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## MEMORANDUM

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**FROM:** Daniel Schmid  
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**DATE:** August 7, 2024

**RE:** Florida Proposed Amendment 4  
*Definition of "Healthcare Provider"*

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**A. Question Presented:**

Criticism has been presented that using the list of licenses and entities regulated by the Florida Department of Health is not an accurate way to define "healthcare provider" under Proposed Amendment 4. Is use of the licenses and regulated entities under the Florida Department of Health appropriate for defining "healthcare provider" under Proposed Amendment 4.

**B. Short Answer:**

The criticism of using the licenses and entities regulated by the Florida Department of Health is not well founded. In fact, the question only highlights the significant vagueness, overbreadth, and troubling scope of Proposed Amendment 4 because it does not provide a definition of "healthcare provider."

**C. Analysis:**

Proposed Amendment 4 states, in its entirety:

No law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare

provider. This amendment does not change the Legislature’s constitutional authority to require notification to a parent or guardian before a minor has an abortion.

There is no definition of “healthcare provider” in the text of Amendment 4, so there is no guarantee what it means, how it is defined, or who defines it. As Justice Francis pointed out in her dissent, the summary language is vague “as to what constitutes ‘health’ or who may qualify as a ‘healthcare provider.’” Slip Op., *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, at 54 (Francis, J., dissenting). And, as Justice Sasso highlighted, “‘Health’ and ‘healthcare provider’ have obviously broad and undefined boundaries which are essentially unlimited without the benefit of technical, legal analysis.” Slip Op., *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, at 74 n.23 (Sasso, J., dissenting). And, worse still, Justice Sasso noted that “the legally operative terms that define the amendment’s scope,” namely “healthcare provider,” are left “up in the air.” *Id.* at 76.

One could certainly pull the definition of “healthcare provider” from one section of the Florida Insurance Code, as some have suggested, and say that is the applicable definition. But, there is nothing in the text of the proposed amendment that this section provides the relevant definition as opposed to the multitude of other definitions in the Florida Code. For one, the Florida Insurance Code encompasses Chapters 62-632, 634, 635, 636, 641, 642, 648, and 651, and there are multiple other definitions of healthcare provider throughout that same Florida Insurance Code. *See Fla. Stat. §624.01* (outlining the scope of the Florida Insurance Code).

Some analysis has suggested that the definition in the Health Maintenance Organizations section of the Health Care Service Programs Chapter of the Florida Insurance Code is the appropriate definition. And, even the definition in that section is inconsistent in itself. The **2016** version of the statute defines “healthcare provider” as “a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a podiatric physician licensed under chapter 461.” *See Fla. Stat. §641.19(14)(c)* (2016). The current version, which was enacted in **2022**, drops “healthcare” altogether and simply defines “provider” as “any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in the state.” *See Fla. Stat. §641.19(14)* (2022). Thus, even in the section selected by some medical professionals conversant in Amendment 4, there is dispute as to the definition of “healthcare provider.”

If one selects the definition of “provider” in the Prepaid Health Clinics section of the Health Care Services Program chapter of the Florida Insurance Code, there is a different definition. That section defines “provider” as “any physician or person other than a hospital that furnishes health care services and is licensed or authorized to practice in this state.” *Fla. Stat. §641.402(6)*.

Or, take the definition provided in the Florida Healthcare Bill of Rights. *See Fla. Stat. §381.026*. That statute defines a “healthcare provider” to mean “a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a podiatric physician licensed under

chapter 461, or an advanced practice registered nurse registered under s. 464.0123." Fla. Stat. §381.026(2)(c).

If one searches for the definition outside of the Florida Insurance Code altogether, which one could just as easily do under the proposed amendment, an entirely different definition emerges. Under the Torts section of the Florida Code, the definition of "healthcare provider" is again divergent. Section 766.1115 defines "healthcare provider" as

A birth center licensed under chapter 383; An ambulatory surgical center licensed under chapter 395; A hospital licensed under chapter 395; A physician or physician assistant licensed under chapter 458; An osteopathic physician or osteopathic physician assistant licensed under chapter 459; A chiropractic physician licensed under chapter 460; A podiatric physician licensed under chapter 461; A registered nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section; A midwife licensed under chapter 467; A health maintenance organization certificated under part I of chapter 641; A health care professional association and its employees or a corporate medical group and its employees; Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider; A dentist or dental hygienist licensed under chapter 466; A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients; Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9."

Fla. Stat. §766.1115(d)(1)-(15).

And, that same section states that the term "healthcare provider" "includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services." *Id.*

Moreover even the Torts Code in Florida does not have a consistent definition of "healthcare provider." In a different section of the same code dealing with medical malpractice, "healthcare provider" is defined as

any hospital or ambulatory surgical center as defined and licensed under chapter 395; a birth center licensed under chapter 383; any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of chapter 464, chapter 466, chapter 467, part XIV of chapter 468, or chapter 486; a health maintenance organization certificated under part I of chapter 641; a blood

bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, corporation, joint venture, or other association for professional activity by health care providers.

Fla. Stat. §766.202(4).

As should be painfully obvious to even the most casual observer, there is no concrete definition of “healthcare provider” across Florida’s statutory code. And, Amendment 4 does not provide a definitive answer on this question. Criticism about using the licensed and entities regulated by the Florida Department of Health as the definition is not well taken because anyone can simply apply any definition of the term they desire to achieve the result sought. Because Amendment 4 lacked a definition of healthcare provider, the questions are—as Justice Sasso said—“up in the air.” The definition is, problematically, anyone’s guess.

What is certain is that there is nothing preventing any one of the multitude of healthcare practitioners from appointing unto themselves the authority to determine that a late-term abortion is purportedly necessary to save the health of the mother. Amendment 4 does not make it clear that the tattoo artist, social worker, nursing home administrator, dental hygienist, and the hearing aid specialist are not permitted to make that determination. Moreover, if the Florida legislature attempts to provide a definition of healthcare provider after Amendment 4 passes, and it prohibits the tattoo artist from having the authority to determine the patient’s health, would that not be a law that—at minimum—“delay[s] or restrict[s]” abortion? That would plainly be violation of Amendment 4? Of course it would, and that is just one of the host of fundamental problems with Proposed Amendment 4.