

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on Health and Human Services Appropriations

BILL: CS/SB 1286

INTRODUCER: Regulated Industries Committee and Senator Thrasher

SUBJECT: Treatment Programs for Impaired Professionals

DATE: February 28, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harrington	Imhof	RI	Fav/CS
2. Davlantes	Stovall	HR	Favorable
3. Bradford	Hendon	BHA	Favorable
4. _____	_____	BC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be subject to the treatment program for impaired practitioners at the election of the impaired practitioner consultant.

In addition, the CS amends the requirements for the impaired practitioner consultant. It provides that the consultant may be an entity that employs a registered nurse as its executive director. It provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S., or as a veterinarian under ch. 474, F.S. The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or the Department of Health (DOH) shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

It is assumed that additional workload related to this legislation will be absorbed by the existing contract with the current vendor for fiscal year 2012-13. However, the Department of Health

estimates the additional costs in fiscal year 2013-14 will be about \$81,000. The bill specifically states that this additional cost cannot be charged to the Medical Quality Assurance Trust Fund.

This CS substantially amends s. 456.076, F.S., and creates ss. 401.466 and 468.315, F.S.

The effective date of this bill is July 1, 2012.

II. Present Situation:

Health Care Practitioner Licensure Authority of the Department of Health

The DOH is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines “health care practitioner” as any person licensed under:

- Chapter 457 (acupuncture)
- Chapter 458 (medical practice)
- Chapter 459 (osteopathic medicine)
- Chapter 460 (chiropractic medicine)
- Chapter 461 (podiatric medicine)
- Chapter 462 (naturopathy)
- Chapter 463 (optometry)
- Chapter 464 (nursing)
- Chapter 465 (pharmacy)
- Chapter 466 (dentistry)
- Chapter 467 (midwifery)
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics)
- Chapter 478 (electrolysis)
- Chapter 480 (massage practice)
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists)
- Chapter 484 (dispensing of optical devices and hearing aids)
- Chapter 486 (physical therapy practice)
- Chapter 490 (psychological services)
- Chapter 491 (clinical, counseling, and psychotherapy services)

Not all professionals regulated by the DOH are issued licenses; some are issued registrations or certifications. However, s. 456.001, F.S., indicates that any provisions related to licensure or licensees in the chapter also apply to those who are certified or registered by the DOH.

Impaired Practitioner Treatment Programs

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against

a licensed health care professional who is unable to practice with reasonable skill and safety due to illness; use of alcohol, drugs, narcotics, chemicals or any other type of material; or as the result of any mental or physical condition. The impaired practitioner treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse. By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program.¹ To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioner treatment program consultant.² Unless specifically made part of the program,³ the impaired practitioner treatment program is only available to health care practitioners regulated by the DOH.

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director who is so licensed. Consultants must refer impaired practitioners to department-approved treatment programs and providers.⁴ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

Veterinarians licensed under ch. 474, F.S., are also subject to the impaired practitioner provisions in this section as if they were under the jurisdiction of the Division of Medical Quality Assurance. Veterinarians are normally regulated by the Department of Business and Professional Regulation (DBPR). DBPR may exercise any of the powers granted to the DOH under s. 456.075, F.S., and "board" as used in this section is construed to mean the Board of Veterinary Medicine.⁵

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions. The PRN currently has two separate contracts with DOH and DBPR.⁶

III. Effect of Proposed Changes:

Section 1 creates s. 401.466, F.S., pertaining to treatment programs for impaired emergency medical technicians and paramedics.⁷ The CS provides that a certified emergency medical

¹ Section 456.076(3)(a), F.S.

² *Id.*

³ Currently, both the Board of Veterinary Medicine and the Board of Pilot Commissioners under DBPR provide impaired practitioner treatment programs for licensees within those practice acts. *See ss.* 474.221 and 310.102, F.S.

⁴ *See* s. 456.076, F.S.

⁵ Section 474.221, F.S.

⁶ Telephone conversation with PRN staff.

technician or paramedic or person who has applied to be certified may be subject to the provisions of s. 456.076, F.S., at the election of an impaired practitioner consultant. Costs may not be charged to the Medical Quality Assurance Trust Fund within the Department of Health.

Section 2 amends the requirements for an impaired practitioner consultant under s. 456.076, F.S. The CS clarifies that the consultant may also be an entity employing a registered nurse as an executive director.

The CS provides that an entity that is retained as a consultant and employs a medical director or registered nurse as an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider if the entity employs or contracts with licensed professionals to perform or appropriately supervise any specific treatment or evaluation that requires individual licensing or supervision.

The CS provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S., or as a veterinarian under ch. 474, F.S. The CS further provides that the school who refers such student to the consultant is not liable in any civil action against the student for the referral or for any resulting disciplinary action that affects the status of the student.

The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or the DOH shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The CS clarifies that the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant.

The CS provides that the impaired practitioner consultant is the official custodian of records concerning any impaired licensee monitored by that consultant. The consultant may not disclose to the impaired licensee any information that is disclosed to or retained by the consultant and is confidential. Instead, the impaired licensee must obtain such information from the Department of Health if a disciplinary proceeding is pending.

Section 3 creates s. 468.315, F.S., pertaining to the creation of a treatment program for impaired radiological personnel.⁸ The CS provides that a radiologic technologist who is certified or who has applied to be certified may be subject to s. 456.076, F.S., at the election of an impaired practitioner consultant. Radiological personnel are not included in the definition of "licensed practitioner" in s. 456.001, F.S., and are thus not subject to the provisions of the impaired practitioner program under current law.

Section 4 provides an effective date of July 1, 2012.

⁷ Part III of ch. 401, F.S., includes all persons licensed in medical transportation services.

⁸ Part IV of ch. 468, F.S., includes all persons licensed as radiological personnel.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be required to participate in the impaired practitioner program under the jurisdiction of the Division of Medical Quality Assurance. As a result, more licensed professionals may be eligible for assistance.

C. Government Sector Impact:

According to the DOH, this CS adds the professions of emergency medical technicians, paramedics, and radiological personnel to the professions covered by the impaired practitioner treatment programs, and will require additional contracts for services with PRN. The DOH estimates that it will cost approximately \$81,620 per year beginning in fiscal year 2013-2014 to cover those other professions.⁹

VI. Technical Deficiencies:

None.

⁹ Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 1286*. A copy is on file with the Senate Health Regulation Committee.

VII. Related Issues:

It might be more appropriate to include information relating to veterinary students and veterinary schools under s. 474.221, F.S., which states that licensed veterinarians are subject to s. 456.076, F.S., despite being regulated by DBPR.

It is unclear whether the DOH or DBPR will be responsible for costs related to impaired veterinarians or veterinary students. Currently, services for impaired veterinarians are paid for by DBPR, but no statutes specify this.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on February 2, 2012:

The CS removed the provisions relating to the Department of Business and Professional Regulation (DBPR) which required a person licensed by or applying for a license from DBPR to be governed by the provisions providing programs for impaired practitioners under the jurisdiction of the Medical Quality Assurance within the Department of Health.

- B. **Amendments:**

None.