, except:
 - a. All inspections shall be unannounced, except as specified in s. 408.806.
 - b. The right of inspection extends to any business that the agency has reason to believe is being operated as a provider without a license
 - c. The agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the agency
 - d. Inspections for relicensure shall be conducted annually unless otherwise specified by authorizing statutes or applicable rules
5. Unless an alternative timeframe is required or approved by the agency, a deficiency found during an inspection must be corrected within what period of time after the provider is notified of inspection results?
 - a. 10 calendar days
 - b. 30 calendar days
 - c. 1 year
 - d. None of the above
6. Which of the following is not listed as a disincentive to commit Medicaid fraud mentioned in 2009-223?
 - a. Decreasing the administrative penalties
 - b. Establishing additional licensure penalties
 - c. Adding fraud-related criminal offenses
 - d. None of the above
7. 2009-223 creates new criminal penalties by making all the following third degree felonies, except:
 - a. Offering services requiring licensure as a home medical provider without a license
 - b. Knowingly submitting false or misleading information to AHCA
 - c. Fraudulent or abusive billing
 - d. Conspiracy to violate the provisions of the enhanced licensure requirement in s. 408.8065
8. 2009-223 gives the Medicaid program additional authority, including all the following provisions, except:
 - a. Requiring prior authorization and increased documentation for certain home health services
 - b. Requiring four pilot projects to monitor and manage home health care services
 - c. Requiring Medicaid to eliminate medically unnecessarily billing
 - d. Making sanctions and "for cause" contract termination mandatory for certain provider activity
9. Which of the following is not one of the requirements for licensure as a massage therapist?
 - a. Being at least 21 years of age
 - b. Completing a course of study at a board-approved massage school or completing an apprenticeship program that meets standards adopted by the board
 - c. Receiving a passing grade on an examination administered by the department
 - d. Paying the initial licensure fees
10. According to 480.044, Fees, the massage therapist initial licensure fee will not exceed:
 - a. \$100
 - b. \$125
 - c. \$150
 - d. \$175
11. According to 480.044, Fees, the colonics examination fee will not exceed:
 - a. \$100
 - b. \$125
 - c. \$150
 - d. \$175
12. According to 64B7-25.0012, as a condition to granting an initial licensure, the applicant is required to complete a course on HIV/AIDS of how many hours?
 - a. 1
 - b. 2
 - c. 3
 - d. 4

13. Which of the following is not a requirement for licensure by endorsement, according to 64B7-25.004?

- The individual must submit a completed application, form #BMT2
- The individual must pay the initial licensure fee
- The individual must complete a course relating to the prevention of medical errors
- The individual must demonstrate that the out-of-state licensure was issued upon the satisfactory completion of an examination comparable to the examination provided by the Board

14. In 2010, the biennial renewal fee for massage therapists and massage establishments was reduced to:

- \$75
- \$100
- \$125
- \$150

15. According to 64B7-28.001, no license shall be renewed unless the licensee has completed at least two hours relating to the prevention of medical errors, including a study of all the following, except:

- Root-cause analysis
- Error reduction and prevention
- Patient safety
- Vaccinations

16. According to 64B7-28.0015, “Place of practice” means all the following except:

- A massage establishment maintained by the licensed massage therapist
- The massage establishment at which the licensed massage therapist provides massage therapy
- The client’s address, if the massage therapist provides therapy at the client’s location
- The medical office at which the licensed massage therapist provides massage therapy

17. According to 64B7-29, Apprentice, a “qualified massage establishment” must be equipped with all the following, except:

- Tables
- Changing rooms
- Colonic equipment if colonic irrigation is taught
- Textbooks and teaching materials on anatomy

18. According to 64B7-30.004, refusing to allow the department to inspect the business premises of the licensee during regular business hours will result in a penalty of what amount?

- \$175
- \$250
- \$350
- \$500

19. According to 64B7-30.004, failure to include the license number of either the massage therapist or the massage establishment in advertisements will result in a penalty of what amount?

- \$175
- \$250
- \$350
- \$500

20. A notice of noncompliance may be issued for all the following, except:

- Failure to timely respond to a continuing education audit
- Failure to provide written notice of licensee’s current mailing address and place of practice
- Failure to obtain continuing education in HIV/AIDS
- Failure to have proof of insurance available at an establishment