The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Harrell, Chair
Senator Berman, Vice Chair

MEETING DATE: Monday, April 1, 2019
TIME: 1:30—3:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Harrell, Chair; Senator Berman, Vice Chair; Senators Baxley, Bean, Book, Cruz, Diaz, Hooper, Mayfield, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1712** Harrell (Compare CS/H 21)	Hospital Licensure; Requiring hospitals licensed after a specified date to participate in the Medicaid program as a provider of medical assistance and provide a certain amount of charity care; deleting a provision relating to certificates of need for hospitals; deleting a provision requiring hospitals to submit data to the agency in the certificate-of-need review process; revising the definition of the term "health care facility" to exclude hospitals and long-term care hospitals for purposes of the Health Facility and Services Development Act, etc. HP 03/18/2019 Temporarily Postponed HP 04/01/2019 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 1
2	**SB 630** Perry (Compare CS/CS/H 451)	Nonopioid Directives; Requiring the Department of Health to establish a voluntary nonopioid directive form; authorizing a patient to appoint a duly authorized guardian or health care proxy who may revoke a voluntary nonopioid directive; providing that certain persons are not liable for damages or subject to criminal prosecution under certain circumstances, etc. HP 03/25/2019 Not Considered HP 04/01/2019 Fav/CS JU RC	Fav/CS Yeas 10 Nays 0
3	**SB 884** Baxley (Similar H 509, Compare CS/H 247, CS/H 7031, CS/CS/S 188, S 1042)	Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors; Revising the licensure requirements for clinical social workers, marriage and family therapists, and mental health counselors; deleting a provision providing certified master social workers an exemption from continuing education requirements; requiring the Department of Health to license an applicant for designation as a certified master social worker under certain circumstances, etc. HP 03/25/2019 Not Considered HP 04/01/2019 Fav/CS AHS AP	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1518** Wright (Similar CS/H 501)	Alternative Treatment Options for Veterans; Specifying eligibility to receive alternative treatment; authorizing the Department of Veterans' Affairs to contract with certain individuals and entities to provide alternative treatment options for certain veterans, etc. HP 04/01/2019 Fav/CS AHS AP	Fav/CS Yeas 10 Nays 0
5	**SB 1700** Lee (Similar CS/H 1253)	Prescription Drug Monitoring Program; Expanding the Attorney General's authority to request information for Medicaid fraud cases from the Department of Health prescription drug monitoring program to information on all cases involving prescribed controlled substances; expanding access the Attorney General or his or her designee has to certain confidential and exempt information maintained by the department, etc. HP 04/01/2019 Fav/CS JU RC	Fav/CS Yeas 10 Nays 0
6	**CS/SB 418** Banking and Insurance / Simpson (Compare CS/CS/H 997)	Essential Health Benefits Under Health Plans; Requiring the Office of Insurance Regulation to conduct a study evaluating this state's current benchmark plan for essential health benefits under the federal Patient Protection and Affordable Care Act (PPACA) and options for changing the benchmark plan for future plan years; requiring the office, in conducting the study, to consider plans and certain benefits used by other states and compare costs with those of this state, etc. BI 03/25/2019 Fav/CS HP 04/01/2019 Favorable RC	Favorable Yeas 10 Nays 0
7	**SB 1242** Rouson (Similar CS/H 873, Compare S 994)	Chiropractors; Revising an exemption from regulation under ch. 460, F.S., for certain chiropractic students; revising application requirements for licensure by examination; revising requirements for the issuance of a chiropractic medicine faculty certificate without examination, etc. HP 04/01/2019 Temporarily Postponed ED RC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1280** Rouson (Identical H 491)	Controlled Substance Prescribing; Revising the definition of the term “acute pain” to exclude pain related to sickle-cell anemia; excluding the treatment of such pain from limitations on the prescription of an opioid drug, etc. HP 04/01/2019 Favorable CF RC	Favorable Yeas 10 Nays 0
9	**SB 572** Baxley (Similar H 531)	Insurance Coverage for Hearing Aids for Children; Requiring certain health insurance policies to provide hearing aid coverage for insured children, etc. BI 03/18/2019 Favorable HP 04/01/2019 Favorable AP	Favorable Yeas 10 Nays 0
10	**CS/SB 1520** Banking and Insurance / Bean (Identical CS/H 7, Compare S 7078)	Direct Health Care Agreements; Expanding the scope of direct primary care agreements that are exempt from the Florida Insurance Code and renaming them direct health care agreements; adding health care providers who may market, sell, or offer to sell such agreements, etc. BI 03/18/2019 Fav/CS HP 04/01/2019 Favorable RC	Favorable Yeas 10 Nays 0
11	**SB 258** Bean (Similar CS/H 879)	Genetic Information Used for Insurance Purposes; Prohibiting life insurers and long-term care insurers, except under certain circumstances, from canceling, limiting, or denying coverage, or establishing differentials in premium rates, based on genetic information; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose, etc. BI 03/11/2019 Favorable HP 04/01/2019 Temporarily Postponed RC	Temporarily Postponed
	Other Related Meeting Documents		

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 Committee on Health Policy

BILL:	CS/SB 1712
INTRODUCER:	Health Policy Committee and Senator Harrell
SUBJECT:	Hospital Licensure
DATE:	April 2, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1712 amends and repeals various sections of the Florida Statutes to eliminate the requirement that a new freestanding general hospital must obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA) prior to being licensed. The bill maintains the existing CON program for specialty hospitals and other facility types, such as nursing homes and hospice facilities, and for existing hospitals that wish to provide tertiary services, such as neonatal intensive care, comprehensive rehabilitation, and pediatric cardiac catheterization services.

The bill also establishes additional licensure requirements applicable to general hospitals licensed on or after July 1, 2019, without a CON including that such hospitals must:

- Have at least 100 beds, and have intensive care, progressive care, and medical surgical beds;
- Have an onsite emergency department that operates 24/7;[1]
- Participate in the Medicaid and Medicare programs; and
- Provide certain amounts of charity care or equivalent donations to the AHCA's Grants and Donations Trust Fund. The bill establishes penalties for a general hospital that does not comply with the charity care requirements.

[1] The bed requirements do not apply to long-term care hospitals, rural hospitals, and hospitals located in a medically underserved area. The requirement to have an emergency department does not apply to a long-term care hospital.

The bill requires that a new general hospital licensure applicant notify the AHCA prior to beginning construction and directs the AHCA to adopt rules to implement the new licensure requirements.

The bill increases penalties for existing hospitals that violate any conditions related to providing Medicaid services or charity care that were agreed to by the hospital when the hospital was issued a CON and requires that general hospitals comply with such conditions as part of licensure, regardless of the status of the hospital's CON.

Effective upon becoming law, the bill prohibits the AHCA from accepting any new applications for general hospital CONS. The AHCA is required to issue a CON to all current general hospital applicants whose CON has been approved by the AHCA, regardless of litigation, if the applicant will have intensive care beds, progressive care beds, medical/surgical beds, and an onsite, 24/7 emergency department. Also, the bill allows current general hospital CON applicants whose applications have been denied or whose status is pending to continue through the current CON process until a final outcome is reached.

Except as otherwise specified, the bill provides an effective date of July 1, 2019.

II. Present Situation:

Hospital Licensure

Hospitals are licensed by the AHCA under chapter 395, F.S., and the general licensure provisions of part II, of chapter 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.[2] Hospitals must, at a minimum, make clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment, regularly available.[3]

A specialty hospital, in addition to providing the same services as general hospitals, provides other services, including:

- A range of medical services restricted to a defined age or gender group;
- A restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders; or
- Intensive residential treatment programs for children and adolescents.[4]

Section 395.1041(2), F.S., requires the AHCA to maintain an inventory of hospitals with an emergency department. The inventory must list all services within the service capability of each hospital, and such services must appear on the face of the hospital's license. As of March 12, 2019, 217 of the 308 licensed hospitals in the state have an emergency department.[5]

[2] Section 395.002(12), F.S.
[3] Id.
[4] Section 395.002(27), F.S.
[5] Agency for Health Care Administration, Facility/Provider Search Results, Hospitals, *available at* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (reports generated on March 13, 2019).

Unless exempt, a hospital must obtain a CON prior to licensure. Facilities must meet initial licensing requirements by submitting a completed application and required documentation, and the satisfactory completion of a facility survey. The license fee is $1,565.13 or $31.46 per bed, whichever is greater.[6] The survey fee is $400 or $12 per bed, whichever is greater.[7]

Section 395.1055, F.S., requires the AHCA to adopt rules for hospitals. Separate standards may be provided for general and specialty hospitals.[8] The rules for general and specialty hospitals must include minimum standards to ensure:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.[9]

The minimum standards for hospital licensure are provided under Rule 59A-3, F.A.C. The AHCA may perform inspections of hospitals, including:

- Inspections directed by the federal Centers for Medicare & Medicaid Services;
- Validation inspections;
- Life safety inspections;
- Licensure complaint investigations; and
- Emergency access complaint investigations.[10]

The AHCA must accept an inspection performed by an accrediting organization in lieu of its own periodic licensure inspection.[11]

Florida's CON Program

Overview

In Florida, a CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited, and exempt.[12] Unless a hospital project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.

[6] Rule 59A-3.066(3), F.A.C.
[7] Section 395.0161(3)(a), F.S.
[8] Section 395.1055(2), F.S.
[9] Section 395.1055(1), F.S.
[10] Section 395.0161(1), F.S.
[11] Section 395.0161(2), F.S.
[12] Section 408.036, F.S.

Florida's CON program has existed since July 1973. From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act of 1974 (Act), which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria.[13] Each state was required to have a CON program in compliance with the Act as a condition for obtaining federal funds for health programs. The Act was repealed in 1986.

Projects Subject to Full CON Review

Some hospital projects are required to undergo a full comparative CON review under the statute, including:

- New construction of general hospitals, long-term care hospitals, and freestanding specialty hospitals;
- Replacement of a hospital if the proposed project site is not located on the same site or within one mile of the existing health care facility;[14]
- Increasing the number of beds for comprehensive rehabilitation; and
- Establishing tertiary health services.[15]

Projects Subject to Expedited CON Review

Section 408.036(2), F.S., permits certain projects to undergo expedited CON review. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include the transfer of a CON and certain replacements, relocations, and new construction of nursing homes.[16]

Exemptions from CON Review

Section 408.036(3), F.S., provides many exemptions to CON review for certain hospital projects, including:

- Adding swing beds[17] in a rural hospital, the total of which does not exceed one-half of its licensed beds.
- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, F.S., so long as the conversion of the beds does not involve the construction of new facilities.
- Adding hospital beds licensed under ch. 395, F.S., for comprehensive rehabilitation, the total of which may not exceed the greater of 10 total beds or 10 percent of the licensed capacity.

[13] Pub. Law No. 93-641, 42 U.S.C. s. 300k et seq.
[14] Section 395.6025, F.S., exempts rural hospitals from the requirement to obtain a CON for building a new hospital, or replacing a hospital, located in a county with a population between 15,000 and 18,000 and a population density of less than 30 persons per square mile as long as the new or replacement hospital is located within 10 miles of the current rural hospital.
[15] Section 408.032(17), F.S., defines "tertiary health service" as a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. Pursuant to this section, AHCA established a list of all tertiary health services in Rule 59C-1.002, F.A.C.
[16] Section 408.036(2), F.S.
[17] Section 395.602(2)(c), F.S., defines "swing bed" as a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

- Establishing a Level II neonatal intensive care unit (NICU) if the unit has at least 10 beds, and if the hospital had a minimum of 1,500 births during the previous 12 months.
- Establishing a Level III NICU if the unit has at least 15 beds, and if the hospital had a Level II NICU and a minimum of at least 3,500 births during the previous 12 months.
- Establishing a Level III NICU if the unit has at least five beds, and is a verified trauma center,[18] and if the applicant has a Level II NICU.
- Establishing an adult open heart surgery program in a hospital located within the boundaries of a health service planning district, which:
  - Has experienced an annual net out-migration of at least 600 open heart surgery cases for three consecutive years; and
  - Has a population that exceeds the state average of population per licensed and operational open-heart programs by at least 25 percent.
- For the addition of mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients as a level equal to or greater than the district average.

CON Determination of Need, Application, and Review Processes

A CON is predicated on a determination of need. The future need for services and projects is known as the "fixed need pool,"[19] which the AHCA publishes for each batching cycle. Rule 59C-1, F.A.C., provides need formulas to calculate the fixed need pool for certain services, including NICU services,[20] adult and child psychiatric services,[21] adult substance abuse services,[22] and comprehensive rehabilitation services.[23]

Upon determining that a need exists, the AHCA accepts applications for CON based on batching cycles. A batching cycle is a means of grouping, for comparative review, of CON applications submitted for beds, services, or programs having a like CON need methodology or licensing category in the same planning horizon and the same applicable district or subdistrict.[24]

The CON review process consists of four batching cycles each year, including two batching cycles each year for two project categories: hospital beds and facilities, and other beds and programs.[25] The "hospital beds and facilities" batching cycle includes applicants for new or expanded:

- Comprehensive medical rehabilitation beds;
- Adult psychiatric beds;
- Child and adolescent psychiatric beds;
- Adult substance abuse beds;

[18] Section 395.4001(15), F.S., defines "trauma center" as a hospital that has been verified by the DOH to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated as a Level II trauma center pursuant to s. 395.4025(15), F.S.
[19] Rule 59C-1.002(19), F.A.C., defines "fixed need pool" as the identified numerical need, as published in the Florida Administrative Register, for new beds or services for the applicable planning horizon established by AHCA in accordance with need methodologies which are in effect by rule at the time of publication of the fixed need pools for the applicable batching cycle.
[20] Rule 59C-1.042(3), F.A.C.
[21] Rule 59C-1.040(4), F.A.C.
[22] Rule 59C-1.041(4), F.A.C.
[23] Rule 59C-1.039(5), F.A.C.
[24] Rule 59C-1.002(5), F.A.C. Note: s. 408.032(5), F.S., establishes the 11 district service areas in Florida.
[25] Rule 59C-1.008(1)(g), F.A.C.

- NICU level II beds; and
- NICU level III beds.[26]

The "other beds and programs" batching cycle includes:
- Nursing home beds;
- Hospice beds;
- Pediatric open heart surgery;
- Pediatric cardiac catheterization services; and
- Organ transplantation services.[27]

Requests for an expedited review or exemption may be made at any time and are not subject to batching requirements.[28]

At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with the AHCA.[29] A letter of intent must describe the proposal, specify the number of beds sought, and identify the services to be provided, and the location of the project.[30]

Applications for CON review must be submitted by the specified deadline for the particular batch cycle.[31] The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.[32] The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.[33]

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.[34] AHCA must then publish the decision, within 14 days, in the Florida Administrative Weekly.[35] If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.[36]

In 2008, the Legislature significantly modified the application and review process for hospital CONs. The revisions included new and separate requirements for general hospital CONs, including:
- Revised contents for CON applications;
- Revised criteria which the AHCA must consider when reviewing a CON application;
- Prohibiting an applicant with a current CON application from submitting a letter of intent for to file another application;

[26] Rule 59C-1.008(1), F.A.C.
[27] Id.
[28] Section 408.036, F.S., and Rule 59C-1.004(1), F.A.C.
[29] Section 408.039(2)(a), F.S.
[30] Section 408.039(2)(c), F.S.
[31] Rule 59C-1.008(1)(g), F.A.C.
[32] Section 408.039(3)(a), F.S.
[33] Id.
[34] Section 408.039(4)(b), F.S.
[35] Section 408.039(4)(c), F.S.
[36] Section 408.039(4)(d), F.S.

- Requiring the AHCA to hold a public heating upon the request of any applicant or substantially affected person;
- Limiting the period of a continuance for any CON related hearings to four months; and
- Requiring a party appealing a final order for a CON to post a $1 million bond which is forfeited for attorney's fees and costs if the appellant loses.[37]

CON Fees

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is $10,000.[38] In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure; however, the total fee may not exceed $50,000.[39] A request for a CON exemption must be accompanied by a $250 fee payable to AHCA.[40]

CON Litigation

Florida law authorizes competitors to challenge CON decisions. A Notice of Intent to Award may be challenged by a competing applicant in the same review cycle or an existing provider in the same district by submitting evidence that they will be substantially affected if the CON is awarded. For general hospital CONs, only competing applicants and existing hospitals that submitted a written statement of opposition may initiate or intervene in an administrative hearing.[41] A challenge to a CON decision is heard by an administrative law judge under the Division of Administrative Hearings.[42] A recommended order must be issued by the administrative law judge by the earlier of within 30 days after the receipt of the proposed recommended order or the deadline for submission for a proposed recommended order. The AHCA must render a Final Order within 45 days of receiving the recommended order of the administrative law judge.[43] A party to an administrative hearing may challenge a Final Order to the District Court of Appeals for judicial review within 30 days of receipt of a Final Order. Parties challenging a general hospital CON must post a $1 million bond which will be used to pay attorney fees and costs if the appeal is lost.[44]

CON Nationwide

Thirty-five states have some form of CON program while 12 states do not have CON requirements for any type of health care facility or service.[45] The types of facilities covered and the requirements of each CON program vary from state to state.

[37] Chapter 2008-29, L.O.F.
[38] Section 408.038, F.S.
[39] Id.
[40] Section 408.036(4), F.S., and Rule 59C-1.005(2)(g), F.A.C.
[41] Section 408.039(5)(c), F.S.
[42] Id.
[43] Section 408.039(5)(e), F.S.
[44] Section 408.039(6), F.S.
[45] National Conference of State Legislators, *Certificate of Need State Laws* (Feb. 28, 2019), *available at* http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx (last viewed March 13, 2019).

Purpose and Effect of Certificate of Need

Cost Containment

CON programs are designed to restrain health care costs and provide for directed, measured planning for new services and facilities. Such programs were originally established to regulate the addition of new facilities, or new beds in hospitals and nursing homes, for example, and to prevent overbuying of expensive equipment, under the economic theory that excess capacity directly results in health care price inflation. When a hospital or health care service provider cannot meet its obligations, fixed costs must be met through higher charges for the beds that are used or for the number of patients using the service.[46]

In addition to cost containment, CON regulation is intended to create a "quid pro quo" in which profitability of covered medical services is increased by restricting competition and, in return, medical providers cross-subsidize specified amounts of indigent care, or medical services to the poor that are unprofitable to the provider.[47] Some states address indigent care to underinsured or uninsured patients and the provision of care for the Medicaid program in their CON process.[48] In Florida applicants may apply a conditions to increase their chances of being issued a CON, including by committing to providing services to Medicaid and charity patients at certain levels.

Some studies have found that CON programs do not meet the goal of limiting costs in health care. One study found that "at best, CON has had a modest cost-containing influence on hospital and other acute care services."[49] Additionally, a literature review conducted in 2004 by the Federal Trade Commission and the Department of Justice concluded that "[O]n balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits. . . .[i]ndeed, there is considerable evidence that CON programs can actually increase prices by fostering anticompetitive barriers to entry. Other means of cost control appear to be more effective and pose less significant competitive concerns."[50]

Indigent Care

Studies are split, however, on whether CON regulation has improved access to care for the underinsured and uninsured. Some studies have found that access to care for the underserved

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[46] Id.

[47] Thomas Stratmann and Jacob Russ, *Do Certificate-of-Need Laws Increase Indigent Care?* Mercatus Center at George Mason University (July 2014) p. 2, *available at* https://www.mercatus.org/publication/do-certificate-need-laws-increase-indigent-care (last viewed March 13, 2019).

[48] For example, Delaware (Del. Code Ann. tit. 16 s. 9303), Georgia (Ga. Code Ann. §111-2-2.03) (providing an exemption from CON with a certain percentage of Medicaid and charity care), Rhode Island (216-RICR-40-10-22.14) requiring findings of indigent and Medicaid care that will be offered, and Virginia (12 Va. Admin. Code §5-230-40 and §5-220-270) require CON applicants to comply with such provisions.

[49] Christopher J. Conover and Frank A. Sloan, *Does Removing Certificate-of-Need Regulations Lead to a Surge in Health Care Spending?* Journal of Health Politics, Policy, and Law: Vol. 23, No. 3, June 1998, p. 478, *available at* https://read.dukeupress.edu/jhppl/article-abstract/23/3/455/82081/Does-Removing-Certificate-of-Need-Regulations-Lead

[50] Improving Health Care: *A Dose of Competition*: A Report by the Federal Trade Commission and the Department of Justice (July 23, 2004) p. 22, *available at* https://www.ftc.gov/reports/improving-health-care-dose-competition-report-federal-trade-commission-department-justice (last viewed March 13, 2019). Note: this report is based on 27 days of joint hearings, an FTC-sponsored workshop, and independent research (see p. 1).

populations has increased in states with CON programs,[51] while another has found only insignificant evidence to support such a conclusion.[52] A study of the Illinois CON program, while not opposing the removal of CON in Illinois, was concerned about the effect of eliminating CON on the financial health of safety-net hospitals, stating that "for some of [those hospitals]…new pressures could lead to failures [which] could force the remaining providers to serve an ever-larger number of less profitable patients, which could lead to a cascade of failures."[53]

Medically Underserved Areas

A medically underserved area (MUA) is a geographic area with a lack of access to primary care services. MUAs have a shortage of primary care health services for residents within a geographic area such as:

- A whole county;
- A group of neighboring counties;
- A group of urban census tracts; or
- A group of county or civil divisions.[54]

MUAs are designated by the Health Resources and Services Administration (HRSA) within the federal Department of Health and Human Services. Eligibility for MUA designation depends on the Index of Medical Underservice (IMU) calculated for the area proposed for designation. Under the established criteria, an area or population with an IMU of 62.0 or below qualifies for designation as an MUA.[55]

The IMU scale is from 0 to 100, where 0 represents completely underserved and 100 represents best served or least underserved. The HRSA calculates the IMU by assigning a weighted value to an area or population's performance on four demographic and health indicators, then adding the weighted values together. The HRSA uses the following indicators:

- Provider per 1,000 population ratio (28.7 points max);
- Percent of population at 100 percent of the Federal Poverty Level (25.1 points max);
- Percent of population age 65 and over (20.2 points max); and
- Infant Mortality Rate (26 points max).[56]

Currently, there are 70 MUAs designated in Florida. Five of those MUAs have IMU scores of 0 while the other 65 have scores ranging from 43.3 to 61.5.[57]

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[51] Tracy Yee, Lucy B. Stark, et al, *Health Care Certificate-of-Need Laws: Policy or Politics?*, Research Brief, National Institute for Health Care Reform, No. 4, (May 2011), *available at* http://nihcr.org/analysis/improving-care-delivery/prevention-improving-health/con-laws/ (last visited on March 13, 2019).
[52] *Supra* note 46
[53] An Evaluation of Illinois' Certificate of Need Program, The Lewin Group, p. 31 (Feb. 22, 2007) *available at* http://cgfa.ilga.gov/Upload/LewinGroupEvalCertOfNeedPresentation.pdf
[54] See https://bhw.hrsa.gov/shortage-designation/muap (last visited on March 13, 2019)
[55] See https://bhw.hrsa.gov/shortage-designation/muap-process. (last visited on March 13, 2019).
[56] Id.
[57] See https://data.hrsa.gov/tools/shortage-area/mua-find. (last visited on March 14, 2019).

III. Effect of Proposed Changes:

CS/SB 1712 amends multiple statutes related to hospital licensure and CON.

Section 1 amends s. 395.003, F.S., to apply new licensure criteria to general hospitals that are licensed on or after July 1, 2019, without a CON. Each such hospital must:

- Notify the AHCA of the intention to build a new hospital prior to beginning construction. the notice must include the location, the number of beds and types of beds to be licensed and the services the hospital will offer;
- Have at least 100 beds and have intensive care, progressive care, and medical/surgical beds. This requirement does not apply to long-term care hospitals, rural hospitals, or hospitals located in a MUA.
- Have an onsite, 24/7 emergency department. This requirement does not apply to long-term care hospitals.
- Participate in the Florida Medicaid and the Medicare programs;
- Provide charity care, as defined in s. 409.911(1), F.S., in an amount equal to or greater than the district average;
    - If a hospital is located in an MUA, the amount of charity care that the hospital must provide is reduced so that it is equal in percentage to that area's IMU;
    - In lieu of providing the required charity care, the hospital may donate to the AHCA's Grants and Donations Trust Fund an amount determined by the AHCA to be functionally equivalent to the amount of charity care required;
- Annually report compliance with these requirements to the AHCA. If a hospital does not report compliance or fails to comply with these requirements, the AHCA must assess a fine equal to one percent of the hospital's net revenue for each 0.5 percent of the required charity care the hospital did not provide or donate.

The section also grants the AHCA rulemaking authority to implement the new licensure provisions and strikes obsolete language related to off-site hospital emergency departments and makes cross-reference changes.

Section 9 amends s. 408.040, F.S., to require the AHCA to assess a fine of $2,500 per day if a health care facility fails to comply with a condition of its CON related to providing charity care or providing care under the Florida Medicaid program. Currently, the AHCA is authorized to assess a fine of up to $1,000 per day. The bill also requires that general hospitals that were initially licensed with a CON must comply with such conditions as part of licensure, regardless of the status of the hospital's CON.

Section 11 creates a new unnumbered section of law to prohibit the AHCA from accepting any new applications for general hospital CONS. The AHCA is required to issue a CON to all current general hospital applicants whose CON has been approved by the AHCA, regardless of litigation, if the applicant will have intensive care beds, progressive care beds, medical/surgical beds, and an onsite, 24/7 emergency department. Also, the bill allows current general hospital CON applicants whose applications have been denied or whose status is pending to continue through the current CON process until a final outcome is reached.

Sections 2-8 and 10 amend and repeal various sections of the Florida statutes to remove the requirement to obtain a CON for the establishment of a new, freestanding general hospital and to make conforming and cross-reference changes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1712 may have an indeterminate negative fiscal impact on existing hospitals if additional hospitals are licensed in the same area and if such hospital projects would not have been licensed under current law.

This bill may have an indeterminate positive fiscal impact on individuals who receive medical services in a hospital if the individual is paying for the services directly, or if there is an increase in the number of hospitals that are licensed under the provisions of the bill and such increase results in a decrease in the amount that hospital charge for such services.

The bill may have an indeterminate positive fiscal impact on individuals who receive the benefits of charity care that new general hospitals will be required to offer.

C. Government Sector Impact:

This bill may have an indeterminate fiscal impact on the AHCA by eliminating the CON program for general hospitals, including a potential reduction in workload and the elimination of revenues received from CON application fees.[58]

The bill may have indeterminate fiscal impact on the AHCA by potentially increasing the number of hospitals the AHCA will be required to regulate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.003, 408.032, 408.034, 408.035, 408.036, 408.037, 408.039, 408.040, and 408.043.

This bill creates one non-statutory section of Florida law.

This bill repeals section 395.6025 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on April 1, 2019.
The CS:

- Narrows the repeal of CON to the construction of new general hospitals, rather than for all hospitals.
- Establishes additional licensure requirements applicable to new general hospitals licensed after July 1, 2019, without a CON, including that each such hospital:
  - Must have at least 100 beds and have intensive care, progressive care, and medical surgical beds. This requirement does not apply to rural hospitals, long-term care hospitals, and hospitals established in a MUA;
  - Must have an onsite, 24/7 emergency department. This requirement does not apply to long-term care hospitals; and
  - Must notify the AHCA before beginning construction.
- Requires each such new hospital to participate in Medicare, as well as Medicaid.

[58] Hospital CON application fees were $703,120 in CY 2018. See AHCA, *Senate Bill 1712 Analysis* (March 5, 2019) (on file with Senate Committee on Health Policy)

- Eliminates the definition of "charity care" established in the bill and instead refers to the definition of "charity care" as established for the disproportionate share program in s. 409.911(1), F.S.
- Grants the AHCA rulemaking authority to implement the new licensure requirements.
- Specifies that a currently licensed general hospital that was issued a CON with conditions related to providing charity care or providing care under the Florida Medicaid program must continue to meet those conditions as part of its licensure, regardless of the status of the hospital's CON.
- Creates a new unnumbered section of Florida law to:
  - Prohibit the AHCA from accepting any new applications for general hospital CONS;
  - Require the AHCA to issue a CON to all current general hospital applicants whose CON has been approved by the AHCA, regardless of litigation, if the applicant will have intensive care beds, progressive care beds, medical/surgical beds, and an onsite, 24/7 emergency department; and
  - Allow current CON applicants whose applications have been denied or whose status is pending to continue through the current CON process until a final outcome is reached.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (8), (9), and (10) of section 395.003, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, paragraph (c) of subsection (1) and present subsections (9) and (10) of that section are amended, and a new subsection (8) is added to that section, to read:

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395.003 Licensure; denial, suspension, and revocation.—

(1)

~~(c) Until July 1, 2006, additional emergency departments located off the premises of licensed hospitals may not be authorized by the agency.~~

(8) Applicable only to a general hospital that is, or will be, newly licensed on or after July 1, 2019; that does not hold a certificate of need issued by the agency; and that is not replacing a currently operating general hospital located within 1 mile of the newly licensed hospital:

(a) When proposing a new general hospital project subject to this subsection and before filing for approval of plans and specifications under s. 395.0163, each prospective applicant for licensure must submit a notice to the agency of its intent to establish a newly licensed hospital which includes the location for the proposed hospital, the number and types of beds to be licensed, and the services that the hospital will offer.

(b) Other than a long-term care hospital, the agency may not license a new general hospital subject to this subsection unless:

1. The hospital has at least 80 beds and has intensive care, progressive care, and medical-surgical beds. This requirement does not apply if the hospital is a rural hospital, as defined in s. 395.602, or is located in a medically underserved area; and

2. The hospital has an onsite emergency department that will operate 24 hours per day, 7 days per week.

(c) Each such hospital must participate in the state Medicaid program and the Medicare program.

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(d) Except as provided in paragraph (e), each such hospital must provide charity care in an amount equal to or greater than the district average for hospitals in the applicable district. The agency shall adopt by rule a method for calculating the district average for charity care for each district. For purposes of this subsection, the term "charity care" means uncompensated care delivered to uninsured patients having an income at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures, and "district" has the same meaning as in s. 408.032(5). The valuation of charity care must be based on Medicaid reimbursement rates.

(e) If such a hospital is located in a medically underserved area, the amount of charity care required to be provided by the hospital under paragraph (d) is equivalent in percentage to the medically underserved area's Index of Medical Underservice score as calculated by the federal Health Resources and Services Administration within the Department of Health and Human Services.

(f) In lieu of providing charity care under paragraph (d) or paragraph (e), each such hospital may donate an amount determined by the agency to be functionally equivalent to the amounts required under those paragraphs to the agency's Grants and Donations Trust Fund.

(g) Each such hospital shall annually report to the agency its compliance with paragraphs (c)-(f). Failure to report compliance constitutes noncompliance. The agency shall assess an administrative fine on a hospital that fails to comply with this subsection in the amount of 1 percent of its net revenue for


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each 0.5 percent of the required amount of charity care not provided pursuant to paragraph (d) or paragraph (e) or the required amount as determined by the agency pursuant to paragraph (f).

(h) The agency shall adopt rules to implement this subsection.

(10) ~~(9)~~ A hospital licensed as of June 1, 2004, is ~~shall be~~ exempt from subsection (9) ~~(8)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (9) ~~(8)~~. Unless the hospital is otherwise exempt under subsection (9) ~~(8)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(11) ~~(10)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (9) ~~(8)~~. Within 14 days after rendering its decision on a license application or revocation, the agency shall publish its proposed decision in the Florida Administrative Register. Within 21 days after publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsection (9) ~~(8)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or revoke licensure under subsection (9) ~~(8)~~ based upon a showing

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that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 2. Section 395.6025, Florida Statutes, is repealed.

Section 3. Subsections (8) and (13) of section 408.032, Florida Statutes, are amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(8) "Health care facility" means a ~~hospital, long-term care hospital,~~ skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

~~(13) "Long-term care hospital" means a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(c) and seeks exclusion from the acute care Medicare prospective payment system for inpatient hospital services.~~

Section 4. Subsection (2) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393 and 395 and parts II, IV, and VIII of chapter 400, the agency may not issue a license to any health care facility or health service provider that fails to receive a certificate of need or an exemption for the licensed facility or service, except that the agency may issue a license to a general hospital that has not been issued a certificate of need if that

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hospital meets the criteria established in s. 395.003(8).

Section 5. Section 408.035, Florida Statutes, is amended to read:

408.035 Review criteria.—

~~(1)~~ The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and health services in context with the following criteria~~, except for general hospitals as defined in s. 395.002~~:

(1)~~(a)~~ The need for the health care facilities and health services being proposed.

(2)~~(b)~~ The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant.

(3)~~(c)~~ The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.

(4)~~(d)~~ The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.

(5)~~(e)~~ The extent to which the proposed services will enhance access to health care for residents of the service district.

(6)~~(f)~~ The immediate and long-term financial feasibility of the proposal.

(7)~~(g)~~ The extent to which the proposal will foster competition that promotes quality and cost-effectiveness.

(8)~~(h)~~ The costs and methods of the proposed construction, including the costs and methods of energy provision and the


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availability of alternative, less costly, or more effective methods of construction.

(9) ~~(i)~~ The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

(10) ~~(j)~~ The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

~~(2) For a general hospital, the agency shall consider only the criteria specified in paragraph (1)(a), paragraph (1)(b), except for quality of care in paragraph (1)(b), and paragraphs (1)(c), (g), and (i).~~

Section 6. Paragraphs (b) and (c) of subsection (1) of section 408.036, Florida Statutes, are amended to read:

408.036 Projects subject to review; exemptions.—

(1) APPLICABILITY.—Unless exempt under subsection (3), all health-care-related projects, as described in paragraphs (a)-(f), are subject to review and must file an application for a certificate of need with the agency. The agency is exclusively responsible for determining whether a health-care-related project is subject to review under ss. 408.031-408.045.

(b) The new construction or establishment of additional health care facilities, except for the construction of or establishment of a general hospital or ~~including~~ a replacement health care facility when the proposed project site is ~~not~~ located on the same site as or within 1 mile of the existing health care facility~~,~~ if the number of beds in each licensed bed category will not increase.

(c) The conversion from one type of health care facility to


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another, including the conversion from a general hospital or~~,~~ a specialty hospital, ~~or a long-term care hospital~~ except that the conversion of a specialty hospital to a general hospital is not subject to review if, once converted, the hospital meets the licensure criteria in s. 395.003(8).

Section 7. Section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) ~~Except as provided in subsection (2) for a general hospital,~~ An application for a certificate of need must contain:

(a) A detailed description of the proposed project and statement of its purpose and need in relation to the district health plan.

(b) A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement must include:

1. A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate-of-need program or a capital expenditure review program pursuant to s. 1122 of the Social Security Act. The agency may, by rule, require less-detailed information from major health care providers. This listing must include the applicant’s actual or proposed financial commitment to those projects and an assessment of their impact on the applicant’s ability to provide the proposed project.

2. A detailed listing of the needed capital expenditures, including sources of funds.

3. A detailed financial projection, including a statement of the projected revenue and expenses for the first 2 years of operation after completion of the proposed project. This statement must include a detailed evaluation of the impact of the proposed project on the cost of other services provided by the applicant.

(c) An audited financial statement of the applicant or the applicant's parent corporation if audited financial statements of the applicant do not exist. In an application submitted by an existing health care facility, health maintenance organization, or hospice, financial condition documentation must include, but need not be limited to, a balance sheet and a profit-and-loss statement of the 2 previous fiscal years' operation.

~~(2) An application for a certificate of need for a general hospital must contain a detailed description of the proposed general hospital project and a statement of its purpose and the needs it will meet. The proposed project's location, as well as its primary and secondary service areas, must be identified by zip code. Primary service area is defined as the zip codes from which the applicant projects that it will draw 75 percent of its discharges. Secondary service area is defined as the zip codes from which the applicant projects that it will draw its remaining discharges. If, subsequent to issuance of a final order approving the certificate of need, the proposed location of the general hospital changes or the primary service area materially changes, the agency shall revoke the certificate of need. However, if the agency determines that such changes are deemed to enhance access to hospital services in the service district, the agency may permit such changes to occur. A party~~

~~participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital has standing to participate in any subsequent proceeding regarding the revocation of the certificate of need for a hospital for which the location has changed or for which the primary service area has materially changed. In addition, the application for the certificate of need for a general hospital must include a statement of intent that, if approved by final order of the agency, the applicant shall within 120 days after issuance of the final order or, if there is an appeal of the final order, within 120 days after the issuance of the court's mandate on appeal, furnish satisfactory proof of the applicant's financial ability to operate. The agency shall establish documentation requirements, to be completed by each applicant, which 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 party participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital may provide written comments concerning the adequacy of the financial information provided, but such party does not have standing to participate in an administrative proceeding regarding proof of the applicant's 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.~~

(2)~~(3)~~ The applicant must certify that it will license and operate the health care facility. For an existing health care


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facility, the applicant must be the licenseholder of the facility.

Section 8. Paragraphs (c) and (d) of subsection (3), paragraphs (b) and (c) of subsection (5), and paragraph (d) of subsection (6) of section 408.039, Florida Statutes, are amended to read:

408.039 Review process.—The review process for certificates of need shall be as follows:

(3) APPLICATION PROCESSING.—

~~(c) Except for competing applicants, in order to be eligible to challenge the agency decision on a general hospital application under review pursuant to paragraph (5)(c), existing hospitals must submit a detailed written statement of opposition to the agency and to the applicant. The detailed written statement must be received by the agency and the applicant within 21 days after the general hospital application is deemed complete and made available to the public.~~

~~(d) In those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the agency. Such response must be received by the agency within 10 days of the written statement due date.~~

(5) ADMINISTRATIVE HEARINGS.—

(b) Hearings shall be held in Tallahassee unless the administrative law judge determines that changing the location will facilitate the proceedings. The agency shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days


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after the time has expired for requesting a hearing. Except upon unanimous consent of the parties or upon the granting by the administrative law judge of a motion of continuance, hearings shall commence within 60 days after the administrative law judge has been assigned. ~~For an application for a general hospital, administrative hearings shall commence within 6 months after the administrative law judge has been assigned, and a continuance may not be granted absent a finding of extraordinary circumstances by the administrative law judge.~~ All parties, except the agency, shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the administrative law judge shall complete and submit to the parties a recommended order as provided in ss. 120.569 and 120.57. The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the agency in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of any certificate of need, whether reviewed under s. 408.036(1) or (2), to a

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competing proposed facility or program within the same district. ~~With respect to an application for a general hospital, competing applicants and only those existing hospitals that submitted a detailed written statement of opposition to an application as provided in this paragraph may initiate or intervene in an administrative hearing. Such challenges to a general hospital application shall be limited in scope to the issues raised in the detailed written statement of opposition that was provided to the agency. The administrative law judge may, upon a motion showing good cause, expand the scope of the issues to be heard at the hearing. Such motion shall include substantial and detailed facts and reasons for failure to include such issues in the original written statement of opposition.~~

(6) JUDICIAL REVIEW.—

~~(d) The party appealing a final order that grants a general hospital certificate of need shall pay the appellee's attorney's fees and costs, in an amount up to $1 million, from the beginning of the original administrative action if the appealing party loses the appeal, subject to the following limitations and requirements:~~

~~1. The party appealing a final order must post a bond in the amount of $1 million in order to maintain the appeal.~~

~~2. Except as provided under s. 120.595(5), in no event shall the agency be held liable for any other party's attorney's fees or costs.~~

Section 9. Subsection (1) of section 408.040, Florida Statutes, is amended, to read:

408.040 Conditions and monitoring.—

(1)(a) The agency may issue a certificate of need, or an

exemption, predicated upon statements of intent expressed by an applicant in the application for a certificate of need or an exemption. Any conditions imposed on a certificate of need or an exemption based on such statements of intent shall be stated on the face of the certificate of need or in the exemption approval.

(b) The agency may consider, in addition to the other criteria specified in s. 408.035, a statement of intent by the applicant that a specified percentage of the annual patient days at the facility will be utilized by patients eligible for care under Title XIX of the Social Security Act. Any certificate of need issued to a nursing home in reliance upon an applicant's statements that a specified percentage of annual patient days will be utilized by residents eligible for care under Title XIX of the Social Security Act must include a statement that such certification is a condition of issuance of the certificate of need. The certificate-of-need program shall notify the Medicaid program office and the Department of Elderly Affairs when it imposes conditions as authorized in this paragraph in an area in which a community diversion pilot project is implemented. Effective July 1, 2012, the agency may not impose sanctions related to patient day utilization by patients eligible for care under Title XIX of the Social Security Act for nursing homes.

(c) A certificateholder or an exemption holder may apply to the agency for a modification of conditions imposed under paragraph (a) or paragraph (b). If the holder of a certificate of need or an exemption demonstrates good cause why the certificate or exemption should be modified, the agency shall reissue the certificate of need or exemption with such


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modifications as may be appropriate. The agency shall by rule define the factors constituting good cause for modification.

(d) If the holder of a certificate of need or the holder of an exemption fails to comply with a condition that is unrelated to the provision of charity care or the provision of care under the Florida Medicaid program upon which the issuance of the certificate or exemption was predicated, the agency may assess an administrative fine against the certificateholder or exemption holder in an amount not to exceed $1,000 per failure per day. If the holder of a certificate of need or the holder of an exemption fails to comply with a condition related to the provision of charity care or the provision of care under the Florida Medicaid program upon which the issuance of the certificate or exemption was predicated, the agency must assess an administrative fine against the certificateholder or exemption holder in the amount of $2,500 per day for each instance of noncompliance. Failure to annually report compliance with any condition upon which the issuance of the certificate or exemption was predicated constitutes noncompliance. In assessing the penalty, the agency shall take into account as mitigation the degree of noncompliance. Proceeds of such penalties shall be deposited in the Public Medical Assistance Trust Fund.

(e) A general hospital that was issued a certificate of need with conditions imposed as described in paragraph (a) or paragraph (b), relating to the provision of charity care or the provision of care under the Florida Medicaid program, must continue to meet those conditions to maintain licensure regardless of the status of that hospital’s certificate of need unless such conditions are modified by the agency pursuant to

paragraph (c).

Section 10. Subsection (1) of section 408.043, Florida Statutes, is amended to read:

408.043 Special provisions.—

~~(1) OSTEOPATHIC ACUTE CARE HOSPITALS.—When an application is made for a certificate of need to construct or to expand an osteopathic acute care hospital, the need for such hospital shall be determined on the basis of the need for and availability of osteopathic services and osteopathic acute care hospitals in the district. When a prior certificate of need to establish an osteopathic acute care hospital has been issued in a district, and the facility is no longer used for that purpose, the agency may continue to count such facility and beds as an existing osteopathic facility in any subsequent application for construction of an osteopathic acute care hospital.~~

Section 11. Effective upon this act becoming a law:

(1) The Agency for Health Care Administration may not initiate a review cycle or accept letters of intent or applications for the issuance of a certificate of need for the new construction or establishment of a freestanding general hospital.

(2) The agency shall issue a certificate of need to any pending applicant for a certificate of need for the new construction of or establishment of a freestanding general hospital:

(a) With intensive care, progressive care, and medical-surgical beds;

(b) With an onsite emergency department that will be operational 24 hours per day, 7 days per week; and


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(c) Whose application for a certificate of need has been approved by the agency, regardless of the litigation status of the application.

(3) For an applicant seeking a certificate of need for the new construction or establishment of a freestanding general hospital that does not meet the criteria in subsection (2), including an applicant whose application is pending approval or denial by the agency and an applicant whose application was initially denied by the agency but such denial is under appeal, ss. 395.6025, 408.032, 408.034, 408.035, 408.036, 408.037, 408.039, and 408.043, Florida Statutes (2018), and any rules adopted thereunder remain in effect until such time as the agency has either issued the applicant a certificate of need, the agency has denied the application and all appeals of the denial have been exhausted, or the application has been withdrawn.

Section 12. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2019.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to hospital licensure; amending s. 395.003, F.S.; deleting an obsolete provision; providing applicability; requiring certain hospitals


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licensed after a specified date to submit a notice to the Agency for Health Care Administration which contains specified information before filing for approval of plans and specifications to establish a new general hospital; prohibiting the agency from licensing a new general hospital unless certain criteria are met; requiring certain hospitals to participate in the Medicaid program and the Medicare program and to provide a certain amount of charity care; defining the terms "charity care" and "district"; providing a separate calculation of required charity care for such hospitals located in a medically underserved area; authorizing such hospitals to provide a certain donation the agency's Grants and Donations Trust Fund in lieu of providing the required charity care; requiring such hospitals to annually report compliance to the agency; requiring the agency to impose a specified administrative fine for noncompliance; requiring the agency to adopt rules; repealing s. 395.6025, F.S., relating to rural hospital replacement facilities; amending s. 408.032, F.S.; revising the definition of the term "health care facility" to exclude hospitals and long-term care hospitals for purposes of the Health Facility and Services Development Act; deleting the definition of the term "long-term care hospital"; amending s. 408.034; authoring the agency to issue a license to a general hospital that has not been issued a certificate of need under certain circumstances;


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amending s. 408.035, F.S.; deleting provisions related to the agency's consideration and review of certificates of need for general hospitals; amending s. 408.036, F.S.; providing an exception for the construction or establishment of a general hospital and the conversion of a specialty hospital to a general hospital from certificate of need review requirements; amending ss. 408.037 and 408.039, F.S.; deleting provisions relating to certificate of need applications for general hospitals; amending s. 408.040, F.S.; requiring the agency to assess a specified administrative fine against the holder of a certificate of need or the holder of an exemption which fails to comply with specified conditions; requiring a general hospital that was issued a certificate of need with certain conditions to continue to meet those conditions to maintain licensure; amending s. 408.043, F.S.; deleting provisions relating to certificates of need for osteopathic acute care hospitals; prohibiting the agency from initiating a review cycle or from accepting letters of intent or applications for the issuance of certificate of need for the new construction or the establishment of a freestanding hospital; requiring the agency to issue such a certificate of need to certain applicants, regardless of litigation status; providing applicability; providing effective dates.

818512

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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The Committee on Health Policy (Bean) recommended the following:

Senate Amendment to Amendment (455382)

Delete line 31

and insert:

1. The hospital has at least 100 beds and has intensive

590662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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The Committee on Health Policy (Bean) recommended the following:

Senate Amendment to Amendment (455382)

Delete lines 45 - 51
and insert:
purposes of this subsection, the term "charity care" has the same meaning as in s. 409.911(1) and the term "district" has the same meaning as in s. 408.032.

 349374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment to Amendment (455382) (with title amendment)

Delete line 107
and insert:
(8) "Health care facility" means a hospital, ~~long-term care~~

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 496 - 499

349374

and insert:

F.S.; revising the definition of the term "health care facility" to eliminate a reference to long-term care hospitals; deleting the definition of

820832

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 59 - 94

and insert:

(8) Applicable only to a hospital that is, or will be, newly licensed on or after July 1, 2019; that has not been issued a certificate of need by the agency; and that is not replacing a currently operating hospital located within 1 mile of the newly licensed hospital:

(a) When proposing a new hospital project subject to this

820832

subsection and before filing for approval of plans and specifications under s. 395.0163, each prospective applicant for licensure must submit a notice to the agency of its intent to establish a newly licensed hospital which includes the location for the proposed hospital, the number and types of beds to be licensed, and the services that the hospital will offer.

(b) The agency may not license a new general hospital subject to this subsection unless:

1. The hospital has at least 80 beds and has intensive care, progressive care, and medical-surgical beds. This requirement does not apply if the hospital is a rural hospital, as defined in s. 395.602, or is located in a medically underserved area; and

2. The hospital has an onsite emergency department that will operate 24 hours per day, 7 days per week.

(c) Each such hospital must participate in the state Medicaid program and the Medicare program.

(d) Except as provided in paragraph (e), each such hospital must provide charity care in an amount equal to or greater than the district average for hospitals in the applicable district. The agency shall adopt by rule a method for calculating the district average for charity care for each district. For purposes of this subsection, the term "charity care" means uncompensated care delivered to uninsured patients having an income at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures, and "district" has the same meaning as in s. 408.032(5). The valuation of charity care must be based on Medicaid reimbursement rates.

820832

(e) If such a hospital is located in a medically underserved area, the amount of charity care required to be provided by the hospital under paragraph (d) is equivalent in percentage to the medically underserved area's Index of Medical Underservice score as calculated by the federal Health Resources and Services Administration within the Department of Health and Human Services.

(f) In lieu of providing charity care under paragraph (d) or paragraph (e), each such hospital may donate an amount determined by the agency to be functionally equivalent to the amounts required under those paragraphs to the agency's Grants and Donations Trust Fund.

(g) Each such hospital shall annually report to the agency its compliance with paragraphs (c)-(f). Failure to report compliance constitutes noncompliance. The agency shall assess an administrative fine on a hospital that fails to comply with this subsection in the amount of 1 percent of its net revenue for each 0.5 percent of the required amount of charity care not provided pursuant to paragraph (d) or paragraph (e) or the required amount as determined by the agency pursuant to paragraph (f).

(h) The agency shall adopt rules to implement this subsection.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 4 - 15

and insert:

providing applicability; requiring certain hospitals

820832

licensed after a specified date to submit a notice to the Agency for Health Care Administration which contains specified information before filing for approval of plans and specifications to establish a newly licensed hospital; prohibiting the agency from licensing a new general hospital unless certain criteria are met; requiring certain hospitals to participate in the Medicaid program as a provider of medical assistance and to provide a certain amount of charity care; defining the terms "charity care" and "district"; providing a separate calculation of required charity care for such hospitals located in a medically underserved area; authorizing such hospitals to provide a certain donation the agency's Grants and Donations Trust Fund in lieu of providing the required charity care; requiring such hospitals to annually report compliance to the agency; requiring the agency to impose a specified administrative fine for noncompliance; requiring the agency to adopt rules;

780192

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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	.	
	.	

The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 225 - 236
and insert:
~~(c) An increase in the number of beds for comprehensive rehabilitation.~~
(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), the following projects are subject to expedited review:
(a) Transfer of a certificate of need~~, except that when an~~

780192

~~existing hospital is acquired by a purchaser, all certificates of need issued to the hospital which are not yet operational shall be acquired by the purchaser without need for a transfer~~.

The agency shall develop rules to implement the expedited review process, including time schedule, application content that may be reduced from the full requirements of s. 408.037(1), and application processing.

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

~~(i) For the addition of hospital beds licensed under chapter 395 for comprehensive rehabilitation in a number that may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater.~~

~~1. In addition to any other documentation otherwise required by the agency, a request for exemption submitted under this paragraph must:~~

~~a. Certify that the prior 12-month average occupancy rate for the licensed beds being expanded meets or exceeds 80 percent.~~

~~b. Certify that the beds have been licensed and operational for at least 12 months.~~

~~2. The timeframes and monitoring process specified in s. 408.040(2)(a)-(c) apply to any exemption issued under this paragraph.~~

~~3. The agency shall count beds authorized under this paragraph as approved beds in the published inventory of hospital beds until the beds are licensed.~~

780192

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 212 - 213

and insert:

Section 8. Paragraphs (c) and (e) of subsection (1) paragraph (a) of subsection (2), and paragraph (i) of subsection (3) of section 408.036, Florida Statutes, are

520418

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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	.	
	.	

The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 440 - 448

and insert:

Section 13. Effective upon this act becoming a law:

(1) The Agency for Health Care Administration may not initiate a review cycle or accept letters of intent or applications for the issuance of a certificate of need for the new construction or establishment of a freestanding hospital.

(2) The agency shall issue a certificate of need to any

520418

pending applicant for a certificate of need for the new construction or establishment of a freestanding general hospital:

(a) With 80 or more beds;

(b) With intensive care, progressive care, and medical-surgical beds;

(c) With an onsite emergency department that will be operational 24 hours per day, 7 days per week; and

(d) Whose application for a certificate of need has been approved by the agency, regardless of the litigation status of the application.

(3) For any pending applicant for a certificate of need for the new construction or establishment of a freestanding hospital that does not meet the criteria in subsection (2), sections 395.0191, 395.1055, 395.6025, 408.032, 408.034, 408.035, 408.036, 408.037, 408.039, and 408.043, Florida Statutes (2018), and any rules adopted thereunder remain in effect until such time as the agency has either issued the applicant a certificate of need or has denied the application and all appeals of the denial have been exhausted.

Section 14. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2019.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 43 - 44

and insert:

520418

hospitals; prohibiting the agency from initiating a review cycle or from accepting letters of intent or applications for the issuance of certificate of need for the new construction or the establishment of a freestanding hospital; requiring the agency to issue such a certificate of need to certain applicants, regardless of litigation status; providing applicability; providing effective dates.

By Senator Harrell

25-01997-19 20191712__

A bill to be entitled

An act relating to hospital licensure; amending s. 395.003, F.S.; deleting an obsolete provision; requiring hospitals licensed after a specified date to participate in the Medicaid program as a provider of medical assistance and provide a certain amount of charity care; providing a separate calculation of required charity care for such hospitals located in a medically underserved area; authorizing such hospitals to provide a certain donation the Agency for Health Care Administration's Grants and Donations Trust Fund in lieu of providing the required charity care; requiring such hospitals to annually report compliance to the agency; requiring the agency to impose a specified administrative fine for noncompliance; conforming cross-references; amending s. 395.0191, F.S.; deleting a provision relating to certificates of need for hospitals; amending s. 395.1055, F.S.; deleting a provision requiring hospitals to submit data to the agency in the certificate-of-need review process; repealing s. 395.6025, F.S., relating to rural hospital replacement facilities; amending s. 408.032, F.S.; revising the definition of the term "health care facility" to exclude hospitals and long-term care hospitals for purposes of the Health Facility and Services Development Act; deleting the definitions of the terms "hospital" and "long-term care hospital"; amending s. 408.034; conforming a provision to changes made by the act; amending ss.

25-01997-19 20191712__

408.035 and 408.036, F.S.; deleting provisions related to the agency's consideration and review of certificates of need for general hospitals, specialty hospitals, and long-term care hospitals; amending ss. 408.037, and 408.039, F.S.; deleting provisions relating to certificate of need applications for general hospitals; amending s. 408.040, F.S.; requiring the agency to assess a specified administrative fine against the holder of a certificate of need or the holder of an exemption that fails to comply with specified conditions; amending s. 408.043, F.S.; deleting provisions relating to certificates of need for osteopathic acute care hospitals; amending s. 395.1065, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (8), (9), and (10) of section 395.003, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, paragraph (c) of subsection (1) and present subsections (9) and (10) of that section are amended, and a new subsection (8) is added to that section, to read:

395.003 Licensure; denial, suspension, and revocation.—

(1)

~~(c) Until July 1, 2006, additional emergency departments located off the premises of licensed hospitals may not be authorized by the agency.~~

(8) Applicable only to a hospital licensed on or after July 1, 2019:

(a) Each such hospital must participate in the Medicaid program as a provider of medical assistance.

(b) Except as provided in paragraph (c), each such hospital must provide charity care in an amount equal to or greater than the applicable district average among licensed providers of similar services. For purposes of this subsection, the term "charity care" means uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures, and "district" has the same meaning as in s. 408.032(5). The valuation of charity care must be based on Medicaid reimbursement rates.

(c) If such a hospital is located in a medically underserved area, the amount of charity care required to be provided by the hospital under paragraph (b) is equivalent in percentage to the medically underserved area's Index of Medical Underservice score as calculated by the federal Health Resources and Services Administration within the Department of Health and Human Services.

(d) In lieu of providing charity care under paragraph (b) or paragraph (c), each such hospital may donate an amount determined by the agency to be functionally equivalent to the amounts required under those paragraphs to the agency's Grants and Donations Trust Fund.

(e) Each such hospital shall annually report to the agency its compliance with this subsection. Failure to report

compliance constitutes noncompliance. The agency shall assess an administrative fine on a hospital that fails to comply with this subsection in the amount of 1 percent of its net revenue for each 0.5 percent of the required amount of charity care that was not provided pursuant to paragraph (b) or paragraph (c) or the required amount as determined by the agency pursuant to paragraph (d).

(10) ~~(9)~~ A hospital licensed as of June 1, 2004, is ~~shall be~~ exempt from subsection (9) ~~(8)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (9) ~~(8)~~. Unless the hospital is otherwise exempt under subsection (9) ~~(8)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(11) ~~(10)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (9) ~~(8)~~. Within 14 days after rendering its decision on a license application or revocation, the agency shall publish its proposed decision in the Florida Administrative Register. Within 21 days after publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsection (9) ~~(8)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or

revoke licensure under subsection (9)~~(8)~~ based upon a showing that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 2. Subsection (10) of section 395.0191, Florida Statutes, is amended to read:

395.0191 Staff membership and clinical privileges.—

~~(10) Nothing herein shall be construed by the agency as requiring an applicant for a certificate of need to establish proof of discrimination in the granting of or denial of hospital staff membership or clinical privileges as a precondition to obtaining such certificate of need under the provisions of s. 408.043.~~

Section 3. Paragraph (f) of subsection (1) of section 395.1055, Florida Statutes, is amended to read:

395.1055 Rules and enforcement.—

(1) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, which shall include reasonable and fair minimum standards for ensuring that:

(f) All hospitals submit ~~such data as necessary to conduct certificate-of-need reviews required under part I of chapter 408. Such data shall include, but shall not be limited to, patient origin data,~~ hospital utilization data, type of service reporting, and facility staffing data. The agency may not collect data that identifies or could disclose the identity of individual patients. The agency shall utilize existing uniform statewide data sources when available and shall minimize reporting costs to hospitals.

Section 4. Section 395.6025, Florida Statutes, is repealed.

Section 5. Subsections (8), (11), and (13) of section 408.032, Florida Statutes, are amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(8) "Health care facility" means a ~~hospital, long-term care hospital,~~ skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

~~(11) "Hospital" means a health care facility licensed under chapter 395.~~

~~(13) "Long term care hospital" means a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(e) and seeks exclusion from the acute care Medicare prospective payment system for inpatient hospital services.~~

Section 6. Subsection (2) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapter ~~chapters~~ 393 ~~and 395~~ and parts II, IV, and VIII of chapter 400, the agency may not issue a license to any health care facility or health service provider that fails to receive a certificate of need or an exemption for the licensed facility or service.

Section 7. Section 408.035, Florida Statutes, is amended to read:

408.035 Review criteria.—

~~(1)~~ The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and health services in context with the following criteria~~, except for general hospitals as defined in s. 395.002~~:

(1) ~~(a)~~ The need for the health care facilities and health services being proposed.

(2) ~~(b)~~ The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant.

(3) ~~(c)~~ The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.

(4) ~~(d)~~ The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.

(5) ~~(e)~~ The extent to which the proposed services will enhance access to health care for residents of the service district.

(6) ~~(f)~~ The immediate and long-term financial feasibility of the proposal.

(7) ~~(g)~~ The extent to which the proposal will foster competition that promotes quality and cost-effectiveness.

(8) ~~(h)~~ The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

(9) ~~(i)~~ The applicant's past and proposed provision of health care services to Medicaid patients and the medically

indigent.

(10) ~~(j)~~ The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

~~(2) For a general hospital, the agency shall consider only the criteria specified in paragraph (1)(a), paragraph (1)(b), except for quality of care in paragraph (1)(b), and paragraphs (1)(c), (g), and (i).~~

Section 8. Paragraph (c) of subsection (1) and paragraph (a) of subsection (2) of section 408.036, Florida Statutes, are amended to read:

408.036 Projects subject to review; exemptions.—

(1) APPLICABILITY.—Unless exempt under subsection (3), all health-care-related projects, as described in paragraphs (a)-(f), are subject to review and must file an application for a certificate of need with the agency. The agency is exclusively responsible for determining whether a health-care-related project is subject to review under ss. 408.031-408.045.

(c) The conversion from one type of health care facility to another~~, including the conversion from a general hospital, a specialty hospital, or a long-term care hospital~~.

(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), the following projects are subject to expedited review:

(a) Transfer of a certificate of need~~, except that when an existing hospital is acquired by a purchaser, all certificates of need issued to the hospital which are not yet operational shall be acquired by the purchaser without need for a transfer~~.

The agency shall develop rules to implement the expedited review process, including time schedule, application content that may be reduced from the full requirements of s. 408.037(1), and application processing.

Section 9. Section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) ~~Except as provided in subsection (2) for a general hospital,~~ An application for a certificate of need must contain:

(a) A detailed description of the proposed project and statement of its purpose and need in relation to the district health plan.

(b) A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement must include:

1. A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate-of-need program or a capital expenditure review program pursuant to s. 1122 of the Social Security Act. The agency may, by rule, require less-detailed information from major health care providers. This listing must include the applicant's actual or proposed financial commitment to those projects and an assessment of their impact on the applicant's ability to provide the proposed project.

2. A detailed listing of the needed capital expenditures, including sources of funds.

3. A detailed financial projection, including a statement

of the projected revenue and expenses for the first 2 years of operation after completion of the proposed project. This statement must include a detailed evaluation of the impact of the proposed project on the cost of other services provided by the applicant.

(c) An audited financial statement of the applicant or the applicant's parent corporation if audited financial statements of the applicant do not exist. In an application submitted by an existing health care facility, health maintenance organization, or hospice, financial condition documentation must include, but need not be limited to, a balance sheet and a profit-and-loss statement of the 2 previous fiscal years' operation.

~~(2) An application for a certificate of need for a general hospital must contain a detailed description of the proposed general hospital project and a statement of its purpose and the needs it will meet. The proposed project's location, as well as its primary and secondary service areas, must be identified by zip code. Primary service area is defined as the zip codes from which the applicant projects that it will draw 75 percent of its discharges. Secondary service area is defined as the zip codes from which the applicant projects that it will draw its remaining discharges. If, subsequent to issuance of a final order approving the certificate of need, the proposed location of the general hospital changes or the primary service area materially changes, the agency shall revoke the certificate of need. However, if the agency determines that such changes are deemed to enhance access to hospital services in the service district, the agency may permit such changes to occur. A party participating in the administrative hearing regarding the~~

~~issuance of the certificate of need for a general hospital has standing to participate in any subsequent proceeding regarding the revocation of the certificate of need for a hospital for which the location has changed or for which the primary service area has materially changed. In addition, the application for the certificate of need for a general hospital must include a statement of intent that, if approved by final order of the agency, the applicant shall within 120 days after issuance of the final order or, if there is an appeal of the final order, within 120 days after the issuance of the court's mandate on appeal, furnish satisfactory proof of the applicant's financial ability to operate. The agency shall establish documentation requirements, to be completed by each applicant, which 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 party participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital may provide written comments concerning the adequacy of the financial information provided, but such party does not have standing to participate in an administrative proceeding regarding proof of the applicant's 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.~~

(2) ~~(3)~~ The applicant must certify that it will license and operate the health care facility. For an existing health care facility, the applicant must be the licenseholder of the

facility.

Section 10. Paragraphs (c) and (d) of subsection (3), paragraphs (b) and (c) of subsection (5), and paragraph (d) of subsection (6) of section 408.039, Florida Statutes, are amended to read:

408.039 Review process.—The review process for certificates of need shall be as follows:

(3) APPLICATION PROCESSING.—

~~(c) Except for competing applicants, in order to be eligible to challenge the agency decision on a general hospital application under review pursuant to paragraph (5)(c), existing hospitals must submit a detailed written statement of opposition to the agency and to the applicant. The detailed written statement must be received by the agency and the applicant within 21 days after the general hospital application is deemed complete and made available to the public.~~

~~(d) In those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the agency. Such response must be received by the agency within 10 days of the written statement due date.~~

(5) ADMINISTRATIVE HEARINGS.—

(b) Hearings shall be held in Tallahassee unless the administrative law judge determines that changing the location will facilitate the proceedings. The agency shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days after the time has expired for requesting a hearing. Except upon

unanimous consent of the parties or upon the granting by the administrative law judge of a motion of continuance, hearings shall commence within 60 days after the administrative law judge has been assigned. ~~For an application for a general hospital, administrative hearings shall commence within 6 months after the administrative law judge has been assigned, and a continuance may not be granted absent a finding of extraordinary circumstances by the administrative law judge.~~ All parties, except the agency, shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the administrative law judge shall complete and submit to the parties a recommended order as provided in ss. 120.569 and 120.57. The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the agency in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of any certificate of need, whether reviewed under s. 408.036(1) or (2), to a competing proposed facility or program within the same district.

~~With respect to an application for a general hospital, competing applicants and only those existing hospitals that submitted a detailed written statement of opposition to an application as provided in this paragraph may initiate or intervene in an administrative hearing. Such challenges to a general hospital application shall be limited in scope to the issues raised in the detailed written statement of opposition that was provided to the agency. The administrative law judge may, upon a motion showing good cause, expand the scope of the issues to be heard at the hearing. Such motion shall include substantial and detailed facts and reasons for failure to include such issues in the original written statement of opposition.~~

(6) JUDICIAL REVIEW.—

~~(d) The party appealing a final order that grants a general hospital certificate of need shall pay the appellee's attorney's fees and costs, in an amount up to $1 million, from the beginning of the original administrative action if the appealing party loses the appeal, subject to the following limitations and requirements:~~

~~1. The party appealing a final order must post a bond in the amount of $1 million in order to maintain the appeal.~~

~~2. Except as provided under s. 120.595(5), in no event shall the agency be held liable for any other party's attorney's fees or costs.~~

Section 11. Paragraph (d) of subsection (1) of section 408.040, Florida Statutes, is amended to read:

408.040 Conditions and monitoring.—

(1)

(d) If the holder of a certificate of need or the holder of

an exemption fails to comply with a condition that is unrelated to the provision of charity care or the provision of care under the Florida Medicaid program upon which the issuance of the certificate or exemption was predicated, the agency may assess an administrative fine against the certificateholder or exemption holder in an amount not to exceed $1,000 per failure per day. If the holder of a certificate of need or the holder of an exemption fails to comply with a condition related to the provision of charity care or the provision of care under the Florida Medicaid program upon which the issuance of the certificate or exemption was predicated, the agency must assess an administrative fine against the certificateholder or exemption holder in the amount of $2,500 per day for each instance of noncompliance. Failure to annually report compliance with any condition upon which the issuance of the certificate or exemption was predicated constitutes noncompliance. In assessing the penalty, the agency shall take into account as mitigation the degree of noncompliance. Proceeds of such penalties shall be deposited in the Public Medical Assistance Trust Fund.

Section 12. Subsection (1) of section 408.043, Florida Statutes, is amended to read:

408.043 Special provisions.—

~~(1) OSTEOPATHIC ACUTE CARE HOSPITALS.—When an application is made for a certificate of need to construct or to expand an osteopathic acute care hospital, the need for such hospital shall be determined on the basis of the need for and availability of osteopathic services and osteopathic acute care hospitals in the district. When a prior certificate of need to establish an osteopathic acute care hospital has been issued in~~

~~a district, and the facility is no longer used for that purpose, the agency may continue to count such facility and beds as an existing osteopathic facility in any subsequent application for construction of an osteopathic acute care hospital.~~

Section 13. Subsection (5) of section 395.1065, Florida Statutes, is amended to read:

395.1065 Criminal and administrative penalties; moratorium.—

(5) The agency shall impose a fine of $500 for each instance of the facility's failure to provide the information required by rules adopted pursuant to s. 395.1055(1)(g) ~~s. 395.1055(1)(h)~~.

Section 14. This act shall take effect July 1, 2019.

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Agency for Health Care Administration

BILL INFORMATION	
BILL NUMBER:	SB 1712
BILL TITLE:	Hospital Licensure
BILL SPONSOR:	Senator Harrell
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1)
2)
3)
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	HB 21
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	HB 437
SPONSOR:	Sprowls
YEAR:	2016
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
Y ___ N _x_

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	March 5, 2019
LEAD AGENCY ANALYST:	Marisol Fitch
ADDITIONAL ANALYST(S):	Jack Plagge
LEGAL ANALYST:	
FISCAL ANALYST:	

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill amends Sections 395.003, 395.0191, 395.1055, 395.1065, 408.032, 408.034, 408.035, 408.036, 408.037, 408.039, 408.040, 408.043 and repeals Section 395.6025 to remove all Certificate of Need (CON) provisions for hospitals or hospital services. Under the provisions of the bill, new hospitals and specified hospital services would no longer need to apply and receive a CON prior to licensure. The bill does maintain a form of condition compliance for all hospitals licensed after the bill takes effect, which requires these hospitals to annually report charity care in an amount equal to or greater than the applicable district average among licensed providers of similar services. Hospitals that do not meet this amount of charity care or who do not report are subject to an administrative fine. Language was added to all other types of facilities subject to CON (nursing homes, hospices and intermediate care facilities for the developmentally disabled) increasing the fine (from a maximum of $1000 a day to a maximum of $2500 a day) for those facilities who do not meet the provision of charity care or Medicaid services which the issuance of the CON was predicated (typically self-imposed conditions by the applicant).

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently, new general acute care hospitals, replacement hospitals that are located greater than one mile from the existing location, freestanding specialty hospitals, long term care hospitals, as well as certain types of hospital services (transplant services, pediatric cardiovascular services, neonatal intensive care units, mental health services and comprehensive medical rehabilitation units) have to apply for a certificate of need prior to construction and licensure. Applicants must attest to meeting certain minimum standards such as staffing, equipment and financial requirements within the CON application.

Applications are submitted twice a year in batching cycles. Most hospital services are reviewed during the hospital batching cycle (beginning February and August of each year), with transplant and pediatric cardiovascular services being reviewed during the "Other Beds and Services Batch" (beginning April and October of each year). Some services such as neonatal intensive care, psychiatric services, substance abuse and comprehensive rehabilitation have established fixed need pool methodologies to calculate the need for beds in each service area for each type of service. These methodologies are established by rule. Regardless of numeric need, facilities can apply for services under "Not Normal Circumstances" during the applicable batching cycle.

In addition to the batched application process, a number of services (neonatal intensive care units, psychiatric and substance abuse services and additional comprehensive medical rehabilitation beds) can be added to existing hospitals through the exemption process. Exemptions can be submitted at any time and must be reviewed within thirty days. Additional acute care hospital beds, hospital-based skilled nursing beds and neonatal intensive care beds can be added to facilities through a notification process to the Agency for inventory purposes.

The Agency publishes the inventory and utilization for all pertinent CON services under its review purview twice a year in conjunction with publication of the fixed need pool for each applicable service.

Facilities can predicate conditions above minimum standards for approval of service/facility within a CON application. These conditions are monitored annually after licensure with condition compliance reports due no later than April 1st of the year following (for example condition compliance for calendar year 2018 is due no later than April 1, 2019). The majority of these conditions proposed by the applicant are for a minimum provision of charity care or Medicaid (either separately or combined) patient days. Currently, the Agency is precluded from fining/sanctioning nursing homes for their failure to meet their promised provision of care to Medicaid population due to language within 408.040 (1)(b).

Licensure standards for new hospitals do not include the requirement for applicants to submit proof of financial ability to operate as indicated in s. 408.820(8) and s. 408.810(8)-(9).

Licensure standards do not require hospitals to participate in the Medicaid program. Of the 308 currently licensed hospitals, 18 do not participate:

- 1 specialty children's psychiatric hospital;
- 1 inactive general hospital recently acquired out of bankruptcy by a children's hospital;
- 2 state-owned hospitals
- 2 long term care hospitals in bankruptcy currently undergoing a change of ownership; and
- 12 psychiatric hospitals.

The following chart shows the number of new hospitals licensed each year since 2014.

Year	Initial Applications Received	Initial Applications Approved	Total licensed Hospitals
2014	4	2	303
2015	2	4	306

2016	1	0	306
2017	3	3	309
2018	3	4	312
2019	0	0	308

2. EFFECT OF THE BILL:

The bill would remove the necessity of hospitals to receive a CON prior to construction and licensure. New hospitals, replacement hospitals, freestanding specialty hospitals, long term care hospitals and specific hospital services would no longer be reviewed for health care planning purposes.

Existing facilities that are currently licensed with CONs would no longer have to fulfill commitments made during the CON review process—the majority of which include serving Medicaid and indigent populations. The bill requires new hospitals to participate in the Medicaid program and meet one of the following:

- Provide charity care in the amount equal to or greater than the applicable district average among similar hospitals—the state average for all hospitals and all hospital types was 3.06 percent in 2017, for all acute care (including teaching) the average was 3.62 percent, for long-term care it was 1.32 percent, for psychiatric hospitals it was 4.68 percent and for CMR it was 2.52 percent.
- For hospitals in a medically underserved area (MUA), provide charity care equal to the MUA's Index of Medical Underservice score as calculated by the federal Health Resources and Services Administration within the Department of Health and Human Services. There are 71 areas identified as MUA. The index scores range from 43 to 62 percent.
- Donate an amount determined by the Agency to be equivalent to the district's average charity care or UMA score to the Agency's Grants and Donations Trust Fund.

New hospitals that fail to report or fail to comply will be assessed a fine in the amount of one percent of its net revenue for each 0.5 percent of the required amount of charity care. Due dates for the compliance reports must be established by Agency rules. Net revenue and charity care percentage (based upon patient revenue) are available from the Florida Hospital Uniform Reporting System (FHURS).

The bill eliminates three hospital publications that are produced twice a year by the Agency, and the requirement to calculate the pertinent fixed need pools semi-annually. Utilization information would be available through the FloridaHealthFinder.gov website.

Hospitals licensed prior to July 1, 2019 will continue to report charity care data through FHURS. FHURS data is submitted based on the hospitals cost report year end date. Data for the previous calendar year is not available until July or August of the subsequent year (CY 2018 data will be available in July or August of 2019). FHURS data is reported by licensee, therefore data is not necessarily available at the hospital level if multiple hospitals operate under a single license. The Index scores for MUAs are considerable and may be cost prohibitive to any applicant attempting to license a hospital in an MUA. The Agency will be required to determine an amount that new hospitals must donate to the Grants and Donations Trust Fund.

Hospitals will no longer be eligible for inactive status as described in s. 408.808(3), F.S. Although infrequently used, inactive status allows a hospital to cease services for a limited period of time in order to make specific changes. Typically, changes are to upgrade the facility's physical plant. During the inactive period, only those sections of the hospital being renovated must be built to current building codes. Without inactive status, the hospital would have to surrender its license upon cessation of services, then apply for a new license at which time, the entire facility would be required to meet current codes. Surrender of licensure will also cause the hospital to lose its Medicare certification. Application for Medicare certification can only occur after a new license is obtained. This would have a significant impact on hospitals regarding renovation costs and the length of time the hospital is unable to provide services. Hospitals may still apply for inactive status pursuant to s. 408.821(3), F.S. This requires the hospital to be located in a geographic area in which a state of emergency was declared by the Governor and suffered damage to its operation during the state of emergency.

The bill increases the maximum fine from $1,000 to $2,500 for those facilities which do not meet their promised provision of care to the indigent or Medicaid (conditions). Compliance with conditions is monitored annually.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y _X__ N ___

If yes, explain:	The statute does not provide new rule authority, although existing rule authority allows the Agency to write rules as required. The statute also increases the maximum fine amount for facilities which fail to meet their condition provision of Medicaid/charity care patient days. Hospital rules will need to be amended to remove references to CON and add charity care reporting requirements if an existing reporting system cannot be utilized. CON rules will need to be amended to remove references to hospital or hospital services.

Is the change consistent with the agency's core mission?	Y _X__ N ___
Rule(s) impacted (provide references to F.A.C., etc.):	59A-3 sections .066, .080, and .278 would be amended. 59C-1.021(3) (for condition compliance). 59C-1.002, 59C-1.004, 59C-1.005, 59C-1.008, 59C-1.0085, 59C-1.010, 59C-1.0105, 59C-1.012, 59C-1.013, 59C-1.018, 59C-1.019, 59C-1.020, 59C-1.021, 59C-1.030 would be amended. 59C-1.032, 59C-1.033, 59C-1.039, 59C-1.040, 59C-1.041, 59C-1.042, 59C-1.044 and 59C-2.100 would be repealed.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown at this time
Opponents and summary of position:	Unknown at this time

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y _X__ N ___

If yes, provide a description:	An annual compliance report is required of all hospitals that are licensed after July 1, 2019 regarding their provision of charity care.
Date Due:	The bill does not specify when these reports are due.
Bill Section Number(s):	Section 1

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC.? REQUIRED BY THIS BILL? Y ___ N _X__

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ___ N _X__

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y _X__ N ___

Revenues:	Revenues for CON application fees ($50,000 for a new hospital) will no longer exist. In CY 2018, hospital application fees were $703,120. Revenues will increase for new hospital licensure fees. Revenues will increase for those facilities that must contribute to the Grants and Donations Trust Fund. Fine revenues may increase due to increase fine amounts and new fine authority.
Expenditures:	Workload will increase in the hospital licensure unit due to growth in licensees and other associated duties in the bill. Workload may increase in legal with the increase in sanctioning ability on condition compliance. Workload would be expected to increase in the areas of physical plant architectural, engineering plan review and inspections, program costs will be supported by fees. CON staff will be shifted to assist with the new tasks in the bill and program growth.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A THE FISCAL IMPACT TO THE PRIVATE SECTOR? Y _X__ N ___

Revenues:	
Expenditures:	Hospitals will no longer be required to pay CON application fees. The proposed bill could also increase the hospital fines.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y _X__ N ___

If yes, explain impact.	1. Establishes a fine for hospitals licensed after July 1, 2019 for noncompliance with charity care criteria. 2. Increases the maximum condition compliance fine from $1000 a day to $2500 a day for facilities subject to CON who do not meet their self-promised provision of patient days to the Medicaid and charity care population.
Bill Section Number:	1. Section 1 2. Section 11

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y __X_ N ___

If yes, describe the anticipated impact to the agency including any fiscal impact.	If utilizing the FHURS data is insufficient due to the time delay, a new reporting system will need to be developed. Options range from a manual form hospitals will be required to fill out and submit to the Agency's licensure unit to a new online reporting system. Cost estimates range from $2,000-$3,000 for updated rules, forms and basic data storage to $150,000 for an online reporting system.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ___ N _X__

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL – GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

1712
Bill Number (if applicable)

455382
Amendment Barcode (if applicable)

Topic Certificate of Need

Name Monica Rodriguez

Job Title Government Affairs Director

Address 201 E Park Ave 5th Floor
Street

Phone 850-577-0444

Tallahassee FL 32301
City *State* *Zip*

Email monica@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing UF Health Shands Gainesville

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

1712
Bill Number (if applicable)

455382
Amendment Barcode (if applicable)

Topic Certificate of Need

Name Nathan Ray

Job Title Government Affairs Director

Address 1611 NW 12th Avenue
Street

Phone 850-766-0793

Miami FL 33136
City *State* *Zip*

Email Nathan.Ray@jhsmiami.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Jackson Memorial

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 1, 2019
Meeting Date

1712
Bill Number (if applicable)

455382
Amendment Barcode (if applicable)

Topic _____

Name Elaine Thompson

Job Title President and Chief Executive Officer

Address 1324 Lakeland Hills Boulevard
Street

Phone 863-687-1295

Lakeland FL 33805
City *State* *Zip*

Email elaine.thompson@mylrh.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Lakeland Regional Health

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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April 1, 2019
Meeting Date

1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hospital Licensure

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street
Street

Phone 850-322-9941

Tallahassee FL 32301
City *State* *Zip*

Email snuzzo@jamesmadison.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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04/01/19
Meeting Date

1712
Bill Number (if applicable)

Topic Certificates of Need

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Florida Office Managing Attorney - Institute for Justice

Address 2 S. Biscayne Blvd., Suite 3180
Street

Phone (305) 721-1600

Miami FL 33131
City *State* *Zip*

Email JPearson@IJ.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Institute for Justice

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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4/1/2019
Meeting Date

1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Certificate of Need

Name Monica Rodriguez

Job Title Government Affairs Director

Address 201 E Park Ave 5th Floor
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-577-0444

Email monica@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing UF Health Shands Gainesville

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

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4/1/2019
Meeting Date

1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Certificate of Need

Name Nathan Ray

Job Title Government Affairs Director

Address 1611 NW 12th Avenue
Street

Miami FL 33136
City *State* *Zip*

Phone 850-766-0793

Email Nathan.Ray@jhsmiami.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Jackson Memorial

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/1/19
Meeting Date

SB 1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hospital Licensure + Certificates of Need

Name Megan Flocken

Job Title Teacher

Address 609 W Emma St
Street
Tampa FL 33603
City *State* *Zip*

Phone 407.353.6329

Email meganflocken@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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APPEARANCE RECORD

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4/1/19
Meeting Date

SB 1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Elimination of Certificate of Need

Name Donald Persson

Job Title Algebra Teacher

Address 12980 Orange Grove Blvd.
Street

Phone (561) 719-6838

West Palm Beach FL 33411
City *State* *Zip*

Email donaldpersson@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 1, 2019
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Senate Health Policy Hospital Licensure

Amendment Barcode (if applicable)

Name Phil Cerulli

Job Title Deputy Sheriff

Address 183 Cordoba Circle
Street

Phone 561-351-1825

Royal Palm Bch FL 33411
City *State* *Zip*

Email Philip-Cerulli@Sheriff.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

SB 1712
Bill Number (if applicable)

Topic HOSPITAL LICENSURE

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT (SHERIFF'S OFFICE)

Address 23370 CAROLWOOD LANE (2303) Phone 954 632 6878
Street

BOCA RATON FL 33428 Email AKTDM@ATT.NET
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1712
Bill Number (if applicable)

Topic HOSPITAL LICENSURE

Amendment Barcode (if applicable)

Name Jhonny Rugama

Job Title GLAZIER.

Address 12505 NW 27 Ave Apt 302
Street

Phone 954-790-7558

MIAMI FL 33167
City *State* *Zip*

Email jrugama@dc78.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing My self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

402 Knott. 1:30 – 3:30

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 1, 2019
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Hospital Licensure - / Senate Health Pol Cmte
Amendment Barcode (if applicable)

Name Amy Datz

Job Title

Address
Street

Phone 850 322-7589

Tallahassee
City *State* *Zip*

Email AmalieDatz@Mac.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Self. Former & Future Hospital Patient

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1712
Bill Number (if applicable)

Topic Hospital Licensure

Amendment Barcode (if applicable)

Name Jeremiah Tattersall

Job Title ~~Student~~ Office worker

Address 230 NW 14th Ave
Street

Gainesville FL 32601
City *State* *Zip*

Phone 352-222-1991

Email Jeremiah.Tattersall@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/01/2019
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Hospital Lincensure

Amendment Barcode (if applicable)

Name Rony Carballo

Job Title Industrial Painter

Address 1600 NW 15 AVE ~~APT~~ #2
Street

Phone 941-391-2677

Boca Raton, FLA. 33486
City *State* *Zip*

Email rcarballo@dc78.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Hospital Licensure - Certificate of Need

Amendment Barcode (if applicable)

Name Emily McQuaig

Job Title Teacher

Address 2009 W. Oak Ave
Street

Phone 813-391-9852

Plant City, FL 33563
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Certificate of Need Elimination

Amendment Barcode (if applicable)

Name Kim Simpson

Job Title Retiree

Address 16545 McKinley Rd
Street

Phone 419-462-2949

Umatilla Fl 32784
City *State* *Zip*

Email crusherkim@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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APPEARANCE RECORD

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4/1/2019
Meeting Date

SB 1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hospital Licensure

Name Richard Haynes

Job Title MEO

Address 15491 S.W. 110th Ave
Street

Phone 352-362-8761

Dunnellon FL 34432
City *State* *Zip*

Email blackwolf195@hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Richard Haynes

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

1712
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hospital Licensure

Name Robert Chandler

Job Title MEO (Medium Equipment operator)

Address PO Box 830442 ~~Ocala FL~~
Street

Phone 352-433-6979

Ocala FL 34483
City *State* *Zip*

Email Robert.Chandler6916@Bmail

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☒ ~~In Support~~ ☒ Against
(The Chair will read this information into the record.)

Representing Robert Chandler

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1712
Bill Number (if applicable)

Topic HOSPITAL LICENSURE - CERTIFICATE OF NEED *Amendment Barcode (if applicable)*

Name BRITTNI WEGMANN

Job Title TEACHER

Address 305 W CHELSEA ST *Street* Phone 941-539-9036

TAMPA *City* FL *State* 33603 *Zip* Email BCWEGMANN@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

1712
Bill Number (if applicable)

Topic Hospital Licensure

Amendment Barcode (if applicable)

Name James Jones

Job Title Sheet metal worker

Address 2373 Glen Gardner Dr
Street

Phone (904) 312-0067

Jacksonville FL 32246
City *State* *Zip*

Email Steelersfan2676@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing James Jones (myself)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

1717
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Certificate of Need

Name Tom Schwarz

Job Title Political Coordinator

Address ~~[redacted]~~ 2415 Southlake Blvd
Street

Phone [redacted]

Southlake TX 75537
City *State* *Zip*

Email tschwarz@ufcw.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing United Food + Commercial Workers Union Local 1625

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 April 2019
Meeting Date

SB 1712
Bill Number (if applicable)

Topic Hospital Licensure

Amendment Barcode (if applicable)

Name Diego A. Echeverri

Job Title Director Coalitions - Concerned Veterans For America

Address 200 West College Ave
Street

TLH FL
City *State* *Zip*

Phone

Email dechevemi@cvfa.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Concerned Veterans For America

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1712
Bill Number (if applicable)

Topic Hospital Licensure

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W. College Ave. (*Street*)

Phone

Tallahassee (*City*) FL (*State*) 32301 (*Zip*)

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date	Bill Number (if applicable)
4/1/19	SB 1712

Amendment Barcode (if applicable)

Topic Certificate of Need

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe (Street) Phone 850-224-6926

Tallahassee (City) FL (State) 32301 (Zip) Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.1.19
Meeting Date

1712
Bill Number (if applicable)

Topic Certificate of Need

Amendment Barcode (if applicable)

Name Aaron Carmella

Job Title

Address 625 Grove St N
Street

Phone 727.204.8622

St Petersburg FL 33701
City *State* *Zip*

Email acarm891@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1712
Bill Number (if applicable)

Topic Hospital Licensure

Hospital Licensure
Amendment Barcode (if applicable)

Name Belinda Davis

Job Title Bus operator

Address 315 N.W. 3rd Ave
Street

Phone 561 702-7092

Delray Beach FL 33444
City *State* *Zip*

Email JohnnyFla315@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

172
Bill Number (if applicable)

Topic Hospital Licensure

Hospital License
Amendment Barcode (if applicable)

Name Iran Acevedo

Job Title Bus Operator

Address 3892 lake tahoe cir
Street

Phone (561) 424-1393

WPB FL 33409
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

780192

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 225 - 236
and insert:
~~(c) An increase in the number of beds for comprehensive rehabilitation.~~
(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), the following projects are subject to expedited review:
(a) Transfer of a certificate of need~~, except that when an~~

780192

~~existing hospital is acquired by a purchaser, all certificates of need issued to the hospital which are not yet operational shall be acquired by the purchaser without need for a transfer~~.

The agency shall develop rules to implement the expedited review process, including time schedule, application content that may be reduced from the full requirements of s. 408.037(1), and application processing.

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

~~(i) For the addition of hospital beds licensed under chapter 395 for comprehensive rehabilitation in a number that may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater.~~

~~1. In addition to any other documentation otherwise required by the agency, a request for exemption submitted under this paragraph must:~~

~~a. Certify that the prior 12-month average occupancy rate for the licensed beds being expanded meets or exceeds 80 percent.~~

~~b. Certify that the beds have been licensed and operational for at least 12 months.~~

~~2. The timeframes and monitoring process specified in s. 408.040(2)(a)-(c) apply to any exemption issued under this paragraph.~~

~~3. The agency shall count beds authorized under this paragraph as approved beds in the published inventory of hospital beds until the beds are licensed.~~

780192

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 212 - 213

and insert:

Section 8. Paragraphs (c) and (e) of subsection (1) paragraph (a) of subsection (2), and paragraph (i) of subsection (3) of section 408.036, Florida Statutes, are

520418

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 440 - 448

and insert:

Section 13. Effective upon this act becoming a law:

(1) The Agency for Health Care Administration may not initiate a review cycle or accept letters of intent or applications for the issuance of a certificate of need for the new construction or establishment of a freestanding hospital.

(2) The agency shall issue a certificate of need to any

520418

pending applicant for a certificate of need for the new construction or establishment of a freestanding general hospital:

(a) With 80 or more beds;

(b) With intensive care, progressive care, and medical-surgical beds;

(c) With an onsite emergency department that will be operational 24 hours per day, 7 days per week; and

(d) Whose application for a certificate of need has been approved by the agency, regardless of the litigation status of the application.

(3) For any pending applicant for a certificate of need for the new construction or establishment of a freestanding hospital that does not meet the criteria in subsection (2), sections 395.0191, 395.1055, 395.6025, 408.032, 408.034, 408.035, 408.036, 408.037, 408.039, and 408.043, Florida Statutes (2018), and any rules adopted thereunder remain in effect until such time as the agency has either issued the applicant a certificate of need or has denied the application and all appeals of the denial have been exhausted.

Section 14. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2019.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 43 - 44

and insert:

520418

hospitals; prohibiting the agency from initiating a review cycle or from accepting letters of intent or applications for the issuance of certificate of need for the new construction or the establishment of a freestanding hospital; requiring the agency to issue such a certificate of need to certain applicants, regardless of litigation status; providing applicability; providing effective dates.

820832

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2019	.	
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	.	

The Committee on Health Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 59 - 94

and insert:

(8) Applicable only to a hospital that is, or will be, newly licensed on or after July 1, 2019; that has not been issued a certificate of need by the agency; and that is not replacing a currently operating hospital located within 1 mile of the newly licensed hospital:

(a) When proposing a new hospital project subject to this

820832

subsection and before filing for approval of plans and specifications under s. 395.0163, each prospective applicant for licensure must submit a notice to the agency of its intent to establish a newly licensed hospital which includes the location for the proposed hospital, the number and types of beds to be licensed, and the services that the hospital will offer.

(b) The agency may not license a new general hospital subject to this subsection unless:

1. The hospital has at least 80 beds and has intensive care, progressive care, and medical-surgical beds. This requirement does not apply if the hospital is a rural hospital, as defined in s. 395.602, or is located in a medically underserved area; and

2. The hospital has an onsite emergency department that will operate 24 hours per day, 7 days per week.

(c) Each such hospital must participate in the state Medicaid program and the Medicare program.

(d) Except as provided in paragraph (e), each such hospital must provide charity care in an amount equal to or greater than the district average for hospitals in the applicable district. The agency shall adopt by rule a method for calculating the district average for charity care for each district. For purposes of this subsection, the term "charity care" means uncompensated care delivered to uninsured patients having an income at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures, and "district" has the same meaning as in s. 408.032(5). The valuation of charity care must be based on Medicaid reimbursement rates.

820832

(e) If such a hospital is located in a medically underserved area, the amount of charity care required to be provided by the hospital under paragraph (d) is equivalent in percentage to the medically underserved area's Index of Medical Underservice score as calculated by the federal Health Resources and Services Administration within the Department of Health and Human Services.

(f) In lieu of providing charity care under paragraph (d) or paragraph (e), each such hospital may donate an amount determined by the agency to be functionally equivalent to the amounts required under those paragraphs to the agency's Grants and Donations Trust Fund.

(g) Each such hospital shall annually report to the agency its compliance with paragraphs (c)-(f). Failure to report compliance constitutes noncompliance. The agency shall assess an administrative fine on a hospital that fails to comply with this subsection in the amount of 1 percent of its net revenue for each 0.5 percent of the required amount of charity care not provided pursuant to paragraph (d) or paragraph (e) or the required amount as determined by the agency pursuant to paragraph (f).

(h) The agency shall adopt rules to implement this subsection.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 4 - 15

and insert:

providing applicability; requiring certain hospitals

820832

licensed after a specified date to submit a notice to the Agency for Health Care Administration which contains specified information before filing for approval of plans and specifications to establish a newly licensed hospital; prohibiting the agency from licensing a new general hospital unless certain criteria are met; requiring certain hospitals to participate in the Medicaid program as a provider of medical assistance and to provide a certain amount of charity care; defining the terms "charity care" and "district"; providing a separate calculation of required charity care for such hospitals located in a medically underserved area; authorizing such hospitals to provide a certain donation the agency's Grants and Donations Trust Fund in lieu of providing the required charity care; requiring such hospitals to annually report compliance to the agency; requiring the agency to impose a specified administrative fine for noncompliance; requiring the agency to adopt rules;

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 Committee on Health Policy

BILL:	CS/SB 630
INTRODUCER:	Health Policy Committee and Senators Perry and Baxley
SUBJECT:	Nonopioid Directives
DATE:	April 1, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 630 amends s. 456.44, F.S., to require the Department of Health (DOH) to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain. The bill also requires a health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation, inform the patient of available nonopioid alternatives for the treatment of pain, discuss the advantages and disadvantages of the use of nonopioid alternatives, provide the patient with the pamphlet created by the DOH; and document any alternatives considered in the patient's record.

The bill provides an effective date of July 1, 209.

The bill provides an effective date of July 1, 2019.

II. Present Situation:

Opioid Abuse

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;

- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;[1]
- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent;
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.[2]

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at $78.5 billion per year.[3]

History of the Opioid Crisis in Florida

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.[4] Between the early 2000s and the early 2010s, Florida was infamous as the "pill mill capital" of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.[5]

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.[6] In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven

[1] The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.
[2] FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2017 Annual Report* (Nov. 2018) http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx (last visited on Mar. 20, 2019).
[3] National Institute on Drug Abuse, *Opioid Overdose Crisis* (Jan. 2018) https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis (last visited on March 20, 2019).
[4] Id.
[5] Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, The New York Times (Aug. 31, 2011), *available at* http://www.nytimes.com/2011/09/01/us/01drugs.html (last visited on Mar. 20, 2018).
[6] See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).[7]

Early in 2017, the CDC declared the opioid crisis an epidemic and shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.

House Bill 21

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to 3 days or up to 7 days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

III. Effect of Proposed Changes:

CS/SB 630 amends s. 456.44, F.S., to establish legislative findings that every competent adult has the right of self-determination regarding healthcare decisions, including the right to refuse treatment with a Schedule II opioid controlled substance.

The bill requires the DOH to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain. The pamphlet must include:

- Information on available nonopioid alternatives for the treatment of pain, including nonopioid medicinal drugs or drug products and nonpharmacological therapies; and
- The advantages and disadvantages of the use of nonopioid alternatives.

Additionally, the bill requires a health care practitioner, prior to providing anesthesia or ordering, administering, dispensing or prescribing a Schedule II opioid drug to a patient in a nonemergency situation, to:

- Inform the patient of available nonopioid alternatives for the treatment of pain, which may include nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner;
- Discuss the advantages and disadvantages of the use of nonopioid alternatives, including whether the patient is at a high risk of, or has a history of, controlled substance abuse or misuse and the patient's personal preferences;

[7] Attorney General's Opioid Working Group, *Florida's Opioid Epidemic: Recommendations and Best Practices* (March 1, 2019), *available at* https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf, (last visited on March 14, 2019).

- Provide the patient with the educational pamphlet described in paragraph (b); and
- Document the nonopioid alternatives considered in the patient's record.

The bill provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 630 may have an indeterminate negative fiscal impact on the DOH related to the development of the educational pamphlet but such impact would likely be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.44 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on April 1, 2019.
The CS eliminates the requirement that the DOH adopt in rule a voluntary nonopioid directive form and all related requirements placed on a health care practitioner. The CS instead requires the DOH to create and publish an educational pamphlet on its website regarding nonopioid alternatives for the treatment of pain. Additionally, the bill requires a health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation, inform the patient of available nonopioid alternatives for the treatment of pain, discuss the advantages and disadvantages of the use of nonopioid alternatives, provide the patient with the pamphlet created by the DOH, and document any alternatives considered in the patient's record.

B. Amendments:

None.

422752

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
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The Committee on Health Policy (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (7) is added to section 456.44, Florida Statutes, to read:

456.44 Controlled substance prescribing.—

(7) NONOPIOID ALTERNATIVES.—

(a) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions

422752

pertaining to his or her own health, including the right to refuse an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

(b) The department shall develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain. The pamphlet must, at a minimum, include:

1. Information on available nonopioid alternatives for the treatment of pain, including nonopioid medicinal drugs or drug products and nonpharmacological therapies; and

2. The advantages and disadvantages of the use of nonopioid alternatives.

(c) Except in the provision of emergency services and care, as defined in s. 395.002, before providing medical treatment or anesthesia or prescribing an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 for the treatment of pain, a health care practitioner shall:

1. Inform the patient of available nonopioid alternatives for the treatment of pain, which may include nonopioid medicinal drugs or drug products, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner;

2. Discuss the advantages and disadvantages of the use of nonopioid alternatives, including whether the patient is at a high risk of, or has a history of, controlled substance abuse or misuse and the patient’s personal preferences;

3. Provide the patient with the educational pamphlet described in paragraph (b); and

422752

4. Document the nonopioid alternatives considered in the patient's record.

Section 2. This act shall take effect July 1, 2019.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to nonopioid alternatives; amending s. 456.44, F.S.; providing a legislative finding; requiring the Department of Health to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain; requiring that the pamphlet include specified information, including the advantages and disadvantages of the use of such alternatives; providing requirements for health care practitioners; providing an exception; providing an effective date.

461754

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
	.	
	.	
	.	

The Committee on Health Policy (Perry) recommended the following:

Senate Amendment to Amendment (422752)

Delete lines 24 - 30
and insert:
as defined in s. 395.002, before providing anesthesia or ordering, administering, dispensing, or prescribing an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 for the treatment of pain, a health care practitioner shall:
1. Inform the patient of available nonopioid alternatives

461754

for the treatment of pain, which may include nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments,

By Senator Perry

8-00755-19 2019630__

A bill to be entitled

An act relating to nonopioid directives; amending s. 456.44, F.S.; providing legislative findings; requiring the Department of Health to establish a voluntary nonopioid directive form; providing requirements for the form; requiring the form to be posted on the department website; requiring certain registrants to document receipt of the form in a patient's medical record; authorizing a patient to appoint a duly authorized guardian or health care proxy who may revoke a voluntary nonopioid directive; requiring certain registrants to provide a copy of the form to certain patients; requiring a pharmacist to presume that an electronically transmitted prescription for an opioid drug is valid; authorizing a pharmacist to dispense an opioid drug in contradiction of a voluntary nonopioid directive; providing that certain persons are not liable for damages or subject to criminal prosecution under certain circumstances; providing that certain persons may be subject to disciplinary action under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 456.44, Florida Statutes, to read:

456.44 Controlled substance prescribing.—

(7) VOLUNTARY NONOPIOID DIRECTIVE FORM.—

Florida Senate - 2019 **SB 630**

8-00755-19 2019630__

(a) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to refuse an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

(b) The department shall establish a voluntary nonopioid directive form. The form shall inform registrants that a patient may not be prescribed, ordered, or administered an opioid drug. The form shall be posted on the department website. A patient may execute and file the form with a registrant. A registrant shall document receipt of the form in a patient's medical record.

(c) A patient may appoint and list on the voluntary nonopioid directive form a duly authorized guardian or health care proxy who may revoke the directive by written or verbal means at any time and for any reason. A person acting in good faith as a duly authorized guardian or health care proxy is not liable for damages in a civil action or subject to criminal prosecution for revoking a voluntary nonopioid directive.

(d) A registrant who prescribes, orders, or administers an opioid drug for the treatment of acute pain or chronic nonmalignant pain must provide a copy of the voluntary nonopioid directive form to any patient to whom an opioid drug may be prescribed, ordered, or administered in the course of treatment before prescribing, ordering, or administering the opioid drug.

(e) For purposes of this subsection, a pharmacist shall presume that an electronically transmitted prescription for an opioid drug is valid and is authorized to dispense an opioid drug in contradiction of a voluntary nonopioid directive. A

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

pharmacist who exercises reasonable care is not liable for damages in a civil action, subject to criminal prosecution, or deemed to have violated the standard of care for dispensing an opioid drug in contradiction of a voluntary nonopioid directive.

(f) A registrant who exercises reasonable care is not liable for damages in a civil action, subject to criminal prosecution, or deemed to have violated the standard of care for refusing to prescribe, order, or administer an opioid drug pursuant to a voluntary nonopioid directive. However, a registrant who fails to comply with a patient's voluntary nonopioid directive or the revocation thereof may be subject to disciplinary action pursuant to s. 456.072.

(g) A registrant employed by a hospital emergency department, acting either as the patient's physician or as the emergency medical services director, who exercises reasonable care is not liable for damages in a civil action, subject to criminal prosecution, or deemed to have violated the standard of care for prescribing, ordering, or administering an opioid drug to a person who has a voluntary nonopioid directive when the registrant has reasonable cause to believe that an opioid drug is necessary and the registrant had no knowledge of the patient's voluntary nonopioid directive at the time of prescribing, ordering, or administering the opioid drug.

Section 2. This act shall take effect July 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 18, 2019

I respectfully request that **Senate Bill #630**, relating to Nonopioid Directives, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/14
Meeting Date

SB 630
Bill Number (if applicable)

461754
Amendment Barcode (if applicable)

Topic Noncpic & Directives

Name Corinne Mixon

Job Title

Address
Street

Phone 850 766 5795

Email -

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida ~~Oriental~~ Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

630
Bill Number (if applicable)

422752
Amendment Barcode (if applicable)

Topic Non-opioid Directives

Name Anita Berry

Job Title Lobbyist

Address 112 E. Jefferson Street
Street

Tallahassee FL
City *State* *Zip*

Phone 3015240172

Email anita@corcoranfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Occupational Therapy Association & Florida State Massage Therapy Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-1-2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 630

Meeting Date *Bill Number (if applicable)*

Topic NON-OPIOID DIRECTIVES *Amendment Barcode (if applicable)*

Name JACK HEBERT

Job Title FLA CHIROPRACTIC ASSN - GOVT AFFAIRS DIR

Address 2961 Executive Dr Phone 727-560-3323
Street

Clearwater FL 33762 Email jack@flachiro.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chiropractic Assn

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

630
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title _____

Address 315 S. Calhoun St., Ste. 830 (*Street*)

Tallahassee (*City*) FL (*State*) 32301 (*Zip*)

Phone 222-5702

Email clyon@llw-law.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Nurse Anesthetists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 1 2019
Meeting Date

630
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Janet Mabry

Job Title Lobbyist

Address 2866 Bay Heather Circle
Street

Phone 850-501-2502

Gulf Breeze FL 32563
City *State* *Zip*

Email MabyJR@cs.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Massage Therapy Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

HB 630
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Saving Families

Address 9166 Sunrise Dr. Phone _____
Street

Largo Fl. 33773 Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	CS/SB 884
INTRODUCER:	Health Policy Committee and Senator Baxley
SUBJECT:	Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors
DATE:	April 2, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 884 amends ch. 491, F.S.to:

- Define the terms "certified master social worker" and the "practice of generalist social work";
- Require the Department of Health (DOH) to:
  - Issue a certificate to a certified master social worker meeting certain requirements,
  - Make rules, and
  - Take disciplinary action against certified master social workers under certain circumstances;
- Revise the application and examination requirements for certification as a master social worker;
- Require the use of applicable professional titles by licensees and certificate holders, provisional licensees, and interns, on social media and other specified materials; and
- Delete obsolete language.

The bill has an insignificant negative impact on state revenues and expenditures, which can be absorbed within existing resources of the DOH.

The bill takes effect July 1, 2019.

II. Present Situation:

Clinical Social Workers, Marriage and Family Therapists, Mental Health Counselors and Certified Master Social Workers

Clinical Social Worker

Section 491.005(1), F.S., directs the DOH to issue a license to a clinical social worker applicant whom the board certifies:

- Has submitted an application and paid the appropriate fee;
- Has received a doctoral degree in social work from an accredited graduate school of social which:
  - Was accredited by the Council on Social Work Education;
  - Was accredited by the Canadian Association of Schools of Social Work; or
  - Was from an equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education.
- Has complete coursework in six content areas;
- Has complete a supervised field placement;
- Has complete 24 semester hours or 32 quarter hours in theory of human behavior and practice methods in clinically oriented services;
- Has completed at least 2 years of clinical social work experience, after completion of a graduate degree. An individual who intends to practice in Florida to satisfy clinical experience requirements must register as an intern before commencing practice.
- Has passed a theory and practice examination; and
- Has demonstrated knowledge of the Florida laws and rules governing the practice of clinical social work.

Marriage & Family Therapist

Section 491.005(3)(b), F.S., relating to licensure by examination for marriage and family therapists requires:

- A master's degree with major emphasis in marriage and family therapy or a closely related field;
- Specific coursework in 12 content areas; and
- A practicum, internship, or field experience of 180 hours providing direct client contact hours of marriage and family services under the supervision of a licensed marriage and family therapist with at least 5 years of experience.

According to the DOH, the specific course work requirement must be an exact match. Lack of an exact match may significantly delay an applicant's licensure.[1]

Section 491.005(3)(c), F.S., is inconsistent as it requires both 2 years, and 3 years, of clinical experience for a marriage and family therapy licensure applicant. According to the DOH, the 3 years of clinical experience was a technical error and is inconsistent with other statutory

[1] *Supra* note 1.

requirements. Only 2 years of clinical experience for a marriage and family therapy applicant is required.[2]

Mental Health Counselor

Section 491.005(4), F.S., relating to licensure by examination for mental health counselors names the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors as the required examination for a mental health counselor. The correct name of the examination required for licensure as a mental health counselor is the National Clinical Mental Health Counseling Examination. The examination was developed by, and is administered by, the National Board for Certified Counselors.

Section 491.005(4), F.S., contains a 300-hour difference between the hours of practicum, internship, or field experience required for graduates from a CACREP and non-CACREP graduates. A mental health counselor applicant who graduated from a program not accredited by CACREP is required to complete 1,000 hours of practicum, internship, or field experience. An MHC applicant who graduated from a CACREP accredited program is required to meet the CACREP standards to complete 700 hours of practicum or internship.[3]

Certified Master Social Worker

Section 491.0145, F.S., permits the DOH to certify an applicant for a designation as a "certified master social worker" upon the following conditions:

- The applicant submits an application and nonrefundable fee to the DOH at least 60 days before the examination to qualify to take the exam;
- Submits an official transcript that the applicant has received:
  - A doctoral degree in social work, or
  - A master's degree in social work with an emphasis on clinical practice or administration in seven content areas;
- Submit proof of at least 3 years' experience in clinical services or administrative experience; and
- Has passed the national Advanced Generalist level examination developed by the Association of Social Work Boards required by the DOH.[4]

Any person who holds a master's degree in social work from institutions outside the United States may apply to the DOH for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. The applicant must submit to the DOH a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

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[2] *Id.*
[3] Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf (last visited Feb. 1, 2019).
[4] The Department of Health, Board of Clinical Social work, Marriage & Family Therapy and Mental health Counseling, *Certified Master Social Worker*, available at https://floridasmentalhealthprofessions.gov/licensing/certified-master-social-worker/ (last visited Mar.20, 2019).

A certified master social worker is not licensed or authorized to provide clinical social work services. It is an administrative license.[5]

Licensure by Endorsement

Section 491.006, F.S., relating to licensure or certification by endorsement, requires an applicant to demonstrate to the board that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active valid license to practice, and has actively practiced the profession in another state for 3 of the last 5 years immediately preceding licensure;
- Meets the education requirements of ch. 491, F.S., in the profession for which the applicant seeks licensure;
- Has passed a substantially equivalent licensure examination in another state, or has passed the licensure examination in this state in the profession for which the applicant seeks licensure;
- Holds a license in good standing; and
- Is not under investigation for, or been found to have committed, an act that would constitute a violation of ch. 491, F.S.

To satisfy the education requirements for endorsement as a clinical social worker, marriage and family therapist or mental health councilor an applicant must demonstrate specific particular course work, rather than a degree from an accredited school or college, or proof of licensure in another state, is required of an applicant for licensure by endorsement.[6]

The educational requirements for certification by endorsement for a certified master social worker are proof to the DOH of:

- A doctoral degree in social work[7]; or
- A master's degree[8] with a major emphasis in clinical practice or administration, including, but not limited to:
  - Agency administration and supervision;
  - Program planning and evaluation;
  - Staff development;
  - Research;
  - Community organization;
  - Community services;
  - Social planning, or
  - Human service advocacy; and

[5] Department of Health, *Certified Master Social Worker*, available at https://floridasmentalhealthprofessions.gov/licensing/certified-master-social-worker/ (last visited Apr. 1, 2019).
[6] Section 491.005, F.S.
[7] Section 491.0145, F.S. Doctoral degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education.
[8] Section 491.0145, F.S. Master's degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work or by one that meets comparable standards.

- Three years' of supervised experience.[9]

Display of Licenses and Use of Professional Titles

Section 491.0149, F.S., requires a clinical social worker, marriage and family therapist, or mental health counselor, and certified as a master social worker to display their licenses at each practice location. On all promotional materials, cards, brochures, stationery, advertisements, and signs, the above licensees' must display their name and respective professions titles as follows:

- "Licensed clinical social worker" or "LCSW";
- "Licensed marriage and family therapist" or "LMFT"; and
- "Licensed mental health counselor" or "LMHC."

An intern and provisional licensee in clinical social work, marriage and family therapy, or mental health counseling must also display his or her valid registration or provisional license at each location where the intern is completing experience requirements or a provisional licensee is practicing; and both must also include "intern" or "provisional licensee" on all promotional materials, cards, brochures, stationery, advertisements, and signs, naming the intern or provisional licensee.

License Renewal

Section 491.007, F.S., provides for the renewal of a license, registration, or certificate for clinical social workers, marriage and family therapists, mental health counselors, and certified master social workers and gives the DOH and the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling rulemaking authority to prescribe the requirements for renewal of the license, registration or certificate of the above listed professions. Sections 491.007 and 491.0045(6), F.S., both address the renewal of an intern registration.

License Discipline

Section 491.009, F.S., sets out what acts by a clinical social worker, marriage and family therapist, mental health counselor, or certified master social worker constitute grounds for discipline, or denial of licensure. However, s. 491.009(2), F.S., incorrectly references psychologists, who are not licensed under ch. 491, F.S., and does not include the certified master social worker profession regulated by the DOH.

III. Effect of Proposed Changes:

CS/SB 884 amends s. 491.003, F.S., to define the terms "certified master social worker" and the "practice of generalist social work" for ch, 491, F.S. A "certified master social worker" is a person licensed under ch. 491, F.S., to practice generalist social work. "General social work" is the application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities. The term includes the application of

[9] *See* Fla. Admin. Code R. 64B25-28.013, (2019) which defines a year of experience and s. 491.0145 , F.S., which includes 3 years of clinical services or administrative activities at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, or is licensed as a clinical social worker under ch. 491, F.S. A doctoral internship may be applied toward the supervision requirement.

specialized knowledge and advanced practice skills in non-diagnostic assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.

The bill amends s. 491.0145, F.S., to no longer require an applicant for a certificate as a master social worker, with a master's degree in social work, to show proof that the masters' degree had an emphasis in clinical practice or administration, and deletes the requirement that the application be received by DOH at least 60 days before the examination to qualify to take the exam. The bill further reduces the number of years of supervised experience for an applicant from three to 2 years. The bill also deletes the provision relating to a non-refundable fee set by the DOH for taking the examination.

The bill amends s. 491.0149, F.S., adding to the list of promotional materials, "social media," that all licensees and certificate holders, interns, and provisional licensees, must include their professional titles. The bill also requires a generalist social worker to include the words "certified master social worker" or the letters "CMSW" on all his or her promotional materials.

The bill gives the DOH rule making authority and removes obsolete language in s. 491.004, F.S.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 491.003, 491.004, 491.0145, and 491.0149.

IX. Additional Information:

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

CS by Health Policy on April 1, 2019:
The CS:

- Defines "certified master social worker" and the "practice of generalist social work";
- Requires the DOH to issue a certificate to a certified master social workers meeting certain requirements, make rules, and take disciplinary action against them;
- Revises the application and examination requirements for certification as a master social worker;
- Requires the use of professional titles by licensees and certificate holders, provisional licensees, and intern registrants on social media and other specified materials; and
- Deletes obsolete language and make technical and conforming changes.

B. Amendments:

None.

536128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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	.	
	.	

The Committee on Health Policy (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (2) through (7) of section 491.003, Florida Statutes, are redesignated as subsections (3) through (8), respectively, present subsections (8) through (17) are redesignated as subsections (10) through (19), respectively, and new subsections (2) and (9) are added to that section, to read:

536128

491.003 Definitions.—As used in this chapter:

(2) "Certified master social worker" means a person certified by the department under this chapter to practice generalist social work.

(9) The term "practice of generalist social work" means the application of social work theory, knowledge, and methods and ethics to and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities. The term includes the application of specialized knowledge and advanced practice skills to nondiagnostic assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs, and activities.

Section 2. Present subsections (4) through (7) of section 491.004, Florida Statutes, are redesignated as subsections (3) through (6), respectively, and present subsection (3) is amended, to read:

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.—

~~(3) No later than January 1, 1988, the Governor shall appoint nine members of the board as follows:~~

~~(a) Three members for terms of 2 years each.~~

~~(b) Three members for terms of 3 years each.~~

~~(c) Three members for terms of 4 years each.~~

Section 3. Section 491.0145, Florida Statutes, is amended to read:

536128

491.0145 Certified master social worker.—The department shall ~~may~~ certify an applicant for a designation as a certified master social worker who, upon applying to the department and remitting the appropriate fee, demonstrates to the department that he or she has met all of the following conditions:

(1) The applicant has submitted ~~The applicant completes~~ an application and has paid ~~to be provided by the department and pays~~ a nonrefundable fee not to exceed $250 to be established by rule of the department. ~~The completed application must be received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.~~

(2) The applicant submits proof satisfactory to the department that the applicant has received a doctoral degree in social work, or a master's degree in social work with a major emphasis or specialty in ~~clinical practice or administration, including, but not limited to, agency~~ administration and supervision, program planning and evaluation, staff development, research, community organization, community services, social planning, or ~~and~~ human service advocacy. Doctoral degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education. Master's degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools for ~~of~~ Social Work Education or by one that meets comparable standards.

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(3) The applicant has had at least 2 ~~3~~ years' experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in subsection (2), 2 years of which must be at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral internship may be applied toward the supervision requirement.

(4) Any person who holds a master's degree in social work from institutions outside the United States may apply to the department for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

(5) The applicant has passed an examination required by the department for this purpose. ~~The nonrefundable fee for such examination may not exceed $250 as set by department rule.~~

(6) ~~Nothing in~~ This chapter does not ~~shall be construed to~~ authorize a certified master social worker to provide clinical social work services.

(7) The department may adopt rules to implement this section.

Section 4. Section 491.0149, Florida Statutes, is amended to read:

491.0149 Display of license; use of professional title on promotional materials.—

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(1)(a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license or certificate issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b)1. A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

2. A licensed marriage and family therapist shall include the words "licensed marriage and family therapist" or the letters "LMFT" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

3. A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

(c) A generalist social worker shall include the words "certified master social worker" or the letters "CMSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

(2)(a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy

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thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the registered intern.

(3)(a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor licensee" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the provisional licensee.

Section 5. This act shall take effect July 1, 2019.

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156
157 ================ T I T L E A M E N D M E N T ================
158 And the title is amended as follows:
159 Delete everything before the enacting clause
160 and insert:
161 A bill to be entitled
162 An act relating to clinical social workers, marriage
163 and family therapists, and mental health counselors;
164 amending s. 491.003, F.S.; defining the terms
165 "certified master social worker" and "practice of
166 generalist social work"; amending s. 491.004, F.S.;
167 deleting an obsolete provision; amending s. 491.0145,
168 F.S.; requiring the Department of Health to certify an
169 applicant for designation as a certified master social
170 worker under certain circumstances; providing that
171 applicants for designation as a certified master
172 social worker submit their application to the
173 department; deleting a provision relating to the
174 nonrefundable fee for examination set by department
175 rule; authorizing the department to adopt rules;
176 amending s. 491.0149, F.S.; requiring the use of
177 applicable professional titles by licensees,
178 certificate holders, provisional licensees, and
179 registrants on social media and other specified
180 materials; providing an effective date.

By Senator Baxley

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A bill to be entitled

An act relating to clinical social workers, marriage and family therapists, and mental health counselors; amending s. 491.003, F.S.; defining the terms "certified master social worker" and "practice of generalist social work"; amending s. 491.004, F.S.; deleting an obsolete provision; amending s. 491.0045, F.S.; revising intern registration requirements; providing an exception; amending s. 491.005, F.S.; revising the licensure requirements for clinical social workers, marriage and family therapists, and mental health counselors; amending s. 491.0057, F.S.; requiring that an applicant for dual licensure as a marriage and family therapist pass an examination designated by the board; amending s. 491.006, F.S.; revising requirements for licensure or certification by endorsement for certain professions; repealing s. 491.0065, F.S., relating to requirements for instruction on HIV and AIDS; amending s. 491.007, F.S.; deleting a provision providing certified master social workers an exemption from continuing education requirements; deleting a provision requiring the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling to establish a procedure for the biennial renewal of intern registrations; amending s. 491.009, F.S.; revising who may enter an order denying licensure or imposing penalties against an applicant for licensure under certain circumstances; amending s. 491.012, F.S.; providing

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that using the title "certified master social worker" without a valid, active license is unlawful; deleting an obsolete provision; amending s. 491.0145, F.S.; requiring the Department of Health to license an applicant for designation as a certified master social worker under certain circumstances; providing that applicants for designation as a certified master social worker submit their application to the board; deleting a provision relating to the nonrefundable fee for examination set by department rule; authorizing the board to adopt rules; amending s. 491.0149, F.S.; requiring the use of applicable professional titles by licensees, provisional licensees, and registrants on social media and other specified materials; repealing s. 491.015, F.S., relating to duties of the department as to certified master social workers; amending s. 414.065, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (2) through (7) of section 491.003, Florida Statutes, are renumbered as subsections (3) through (8), respectively, present subsections (8) through (17) are renumbered as subsections (10) through (19), respectively, and new subsections (2) and (9) are added to that section, to read:

491.003 Definitions.—As used in this chapter:

(2) "Certified master social worker" means a person

licensed under this chapter to practice generalist social work.

(9) "Practice of generalist social work" means the application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities. The term includes the application of specialized knowledge and advanced practice skills in nondiagnostic assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.

Section 2. Present subsections (4) through (7) of section 491.004, Florida Statutes, are renumbered as subsections (3) through (6), respectively, and present subsection (3) is amended to read:

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.—

~~(3) No later than January 1, 1988, the Governor shall appoint nine members of the board as follows:~~

~~(a) Three members for terms of 2 years each.~~

~~(b) Three members for terms of 3 years each.~~

~~(c) Three members for terms of 4 years each.~~

Section 3. Subsections (2) and (6) of section 491.0045, Florida Statutes, are amended to read:

491.0045 Intern registration; requirements.—

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental

health counselor intern each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(d) Completed an 8-hour Florida laws and rules course approved by the board.

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. The board may make a one-time exception from the requirements of this section in emergency or hardship cases, as defined by board rule, if ~~A subsequent intern registration may not be issued unless~~ the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d).

Section 4. Subsection (1), paragraph (b) of subsection (2), and subsections (3) and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of

documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost ~~to the department~~ for purchase of the examination from the ~~American~~ Association of ~~State~~ Social Work ~~Worker's~~ Boards or its successor ~~a similar national organization~~, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)1. Has received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by the United States Department of Education or has received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association of Schools of Social Work; or

c. Has been determined to have been a program equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's

graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in courses approved by rule of the board ~~theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1~~.

~~3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.~~

(c) Has had at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must

take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination designated ~~provided~~ by the board ~~department for this purpose~~.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(2) CLINICAL SOCIAL WORK.—

(b) An applicant from a master's or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education ~~of Schools of Social Work~~, or to a clinical social work graduate program with comparable standards, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost ~~to the department~~ for the purchase of the examination from the Association of Marital and

Family Therapy Regulatory Boards ~~Board~~, or its successor ~~similar national~~ organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)~~1.~~ Has a minimum of a master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs, or a closely related field, and graduate courses approved by the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling ~~has completed all of the following requirements:~~

~~a. Thirty-six semester hours or 48 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level course credits in each of the following nine areas: dynamics of marriage and family systems; marriage therapy and counseling theory and techniques; family therapy and counseling theory and techniques; individual human development theories throughout the life cycle; personality theory or general counseling theory and techniques; psychopathology; human sexuality theory and counseling techniques; psychosocial theory; and substance abuse theory and counseling techniques. Courses in research, evaluation, appraisal, assessment, or testing theories and procedures; thesis or dissertation work; or practicums, internships, or fieldwork may not be applied toward this requirement.~~

~~b. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in legal, ethical, and professional standards issues in the practice of marriage and family therapy or a course determined by the board to be equivalent.~~

~~c. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction; and a minimum of one 3-semester-hour or 4-quarter-hour graduate-level course in behavioral research which focuses on the interpretation and application of research data as it applies to clinical practice. Credit for thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.~~

~~d. A minimum of one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services under the supervision of an individual who met the requirements for supervision under paragraph (c). This requirement may be met by a supervised practice experience which took place outside the academic arena, but which is certified as equivalent to a graduate-level practicum or internship program which required a minimum of 180 direct client contact hours of marriage and family therapy services currently offered within an academic program of a college or university accredited by an accrediting agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education. Certification shall be required from an official of such college, university, or training institution.~~

~~2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course~~.

The required master's degree must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation ~~Commission on Recognition of Postsecondary Accreditation~~; publicly recognized as a member in good standing with ~~the Association of~~ Universities ~~and Colleges of~~ Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists.

The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program which did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Has had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under paragraph (b) ~~sub-subparagraphs (b)1.a.-c.~~, credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under paragraph (b) ~~sub-subparagraphs (b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the

course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 ~~3~~ years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination designated ~~provided~~ by the board ~~department~~ for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost ~~to the department~~ for purchase of the examination from the National Board for Certified Counselors or its successor ~~Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization~~, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction~~, including a course in human sexuality and a course in substance abuse~~. If the master's degree is earned from a program related to the practice of mental health counseling that is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling ~~in community settings; and substance abuse~~. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of

graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the most-recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience ~~in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement~~.

c. The equivalent, as determined by the board, of at least 700 ~~1,000~~ hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have

been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~; publicly recognized as a member in good standing with ~~the Association of~~ Universities ~~and Colleges of~~ Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree in a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Has had at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling that did not include all the coursework required under sub-subparagraphs (b)1.a.-b., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination designated ~~provided~~ by the board ~~department~~ for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 5. Subsection (3) of section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—The department shall license as a marriage and family

therapist any person who demonstrates to the board that he or she:

(3) Has passed the examination designated ~~provided~~ by the board ~~department~~ for marriage and family therapy.

Section 6. Paragraph (b) of subsection (1) of section 491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:

(b)1. Holds an active valid license to practice and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.

~~2. Meets the education requirements of this chapter for the profession for which licensure is applied.~~

2.~~3.~~ Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.

3.~~4.~~ Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. ~~The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.~~

Section 7. Section 491.0065, Florida Statutes, is repealed.

Section 8. Subsections (2) and (3) of section 491.007,

Florida Statutes, are amended to read:

491.007 Renewal of license, registration, or certificate.—

(2) Each applicant for renewal shall present satisfactory evidence that, in the period since the license or certificate was issued, the applicant has completed continuing education requirements set by rule of the board or department. Not more than 25 classroom hours of continuing education per year shall be required. ~~A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.~~

~~(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed $100.~~

Section 9. Subsection (2) of section 491.009, Florida Statutes, is amended to read:

491.009 Discipline.—

(2) The ~~department, or, in the case of psychologists, 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).

Section 10. Paragraphs (a) and (n) of subsection (1) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(a) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a clinical

social worker issued pursuant to this chapter:

1. "Licensed clinical social worker."

2. "Clinical social worker."

3. "Licensed social worker."

4. "Psychiatric social worker."

5. "Psychosocial worker."

6. "Certified master social worker."

(n) ~~Effective October 1, 2000,~~ Practice juvenile sexual offender therapy in this state, as the practice is defined in s. 491.0144, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Families if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

Section 11. Section 491.0145, Florida Statutes, is amended to read:

491.0145 Certified master social worker.—The department shall license ~~may certify~~ an applicant for a designation as a certified master social worker who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she has met all of the following conditions:

(1) The applicant has submitted ~~The applicant completes~~ an application and has paid ~~to be provided by the department and pays~~ a nonrefundable fee not to exceed $250 to be established by rule of the board ~~department~~. ~~The completed application must be~~

~~received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.~~

(2) The applicant submits proof satisfactory to the board ~~department~~ that the applicant has received a doctoral degree in social work, or a master's degree in social work with a major emphasis or specialty in ~~clinical practice or administration, including, but not limited to, agency~~ administration and supervision, program planning and evaluation, staff development, research, community organization, community services, social planning, and human service advocacy. Doctoral degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education. Master's degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools for ~~of~~ Social Work Education or by one that meets comparable standards.

(3) The applicant has had at least 2 ~~3~~ years' experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in subsection (2), 2 years of which must be at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral internship may be applied toward the supervision requirement.

(4) Any person who holds a master's degree in social work from institutions outside the United States may apply to the board ~~department~~ for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

(5) The applicant has passed an examination required by the board ~~department~~ for this purpose. ~~The nonrefundable fee for such examination may not exceed $250 as set by department rule.~~

(6) ~~Nothing in~~ This chapter does not ~~shall be construed to~~ authorize a certified master social worker to provide clinical social work services.

(7) The board may adopt rules to implement this section.

Section 12. Section 491.0149, Florida Statutes, is amended to read:

491.0149 Display of license; use of professional title on promotional materials.—

(1)(a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b)1. A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

2. A licensed marriage and family therapist shall include the words "licensed marriage and family therapist" or the letters "LMFT" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

3. A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

(c) A generalist social worker shall include the words "certified master social worker" or the letters "CMSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the licensee.

(2)(a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the registered

intern.

(3)(a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor licensee" on all promotional materials, including cards, brochures, stationery, advertisements, social media, and signs, naming the provisional licensee.

Section 13. Section 491.015, Florida Statutes, is repealed.

Section 14. Paragraph (c) of subsection (4) of section 414.065, Florida Statutes, is amended to read:

414.065 Noncompliance with work requirements.—

(4) EXCEPTIONS TO NONCOMPLIANCE PENALTIES.—Unless otherwise provided, the situations listed in this subsection shall constitute exceptions to the penalties for noncompliance with participation requirements, except that these situations do not constitute exceptions to the applicable time limit for receipt of temporary cash assistance:

(c) *Noncompliance related to treatment or remediation of past effects of domestic violence.*—An individual who is

determined to be unable to comply with the work requirements under this section due to mental or physical impairment related to past incidents of domestic violence may be exempt from work requirements, except that such individual shall comply with a plan that specifies alternative requirements that prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents. A participant who is determined to be out of compliance with the alternative requirement plan shall be subject to the penalties under subsection (1). The plan must include counseling or a course of treatment necessary for the individual to resume participation. The need for treatment and the expected duration of such treatment must be verified by a physician licensed under chapter 458 or chapter 459; a psychologist licensed under s. 490.005(1), s. 490.006, or the provision identified as s. 490.013(2) in s. 1, chapter 81-235, Laws of Florida; a therapist as defined in s. 491.003(3) or (7) ~~s. 491.003(2) or (6)~~; or a treatment professional who is registered under s. 39.905(1)(g), is authorized to maintain confidentiality under s. 90.5036(1)(d), and has a minimum of 2 years' ~~years~~ experience at a certified domestic violence center. An exception granted under this paragraph does not automatically constitute an exception from the time limitations on benefits specified under s. 414.105.

Section 15. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 20, 2019

The Honorable Chair Gayle Harrell
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32309

Dear Chairwoman Harrell,

I would like to request that SB 884 Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors be heard in the next Health Policy Committee meeting.

This bill deals with licensure revisions for Clinical social workers, marriage and family therapists and mental health counselors. It revises intern registration requirements, revises the licensure requirements for clinical social workers, marriage and family therapists and mental health counselors.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Allen Brown, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

8641
Bill Number (if applicable)

536128
Amendment Barcode (if applicable)

Topic 491 LICENSURE

Name JIM ATKIN

Job Title EXECUTIVE DIRECTOR

Address 1931 DENWOOD DRIVE
Street

TALLAHASSEE FL 32303
City *State* *Zip*

Phone 850-224-2400

Email JATKIN@NASWFL.SOCIALWORK.ORG

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NASW-FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 884
Bill Number (if applicable)

Topic Clinical Social Workers, Marriage & Family, etc...

Amendment Barcode (if applicable)

Name ~~Corinne Mixon~~ Corinne Mixon

Job Title -

Address _____ Phone 850 766 5795
Street

_____ Email -
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Mental Health Counselors Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

884
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.
Street

Largo Fl. 33773
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	CS/SB 1518
INTRODUCER:	Health Policy Committee and Senator Wright and others
SUBJECT:	Alternative Treatment Options for Veterans
DATE:	April 2, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	**Fav/CS**
2.			AHS	
3.			AP	

I. Summary:

CS/SB 1518 authorizes the Florida Department of Veterans' Affairs (FDVA) to contract with one state university or Florida College System institution to provide alternative treatment options for veterans who have been diagnosed by a health care practitioner with service-connected posttraumatic stress disorder or a traumatic brain injury under certain conditions. The provision of the alternative treatment services must be under the direction and supervision of an individual licensed as an allopathic physician, an osteopathic physician, a chiropractor, a psychologist, or a clinical social worker, marriage and family therapist, or a mental health counselor, and participating providers must agree to provide certain data. The bill requires compilation of specified data into an annual report for submission to the Governor and legislative leadership. The FDVA is given rulemaking authority for purposes of implementing the bill.

Implementation of the bill is subject to an appropriation.

The bill has an effective date of July 1, 2019.

II. Present Situation:

Veterans' Health Care Services

Veterans of the United States Armed Forces may be eligible for a range of benefits, which are codified in Title 38 of the United States Code. Certain former members of the Reserves or National Guard who were called to active duty may also be eligible for benefits.[1] The federal Department of Veterans Affairs (VA) is required by law to provide eligible veterans hospital care and outpatient care services that are defined as "needed." The VA defines "needed" as care or services that will promote, preserve, and restore health. This includes treatment, procedures,

[1] U.S. Department of Veterans Affairs, Health Benefits, https://www.va.gov/HEALTHBENEFITS/apply/veterans.asp (last visited Mar. 21, 2019).

supplies, or services. This decision of need will be based on the judgment of the veteran's health care provider and in accordance with generally accepted standards of clinical practice.

There are also specific health programs for which veterans may be eligible, including treatment relating to:

- Blindness rehabilitation;
- Post-traumatic stress;
- Traumatic brain injury;
- Agent Orange exposure;
- Gulf War Syndrome and related illnesses;
- Radiation exposure; and,
- HIV/AIDS.[2]

If a person served in the active military service and was separated under any condition other than "dishonorable," that individual may be eligible for health care and other benefits under the federal Veterans Health Administration (VHA) through the VA. Most veterans who enlisted after September 7, 1980, or entered active duty after October 16, 1981, must have served at least 24 continuous months; however, this time standard may not apply to those veterans who were discharged due to a disability that was caused or aggravated in the line of duty or under other exceptions.[3]

Veterans must register or apply for health care benefits through the VHA. Certain categories of veterans are provided enhanced enrollment, such as veterans who:

- Are former prisoners of war;
- Are Purple Heart Medal recipients;
- Are Medal of Honor recipients;
- Are classified as having compensable VA-awarded, service-connected disability[4] representing 10 percent or more of the veteran's functional capacity;
- Receive a VA pension;
- Were discharged from the military because of a disability (not pre-existing), early out, or hardship;
- Served in a theater of operations for five years post discharge;
- Served in the Republic of Vietnam from January 9, 1962, to May 7, 1975;
- Served in the Persian Gulf from August 2, 1990 to November 11, 1998;
- Were stationed or resided at Camp Lejeune for 30 days or more between August 1, 1953, and December 31, 1987;
- Were found catastrophically disabled by the VA; or

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[2] U.S. Department of Veterans Affairs, Veteran's Health Care overview, *available at* https://www.military.com/benefits/veterans-health-care/veterans-health-care-overview.html#1 (last visited Mar. 21, 2019).

[3] *Supra* note 1.

[4] A service-connected disability is an injury or illness that was incurred or aggravated during active military service. Compensation may also be paid for post-service disabilities that are considered related or secondary to disabilities occurring in service or presumed to be related to circumstances of military services, even if they arise after military service. To be eligible for compensation, the veteran must have been separated or discharged under conditions other than dishonorable. *See* https://www.benefits.va.gov/compensation/ (last visited Mar. 21, 2019).

- Have a household income that is below the VA's national income or geographical-adjusted thresholds.[5]

Only certain veterans are required to provide income information to the VA as part of the application process. Veterans who do not have a VA-service connected disability, do not receive a VA pension, or have a special eligibility are required to participate in the financial assessment. While many Veterans qualify for enrollment and cost-free health care services based on a compensable, service-connected condition or other qualifying factors, certain veterans will be asked to complete a financial assessment at the time of enrollment to determine their eligibility for free medical care, medications and/or travel benefits. The assessment is based on the previous year's gross household income of the veteran and his or her spouse and dependents, if any.

This financial information also may be used to determine the veteran's enrollment priority group. The gross household income amounts that are used to determine priority groups or eligibility for cost-free care are adjusted annually. These amounts can also vary by geographic based assessments. Unreimbursed medical expenses are deductible from the veteran's gross income, including medical-travel related expenses, health insurance premiums, and prescriptions.[6]

When a veteran enrolls for benefits, the he or she is assigned to one of eight priority groups that the VA uses to balance the demand for services with available resources. Priority groupings are based on need for services, level of disability, discharge status, and income.[7] The highest priority group are those veterans with service-related injuries with at least a 50 percent service-connected disability and/or the veteran has been determined unemployable.[8] Group 8 is the lowest priority group and includes those veterans whose gross household incomes are above the VA national income threshold and who agree to pay copayments.

Florida Veterans

The federal VA system serves more than 1.5 million Floridians, which is the third highest population of veterans in the country behind California and Texas.[9] Over half of the state's veterans are aged 65 and older, with the majority of those veterans having served during the Vietnam era and with the Gulf Wars second, as noted in the chart below.

[5] *Supra* note 1.
[6] See U.S. Department of Veterans Affairs, Basic Eligibility for VA Health Care (last updated April 2, 2018) *available at* https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_basic_eligibility.asp (last visited Mar. 22, 2019).
[7] *Supra* note 2.
[8] Id.
[9] See U.S. Department of Veterans Affairs, State Profile (as of September 30, 2017) *available at* https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Florida.pdf (last visited Mar. 22, 2019).

Florida's Veteran Population by Period of Service[10]	
Period of Service	**Number of Veterans 9/30/2017**
WWII	75,794
Korea	153,562
Vietnam	532,691
Gulf Wars	500,269
Other	297,462
Total	**1,559,778**

In Florida, 733,037 individuals were enrolled in VA health services and over 500,000 unique enrollees received treatment in Fiscal Year 2017. The VHA operates nine VA inpatient facilities, 69 outpatient facilities, and 24 Vet Centers in the state. For 2016, the VHA reported expending $6,371,816 for medical care in Florida. Besides health care benefits, over 348,000 Florida veterans also receive disability compensation payments.[11]

Uninsured Florida Veterans

The most recent projections indicate that approximately 49,000 Florida veterans are uninsured, or 7.4 percent of the state's veteran population, which is 5.2 percentage points lower than the state's 2013 uninsured rate of 12.5 percent.[12] Census figures released earlier this year showed that most veterans either had TRICARE[13] or VHA coverage alone or paired it with private coverage (716,228 enrollees) compared with a coupling with public coverage such as Medicare or Medicaid (610,462 enrollees).[14]

A study by the RAND Corporation found that most care provided to non-elderly veterans is delivered outside of the VA system.[15] Federal VA data show that while health care benefits are the largest veterans' benefit program,[16] most veterans are covered by non-VA health insurance even if they are enrolled in the VA. Implementation of the Affordable Care Act was followed by reduction in the number of veterans who lacked any form of health insurance and increases in the

[10] U.S. Department of Veterans Affairs, *Veteran Population*, (updated November 23, 2018) *available at* https://www.va.gov/vetdata/Veteran_Population.asp (last visited Mar. 22, 2019). The "Other" category includes veterans of multiple more recent conflicts as well as those with no war-time service.

[11] *Supra* note 9.

[12] Jennifer Haley, et al, *Veterans Saw Broad Coverage Gains Between 2013 and 2015*, (April 2017) Robert Wood Johnson Foundation and Urban Institute, p. 5, https://www.urban.org/sites/default/files/publication/89756/2001230-veterans-saw-broad-coverage-gains-between-2013-and-2015.pdf (last visited Mar. 22, 2019).

[13] TRICARE is a military healthcare program for active duty personnel, military retirees, and their dependents, which is managed by the Defense Health Agency under the federal Department of Defense (DOD). TRICARE, formerly known as CHAMPUS, provides comprehensive health care services through military hospitals and clinics with civilian health care networks. The CHAMPVA is managed by DVA, which shares the cost of covered health care services with eligible beneficiaries. *See* https://www.va.gov/COMMUNITYCARE/programs/dependents/champva/index.asp (last visited Mar. 22, 2019).

[14] U.S. Census Bureau, *American Fact Finder, Private and Public Health Insurance Coverage by Type – 2016 American Community Survey 1-Year Estimates* (chart created Nov. 2, 2017) (on file with the Senate Committee on Health Policy).

[15] Michael Dworksy, et al, *Veterans' Health Insurance Coverage Under the Affordable Health Care Act and Implications of Repeal for the Department of Veterans Affairs: Research Report*, RAND Corp., (2017), p. 28, *available at* https://www.rand.org/pubs/research_reports/RR1955.html (last visited Mar. 22, 2019).

[16] U.S. Department of Veterans Affairs, *Unique Veterans Users Profiles, FY 2015* (December 2016), *available at* https://www.va.gov/vetdata/docs/SpecialReports/Profile_of_Unique_Veteran_Users_2015.pdf (last visited Mar. 22, 2019).

number of VA-covered veterans who were dually-enrolled in some non-VA source of insurance.[17]

Veterans' Health Care Delivery System

Nationally, the VA has 155 inpatient sites and over 1,000 outpatient sites with another 300 Vet Centers that provide counseling services, outreach, and referral services to combat veterans and their families. Veterans can receive health care services at any VA health care facility in the country. Health care enrollment and utilization has increased with outpatient visits growing from 46.5 million visits in 2002 to 95.2 million visits in 2015.[18]

Health care is primarily delivered through 21 regional networks know as Veterans Integrated Service Networks, or VISNs, nationwide. For Florida, two networks cover the state with one responsible for 60 counties in the northern, central, and southern regions of the state[19] and the other network covering the remaining seven counties in northwest Florida.[20]

Veterans Choice Program

Congress directed the VA through the Veterans Access, Choice, and Accountability Act of 2014 (VACCA)[21], and specifically, the Veterans Choice Program (VCP), to furnish hospital care and medical services through alternative means when veterans could not access services in a timely manner. To be eligible, a veteran may optionally enroll if he or she faces an unacceptable burden in accessing a provider of more than 40 miles driving distance to the nearest VA medical facility and has been identified to have an appointment more than 30 days out from a preferred appointment date; faces other geographic challenges; encounters environmental challenges; or has a medical condition that impairs the veterans ability to travel.

When a veteran attempts to schedule an appointment at a VHA medical facility or meets the driving condition or one of the other special circumstances and cannot be seen within 30 days, the veteran is placed on the Veterans Choice List (VCL). Once the veteran is placed on this list, the veteran has the ability to opt into the program and receive care from the designated third party administrator (TPA) managed provider network.

The legislation also mandated other changes such as requiring the use of electronic waiting lists (ECLs), making such waiting lists accessible so veterans can make informed choices about whether to receive care at such facilities, requiring VCP cards be issued to certain veterans, requiring non-VA health care providers to have the same credentials as VA health care

[17] *Supra* note 17, at 26.
[18] U.S. Department of Veterans Affairs, *Selected Veterans Health Administration Characteristics, FY 2001 to FY 2015*, https://www.va.gov/vetdata/Expenditures.asp (last visited Mar. 22, 2019).
[19] VISN 8 is the Sunshine Healthcare Network and covers 60 Florida counties, 19 rural counties in South Georgia, and Puerto Rico and the U.S. Virgin Islands. VISN 8 includes seven outpatient clinics of which six are located in Florida and one is located in Puerto Rico. For more information on VISN 8, see https://www.visn8.va.gov/VISN8/about/index.asp (last visited Mar. 22, 2019).
[20] VISN 16 is the South Central VA Health Care Network and serve veterans in Arkansas, Louisiana, Mississippi, and parts of Texas, Missouri, Alabama, Oklahoma, and Florida. VISN 16 has eight Veterans Affairs Medical Centers (VAMC) of which none are located in Florida, one outpatient clinic in Texas, and 68 outpatient sites or Vet Centers of which six are located in Florida. For more information on VISN 16, see https://www.visn16.va.gov/about/ (last visited Mar. 22, 2019).
[21] Pub. Law No. 113-146.

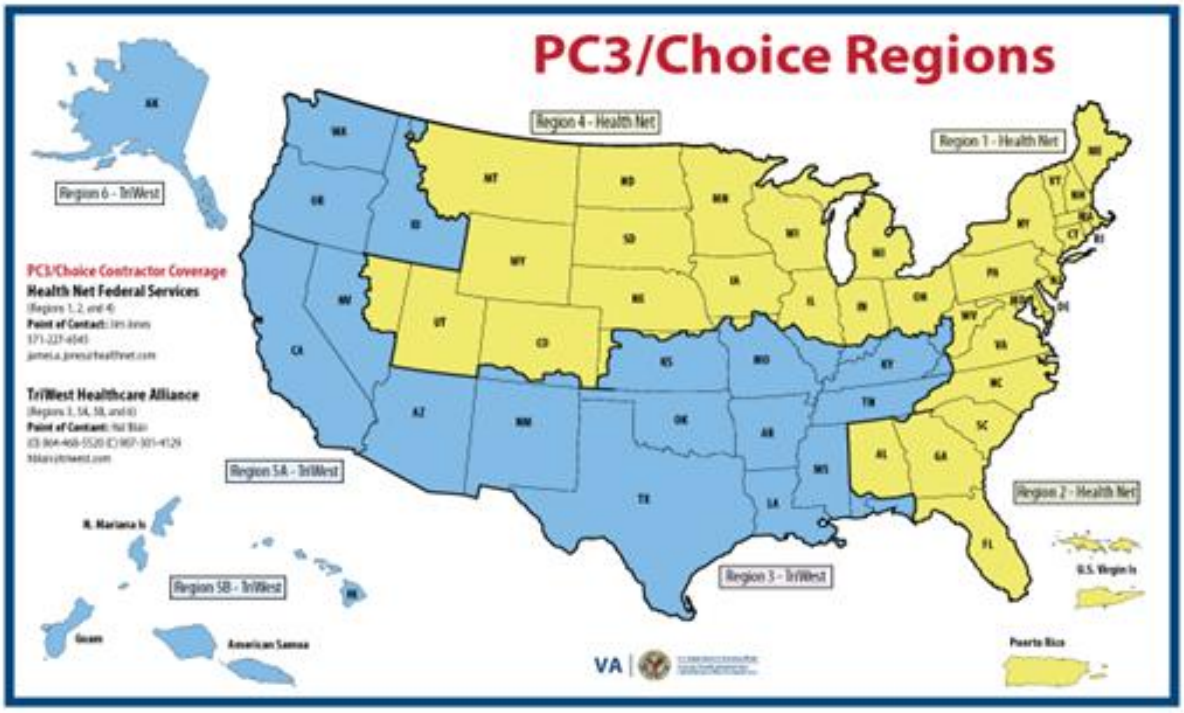
providers, requiring the establishment of performance metrics, setting appointment access standards, requiring a number of reports, and publishing wait times of VA facilities publicly.

The VCP was initially funded by Congress with $10 billion. The legislation would sunset upon either the exhaustion of the funds or three years from the its enactment, whichever occurred first.[22] Before either event could happen, the program's termination date was removed and additional funds were authorized in 2017.[23]

Patient Centered Community Care Program

Existing prior to VCP, if care was not readily available either because of time or geography, a veteran's health care facility could and still can use a Patient Centered Community Care Contract (PC3) to purchase care from a non-VA provider. More than 3.5 million authorizations for services under PC3 contracts were made from September 1, 2015 through August 31, 2016, a 13 percent increase over the same period in 2014-2015.[24] In comparison, internal VA appointments for 2015-2016 were 58.3 million.[25]

Florida is covered by two different health network contracts: Health Net Federal Services and TriWest Healthcare Alliance.[26] A map of the regions covered by the contracts is shown below.



[22] Veterans Access, Choice, and Accountability Act of 2014, Pub. Law No. 113-146, s. 101(p) (August 7, 2014), 128 STAT. 1763 (August 7, 2014).
[23] VA Choice and Quality Employment Act of 2017, Pub. Law No. 115-26, 131 STAT. 129-130 (April 19, 2017).
[24] *Supra* note 26, at 9.
[25] Id.
[26] U.S. Department of Veterans Affairs, *VHA Office of Community Care, Patient Centered Community Care (PC3)*, (last updated May 11, 2017) *available at* https://www.va.gov/COMMUNITYCARE/programs/veterans/pccc/index.asp (last visited Mar. 22, 2019).

The PC3 program does not provide coverage for all benefits. Coverage is limited only to primary care, limited emergency care, mental health care, inpatient and outpatient specialty care, and limited newborn care for enrolled female veterans following the birth of a child.[27] Services are managed nationally by one of two TPA managed provider networks based on where the veteran is located.

The Veterans Choice Programs

Collectively known as the Veterans Choice Programs (Choice), the VA provides veterans with options under the VCP, the PC3, and non-VA fee programs for pre-authorized medical care only. Millions of appointments had been provided under the programs and billions of dollars had been expended in health care funds with an additional $235 million spent on administrative costs to the health care networks over a several year time span.[28]

The Inspector General (IG) of the DVA reported on contacts received by its office from October 1, 2015, through January 31, 2017, and noted they fell into four general complaint categories:

- 48 percent had concerns about appointments and scheduling;
- 35 percent had concerns about referrals, authorizations, or consults;
- 12 percent had concerns about veteran and provider payments; and
- 5 percent had concerns about program eligibility or enrollment.[29]

The IG reviewed appointment wait times, authorization practices, scheduling procedures, and timeliness of care of various offices and facilities. Several barriers to care were found, including 1.2 million appointments from November 1, 2014, through September 30, 2015 for veterans in the various VHA programs waiting over 30 days for care at VHA medical facilities.[30] In the October 2016 report, the IG published its review of the Phoenix, Arizona, VA Health System in which it had determined that more than 22,000 patients had 34,000 open consults. One patient waited in excess of 300 days for a consult.[31] The review of the Phoenix office included services delivered in both the traditional and non-traditional VA care settings.

In February 2016, another IG report looked at timely care in Colorado Springs. Out of 450 consults and appointments, 288 veterans in Colorado Springs encountered wait times in excess of 30 days. Of those 288 who had wait times in excess of 30 days, none of those 288 veterans were

[27] Id.
[28] Testimony of Michael J. Missal, Inspector General of U.S. Department of Veterans Affairs before the Committee on Veterans' Affairs, U.S. House of Representatives, Hearing on "Shaping the Future: Consolidating and Improving VA Community Care," (March 7, 2017), p. 2, *available at* https://www.va.gov/oig/pubs/statements/VAOIG-Statement-20170307-missal.pdf (last visited Mar. 22, 2019).
[29] Id.
[30] Id at 3.
[31] Id at 4. The publication title of the report is *Review of Alleged Consult Mismanagement of the Phoenix VA Health Care System (PVAHCS)*, VA Office of Inspector General, Office of Audits and Evaluation, (October 4, 2016), Report 15-046720342, *available at* https://www.va.gov/oig/pubs/VAOIG-15-04672-342.pdf (last visited Mar. 22, 2019).

added to the VCL or were not added in a timely manner, which would make them eligible to receive services under that program.[32]

Access to Care in Florida

News reports and other OIG reports indicate that the VA struggled to implement the new Choice programs from November 1, 2014, through September 30, 2015, including the special OIG Choice Implementation report requested by Congress.[33] Within this audit, one Florida facility was included, the North Florida/South Georgia Veterans Health System. The audit noted the struggles of the VA to meet the expedited 90-day implementation timeline of the original 2014 legislation, inadequate provider networks once the program was implemented, third party liability concerns by veterans for non-payment of medical bills to providers, appointment wait times in excess of 30 days, and provider administrative burden issues.[34]

In its response to the audit report, the Secretary of the DVA noted that the Choice programs have changed dramatically since implementation and had seen a growth rate in authorizations from October 2015 to March 2016 of 103 percent.[35] The DVA requested authorization to consolidate all of the Community Care Programs into a singular authority tied to Medicare reimbursement for like services to address issues related to provider network adequacy and administrative burdens on both the DVA and the provider.[36]

Alternative Treatment Options for Veterans

Complementary and integrative health (CIH) consists of products and practices that are not currently part of mainstream, conventional medical practice. CIH emphasizes patient empowerment, self-activation, preventive self-care, and wellness, often in conjunction with traditional medical treatment or in other alternative treatment settings. These approaches may be considered complementary (i.e., used in place of or used along with standard medical care). Integrative medicine refers to care that blends both mainstream and alternative practices. The boundaries between CIH and conventional medicine are not absolute, although most CIH approaches fall into one of two subgroups: natural products (e.g., herbs, vitamins and minerals, and probiotics) and mind and body practices (e.g., yoga, meditation, massage therapy, acupuncture, and relaxation techniques).[37]

In the United States, CIH approaches have gained popularity in recent years, and, as a result, more research is focusing on how CIH may improve various patient outcomes. According to the National Center for Complementary and Integrative Health (NCCIH) of the National Institutes of

[32] U.S. Department of Veterans Affairs, VA Office of Inspector General Office of Audits and Evaluation, Veterans Health Administration, *Veterans Health Administration – Review of the Alleged Untimely Care at the Community Based Outpatient Clinic Colorado Springs, CO,* (February 4, 2016), Report 15-02472-46, *available at* https://www.va.gov/oig/pubs/VAOIG-15-02472-46.pdf (last visited Mar. 22, 2019).
[33] U.S. Department of Veterans' Affairs, VA Office of Inspector General Office of Audits and Evaluation, *Veterans Health Administration Review of the Implementation of the Veterans Choice Program,* (January 30, 2017), Report 15-04673-333, *available at* https://www.va.gov/oig/pubs/VAOIG-15-04673-333.pdf (last visited Mar. 22, 2019).
[34] Id at vi.
[35] *Supra* note 42, at 25-26.
[36] Id at 33.
[37] U.S. Department of Veterans Affairs, Office of Research and Development, (updated September 19, 2018) *available at* https://www.research.va.gov/topics/cih.cfm (last visited Mar. 25, 2019).

Health, more than 30 percent of American adults and about 12 percent of children use health care approaches developed outside of mainstream conventional medicine.[38]

In the VA, complementary and integrative health (CIH) approaches are most commonly used to improve veterans' mental health, manage pain, and promote general wellness. More specifically, these approaches are often used to treat posttraumatic stress disorder (PTSD), depression, back pain, headache, arthritis, fibromyalgia, and substance abuse. One of the greatest challenges in CIH is critically examining the effectiveness of approaches that have not been rigorously tested through formal research. VA researchers remain committed to addressing these scientific gaps. They are conducting studies to determine which approaches are truly safe and effective, and for which conditions and populations they work best.[39]

Through its Center for Compassionate Care Innovation (CCI)[40] and as part of its mission to better meet the needs of veterans on an ongoing basis, the VA provides a wide array of state-of-the-art treatments and evidence-based therapies, and is a leader in research and innovation. The VA is committed to providing the best health care available to veterans and is interested in learning about new treatment modalities used in the private sector that result in positive health outcomes. The CCI is a program within the Office of Community Engagement (OCE). The mission of CCI is to explore emerging therapies that are safe and ethical to enhance veteran physical and mental well-being when other treatments have not been successful. CCI focuses on the conditions that may be resistant to standard treatments, including: chronic pain, PTSD, suicidality, and traumatic brain injury (TBI).

Given that there may be numerous innovative treatment approaches for each of the above conditions, the CCI is tasked with prioritizing proposals that have a current or emerging evidence-base documenting their efficacy, are cleared by the federal Food and Drug Administration (FDA) for their intended purpose and are designed to offer sustained benefits to the target population. The CCI has a review process in order to identify proposals that are appropriate for implementation. Proposals shared with the CCI should be aligned with the CCI's mission, not already available within the VHA network, feasible to implement, and developed in accordance with the CCI's guidelines.[41]

To accomplish its mission, the CCI:

- Maintains integrity of the fundamental principle to "Do No Harm."
- Evaluates emerging modalities, devices, and interventions that are safe and ethical in order to augment and support current the evidence-based program.
- Advocates for shared decision-making where veterans are active participants in choosing treatments, interventions, or therapies.
- Examines innovative proposals that may provide help and hope to veterans who have not responded to standard treatments.

[38] Id
[39] Id
[40] U.S. Department of Veterans Affairs, Office of Community Engagement. Center of Compassionate Care Innovation, (updated March 22, 2019) *available at* https://www.va.gov/HEALTHPARTNERSHIPS/CCIMission.asp (last visited Mar. 26, 2019).
[41] Id

- Collaborates with experts across health care disciplines to consider noteworthy, safe, and ethical emerging therapies that are not currently in widespread clinical use in VA.[42]

A sampling of alternative treatments being provided by the federal VA at present include things such as light emitting diode (LED) therapy for mild TBI, stellate ganglion block (SGB) for treatment of PTSD, various services delivered via telehealth, yoga and meditation, acupuncture, the training and use of service dogs, equine therapy, music therapy, accelerated resolution therapy, and various outdoor therapies including horseback riding, hiking, and rafting.[43,44]

Florida Department of Veterans' Affairs

In 1988, Florida citizens voted to create the Department of Veterans' Affairs (department or FDVA) by constitutional amendment.[45] The department is responsible for advocating on behalf of Florida's veterans to improve their quality of life and to facilitate access to federally funded medical care for eligible veterans.

The department also manages one assisted living facility and six state veterans' nursing homes with nursing homes seven and eight in construction stages in St. Lucie County and Orange County. To be eligible for admission to these state facilities, a veteran must have had an honorable discharge, be a state resident prior to admission, and have received a certification of need of assisted living or skilled nursing care as determined by a VA physician.

Other services are available to veterans in county services offices which may be co-located in VA Regional Offices in Bay Pines, each federal VA Medical Center and many of the federal VA Outpatient Clinics.

Currently, the FDVA offers primary care at each of the state veterans' nursing homes and at the domiciliary for the residents. At present, the department does not offer secondary, specialized, or alternative care.[46]

III. Effect of Proposed Changes:

Section 1 creates s. 295.156, F.S., to authorize the Florida Department of Veterans' Affairs (FDVA), subject to a legislative appropriation, to contract with a state university or a Florida College System institution to provide alternative treatment options for veterans. To qualify, a veteran must have been diagnosed with service-connected posttraumatic stress disorder or a traumatic brain injury by a health care practitioner and demonstrate having previously sought services for traumatic brain injury or posttraumatic stress disorder through the federal Veterans Affairs service delivery system or through private health insurance, if such coverage is available to the individual.

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[42] Id
[43] News Release, U.S. Department of Veterans Affairs, *VA Exploring Alternative Treatments for TBI and PTSD* (Dec. 7, 2017) *available at* https://www.va.gov/opa/pressrel/pressrelease.cfm?id=3986 9last visited Mar. 26, 2019).
[44] Florida Department of Veterans' Affairs, *Senate Bill 1518 Analysis,* (Mar. 20, 2019) (on file with the Senate Committee on Health Policy).
[45] See FLA. CONST. art IV, s. 11.
[46] *Supra* note 44

The alternative treatment options specified in the bill are: accelerated resolution therapy, equine therapy, hyperbaric oxygen therapy, music therapy, and service animal training therapy.

Definitions are provided for 11 relevant terms used in the bill: accelerated resolution therapy, alternative treatment, equine therapy, facility, hyperbaric oxygen therapy, music therapy, physician, service animal training therapy, traumatic brain injury, and veteran.

The provision of the alternative treatment services must be under the direction and supervision of an individual licensed as: an allopathic physician under ch. 458, F.S., an osteopathic physician under ch. 459, F.S., a chiropractor under ch. 460, F.S., a psychologist under ch. 490, F.S., or a clinical social worker, marriage and family therapist, or a mental health counselor under ch. 491, F.S. The licensed provider supervising the provision of alternative treatment must agree to cooperate with the FDVA to provide data sufficient for an assessment of the efficacy of alternative treatment modalities.

The bill requires that by January 1 of each year, beginning January 1, 2020, the FDVA shall compile a report documenting each alternative treatment provided under this act, the provider type, the number of veterans served, and the treatment outcomes. The department shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The FDVA is given rulemaking authority for purposes of implementing the bill.

Section 2 specifies that the bill has an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1518 provides that implementation is subject to an appropriation. As of this writing, SB 2500, the Senate's proposed General Appropriations Act for fiscal year 2019-2020, includes a $50,000 nonrecurring appropriation from the General Revenue Fund to the University of South Florida for "Alternative Treatment for Veterans" under Specific Appropriation 575A.

In addition to funding for services, the FDVA also indicates the need for one full-time equivalent position to implement the bill.[47]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 295.156

IX. Additional Information:

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

CS by Health Policy on April 1, 2019:
The CS added provisions to the bill which:

- Requires a veteran seeking participation in the program to demonstrate having previously sought services for traumatic brain injury or posttraumatic stress disorder through the federal Veterans Affairs service delivery system or through private health insurance, if such coverage is available to the individual.
- Limits the FDVA to contracting with either one state university or one state college system institution for the purposes of entering into and managing multiple provider

[47] *Supra* note 44.

contracts, and the chosen contracting entity must manage, monitor, and ensure compliance of the contracted providers.

- Requires the licensed provider supervising the provision of alternative treatment to agree to cooperate with the FDVA to provide data sufficient for an assessment of the efficacy of alternative treatment modalities.
- Requires that by January 1 of each year, beginning January 1, 2020, the FDVA must compile a report documenting each alternative treatment provided under the bill, the provider type, the number of veterans served, and the treatment outcomes. The FDVA must submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
	.	
	.	
	.	

The Committee on Health Policy (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete lines 73 - 98

and insert:

(2) A veteran qualifies to receive alternative treatment under this section if he or she:

(a) Has been diagnosed by a health care practitioner with service-connected posttraumatic stress disorder or a traumatic brain injury;

(b) Voluntarily agrees to such alternative treatment; and

(c) Can demonstrate that he or she has previously sought services for a posttraumatic stress disorder or a traumatic brain injury through the federal Veterans Affairs service delivery system or through private health insurance, if such coverage is available to the veteran.

(3) Subject to legislative appropriation, the Department of Veterans' Affairs may contract with one state university or Florida College System institution to enter into and to manage multiple licensed provider contracts to provide the alternative treatment options specified in paragraphs (a) through (e) to veterans who have been certified by the United States Department of Veterans Affairs or by any branch of the United States Armed Forces as having a traumatic brain injury or posttraumatic stress disorder. The university or institution shall manage, monitor, and ensure the compliance of contracted providers who provide any of the following alternative treatment options:

(a) Accelerated resolution therapy.

(b) Equine therapy.

(c) Hyperbaric oxygen therapy, which must be provided at a registered hyperbaric oxygen facility.

(d) Music therapy.

(e) Service animal training therapy.

(4)(a) The provision of alternative treatment must be under the direction and supervision of an individual licensed under chapter 458, chapter 459, chapter 460, chapter 490, or chapter 491.

(b) The supervising licensed provider must agree to cooperate with the Department of Veterans' Affairs to provide data sufficient to assess the efficacy of alternative treatment

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modalities.

(5) By January 1 of each year, beginning in 2020, the Department of Veterans' Affairs shall prepare a report detailing each alternative treatment provided pursuant to this section, the provider type, the number of veterans served, and the treatment outcomes, which it shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) The Department of Veterans' Affairs may adopt rules to implement this section.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 5 - 9

and insert:

alternative treatment; authorizing the Department of Veterans' Affairs, subject to appropriation, to contract with a state university or Florida College System institution to enter into and manage contracts for the provision of alternative treatment options for certain veterans; providing requirements as to the provision of alternative treatment options and related assessment data; requiring the department to annually prepare a report for submission to the Governor and Legislature; prescribing report requirements; authorizing

By Senator Wright

14-01832B-19 20191518__

A bill to be entitled

An act relating to alternative treatment options for veterans; creating s. 295.156, F.S.; providing definitions; specifying eligibility to receive alternative treatment; authorizing the Department of Veterans' Affairs to contract with certain individuals and entities to provide alternative treatment options for certain veterans; requiring direction and supervision by certain licensed providers; authorizing the department to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 295.156, Florida Statutes, is created to read:

295.156 Alternative treatment options for veterans.—

(1) As used in this section, the term:

(a) "Accelerated resolution therapy" means a process that replaces negative images and sensations with positive ones, uses specific eye movements in conjunction with controlled verbalization about details of the prior traumatic experience, and uses metaphors and other interventions to assist the patient in recalling less distressing images while retaining the facts of the original experience.

(b) "Alternative treatment" means a treatment that is not part of the standard of medical care established by the United States Department of Veterans Affairs for treating traumatic brain injury or posttraumatic stress disorder but has been shown

14-01832B-19 20191518__

by at least one scientific or medical peer-reviewed study to have some positive effect for the treatment of traumatic brain injury or posttraumatic stress disorder.

(c) "Equine therapy" means the use of interaction with horses under the supervision of a trained equine instructor to improve the patient's sense of trust and self-efficiency; increase communication, socialization, and emotional management skills; and decrease isolation.

(d) "Facility" includes a hospital, a public health clinic, an outpatient health clinic, a community health center, and any other facility authorized under Department of Veterans' Affairs rule to provide hyperbaric oxygen therapy under this section.

(e) "Health care practitioner" means a person who is licensed to provide medical care or other health care in this state and who has prescriptive authority, including a physician.

(f) "Hyperbaric oxygen therapy" means a medical treatment, provided at a facility in compliance with applicable state fire codes, which is used in the prevention, treatment, or cure of a disease or a condition in human beings by delivering a saturation of 100 percent oxygen in a mono-place or multi-place hyperbaric chamber or a total body chamber approved by the United States Food and Drug Administration (FDA), or in a device that has an appropriate FDA-approved investigational device exemption, in which atmospheric pressure is increased and controlled.

(g) "Music therapy" means the use of music listening or performance to address the patient's physical, emotional, cognitive, and social needs and to facilitate communication and expression.

(h) "Physician" means a person licensed to practice medicine under chapter 458 or chapter 459.

(i) "Service animal training therapy" means a technique that allows the patient to work directly with an animal trainer to train animals as therapy or service animals.

(j) "Traumatic brain injury" means an acquired injury to the brain. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma.

(k) "Veteran" means an individual who has served in any of the following:

1. The United States Armed Forces, including the United States Army, Navy, Air Force, Coast Guard, or Marine Corps.

2. The Florida National Guard.

3. A reserve component of the United States Armed Forces.

(2) A veteran qualifies to receive alternative treatment under this section if he or she:

(a) Has been diagnosed with service-connected posttraumatic stress disorder or a traumatic brain injury by a health care practitioner; and

(b) Voluntarily agrees to such alternative treatment.

(3) Subject to legislative appropriation, the Department of Veterans' Affairs may contract with one or more individuals, corporations not for profit, state universities, hospitals, or Florida College System institutions to provide the following alternative treatment options for veterans who have been certified by the United States Department of Veterans Affairs or any branch of the United States Armed Forces as having a traumatic brain injury or posttraumatic stress disorder:

(a) Accelerated resolution therapy.

(b) Equine therapy.

(c) Hyperbaric oxygen therapy, which must be provided at a registered hyperbaric oxygen facility.

(d) Music therapy.

(e) Service animal training therapy.

(4) The provision of alternative treatment must be under the direction and supervision of an individual licensed under chapter 458, chapter 459, chapter 460, chapter 490, or chapter 491.

(5) The Department of Veterans' Affairs may adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

March 8, 2019

The Honorable Gayle Harrell
310, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1518 – Alternative Treatment Options for Veterans

Dear Chair Harrell:

Senate Bill 1518, relating to Alternative Treatment Options for Veterans has been referred to the Committee on Health Policy. I am requesting your consideration on placing SB 1518 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright

Tom A. Wright, District 14

cc: Allen Brown, Staff Director of the Committee on Health Policy
Celia Georgiades, Administrative Assistant of the Committee on Health Policy

REPLY TO:
☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Veterans' Affairs

BILL INFORMATION	
BILL NUMBER:	SB 1518
BILL TITLE:	Relating to Alternative Treatment Options for Veterans
BILL SPONSOR:	Senator Wright
EFFECTIVE DATE:	July 1, 2018

COMMITTEES OF REFERENCE
1) Health Policy
2) Appropriations Subcommittee on Health and Human Services
3) Appropriations
4) .
5) .

CURRENT COMMITTEE
Health Policy

SIMILAR BILLS	
BILL NUMBER:	HB 501
SPONSOR:	Representative Ponder

PREVIOUS LEGISLATION	
BILL NUMBER:	SB 326
SPONSOR:	Senator Stuebe
YEAR:	2017
LAST ACTION:	Died in Military and Veterans Affairs, Space and Domestic Security

IDENTICAL BILLS	
BILL NUMBER:	.
SPONSOR:	.

Is this bill part of an agency package?
Yes.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	3/20/2019
LEAD AGENCY ANALYST:	Allison Hess Sitte
ADDITIONAL ANALYST(S):	Roy Clark, Jessica Hunter
LEGAL ANALYST:	Chuck Faircloth
FISCAL ANALYST:	.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This proposed bill authorizes the Florida Department of Veterans' Affairs to contract with certain individuals and entities to provide alternative treatment options for certain veterans.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently, The Florida Department of Veterans' Affairs offers primary care at each of the State Veterans' Nursing Homes and at the Domiciliary for the residents. The department does not offer secondary, specialized care. The State of Florida does not offer specialized, secondary care for veterans.

The United States Department of Veterans' Affairs currently offers: Accelerated resolution therapy, Acupuncture, Equine therapy, Meditation therapy, Music therapy, Outdoor and indoor sports therapy, Service animal training therapy, and Yoga therapy for veterans. They rarely offer Hyperbaric oxygen therapy.

2. EFFECT OF THE BILL:

This proposed bill authorizes the Florida Department of Veterans' Affairs to contract with one institution to provide a list of alternative treatment options for veterans who have been certified by the United States Department of Veterans Affairs or any branch of the United States Armed Forces as having a traumatic brain injury or posttraumatic stress disorder. This list includes: Accelerated resolution therapy, Acupuncture, Equine therapy, Hyperbaric oxygen therapy, Meditation therapy, Music therapy, Outdoor and indoor sports therapy, Service animal training therapy, and Yoga therapy.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	.
Is the change consistent with the agency's core mission?	Y☐ N☒
Rule(s) impacted (provide references to F.A.C., etc.):	None.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown at this time.
Opponents and summary of position:	Unknown at this time.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	.

Date Due:	.
Bill Section Number(s):	.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	.
Board Purpose:	.
Who Appoints:	.
Changes:	.
Bill Section Number(s):	.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	.
Expenditures:	.
Does the legislation increase local taxes or fees? If yes, explain.	.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	.
Expenditures:	The Florida Department of Veterans' Affairs has never paid for any kind of specialty care, including the ones listed in the bill. Our research found the average costs for each treatment listed. Hyperbaric Oxygen Therapy is $2000 without insurance per treatment and $230- $450 with insurance. The United States Department of Veterans Affairs pays $268.75 for each treatment. 40 dives are protocol for the treatment. Equine Therapy costs $80-115 per session. Acupuncture routine visit costs $50-75. Yoga treatments are $75 per session. Music therapy costs on average $53 per session. Service animal training costs for a canine average between $1100-2000. This does not include purchase of animal, food or veterinarian bills. Indoor/outdoor therapy costs between $400-600 a day, depending on events involved. Meditation therapies are too numerous to detail costs.

	If money is appropriated for these therapies listed in bill, the provider will select which therapy to use. Additional staffing for the Florida Department of Veterans' Affairs will be needed.
Does the legislation contain a State Government appropriation?	Currently, there is no specified amount in the bill.
If yes, was this appropriated last year?	No.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	.
Expenditures:	.
Other:	.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	.
Bill Section Number:	.

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	.

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	.

ADDITIONAL COMMENTS

The Florida Department of Veterans' Affairs does not provide specialty care, we do provide links to superior services as stated in our core mission. The US Department of Veterans' Affairs already provides most of these services.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Under the revised bill FDVA would contract with a single institution to provide provider and sub-provider contract management, monitoring and compliance functions. The single institution's contractual duties would include, but not be limited to, drafting, negotiation, oversight and compliance audits of multiple licensed provider contracts and sub-provider contracts. Two main concerns are that 1) a provider's license status would require verification, and 2) the person actually providing the treatment must be shown to be "under the direction and supervision" of a licensed provider in a legally supportable manner. These concerns could be addressed in the FDVA contract with the selected institution. FDVA may also engage in rulemaking to implement the new programs. FDVA contracting with an institution to enter and manage multiple licensed provider contracts may result in litigation, which could involve FDVA. The FDVA contract may include an indemnification provision to address this issue.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1518

4/1/19
Meeting Date

HB 501
Bill Number (if applicable)

Topic Alternative Treatment for Veterans

Amendment Barcode (if applicable)

Name Ciele Gutierrez

Job Title Music Therapist

Address 534 E Call Street
Street

Phone (305) 878-5197

Tallahassee FL 32301
City *State* *Zip*

Email Ciele.Gutierrez@TMH.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Music Therapy Task Force

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

SB 1518

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

HB 501
Bill Number (if applicable)

Topic Alternative therapies/treatments for Veterans

Amendment Barcode (if applicable)

Name Brittany Rosado

Job Title Director of TMH Music Therapy department

Address 2413 Ionic Ct
Street

Phone 724-699-6964

Tallahassee, FL 32303
City *State* *Zip*

Email brittany.rosado@tmh.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Music Therapy Task Force

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

#1518
Bill Number (if applicable)

Topic SERVICE DOGS FOR VETERANS

Amendment Barcode (if applicable)

Name JESSE DIAZ

Job Title OUTREACH COORDINATOR VET. ALT.

Address 8360 PHILADELPHIA AVE.
Street

Phone 352-585-0606

SPRING HILL FL 34608
City *State* *Zip*

Email JESSERESPONDS FIRST@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing VETERANS ALTERNATIVE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

1518
Bill Number (if applicable)

Topic Alternative Treatment for Veterans

Amendment Barcode (if applicable)

Name Danny Burgess

Job Title Executive Director

Address The Capitol, Suite 2105
Street

Tallahassee FL 32399
City *State* *Zip*

Phone (850) 487-1533

Email exdir@fdva.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

APR. 1, 2019
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1518
Bill Number (if applicable)

Topic ALTERNATIVE TREATMENT FOR VETERANS

Amendment Barcode (if applicable)

Name JOHN HAGNES

Job Title FLORIDA VETERANS FOUNDATION CHAIRMAN EMERITUS

Address 424 HIAWATHA TRAILS
Street

Phone 850-443-3451

MONTICELLO FL. 32301
City *State* *Zip*

Email JOHN2045@EMBARQMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA VETERANS FOUNDATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

APR 1, 2019
Meeting Date

1518
Bill Number (if applicable)

Topic ALTERNATIVE TREATMENT FOR VETERANS

Amendment Barcode (if applicable)

Name DENNIS BAKER

Job Title PRESIDENT

Address 3260 RUE DE LAFITTE DRIVE
Street

Phone 850-545-6668

TALLAHASSEE FL. 32312
City *State* *Zip*

Email BAKERD@FSU.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA VETERANS FOUNDATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-2019
Meeting Date

SB 1518
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alternative Treatments - Vets.

Name JACK HEBERT

Job Title Govt Affairs Director

Address 2961 Executive Dr
Street

Clearwater FL 33762
City *State* *Zip*

Phone 727-560-3323

Email jack@feachiro.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chiropractic Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

#1518
Bill Number (if applicable)

Topic Service dogs for veterans

Amendment Barcode (if applicable)

Name Julie Sanderson

Job Title CEO · Patriot Service Dogs.

Address 10545 SE 42 Ct.
Street

Phone 352-514-9903

Belleview FL 34420
City *State* *Zip*

Email julie@patriotservicedogs.org

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/2019
Meeting Date

SB 1518
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alternative treatment Options for Veterans

Name BRIAN Anderson

Job Title Retired Green Beret / Ceo Veterans Alternative

Address 5041 Circus Lane
Street

NPR FL 34653
City *State* *Zip*

Phone 910 364 5960

Email brian@veteransalternative.org

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Veterans Alternative

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1518
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Health + Wellness

Name Troy Shelton

Job Title ~~Registered~~ Operation Restored Warrior

Address _____ Phone 586 203 7394
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1518
Bill Number (if applicable)

Topic SB 1518 - Health, Wellness

Amendment Barcode (if applicable)

Name Julie Smith

Job Title CEO/Founder Veterans Lodge

Address _____ Phone _____

Street

Tallahassee FL 32312 Email julie@veteranslodge.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/01/19	1518
Meeting Date	*Bill Number (if applicable)*

Topic HBOT Alternative Treatment for Veterans — *Amendment Barcode (if applicable)*

Name Washington SANCHEZ, Col. USA

Job Title VP

Address 319 E. Park Ave — Phone 850-570-1969

Street

Tallahassee FL 32301 — Email WJSAN4@GMAIL.COM

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Tallahassee Veterans Legal Collaborative

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1518
Bill Number (if applicable)

Topic Alternative Treatment Options for Veterans

Amendment Barcode (if applicable)

Name Kaitlyn Gardner

Job Title Consultant

Address 113 E. College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 813-422-8571

Email kaitlyn@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing United Way Suncoast

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1518
Bill Number (if applicable)

Topic Alternative Treatment Options for Veterans

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title -

Address -
Street

Phone 850 766 5795

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Music Therapy Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1518
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Greg Pound

Job Title _____

Address Largo Fl.
Street
9166 Sunrise Dr. 33773
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	CS/SB 1700
INTRODUCER:	Health Policy Committee and Senator Lee
SUBJECT:	Prescription Drug Monitoring Program
DATE:	April 2, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1700 amends ss. 893.055 and 893.0551, F.S., to expand the Attorney General's (AG) access to data in the prescription drug monitoring program (PDMP) database. The bill allows the AG access to PDMP records for active investigations or pending civil or criminal litigation involving prescribed controlled substances (rather than only for Medicaid fraud cases). The bill requires that any patient information released to the AG, other than for Medicaid fraud cases, be deidentified. The DOH must assign each patient a unique identifying number and may only release that number along with the patient's year of birth and the city, county, and zip code of the patient's residence. Additionally, the bill specifies that the AG may introduce PDMP records released pursuant to the above provision as evidence in a civil, criminal, or administrative action and provides that the PDMP program manager may be called to testify for purposes of authenticating such records.

The bill takes effect upon becoming law.

II. Present Situation:

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic database to monitor the prescribing and dispensing of certain controlled substances.[1] The PDMP became operational on September 1, 2011, when it began

[1] Section 893.055(2)(a), F.S.

receiving prescription data from pharmacies and dispensing practitioners.[2] Health care practitioners began accessing the PDMP on October 17, 2011.[3]

Section 893.055, F.S., requires that for each controlled substance[4] dispensed to a patient in Florida, the dispensing practitioner must report specified information[5] by the close of the next business day. All acts of administration, the dispensing of a controlled substance to a person under the age of 16, and the dispensing of a controlled substance in a health care system of the Department of Corrections are exempt from the requirement to report. During the 2017-2018 reporting period, there were approximately 33 million controlled substances prescribed to Florida patients. This is a decline of 4.64 percent over the previous reporting period.[6]

Protection of Records in the PDMP

Sections 893.055 and 893.0551, F.S., restrict access to records in the PDMP. Specifically, s. 893.0551, F.S., makes confidential and exempt from public records laws the name, address, telephone number, insurance plan number, government-issued identification number, provider number, drug enforcement administration number, and any other unique identifying information or number of a patient or the patient's agent, a health care practitioner, an employee of the health care practitioner who is acting on behalf and at the direction of the health care practitioner, a pharmacist, or a pharmacy.

The Department of Health (DOH) is required to disclose protected information to specified entities in two ways: by providing direct access to the database or by disclosing information pursuant to a request.

- Persons and entities who may have direct access to the database are:
  - A prescriber, dispenser, or his or her designee;
  - An employee of the United States Department of Veterans Affairs, Department of Defense, or Indian Health Services who provides health care services pursuant to such employment and who is authorized to prescribe or dispense controlled substances;
  - The PDMP program manager in order to administer the system.[7]
- The following entities may request information from the system under specified circumstances:
  - The DOH and its health care regulatory boards, as appropriate, for investigations involving licensees authorized to prescribe or dispense controlled substances.
  - The AG for Medicaid fraud cases involving prescribed controlled substances.

---

[2] Florida Dept. of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2013), *available at* http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf (last visited on March 26, 2019).
[3] Id.
[4] Section 893.055, F.S., defines "controlled substance" as "a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03 or 21 U.S.C. s. 812." Prior to the passage of HB 21 in 2018 controlled substances listed in Schedule V were exempt from reporting. See ch. 2018-13, Laws of Fla.
[5] For the information required to be reported, see s. 893.055(3)(a)1.-8., F.S.
[6] Florida Dept. of Health, *2017-2018 Prescription Drug Monitoring Program Annual Report* (December 1, 2018), *available at* http://www.floridahealth.gov/statistics-and-data/e-forcse/health_care_practitioners/_documents/2018-pdmp-annual-report.pdf (last visited on March 27, 2019).
[7] Section 893.055(4), F.S.

- A law enforcement agency during active investigations of potential criminal activity, fraud, or theft regarding prescribed controlled substances.
- A medical examiner when conducting an authorized investigation under s. 406.11, F.S., to determine the cause of death of an individual.
- An impaired practitioner consultant who is retained by the DOH under s. 456.076, F.S., to review the system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and who has separately agreed in writing to the consultant's access to and review of such information.
- A patient or the legal guardian or designated health care surrogate of an incapacitated patient who submits a written and notarized request that includes the patient's full name, address, phone number, date of birth, and a copy of a government-issued photo identification.[8]

Section 893.0551(5), F.S., requires that before disclosing information to a criminal justice agency or a law enforcement agency, the disclosing person or entity must take steps to ensure the continued confidentiality of all information. At a minimum, these steps must include redacting any non-relevant information. Also, s. 893.0551(6), F.S., requires an agency or person who obtains any information pursuant to this section to maintain the confidential and exempt status of that information and may not disclose such information unless authorized by law.

Additionally, s. 893.055(10), F.S., specifies that information in the PDMP is for informational purposes only and is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient. The program manager and other authorized persons are also restricted from testifying to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the PDMP in any civil or administrative action.

Florida's Opioid Lawsuit

In 2018, AG Pam Bondi filed suit against multiple opioid manufacturers and distributors. The suit was later expanded to include the pharmacies CVS and Walgreens.[9] The complaint alleges that the defendants caused the opioid crisis by, among other things:

- Engaging in a campaign of misrepresentations and omissions about opioid use designed to increase opioid prescriptions and opioid use, despite the risks.
- Funding ostensibly neutral and independent "front" organizations to publish information touting the benefits of opioids for chronic pain while omitting the information about the risks of opioid treatment.
- Paying ostensibly neutral medical experts called "key opinion leaders" who were really manufacturer mouthpieces to publish articles promoting the use of opioids to treat pain while omitting information regarding the risks.[10]

[8] Section 893.055(5), F.S.
[9] See *Florida Sues Walgreens, CVS for Alleged Role in Opioid Crisis*, (November 19, 2018) *available at* https://www.npr.org/2018/11/19/669146432/florida-sues-walgreens-cvs-for-alleged-role-in-opioid-crisis (last visited on March 27, 2019).
[10] See http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AYSNED/$file/Complaint+summary.pdf, (last visited on March 27, 2019).

The lawsuit is ongoing.[11]

III. Effect of Proposed Changes:

CS/SB 1700 amends s. 893.055, F.S. to:

- Allow the AG to request and receive data from the PDMP pursuant to an active investigation or pending civil or criminal litigation involving prescribed controlled substances, rather than only for Medicaid fraud cases;
- Require the DOH, when releasing information to the AG, other than for Medicaid fraud cases, to protect patient information by assigning each patient a unique identifying number. The unique identifier may not identify, or provide a reasonable basis to identify, the patient and the DOH may only release the patient's assigned number, his or her year of birth, and the county, city, and zip code of his or her residence.
- Allow the AG to introduce information released pursuant to the above provision in a civil, criminal, or administrative action against a dispenser or pharmacy; and
- Provide that the PDMP program manager, or other authorized persons who participate in preparing, reviewing, issuing, or any other activity related to the management of the system, may testify for the purposes of authenticating the records introduced by the AG.

The bill amends s. 893.0551, F.S., to:

- Conform to the change allowing the AG to request and receive data from the PDMP for all cases; and
- Specify that the AG may release information from the system only in response to a discovery demand if such information is directly related to the case for which the information is reported.

The bill's provisions are effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[11] To review the amended complaint please see http://myfloridalegal.com/webfiles.nsf/WF/GWRY-B6KV32/$file/Amended+Complaint+(Filed).pdf (last visited on March 27, 2019).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1700 may have an indeterminate negative fiscal impact on the DOH as the DOH may experience an increase in workload related to deidentifying records released to the AG and related to trial preparation and travel.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 893.055 and 893.0551 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on April 1, 2019:
The CS requires that patient information released to the AG for any active investigation or civil, criminal, or administrative case, other than for Medicaid fraud cases, be deidentified. The CS also narrows the scope of the bill so that only information released to the AG pursuant to the above provision may be introduced as evidence in a civil or administrative suit. The provisions of the CS are effective upon becoming law, whereas the underlying bill's effective date was July 1, 2019.

B. Amendments:

None.

[12] See DOH, *House Bill 1253 Analysis*, (on file with the Senate Committee on Health Policy).

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
	.	
	.	
	.	

The Committee on Health Policy (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (5) and subsection (10) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(5) The following entities may not directly access information in the system, but may request information from the program manager or designated program and support staff:

(b) The Attorney General for:

1. Medicaid fraud cases involving prescribed controlled substances.

2. An active investigation or pending civil or criminal litigation involving prescribed controlled substances other than Medicaid fraud cases. When releasing information pursuant to this subparagraph, the department must assign each patient whose information is released a unique identifying number that does not identify, or provide a reasonable basis to identify, the patient to whom the identifying number is assigned. The department may not release any patient information pursuant to this subparagraph other than the patient's unique identifying number, year of birth, and the county, city, and zip code where the patient resides.

(10) Information in the prescription drug monitoring program's system may be released only as provided in this section and s. 893.0551.

(a) Except as provided in paragraph (b), the content of the system is intended to be informational only. Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient arising out of matters that are the subject of information in the system. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to management of the system may not be permitted or required to testify in any such civil or administrative action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the system.

(b) The Attorney General may introduce information from the


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system released to him or her pursuant to subparagraph (5)(b)2. as evidence in a civil, criminal, or administrative action against a dispenser or a pharmacy. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to the management of the system may testify for purposes of authenticating the records introduced into evidence pursuant to this paragraph.

Section 2. Paragraph (e) of subsection (3) and subsection (6) of section 893.0551, Florida Statutes, are amended to read:

893.0551 Public records exemption for the prescription drug monitoring program.—

(3) The department shall disclose such information to the following persons or entities upon request and after using a verification process to ensure the legitimacy of the request as provided in s. 893.055:

(e) The Attorney General or his or her designee:

1. When working on Medicaid fraud cases involving prescribed controlled substances or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud or specific identifiers that warrant a Medicaid investigation regarding prescribed controlled substances. The Attorney General’s Medicaid fraud investigators may not have direct access to the department’s system. The Attorney General or his or her designee may disclose to a criminal justice agency, as defined in s. 119.011, only the information received from the department that is relevant to an identified active investigation that prompted the request for the information.

2. When pursuing an active investigation or pending civil or criminal litigation involving prescribed controlled

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substances. Except for Medicaid fraud cases, when releasing information pursuant to this subparagraph, the department must assign each patient whose information is released a unique identifying number that does not identify, or provide a reasonable basis to identify, the patient to whom the identifying number is assigned. The department may not release any patient information pursuant to this subparagraph other than the patient's unique identifying number, year of birth, and the county, city, and zip code where the patient resides.

(6) An agency or person who obtains any information pursuant to this section must maintain the confidential and exempt status of that information and may not disclose such information unless authorized by law. Information shared with a state attorney pursuant to paragraph (3)(f), ~~or~~ paragraph (3)(h), or with the Attorney General or his or her designee pursuant to subparagraph (3)(e)2. may be released only in response to a discovery demand if such information is directly related to the ~~criminal~~ case for which the information was requested. Unrelated information may be released only upon an order of a court of competent jurisdiction.

Section 3. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to prescribed controlled substances; amending s. 893.055, F.S.; expanding the circumstances


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under which the Attorney General may request information from the prescription drug monitoring program to include an active investigation or pending civil or criminal litigation involving prescribed controlled substances; requiring the Department of Health to assign each patient a unique identifying number when releasing certain information; limiting the information of a patient the department may release; authorizing the Attorney General to introduce as evidence in certain actions specified information that is released to the Attorney General from the program's records system; authorizing certain persons to testify as to the authenticity of certain records; amending s. 893.0551, F.S.; expanding the circumstances under which the department must disclose certain information to the Attorney General to include active investigations or pending civil or criminal litigation involving prescribed controlled substances; requiring the department to assign each patient a unique identifying number when releasing certain information; providing an exception; limiting the information of a patient the department may release; authorizing the release of specified information shared with a state attorney only in response to a discovery demand under certain circumstances; providing an effective date.

By Senator Lee

20-01497-19 20191700__

A bill to be entitled

An act relating to the prescription drug monitoring program; amending s. 893.055, F.S.; expanding the Attorney General's authority to request information for Medicaid fraud cases from the Department of Health prescription drug monitoring program to information on all cases involving prescribed controlled substances; removing a limitation that prohibits discovery of, or the introduction into evidence of, certain information in a civil or administrative action against dispensers or pharmacies in the program; authorizing certain individuals to testify regarding the authenticity of program records; amending s. 893.0551, F.S.; expanding access the Attorney General or his or her designee has to certain confidential and exempt information maintained by the department; authorizing the Attorney General to use for certain purposes all information maintained by the department whether compiled before, on, or after a certain date; providing for treatment of certain information as it relates to discovery in certain actions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (5) and subsection (10) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(5) The following entities may not directly access information in the system, but may request information from the

20-01497-19 20191700__

program manager or designated program and support staff:

(b) The Attorney General for ~~Medicaid fraud~~ cases involving prescribed controlled substances.

(10) Information in the prescription drug monitoring program's system may be released only as provided in this section and s. 893.0551. The content of the system is intended to be informational only. Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber~~, dispenser, pharmacy,~~ or patient arising out of matters that are the subject of information in the system. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to management of the system may not be permitted or required to testify in any such civil or administrative action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the system. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to the management of the system may testify for purposes of authenticating the records contained in the system.

Section 2. Paragraph (e) of subsection (3) and subsection (6) of section 893.0551, Florida Statutes, are amended to read:

893.0551 Public records exemption for the prescription drug monitoring program.—

(3) The department shall disclose such information to the following persons or entities upon request and after using a verification process to ensure the legitimacy of the request as provided in s. 893.055:

(e) The Attorney General or his or her designee when working on ~~Medicaid fraud~~ cases involving prescribed controlled substances or when the Attorney General has initiated a review of ~~specific identifiers of Medicaid fraud or~~ specific identifiers that warrant an ~~a Medicaid~~ investigation regarding prescribed controlled substances. The Attorney General's ~~Medicaid fraud~~ investigators may not have direct access to the department's system. The Attorney General or his or her designee may disclose to a criminal justice agency, as defined in s. 119.011, only the information received from the department that is relevant to an identified active investigation that prompted the request for the information. The Attorney General may use all information maintained by the department, whether compiled before, on, or after July 1, 2019, to pursue an investigation and civil or criminal litigation.

(6) An agency or person who obtains any information pursuant to this section must maintain the confidential and exempt status of that information and may not disclose such information unless authorized by law. Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber or patient arising out of matters that are the subject of information in the system. Information shared with a state attorney pursuant to paragraph (3)(f) or paragraph (3)(h) or by the Attorney General or his or her designee pursuant to paragraph (3)(e) may be released only in response to a discovery demand if such information is directly related to the ~~criminal~~ case for which the information was requested. Unrelated information may be released only upon an order of a court of competent

jurisdiction.

Section 3. This act shall take effect July 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 8, 2019

I respectfully request that **Senate Bill #1700**, relating to Prescription Drug Monitoring Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

BILL INFORMATION	
BILL NUMBER:	1253
BILL TITLE:	Prescription Drug Monitoring Program
BILL SPONSOR:	Mariano
EFFECTIVE DATE:	7/1/2019

COMMITTEES OF REFERENCE
1) Click or tap here to enter text.
2) Click or tap here to enter text.
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Click or tap here to enter text.

SIMILAR BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	Click or tap here to enter text.
LEAD AGENCY ANALYST:	Click or tap here to enter text.
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Click or tap here to enter text.
FISCAL ANALYST:	Click or tap here to enter text.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill expands indirect access by the Attorney General to all cases involving prescribed controlled substances not just Medicaid fraud cases. Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber or patient; however, is subject to discovery against a dispenser. The bill authorizes the program manager to testify for purposes of authenticating the records contained in the system. The bill authorizes the Attorney General or his or her designee to retroactively use the information prior to the effective date of the bill to investigate or pursue criminal or civil litigation.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Prescription Drug Monitoring Program (PDMP) collects and maintains controlled substance dispensing information (Information) in a database pursuant to sections 893.055 and 893.0551, F.S. The Information maintained in the database is confidential and exempt from public record disclosure and may only be released to an authorized user under specified circumstances. The PDMP system is a repository for the Information not the official custodian of the record or its primary source.

Section 893.055, F.S., authorizes certain entities to have direct access to controlled substance dispensing information in the system. In accordance with sections 893.055(5) and 893.0551(3), F.S., local, state, and federal law enforcement, the Department or its relevant health care regulatory boards, the Attorney General for Medicaid fraud cases and medical examiners do not have direct access to the Information in the system, however may request and receive Information from the PDMP if the following is met.

1. Designate an individual from its Agency to function as the Agency Administrator and point of contact.
2. Notify the PDMP Program Manager of changes to the Agency Administrator immediately.
3. Ensure the Agency complies with the Agency User Agreement, the Training Guide for Law Enforcement and Investigative Agencies, and the laws and rules governing the access, use, and dissemination of Information received.
4. Designate authorized users who may request Information on behalf of the Agency and ensure all authorized users have knowledge and proof of an active investigation prior to submitting a request.
5. Immediately update user access permissions upon separation or reassignment of users and immediately update user access permissions upon discovery of negligent, improper, or unauthorized use or dissemination of information.
6. Immediately report any findings of noncompliance to the Program Manager.

Currently, the Attorney General's has indirect access to request Information for prescribed controlled substances. Section 893.0551, F.S., authorizes the PDMP to release the Information to the Attorney General or his or her designee when working on Medicaid fraud cases involving prescribed controlled substances or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud or specific identifiers that warrant a Medicaid investigation regarding prescribed controlled substances. The Attorney General may disclose to a criminal justice agency information received from the department that is relevant to an identified active investigation that prompted the request for information. However, before disclosing Information, all nonrelevant information must be redacted and Information must remain confidential.

There are several reports available for request within the system by an authorized user. These include reports on prescriber activity, dispenser activity, and patient activity. The prescriber activity request displays a summary of prescriptions prescribed by specified DEA number and the corresponding patient and pharmacy information. The dispenser activity request displays a summary of prescriptions dispensed at a specified location by a specified DEA number and the corresponding patient and prescriber information. The patient activity request allows broader searches for a single patient by name and date of birth. All report requests require the user to select the request purpose identifying the type of investigation and case number. The requests are reviewed and approved by program staff. The search results are returned to the authorized user via the system.

Last year the PDMP responded to 5,698 requests from 275 approved users last year. This includes requests from law enforcement, Attorney General's Medicaid Fraud Unit, Department Investigative Services Unit; and Impaired Practitioner Consultants. Of the 5,698 requests made last year, 121 report requests were made by seven (7) are Medicaid Fraud Unit Investigators.

Information in the system is only released by the PDMP in accordance to s. 893.0551, F.S. The content of the report is intended to be informational only. The Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient arising out of

matters that are the subject of the Information in the system. The program manager or persons preparing, reviewing, issuing, or any other activity in managing the system may not be permitted or required to testify in any civil or administrative action as to the any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the system. The program manager or program staff have testified at four (4) criminal trials in the past.

2. EFFECT OF THE BILL:

The bill expands indirect access by the Attorney General to all cases involving prescribed controlled substances not just Medicaid fraud cases.

The bill authorizes the program manager and authorized persons to testify for purposes of authenticating the records contained in the system in civil and administrative action against dispensers. The term "dispenser" is defined as a dispensing health care practitioner, pharmacy, or pharmacist licensed to dispense controlled substances in or into this state.

It is indeterminate as to how much additional staff time will be needed for trial preparation and travel to court to provide testimony. The Department does not collect the number of civil cases that have been filed involving prescribed controlled substances for comparison. When analyzing potential administrative action, there are 11,408 dispensing health care practitioners, 9,859 pharmacies and 31,606 pharmacists registered by the Department that could be subject to an administrative complaint. Although not differentiated by case type, in FY17-18, there were 905 administrative complaints received by the Department of which 431 were received against pharmacies and 474 complaints were received against pharmacists. Out of the 905 complaints received, 36 percent or 325 complaints were legally sufficient. The program manager or program staff has provided testimony in three (3) criminal trials.

There are no PDMP system enhancements necessary to implement the bill.

The effective date of the bill is July 1, 2019; however, the Attorney General may use the information to pursue an investigation and civil or criminal litigation retroactively.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A

Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	Click or tap here to enter text.
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	None
Expenditures:	DOH/PDMP will experience a recurring increase in workload and costs associated with additional OPS staff time needed for trail preparation and travel expenses to court to provide testimony. The impact is indeterminate; therefore, the fiscal impact cannot be calculated. DOH/PDMP will experience a recurring increase in workload associated with approving requests for information or to authenticate records in the PDMP system for civil and administrative actions against dispensers. The impact is indeterminate; therefore, the fiscal impact cannot be calculated.

Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	Unknown
Expenditures:	Unknown
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Lines 28 and 56-60 of the proposed legislation removes the requirement that Attorney General access to the information in the database be related to Medicaid fraud or a Medicaid investigation initiated by a review of specific identifiers. "Specific identifiers" is not defined in current law or the proposed legislation. The absence of a definition and the Medicaid qualifier results in extremely broad access to the information in the database that appears to conflict with restrictions placed on active investigations in section 893.055(1)(a), Fla. Stat.

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04.01.16
Meeting Date

1700
Bill Number (if applicable)

428208
Amendment Barcode (if applicable)

Topic Prescription Drug Monitoring Program

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Phone (850) 222-0170

Tallahassee FL 32301
City *State* *Zip*

Email William@fljustice.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1700
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PDMP

Name Lorena Holley

Job Title General Counsel

Address 227 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 222 4082

Email lorena@frf.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04.01.16
Meeting Date

1700
Bill Number (if applicable)

Topic Prescription Drug Monitoring Program
Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Phone (850) 222-0170

Tallahassee FL 32301
City *State* *Zip*

Email William@fljustice.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1
Meeting Date

1700
Bill Number (if applicable)

Topic Prescription Drug Monitoring Program

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director, Gov't Relations

Address 400 S. Monroe St. Phone

Street

Tallahassee FL 32399 Email

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Attorney General's Office

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	CS/SB 418
INTRODUCER:	Banking and Insurance Committee and Senator Simpson
SUBJECT:	Essential Health Benefits Under Health Plans
DATE:	March 29, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Brown	HP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 418 requires the Office of Insurance Regulation to conduct a study to evaluate Florida's essential health benefits (EHB) benchmark plan and submit a report to the Governor, the President of the Senate, and the Speaker of the House. The study must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost.

Starting in plan year 2020, the federal government is providing each state with greater flexibility in the selection of its EHB-benchmark plan. This flexibility may foster innovation in plan design and greater access to affordable coverage in the states. The options include:

- Selecting an EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more categories of EHBs under its EHB-benchmark plan used for the 2017 plan year with the same category or categories of EHB from the EHB-benchmark plan that another state used for the 2017 plan year; or
- Selecting a set of benefits that would become the state's EHB-benchmark plan.[1]

The bill also provides insurers and HMOs issuing or delivering individual or group policies or contracts in Florida that provide EHBs additional flexibility in developing affordable coverage options. Such coverage options must be substantially equivalent to the state EHB-benchmark plan and could be submitted to the OIR for review and approval.

[1] CMS.gov, *The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed February 11, 2019).

The bill takes effect upon becoming a law.

II. Present Situation:

Regulation of Insurance in Florida

The Florida Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities that do business in the state.[2]

2019 Individual and Small Group Markets

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018, which were compliant with the federal Patient Protection and Affordable Care Act (PPACA).[3] In August 2018, the OIR announced that premiums for the individual PPACA-compliant plans would increase an average of 5.2 percent effective January 1, 2019.[4] The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield, offers individual coverage in all 67 counties.[5] During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.[6] The 2020 open enrollment period will occur from November 1, 2019, through December 15, 2019, and plans sold during this span will start January 1, 2020.[7]

The OIR approved the 2019 rates for 14 small group insurers.[8] The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and United Healthcare (and affiliates) offer small group plans in every county.

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[2] The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

[3] The federal Patient Protection and Affordable Care Act was enacted on March 23, 2010, which created or expanded a number of health care protections and guarantees, provided states with a Medicaid eligibility expansion option, and made available individual health insurance subsidies, and tax credits based on income.

[4] Office of Insurance Regulation, *Individual PPACA Market Monthly Premiums for Plan Year 2019*, (August 22, 2018) *available at* https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf (last viewed February 11, 2019). See also Press Release, Office of Insurance Regulation, *OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates*, (August 28, 2019) *available at* https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234 (last viewed February 11, 2019).

[5] OIR, *Individual Market County Offerings*, (August 22, 2019) *available at* https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf, (last viewed February 11, 2019).

[6] CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period,* (January 3, 2019) *available at* https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period (last viewed February 14, 2019).

[7] Centers for Medicare and Medicaid Services, *Dates and deadlines for 2019 health insurance, Healthcare.gov,* https://www.healthcare.gov/quick-guide/dates-and-deadlines/ (last viewed March 28, 2019).

[8] OIR, *Small Group PPACA Market Monthly Premiums for Plan Year 2019*, (August 22, 2018) *available at* https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf (last viewed February 14, 2019).

The initial deadline for the submission of 2020 rates by health insurance issuers is July 24, 2019, with certification of rates expected to be completed by early October, 2019.[9]

Patient Protection and Affordable Care Act (PPACA)

The federal PPACA was signed into law on March 23, 2010.[10] Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. Further, PPACA requires 10 categories of essential health benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.[11] The PPACA preempts any state law that prevents the application of a provision of PPACA. [12]

Essential Health Benefits

The PPACA requires non-grandfathered health plans in the individual and small group markets to cover essential health benefits (EHB), which include items and services in the following 10 benefit categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Pregnancy, maternity, and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; and
- Pediatric services, including oral and vision care.[13]

State EHB-Benchmark Plans, Generally

Rules adopted by the U.S. Department of Health and Human Services (HHS)[14] define EHB based on state-specific EHB benchmark plans. In plan year 2017, 2018, and 2019, the EHB-benchmark plan is defined as a plan that was sold in 2014. The HHS codified regulations to

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[9] Centers for Medicare and Medicaid Services, *Proposed Key Dates for Calendar Year 2019, Qualified Health Plan (QHP) Certification in the Federally Facilitated Exchanges (FFEs); Rate Review; and Risk Adjustment*, https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Key-Dates-Table-for-CY2019.pdf (last viewed March 28, 2019).

[10] Pub. Law No. 111-148. On March 30, 2010, PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010.

[11] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).

[12] PPACA, s. 1321(d)

[13] HealthCare.gov, *What Marketplace health insurance plans cover*, available at: https://www.healthcare.gov/coverage/what-marketplace-plans-cover/ (last viewed February 11, 2019).

[14] 45 CFR s. 156.100.

allow each state to select a benchmark plan that serves as a reference plan. According to the HHS, this approach seeks to balance coverage of essential health benefits (EHB) categories and affordability and provide flexibility for states as primary regulators of health insurance. States can choose a benchmark plan from among the following health insurance plans:

- The largest plan by enrollment in any of the three largest small group insurance products in the State's small group market;
- Any of the largest three state employee plans by enrollment;
- Any of the largest three national federal employer health benefit plans (FEHBP) plan options by enrollment; or
- The largest insured commercial non-Medicaid health maintenance organization (HMO) operating in the state.

All 10 essential health benefit categories must be included as a part of EHB; therefore, if the selected or default benchmark plan does not initially cover a category, the benchmark must be supplemented.[15] If one or more categories of benefits is missing in the benchmark plan, the insurer or HMO must supplement it.[16] States are required to supplement pediatric dental and vision with the benefits which are equivalent to the Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan[17] with the largest national enrollment or the benefits in the Children's Health Insurance Program.[18]

In Florida, the state did not select a plan; therefore, the default benchmark plan is the largest small group plan, which is supplemented to include pediatric dental. The small group plan also includes all of the mandated coverage required under Florida law.

EHB-Benchmark Plans in 2020 and Thereafter

For plan year 2020 and after, the HHS provides states with greater flexibility to update their EHB benchmark plans, if they so choose.[19] Such modifications are subject to HHS review and approval to become effective. States that opt not to exercise this flexibility continue to use the same benchmark plan applicable for the prior year.[20]

Under the new regulations, a state may modify its EHB-benchmark plan by:

- Selecting the EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more EHB categories of benefits in its EHB-benchmark plan used for the 2017 plan year with the same categories of benefits from another state's EHB-benchmark plan used for the 2017 plan year; or

[15] 45 CFR s. 156.110(b).
[16] 45 CFR s. 156.110(b)-(c).
[17] Federal Employees Dental and Vision Insurance Program, *available at* https://www.benefeds.com/Portal/EducationSupport?EnsSubmit=EducationSupportMainCnt&ctoken=WyGpd9Pk (last viewed March 20, 2019).
[18] The program, established pursuant to Title XXI of the U.S. Social Security Act, is a program jointly administered by the states and the United States Department of Health and Human Services that provides matching funds to states for health insurance for children from families with low to moderate household incomes. In Florida, the program is known as Florida KidCare.
[19] CMS.gov, *The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans*, available at https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed February 11, 2019). For plan year 2020, no state has opted to permit insurers or HMOs to substitute benefits between benefit categories.
[20] 45 CFR s. 156.111(c).

- Selecting a set of benefits that would become the state's EHB-benchmark plan.[21]

The regulation allows an issuer of a plan offering EHB to substitute benefits for those provided in the EHB-benchmark plan under the following conditions:

- The substituted benefit is not a prescription drug benefit.[22]
- An issuer may substitute a benefit within the same category, unless prohibited by state law.
- For plan years beginning on or after January 1, 2020, an issuer may substitute benefits between categories if the state in which the plan will be offered has notified HHS that substitution between EHB categories is permitted.

If a state selects a new EHB benchmark plan for submission to the HHS, the plan will be required to include coverage for all 10 EHB categories of benefits, and the state will be required to confirm its plan to include coverage for each EHB category.[23] Further, a state is required to confirm that its new EHB-benchmark plan meets the applicable requirements[24] on scope of benefits, including that the state's EHB-benchmark plan provide a scope of benefits that is equal to, or greater than, to the extent any supplementation is required to provide coverage within each EHB category, the scope of benefits provided under a typical employer plan.[25] Because of these requirements, HHS concludes that the options at 45 CFR s. 156.111(a), do not allow a state to reduce substantially the level of coverage, and instead allow a state the option to adjust its EHB-benchmark plan.[26]

In the proposed rule published on January 24, 2019, the suggested deadline for the states to submit any revisions to its EHB benchmark selection for the 2021 plan year is May 6, 2019, and the suggested deadline for the 2022 plan year is May 8, 2020.[27]

Issuer Options

If an issuer (health insurer or HMO) offers a policy or contract that includes substituted benefits, the issuer must:

- Provide benefits that are substantially equivalent to the EHB-benchmark plan;
- Provide an appropriate balance among the EHB categories such that benefits are not unduly weighted toward any category; and
- Provide benefits for diverse segments of the population.[28]

The issuer is required to submit to the state insurance regulator evidence of actuarial equivalence certified by a member of the American Academy of Actuaries and evidence that the plan meets other specified requirements.

[21] 45 CFR s. 156.111(a).
[22] 45 CFR s. 156.115
[23] 45 CFR s. 156.111(e)(1).
[24] 45 CFR s. 156.111(b)
[25] 45 CFR s. 156.111(e)(2).
[26] 83 FR at 17011.
[27] Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020; 84 Fed. Reg. 227, 283-284 (Jan. 24, 2019) (to be codified at 45 CFR s. 156.115).
[28] 45 CFR s. 156.111(e).

III. Effect of Proposed Changes:

For purposes of Sections 1 and 2, the term, EHB-benchmark plans has the same meaning as provided in 45 CFR s. 156.20. This regulation provides that an EHB-benchmark plan is the standardized set of essential health benefits that must be met by a qualified health plan, as defined in 45 CFR s. 155.20, or other issuer as required by 45 CFR s. 147.150.

Section 1 creates an undesignated section that requires the OIR to conduct a study to evaluate the state's current EHB-benchmark plan for non-grandfathered individual and group plans and options for changing the EHB-benchmark plan pursuant to 45 CFR s. 156.111 for future years.

- Consider EHB-benchmark plans and benefits under the 10 essential health benefits categories established under 45 CFR s. 156.110(a), which are used by the other 49 states;
- Compare the costs of benefits within such categories and overall costs of EHB-benchmark plans used by other states with the costs of benefits within the categories and overall costs of the current EHB-benchmark plan of this state; and
- Solicit and consider proposed individual and group health plans from health insurers and health maintenance organizations in developing recommendations for changes to the current EHB-benchmark plan.

The OIR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes recommendations for changing the current EHB-benchmark plan. The report is due by October 30, 2019. The OIR must also include an analysis as to whether proposed plans submitted by health insurers and HMOs pursuant to Section 2 of the bill meet the requirements for EHB-benchmark plans under 45 CFR s. 156.111(b).

Section 2 creates s. 627.443, F.S., to authorize an insurer or HMO, which issues or delivers individual or group policies or individual or group contracts in Florida, options for providing the 10 categories of essential health benefits mandated by PPACA. The insurer or HMO may provide essential health benefits by:

- Selecting one or more services or coverages for each of the required 10 essential health benefits categories from the list of essential health benefits required by any single state or multiple states;
- Selecting one or more services or categories from any one or more of the required categories of EHBs from one state or multiple states; or
- Selecting any combination of services or coverages required by any one or a combination of states to provide the required categories of EHBs.

An insurer or HMO is authorized to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of EHB required under PPACA in a policy or contract issued in this state.

Further, the section authorizes health insurers and HMOs to submit the policies or contracts authorized under this section to the OIR for consideration as part of the OIR's study of the state's EHBs, required under section 1 of the bill. A health insurer or HMO may also submit to the OIR for evaluation a policy or contract as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 3 provides the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Once the state submits a new EHB-benchmark plan and the federal government approves, it is anticipated that insurers and HMOs will be able to offer consumers more innovative coverage options at affordable prices for coverage that is substantially equivalent to the new state EHB-benchmark plan.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 1, lines 67-73, reference health plans created by health insurers and HMOs "under this section." Section 1 of the bill requires an OIR study of the essential health benefits benchmark plan; plans would not be created pursuant to the study. Submission by health insurers and HMOs of plans for consideration in the study is addressed in lines 54-57.

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VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.6054 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS:

- Requires the OIR to study options for revising the EHB-benchmark plan and to present recommendations to the Legislature and Governor.
- Allows insurers or HMOs to propose policies or contracts using alternate EHB-benchmark plans and to submit them to OIR for consideration as equivalent to the current EHB-benchmark plan or to any EHB-benchmark plan created in the future.
- Revises the effective date of the bill from July 1, 2019, to upon becoming a law.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Simpson

597-03478-19 2019418c1

A bill to be entitled

An act relating to essential health benefits under health plans; defining the terms "EHB-benchmark plan" and "office"; requiring the Office of Insurance Regulation to conduct a study evaluating this state's current benchmark plan for essential health benefits under the federal Patient Protection and Affordable Care Act (PPACA) and options for changing the benchmark plan for future plan years; requiring the office, in conducting the study, to consider plans and certain benefits used by other states and compare costs with those of this state; requiring the office to solicit and consider proposed health plans from health insurers and health maintenance organizations in developing recommendations; requiring the office, by a certain date, to provide a report with certain recommendations and a certain analysis to the Governor and the Legislature; providing that health plans created by health insurers and health maintenance organizations may be submitted to the office for certain purposes; creating s. 627.443, F.S.; defining the terms "EHB-benchmark plan" and "PPACA"; authorizing health insurers and health maintenance organizations to create new health insurance policies and health maintenance contracts meeting certain criteria for essential health benefits under PPACA; providing that such criteria may be met by certain means; providing construction; providing that such policies and contracts created by health insurers and

597-03478-19 2019418c1

health maintenance organizations may be submitted to the office for certain purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Study of state essential health benefits benchmark plan; report.—

(1) As used in this section, the term:

(a) "EHB-benchmark plan" has the same meaning as provided in 45 C.F.R. s. 156.20.

(b) "Office" means the Office of Insurance Regulation.

(2) The office shall conduct a study to evaluate this state's current EHB-benchmark plan for nongrandfathered individual and group health plans and options for changing the EHB-benchmark plan pursuant to 45 C.F.R. s. 156.111 for future plan years. In conducting the study, the office shall:

(a) Consider EHB-benchmark plans and benefits under the 10 essential health benefits categories established under 45 C.F.R. s. 156.110(a) which are used by the other 49 states;

(b) Compare the costs of benefits within such categories and overall costs of EHB-benchmark plans used by other states with the costs of benefits within the categories and overall costs of the current EHB-benchmark plan of this state; and

(c) Solicit and consider proposed individual and group health plans from health insurers and health maintenance organizations in developing recommendations for changes to the current EHB-benchmark plan.

(3) By October 30, 2019, the office shall submit a report

to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost than this state's current EHB-benchmark plan. In its report, the office shall provide an analysis as to whether proposed health plans it receives under paragraph (2)(c) meet the requirements for an EHB-benchmark plan under 45 C.F.R. s. 156.111(b).

(4) Health plans created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the study under this section; and

(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 2. Section 627.443, Florida Statutes, is created to read:

627.443 Essential health benefits.—

(1) As used in this section, the term:

(a) "EHB-benchmark plan" has the same meaning as provided in 45 C.F.R. s. 156.20.

(b) "PPACA" has the same meaning as in s. 627.402.

(2) A health insurer or health maintenance organization issuing or delivering an individual or a group health insurance policy or health maintenance contract in this state may create a new health insurance policy or health maintenance contract that:

(a) Must include at least one service or coverage under each of the 10 essential health benefits categories under 42 U.S.C. s. 18022(b) which are required under PPACA;

(b) May fulfill the requirement in paragraph (a) by selecting one or more services or coverages for each of the required categories from the list of essential health benefits required by any single state or multiple states; and

(c) May comply with paragraphs (a) and (b) by selecting one or more services or coverages from any one or more of the required categories of essential health benefits from one state or multiple states.

(3) This section specifically authorizes an insurer or health maintenance organization to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of essential health benefits required under PPACA in a policy or contract issued in this state.

(4) Health insurance policies and health maintenance contracts created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the office's study of this state's essential health benefits benchmark plan; and

(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 3. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 27, 2019

I respectfully request that **Senate Bill #418**, relating to essential health benefits, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Wilton Simpson
Florida Senate, District 10

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 Committee on Health Policy

BILL:	SB 1242
INTRODUCER:	Senator Rouson
SUBJECT:	Chiropractors
DATE:	March 29, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Pre-meeting**
2.			ED	
3.			RC	

I. Summary:

SB 1242 strikes the Council on Chiropractic Education as the accrediting agency for chiropractic schools and colleges in the United States. The bill provides that for an applicant to satisfy the chiropractic educational requirements for licensure, he or she must have graduated from a chiropractic school or college accredited by an accrediting agency recognized by the Secretary of the United States Department of Education.

The bill creates a path to licensure for foreign-educated chiropractic physicians and a path to certification for foreign-educated applicants for chiropractic faculty certificates.

The bill creates licensure by endorsement in Florida for chiropractic physicians. The Board of Chiropractic Medicine (BOCM) may grant an individual a license to practice chiropractic medicine if the applicant has held a valid license to practice chiropractic in another state or territory of the United States for 10 years with no discipline and meets all other licensure requirements except the passing of the national examination.

The bill may have an insignificant fiscal impact on state government.

The bill takes effect upon becoming law.

II. Present Situation:

Chiropractic Medicine

Chapter 460, F.S., sets the minimum requirements for safe practice of chiropractic medicine in Florida. The Department of Health (DOH) and BOCM regulate the education, training, and practice of chiropractic physicians. The practice of chiropractic medicine consists of the science,

philosophy, and art of adjustment, manipulation, and treatment of the human body which produces normal function and health using specific chiropractic techniques taught in chiropractic colleges accredited by the Council on Chiropractic Education (CCE). No person other than a licensed chiropractic physician may lawfully render chiropractic services, chiropractic adjustments, or chiropractic manipulations.[1]

Chapter 460, F.S., does not apply to a chiropractic student enrolled in a chiropractic college accredited by the CCE and participating in either:

- A community-based internship under the direct supervision of a doctor of chiropractic medicine who is credentialed as an adjunct faculty member of a chiropractic college in which the student is enrolled; or
- A chiropractic college clinical internship under the direct supervision of a doctor of chiropractic medicine who is a full-time, part-time, or adjunct faculty member of a chiropractic college located in this state and accredited by the CCE and who holds a current, active, Florida chiropractic license.[2]

Licensure

Section 460.406, F.S., requires that a person desiring a license as a chiropractic physician in Florida by examination must pay to the DOH an application fee and examination fee. The DOH must certify to the BOCM that each applicant has submitted proof that he or she:

- Is at least 18 years of age;
- Is a graduate of a chiropractic college accredited by the CCE or its predecessor;
- Has completed at least three years of residence college work in a college or university accredited by an accrediting agency recognized and approved by the United States Department of Education (US-DOE);[3]
- Has passed the National Board of Chiropractic Examiners certification examination, parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners;
- Has taken and passed the Florida Laws and Rules Examination;[4] and
- Has submitted to a criminal background check.[5]

The BOCM may require an applicant who has graduated from a CCE-accredited institution more than 10 years before the date of his or her application for licensure to take and pass the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic.[6]

An applicant applying to take the acupuncture certification exam, who graduated chiropractic college before July 1, 1996, from a college which was denied CCE accreditation on the basis that

[1] Section 460.403, F.S.
[2] Section 460.402, F.S.
[3] Section 460.406(1)d., F.S. For applicants who graduated from a chiropractic college before July 2, 1990, only 2 years of residence college work from an accredited college or university are required. However, anyone who graduated from a chiropractic college after July 1, 1990, must have received a bachelor's degree based on four academic years of study from an accredited college.
[4] Section 456.017(6), F.S.; Fla. Admin. Code R. 64B2-11.001(2),(2019).
[5] Section 460.406,(1), F.S.
[6] *Id*.

the curriculum did not include acupuncture certification preparation, or where acupuncture was not taught, is exempt from the requirement that they are a graduate of a chiropractic college which was CCE accredited.[7]

The DOH must offer both a licensing exam and an acupuncture certification exam. An applicant may elect to take both at once or take each separately, but the passage of the acupuncture certification exam alone does not permit the applicant to practice chiropractic medicine absent the passage of the licensing examination.[8]

The DOH must notify in writing applicants with completed applications who have successfully passed the state licensure exam within five working days after taking the exam. Such applicants may lawfully practice chiropractic medicine for a maximum period of 45 day, pending DOH's receipt of the licensure fee and issuance of the certificate of licensure.[9]

A student in a chiropractic school or college, accredited by the CCE, in his or her final year, may file an application to take all exams required for licensure, submit fingerprints, and pay all fees required for licensure. A chiropractic student who successfully completes the licensure examinations and has met all the requirements for licensure as a chiropractic physician during that final year, must graduate before the DOH may issue him or her a license.[10]

Restricted Licenses

Section 460.4061, F.S., creates a limited opportunity for certain chiropractic physicians to apply for licensure without a licensure exam. The BOCM may grant restricted licenses to applicants who:[11]

- Applied by October 31, 1994;
- Held a degree from a college accredited by the CCE;
- Continuously held a license to practice chiropractic medicine in another state, territory, or U.S. jurisdiction since 1979;
- Was actively practicing for the past 5 years; and
- Was never the subject of discipline for an offense that would violate Florida law.

Under current law, such individuals are not required to take the national exams, but the BOCM may impose reasonable restrictions on their license to ensure safe practice, including random audits of treatment records, appearances before the BOCM, or a requirement for written reports to the BOCM.[12]

[7] Section 460.406(2), F.S.
[8] Section 460.406(3), F.S.
[9] Section 460.406(4), F.S.
[10] Section 460.406(5), F.S.
[11] Section 460.4061, F.S.
[12] *Id.*

Accreditation of Chiropractic Schools, Colleges and Institutions

Counsel on Chiropractic Education (CCE)

The CCE was incorporated in 1971 as a non-profit, autonomous national accrediting organization for chiropractic programs within the United States. Accreditation is designed to provide assurances of educational quality and institutional integrity to governments, jurisdictional licensing and regulatory bodies, institutions, professional organizations, students, other accrediting agencies and the public at large.[13]

The CCE accredits 16 doctor of chiropractic degree programs at 19 locations within the United States. The CCE maintains recognition by the US-DOE as the national accrediting body for doctor of chiropractic programs and chiropractic solitary purpose institutions of higher education. The CCE is also recognized by the Council for Higher Education Accreditation (CHEA) and is a member of the Association of Specialized and Professional Accreditors (ASPA) and the CHEA International Quality Group (CIQG).[14]

Council on Higher Education Accreditation (CHEA)

The CHEA is a nongovernmental organization that also evaluates and recognizes accrediting agencies to ensure the academic quality of institutions and programs for higher education in the United States.[15] There is significant overlap between accrediting agencies the US-DOE and CHEA recognize; however, the US-DOE limits its review to higher education that is related to federal student financial aid programs, whereas the CHEA will consider accreditation of all higher education.[16] CHEA currently recognizes approximately 60 accrediting agencies for various higher education institutions and programs.[17]

United States Department of Education (US-DOE)

The Secretary of Education is required by statute[18] to publish a list of nationally recognized accrediting agencies and associations which the Secretary determines to be reliable authorities as to the quality of training offered by educational institutions and programs. The National Advisory Committee on Accreditation and Institutional Eligibility assists the Secretary in determining which accrediting bodies should be listed. Accrediting bodies that achieve

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[13] The Council on Chiropractic Education, *History*, *available at* http://www.cce-usa.org/history.html, (last visited Mar. 26, 2019).
[14] The Council on Chiropractic Education, *About the CCE, available at* http://www.cce-usa.org/about.html, (last visited Mar. 25, 2019).
[15] Council for Higher Education Accreditation, *Accreditation & Recognition in the United States*, (November 15, 2015) *available at* https://www.chea.org/accreditation-recognition-united-states (last visited Mar. 26, 2019).
[16] *Id*.
[17] Council for Higher Education Accreditation, *CHEA- and USDE-Recognized Accrediting Organizations*, (Apr. 18, 2018), *available at* https://www.chea.org/chea-and-usde-recognized-accrediting-organizations (last visited Mar. 26, 2019).
[18] *See* 20 U.S.C. s. 1099b, and 34 CFR s. 602.1 (2019), *available at* https://www.law.cornell.edu/cfr/text/34/602.1, (last visited Mar. 26, 2019). The US-DOE Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit. The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B.

recognition are reviewed at least every 4 years thereafter.[19] Recognition by the Secretary does not extend to the approval or accreditation of any accreditor of foreign institutions or programs.[20]

The commissions of the regional associations and the national institutional and specialized accrediting agencies which are recognized by the Secretary have no legal control over educational institutions or programs. They promulgate standards of quality or criteria of institutional excellence and approve or admit to membership those institutions that meet the standards or criteria. The CCE is an accrediting agency recognized by the Secretary of the US-DOE.[21]

Councils on Chiropractic Education International (CCEI)

The Councils on Chiropractic Education International (CCEI) was established in 2001 by the world's regional chiropractic accrediting agencies. These member agencies combined their efforts to collaborate for the purpose of assuring excellence and consistent quality improvement in chiropractic education through accreditation.[22] The following chiropractic educational accrediting bodies are members in good standing of the CCEI:

- Council on Chiropractic Education Australasia (CCEA);
- European Council on Chiropractic Education (ECCE), and
- Council on Chiropractic Education Canada (CCEC).

The CCE is not currently a member of CCEI.[23] The CCEI is not an accrediting agency recognized by the Secretary of the US-DOE.[24]

III. Effect of Proposed Changes:

SB 1242 removes the CCE as the accrediting entity for chiropractic colleges and schools and requires that accreditation must be from an accrediting agency recognized by the US-DOE. The CCE is currently the only chiropractic school or colleges accrediting entity recognized by the US-DOE.[25]

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[19] See note 12.
[20] United States Department of Education, *Accreditation in the United States,* (last modified March 18, 2019) *available at* https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview (last visited Mar. 26, 2019).
[21] *Id.*
[22] The Councils on Chiropractic Education International, *About Us*, *available at* https://www.cceintl.org/about-us, (last visited Mar. 26, 2019).
[23] The Councils on Chiropractic Education International, *Frequently Asked questions*, *available at*: https://www.cceintl.org/faqs, (last visited Mar. 25, 2019).
[24] National Center for Education Statistics (NCES), *Accrediting Agencies and Associations Recognized by the Secretary, U.S. Department of Education*, *available at* https://nces.ed.gov/pubs98/98300av2 (last visited Mar. 25, 2019). The NCES is the primary federal entity for collecting and analyzing data related to education.
[25] U.S. Department of Education, *Database of Accredited Postsecondary Institutions and Programs,* https://ope.ed.gov/dapip/#/search-results (last visited Mar. 15, 2019); Council on Chiropractic Education, *Accredited Doctor of Chiropractic Programs/Institutions,* http://www.cce-usa.org/dcp-info.html (last visited Mar. 15, 2019); The three Florida accredited institutions are the National University of Health Sciences, Palmer College of Chiropractic, and Keiser University.

The bill allows for certain foreign-educated chiropractic license applicants, and for foreign-educated applicants for a chiropractic faculty certificate, to satisfy the chiropractic education requirements with:

- A course of study leading to a degree in chiropractic from an institute of higher education outside of the United States that is approved by the BOCM as reasonably comparable to that of similar accredited institutions in the United States, based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs; and
- Undergraduate education located outside of the United States if the BOCM determines such education is reasonably comparable to education within the United States for a bachelor's degree from an accredited liberal arts college or university.

These changes would allow foreign-educated individuals to qualify for the licensure exam for chiropractic physicians. Additionally, foreign-trained chiropractic physicians will be able to qualify for chiropractic medicine faculty certificates, allowing them to practice while working at accredited chiropractic colleges in the state.

The bill also establishes licensure by endorsement for chiropractic physicians under certain circumstances. Specifically, the BOCM may grant an individual a license to practice chiropractic medicine in Florida if the applicant:

- Holds a valid license to practice chiropractic medicine in another state or territory of the United States;
- Has actively practiced chiropractic medicine in another state or territory of the U.S. for the last 10 years without having any disciplinary action taken against that license; and
- Meets all of the requirements for licensure in Florida except the national exam requirements.

Eligible applicants would not be required to take the national examination. Currently, ch. 460, F.S., allows restricted licenses without examination for certain chiropractic physicians but that section only applies to applicants before September 1, 1994.

The bill also makes multiple conforming changes and technical changes.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Foreign-trained chiropractic physicians may be eligible for licensure in Florida under SB 1242. This may result in an increase in the number of chiropractic physicians practicing in the state.

C. Government Sector Impact:

The DOH may incur costs associated with rulemaking to implement the changes in the bill, but those costs should be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 460.402, 460.403, 460.406, 460.4062, 460.4061, 460.4165, 460.4167, and 400.9905.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Health Policy (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 460.402, Florida Statutes, is amended to read:

460.402 Exceptions.—The provisions of this chapter shall not apply to:

(6) A chiropractic student enrolled in a chiropractic school, college, or program accredited by an accrediting agency

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recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ and participating in ~~either~~:

(a) A community-based internship under the direct supervision of a doctor of chiropractic medicine who is credentialed as an adjunct faculty member of a chiropractic college in which the student is enrolled; or

(b) A chiropractic college clinical internship under the direct supervision of a doctor of chiropractic medicine who is a full-time, part-time, or adjunct faculty member of a chiropractic college ~~located in this state and~~ accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ and who holds a current, active Florida chiropractor's license.

Section 2. Subsection (4) and paragraph (a) of subsection (9) of section 460.403, Florida Statutes, are amended to read:

460.403 Definitions.—As used in this chapter, the term:

(4)(a) "Community-based internship" means a program in which a student enrolled in the last year of a chiropractic college accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ is approved to obtain required pregraduation clinical experience in a chiropractic clinic or practice under the direct supervision of a doctor of chiropractic medicine approved as an adjunct faculty member of the chiropractic college in which the student is enrolled, according to the teaching protocols for the clinical practice requirements of the college.

(b) "Chiropractic college clinical internship" means a program in which a student enrolled in a chiropractic college ~~located in this state and~~ accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ obtains clinical experience pursuant to the chiropractic college's curriculum in a classroom or chiropractic clinic operated by the chiropractic college, according to the teaching protocols for the clinical practice requirements of the college.

(9)(a) "Practice of chiropractic medicine" means a noncombative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health by chiropractic physicians using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~. No person other than a licensed chiropractic physician may render chiropractic services, chiropractic adjustments, or chiropractic manipulations.

Section 3. Subsections (1) and (5) of section 460.406,

Florida Statutes, are amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted the appropriate fee.

(b) Submitted proof satisfactory to the department that he or she is not less than 18 years of age.

(c) Submitted proof satisfactory to the department that he or she is a graduate of a chiropractic college ~~which is~~ accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~or has status with the Council on Chiropractic Education or its predecessor agency~~. However, any applicant who is a graduate of a chiropractic college that was initially accredited by the Council on Chiropractic Education in 1995, who graduated from such college within the 4 years immediately preceding such accreditation, and who is otherwise qualified shall be eligible to take the examination. No application for a license to practice chiropractic medicine


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shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic medicine as distinguished from another.

(d)1. For an applicant who has matriculated in a chiropractic college before ~~prior to~~ July 2, 1990, completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 1990, shall have been granted a bachelor's degree, based upon 4 academic years of study, by a college or university accredited by a regional accrediting agency which is a member of the Commission on Recognition of Postsecondary Accreditation.

2. Effective July 1, 2000, completed, before ~~prior to~~ matriculation in a chiropractic college, at least 3 years of residence college work, consisting of a minimum of 90 semester hours leading to a bachelor's degree in a liberal arts college or university accredited by an accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 2000, shall have been granted a bachelor's degree from an institution holding accreditation for that degree from a regional accrediting agency which is recognized by the United States Department of Education. The


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applicant's chiropractic degree must consist of credits earned in the chiropractic program and may not include academic credit for courses from the bachelor's degree.

(e) Successfully completed the National Board of Chiropractic Examiners certification examination in parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

(f) Submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.

(5) A student in a school or college of chiropractic accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education or its successor~~ in the final year of the program may file an application pursuant to subsection (1), take all examinations required for licensure, and submit a set of fingerprints~~, and pay all fees required for licensure~~. A chiropractic student who


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successfully completes the licensure examinations and who otherwise meets all requirements for licensure as a chiropractic physician during the student's final year must have graduated before being certified for licensure pursuant to this section.

Section 4. Subsection (1) of section 460.4062, Florida Statutes, are amended to read:

460.4062 Chiropractic medicine faculty certificate.—

(1) The department may issue a chiropractic medicine faculty certificate without examination to an individual who remits a nonrefundable application fee, not to exceed $100 as determined by rule of the board, and who demonstrates to the board that he or she meets the following requirements:

(a) Is a graduate of a ~~an accredited~~ school or college of chiropractic accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~.

(b) Holds a valid current license to practice chiropractic medicine in another jurisdiction in the United States.

(c) Is at least 21 years of age and of good moral character.

(d) Has not committed any act or offense in any jurisdiction which would constitute the basis for discipline under this chapter or chapter 456.

(e)1. Performs research or has been offered and has accepted a full-time or part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university or college or at a college of chiropractic located in the state and accredited by an accrediting agency recognized by

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the United States Secretary of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~; and

2. Provides a certification from the dean of the appointing college acknowledging the appointment.

Section 5. Paragraph (a) of subsection (1) of section 460.4061, Florida Statutes, is amended to read:

460.4061 Restricted license.—

(1) An applicant for licensure as a chiropractic physician may apply to the department for a restricted license without undergoing a state or national written or clinical competency examination for licensure if the applicant initially applies not later than October 31, 1994, for the restricted license and:

(a) Holds a degree from a college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education or its predecessor agency~~ and holds a bachelor's degree.

Section 6. Paragraph (b) of subsection (13) of section 460.4165, Florida Statutes, is amended to read:

460.4165 Certified chiropractic physician's assistants.—

(13) CERTIFIED CHIROPRACTIC ASSISTANT CERTIFICATION RENEWAL.—The certification must be renewed biennially.

(b) Each certified chiropractic physician's assistant shall biennially complete 24 hours of continuing education courses approved by the board and sponsored by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~chiropractic colleges accredited by the Council on Chiropractic Education and approved~~

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~~by the board~~. The board shall approve those courses that build upon the basic courses required for the practice of chiropractic medicine, and the board may also approve courses in adjunctive modalities. The board may make exception from the requirements of this section in emergency or hardship cases. The board may adopt rules within the requirements of this section which are necessary for its implementation.

Section 7. Paragraph (d) of subsection (1) of section 460.4167, Florida Statutes, is amended to read:

460.4167 Proprietorship by persons other than licensed chiropractic physicians.—

(1) A person may not employ a chiropractic physician licensed under this chapter or engage a chiropractic physician licensed under this chapter as an independent contractor to provide services that chiropractic physicians are authorized to offer under this chapter, unless the person is any of the following:

(d) A clinical facility that is affiliated with a college of chiropractic accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ at which training is provided for chiropractic students.

Section 8. Paragraph (j) of subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a

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portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(j) Clinical facilities affiliated with a college of chiropractic accredited by an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ at which training is provided for chiropractic students.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 9. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to chiropractors; amending s. 460.402, F.S.; revising an exemption from regulation under ch. 460, F.S., for certain chiropractic students; amending s. 460.406, F.S.; revising application requirements for licensure by examination; amending s. 460.4062, F.S.; revising requirements for the issuance of a chiropractic medicine faculty certificate without examination; conforming a provision to changes made by


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the act; amending ss. 460.403, 460.4061, 460.4165, 460.4167, and 400.9905, F.S.; conforming provisions to changes made by the act; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Health Policy (Rouson) recommended the following:

Senate Amendment to Amendment (886046)

Delete lines 10 - 247
and insert:
school, college, or program accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ and participating in ~~either~~:
(a) A community-based internship under the direct supervision of a doctor of chiropractic medicine who is

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credentialed as an adjunct faculty member of a chiropractic college in which the student is enrolled; or

(b) A chiropractic college clinical internship under the direct supervision of a doctor of chiropractic medicine who is a full-time, part-time, or adjunct faculty member of a chiropractic college ~~located in this state and~~ accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ and who holds a current, active Florida chiropractor's license.

Section 2. Subsection (4) and paragraph (a) of subsection (9) of section 460.403, Florida Statutes, are amended to read:

460.403 Definitions.—As used in this chapter, the term:

(4)(a) "Community-based internship" means a program in which a student enrolled in the last year of a chiropractic college accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ is approved to obtain required pregraduation clinical experience in a chiropractic clinic or practice under the direct supervision of a doctor of chiropractic medicine approved as an adjunct faculty member of the chiropractic college in which the student is enrolled, according to the teaching protocols for the clinical practice requirements of the college.

(b) "Chiropractic college clinical internship" means a program in which a student enrolled in a chiropractic college ~~located in this state and~~ accredited by a programmatic accrediting agency recognized by the United States Department of

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Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ obtains clinical experience pursuant to the chiropractic college's curriculum in a classroom or chiropractic clinic operated by the chiropractic college, according to the teaching protocols for the clinical practice requirements of the college.

(9)(a) "Practice of chiropractic medicine" means a noncombative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health by chiropractic physicians using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~. No person other than a licensed chiropractic physician may render chiropractic services, chiropractic adjustments, or chiropractic manipulations.

Section 3. Subsections (1) and (5) of section 460.406, Florida Statutes, are amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure

examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted the appropriate fee.

(b) Submitted proof satisfactory to the department that he or she is not less than 18 years of age.

(c) Submitted proof satisfactory to the department that he or she is a graduate of a chiropractic college ~~which is~~ accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~or has status with the Council on Chiropractic Education or its predecessor agency~~. However, any applicant who is a graduate of a chiropractic college that was initially accredited by the Council on Chiropractic Education in 1995, who graduated from such college within the 4 years immediately preceding such accreditation, and who is otherwise qualified shall be eligible to take the examination. No application for a license to practice chiropractic medicine shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic medicine as distinguished from another.

(d)1. For an applicant who has matriculated in a

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chiropractic college before ~~prior to~~ July 2, 1990, completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by a programmatic ~~an~~ accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 1990, shall have been granted a bachelor's degree, based upon 4 academic years of study, by a college or university accredited by a regional accrediting agency which is a member of the Commission on Recognition of Postsecondary Accreditation.

2. Effective July 1, 2000, completed, before ~~prior to~~ matriculation in a chiropractic college, at least 3 years of residence college work, consisting of a minimum of 90 semester hours leading to a bachelor's degree in a liberal arts college or university accredited by a programmatic ~~an~~ accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 2000, shall have been granted a bachelor's degree from an institution holding accreditation for that degree from a regional accrediting agency which is recognized by the United States Department of Education. The applicant's chiropractic degree must consist of credits earned in the chiropractic program and may not include academic credit for courses from the bachelor's degree.

(e) Successfully completed the National Board of

Chiropractic Examiners certification examination in parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

(f) Submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.

(5) A student in a school or college of chiropractic accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education or its successor~~ in the final year of the program may file an application pursuant to subsection (1), take all examinations required for licensure, and submit a set of fingerprints~~, and pay all fees required for licensure~~. A chiropractic student who successfully completes the licensure examinations and who otherwise meets all requirements for licensure as a chiropractic physician during the student's final year must have graduated before being certified for licensure

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pursuant to this section.

Section 4. Subsection (1) of section 460.4062, Florida Statutes, are amended to read:

460.4062 Chiropractic medicine faculty certificate.—

(1) The department may issue a chiropractic medicine faculty certificate without examination to an individual who remits a nonrefundable application fee, not to exceed $100 as determined by rule of the board, and who demonstrates to the board that he or she meets the following requirements:

(a) Is a graduate of a ~~an accredited~~ school or college of chiropractic accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~.

(b) Holds a valid current license to practice chiropractic medicine in another jurisdiction in the United States.

(c) Is at least 21 years of age and of good moral character.

(d) Has not committed any act or offense in any jurisdiction which would constitute the basis for discipline under this chapter or chapter 456.

(e)1. Performs research or has been offered and has accepted a full-time or part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university or college or at a college of chiropractic located in the state and accredited by a programmatic accrediting agency recognized by the United States Secretary of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~; and

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2. Provides a certification from the dean of the appointing college acknowledging the appointment.

Section 5. Paragraph (a) of subsection (1) of section 460.4061, Florida Statutes, is amended to read:

460.4061 Restricted license.—

(1) An applicant for licensure as a chiropractic physician may apply to the department for a restricted license without undergoing a state or national written or clinical competency examination for licensure if the applicant initially applies not later than October 31, 1994, for the restricted license and:

(a) Holds a degree from a college of chiropractic accredited by a programmatic accrediting agency recognized by the United States Secretary of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education or its predecessor agency~~ and holds a bachelor's degree.

Section 6. Paragraph (b) of subsection (13) of section 460.4165, Florida Statutes, is amended to read:

460.4165 Certified chiropractic physician's assistants.—

(13) CERTIFIED CHIROPRACTIC ASSISTANT CERTIFICATION RENEWAL.—The certification must be renewed biennially.

(b) Each certified chiropractic physician's assistant shall biennially complete 24 hours of continuing education courses approved by the board and sponsored by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~chiropractic colleges accredited by the Council on Chiropractic Education and approved by the board~~. The board shall approve those courses that build upon the basic courses required for the

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practice of chiropractic medicine, and the board may also approve courses in adjunctive modalities. The board may make exception from the requirements of this section in emergency or hardship cases. The board may adopt rules within the requirements of this section which are necessary for its implementation.

Section 7. Paragraph (d) of subsection (1) of section 460.4167, Florida Statutes, is amended to read:

460.4167 Proprietorship by persons other than licensed chiropractic physicians.—

(1) A person may not employ a chiropractic physician licensed under this chapter or engage a chiropractic physician licensed under this chapter as an independent contractor to provide services that chiropractic physicians are authorized to offer under this chapter, unless the person is any of the following:

(d) A clinical facility that is affiliated with a college of chiropractic accredited by a programmatic accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation ~~the Council on Chiropractic Education~~ at which training is provided for chiropractic students.

Section 8. Paragraph (j) of subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does

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not include and the licensure requirements of this part do not apply to:

(j) Clinical facilities affiliated with a college of chiropractic accredited by a programmatic accrediting agency recognized by

By Senator Rouson

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A bill to be entitled

An act relating to chiropractors; amending s. 460.402, F.S.; revising an exemption from regulation under ch. 460, F.S., for certain chiropractic students; amending s. 460.403, F.S.; conforming definitions to changes made by the act; amending s. 460.406, F.S.; revising application requirements for licensure by examination; conforming cross-references to changes made by the act; amending s. 460.4062, F.S.; revising requirements for the issuance of a chiropractic medicine faculty certificate without examination; conforming a provision to changes made by the act; amending ss. 460.4061, 460.4165, 460.4167, and 400.9905, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 460.402, Florida Statutes, is amended to read:

460.402 Exceptions.—The provisions of this chapter shall not apply to:

(6) A chiropractic student enrolled in a chiropractic school, college, or program accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States

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based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~ and participating in ~~either~~:

(a) A community-based internship under the direct supervision of a doctor of chiropractic medicine who is credentialed as an adjunct faculty member of a chiropractic college in which the student is enrolled; or

(b) A chiropractic college clinical internship under the direct supervision of a doctor of chiropractic medicine who is a full-time, part-time, or adjunct faculty member of a chiropractic college ~~located in this state and~~ accredited by an accrediting agency recognized by the United States Secretary of Education or an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~ and who holds a current, active Florida chiropractor's license.

Section 2. Subsection (4) and paragraph (a) of subsection (9) of section 460.403, Florida Statutes, are amended to read:

460.403 Definitions.—As used in this chapter, the term:

(4)(a) "Community-based internship" means a program in which a student enrolled in the last year of a chiropractic college accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is

approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~ is approved to obtain required pregraduation clinical experience in a chiropractic clinic or practice under the direct supervision of a doctor of chiropractic medicine approved as an adjunct faculty member of the chiropractic college in which the student is enrolled, according to the teaching protocols for the clinical practice requirements of the college.

(b) "Chiropractic college clinical internship" means a program in which a student enrolled in a chiropractic college ~~located in this state and~~ accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~ obtains clinical experience pursuant to the chiropractic college's curriculum in a classroom or chiropractic clinic operated by the chiropractic college, according to the teaching protocols for the clinical practice requirements of the college.

(9)(a) "Practice of chiropractic medicine" means a noncombative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and

treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health by chiropractic physicians using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~. No person other than a licensed chiropractic physician may render chiropractic services, chiropractic adjustments, or chiropractic manipulations.

Section 3. Section 460.406, Florida Statutes, is amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of

the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has:

(a)1. Completed the application form and remitted the appropriate fee.

2.~~(b)~~ Submitted proof satisfactory to the department that he or she is not less than 18 years of age.

3.~~(c)~~ Submitted proof satisfactory to the department that he or she is a graduate of a chiropractic college ~~which is~~ accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~or has status with the Council on Chiropractic Education or its predecessor agency~~. However, any applicant who is a graduate of a chiropractic college that was initially accredited by the Council on Chiropractic Education in 1995, who graduated from such college within the 4 years immediately preceding such accreditation, and who is otherwise qualified shall be eligible to take the examination. No application for a license to practice chiropractic medicine shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic medicine as

distinguished from another.

4.a.~~(d)1.~~ For an applicant who has matriculated in a chiropractic college before ~~prior to~~ July 2, 1990, completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 1990, shall have been granted a bachelor's degree, based upon 4 academic years of study, by a college or university accredited by a regional accrediting agency which is a member of the Commission on Recognition of Postsecondary Accreditation.

b.(I)~~2.~~ Effective July 1, 2000, completed, before ~~prior to~~ matriculation in a chiropractic college, at least 3 years of residence college work, consisting of a minimum of 90 semester hours leading to a bachelor's degree in a liberal arts college or university accredited by an accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 2000, shall have been granted a bachelor's degree from an institution holding accreditation for that degree from a regional accrediting agency which is recognized by the United States Department of Education. The applicant's chiropractic degree must consist of credits earned in the chiropractic program and may not include academic credit

for courses from the bachelor's degree; or

(II) Completed an educational program located outside of the United States, if the board finds the educational program is reasonably comparable to the requirement of this paragraph based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs.

5. ~~(c)~~ Successfully completed the National Board of Chiropractic Examiners certification examination in parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

6. ~~(f)~~ Submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant; or

(b) For an applicant who holds a valid license to practice chiropractic in another state or territory of the United States, demonstrated that he or she:

1. Has actively practiced chiropractic in another state or territory of the United States for the preceding 10 years without having his or her license acted against by the licensing authority of any jurisdiction.

2. Meets the requirements of subparagraphs (a)1., 2., 3., 4., and 6.

~~The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education~~

~~more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.~~

(2) For those applicants applying for the certification examination who have matriculated prior to July 1, 1996, in a chiropractic college, the board shall waive the provisions of subparagraph (1)(a)3. ~~paragraph (1)(c)~~ if the applicant is a graduate of a chiropractic college which has been denied accreditation or approval on the grounds that its curriculum does not include the training in acupuncture necessary for the completion of the certification examination or is a graduate of a chiropractic college where acupuncture is not taught or offered if the college is accredited by or has status with the Council on Chiropractic Education or its predecessor.

(3) An applicant for the licensure examination may elect not to take the certification examination to use acupuncture. The department shall, in addition to the licensing exam, offer an examination for certification to use acupuncture. An applicant may elect to take the certification examination at the time of taking the licensure examination. Passage of the certification examination shall not grant any applicant the right to practice chiropractic medicine absent the passage of the licensing examination.

(4) The department shall submit written notification within 5 working days to applicants who have successfully completed the requirements of subparagraphs (1)(a)1.-5. ~~paragraphs (1)(a)-(c)~~ and who have successfully passed the state licensure

examination. An applicant who is notified in writing by the department of the successful completion of requirements in subparagraphs (1)(a)1.-5. ~~paragraphs (1)(a)-(c)~~ and who has successfully passed the state licensure examination may lawfully practice pending receipt of the certificate of licensure, and the written notification shall act as evidence of licensure entitling the chiropractic physician to practice for a maximum period of 45 days or until the licensing fee is received by the department whichever is sooner.

(5) A student in a school or college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education or its successor~~ in the final year of the program may file an application pursuant to subsection (1), take all examinations required for licensure, and submit a set of fingerprints~~, and pay all fees required for licensure~~. A chiropractic student who successfully completes the licensure examinations and who otherwise meets all requirements for licensure as a chiropractic physician during the student's final year must have graduated before being certified for licensure pursuant to this section.

Section 4. Subsection (1) of section 460.4062, Florida Statutes, is amended to read:

460.4062 Chiropractic medicine faculty certificate.—

(1) The department may issue a chiropractic medicine faculty certificate without examination to an individual who remits a nonrefundable application fee, not to exceed $100 as determined by rule of the board, and who demonstrates to the board that he or she meets the following requirements:

(a) Is a graduate of a ~~an accredited~~ school or college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education or a course of study leading to a degree in chiropractic from an institution of higher education located outside the United States which is approved by the board as reasonably comparable to that of similar accredited institutions in the United States based on information that includes evaluations by third parties with experience in evaluating the comparability of educational programs ~~the Council on Chiropractic Education~~.

(b) Holds a valid current license to practice chiropractic medicine in another jurisdiction in the United States.

(c) Is at least 21 years of age and of good moral character.

(d) Has not committed any act or offense in any jurisdiction which would constitute the basis for discipline under this chapter or chapter 456.

(e)1. Performs research or has been offered and has accepted a full-time or part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university or college or at a college of chiropractic located in the state and accredited by an accrediting agency recognized by the United States Secretary of Education ~~the Council on~~

~~Chiropractic Education~~; and

2. Provides a certification from the dean of the appointing college acknowledging the appointment.

Section 5. Paragraph (a) of subsection (1) of section 460.4061, Florida Statutes, is amended to read:

460.4061 Restricted license.—

(1) An applicant for licensure as a chiropractic physician may apply to the department for a restricted license without undergoing a state or national written or clinical competency examination for licensure if the applicant initially applies not later than October 31, 1994, for the restricted license and:

(a) Holds a degree from a college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education ~~the Council on Chiropractic Education or its predecessor agency~~ and holds a bachelor's degree.

Section 6. Paragraph (b) of subsection (13) of section 460.4165, Florida Statutes, is amended to read:

460.4165 Certified chiropractic physician's assistants.—

(13) CERTIFIED CHIROPRACTIC ASSISTANT CERTIFICATION RENEWAL.—The certification must be renewed biennially.

(b) Each certified chiropractic physician's assistant shall biennially complete 24 hours of continuing education courses approved by the board and sponsored by an accrediting agency recognized by the United States Secretary of Education ~~chiropractic colleges accredited by the Council on Chiropractic Education and approved by the board~~. The board shall approve those courses that build upon the basic courses required for the practice of chiropractic medicine, and the board may also

approve courses in adjunctive modalities. The board may make exception from the requirements of this section in emergency or hardship cases. The board may adopt rules within the requirements of this section which are necessary for its implementation.

Section 7. Paragraph (d) of subsection (1) of section 460.4167, Florida Statutes, is amended to read:

460.4167 Proprietorship by persons other than licensed chiropractic physicians.—

(1) A person may not employ a chiropractic physician licensed under this chapter or engage a chiropractic physician licensed under this chapter as an independent contractor to provide services that chiropractic physicians are authorized to offer under this chapter, unless the person is any of the following:

(d) A clinical facility that is affiliated with a college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education ~~the Council on Chiropractic Education~~ at which training is provided for chiropractic students.

Section 8. Paragraph (j) of subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(j) Clinical facilities affiliated with a college of chiropractic accredited by an accrediting agency recognized by the United States Secretary of Education ~~the Council on Chiropractic Education~~ at which training is provided for chiropractic students.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 9. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Health Policy Committee

Subject: Committee Agenda Request

Date: March 8, 2019

I respectfully request that **Senate Bill # 1242**, relating to Chiropractors, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

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 Committee on Health Policy

BILL:	SB 1280
INTRODUCER:	Senator Rouson
SUBJECT:	Controlled Substance Prescribing
DATE:	March 28, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Favorable**
2.			CF	
3.			RC	

I. Summary:

SB 1280 amends s. 456.44, F.S., to exempt sickle-cell anemia from the definition of "acute pain." This change would no longer require a prescribing practitioner to meet the three-day or seven-day supply limits when prescribing a Schedule II opioid controlled substance for the treatment of sickle-cell anemia.

II. Present Situation:

History of the Opioid Crisis in Florida

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.[1] Between the early 2000s and the early 2010s, Florida was infamous as the "pill mill capital" of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.[2]

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.[3] Between 2010 and 2014, deaths from prescription drugs dropped but deaths from illegal opioids, such as heroin, began to rise.[4]

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[1] Id.
[2] Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, THE NEW YORK TIMES (Aug. 31, 2011), *available at* http://www.nytimes.com/2011/09/01/us/01drugs.html (last visited on Mar. 28, 2018).
[3] See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.
[4] Supra note 3

In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100. Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).[5]

Early in 2017, the federal Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic, and, shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

House Bill 21 Prescription Supply Limits

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. Among its numerous provisions, HB 21 restricted the length of prescriptions for Schedule II opioid medications for the treatment of acute pain to three days or up to seven days if medically necessary. HB 21 also defined "acute pain" to mean the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The bill excluded pain related to cancer, a terminal condition, palliative care, or a serious traumatic injury from being considered acute pain.

Sickle-Cell Anemia

Sickle cell disease, also known as Sickle-Cell Anemia, is a group of inherited red blood cell disorders. Early signs and symptoms of sickle cell disease include swelling of the hands and feet; symptoms of anemia, including fatigue, or extreme tiredness; and jaundice. Over time, sickle cell disease can lead to complications such as infections, delayed growth, and episodes of pain, called pain crises. Most children who have sickle cell disease are pain-free between crises, but adolescents and adults may also suffer with chronic, ongoing pain. Over a lifetime, sickle cell disease can harm a patient's spleen, brain, eyes, lungs, liver, heart, kidneys, penis, joints, bones, or skin.

A blood and bone marrow transplant is currently the only approved cure for sickle cell disease, and only a small number of people who have sickle disease are able to have the transplant. There are effective treatments that can reduce symptoms and prolong life. Early diagnosis and regular

[5] Attorney General's Opioid Working Group, *Florida's Opioid Epidemic: Recommendations and Best Practices* (March 1, 2019), *available at* https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf, (last visited on March 28, 2019).

medical care to prevent complications also contribute to improved well-being. Sickle cell disease is a life-long illness and the severity of the disease varies widely from person to person.[6]

III. Effect of Proposed Changes:

SB 1280 amends s. 456.44, F.S., to exempt sickle-cell anemia from the definition of "acute pain." This change would no longer require a prescribing practitioner to observe the three-day or seven-day supply limits when prescribing a Schedule II opioid controlled substance for the treatment of sickle-cell anemia.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[6] See National Heart, Lung, and Blood Institute within the National Institutes of Health, *Sickle Cell Disease*, available at https://www.nhlbi.nih.gov/health-topics/sickle-cell-disease, (last visited on March 28, 2019).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.44 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rouson

19-01495-19 20191280__

A bill to be entitled

An act relating to controlled substance prescribing; amending s. 456.44, F.S.; revising the definition of the term "acute pain" to exclude pain related to sickle-cell anemia; excluding the treatment of such pain from limitations on the prescription of an opioid drug; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 456.44, Florida Statutes, is amended, and subsection (5) of that section is republished, to read:

456.44 Controlled substance prescribing.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Acute pain" means the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The term does not include pain related to:

1. Cancer.

2. A terminal condition. For purposes of this subparagraph, the term "terminal condition" means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

3. Palliative care to provide relief of symptoms related to an incurable, progressive illness or injury.

19-01495-19 20191280__

4. A traumatic injury with an Injury Severity Score of 9 or greater.

5. Sickle-cell anemia.

(5) PRESCRIPTION SUPPLY.—

(a) For the treatment of acute pain, a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812 may not exceed a 3-day supply, except that up to a 7-day supply may be prescribed if:

1. The prescriber, in his or her professional judgment, believes that more than a 3-day supply of such an opioid is medically necessary to treat the patient's pain as an acute medical condition;

2. The prescriber indicates "ACUTE PAIN EXCEPTION" on the prescription; and

3. The prescriber adequately documents in the patient's medical records the acute medical condition and lack of alternative treatment options that justify deviation from the 3-day supply limit established in this subsection.

(b) For the treatment of pain other than acute pain, a prescriber must indicate "NONACUTE PAIN" on a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812.

Section 2. This act shall take effect July 1, 2019.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Health Policy Committee

Subject: Committee Agenda Request

Date: March 8, 2019

I respectfully request that **Senate Bill # 1280**, relating to Controlled Substance Prescribing, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl S. Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

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 Committee on Health Policy

BILL:	SB 572
INTRODUCER:	Senator Baxley and others
SUBJECT:	Insurance Coverage for Hearing Aids for Children
DATE:	March 29, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Lloyd	Brown	HP	**Favorable**
3.			AP	

I. Summary:

SB 572 requires an individual market health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist. The bill requires an insurer to provide a minimum coverage amount of $3,500 per ear within a 24-month period.

The bill provides that if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

The bill applies to a policy that is issued or renewed on or after January 1, 2020.

II. Present Situation:

Newborn Hearing Screening Program

Since October 1, 2000, Florida has had a universal newborn hearing screening program.[1] Unless a parent objects to the screening, all Florida-licensed facilities that provide maternity and newborn care are required to screen all newborns prior to discharge for the detection of hearing loss. All test results, including recommendations for any referrals or follow up evaluations from that screening by the licensed audiologist, a physician licensed under chs. 458 or 459, F.S., or other newborn hearing screening providers in the hospital facility, must be placed in the newborn's medical records within 24 hours after the completion of the screening procedure.[2] For

[1] *See* s. 383.145, F.S.

[2] Section 383.145(3)(e), F.S.

babies born in a facility other than a hospital, the parents are to be instructed on the importance of having a screening conducted, information must be provided, and assistance given to make an appointment within three months.[3]

The initial newborn screening and any necessary follow-up and evaluation are a covered insurance benefit that is reimbursable by Medicaid, health insurers, and health maintenance organizations with some limited exceptions.[4] For those newborns and children found to have a permanent hearing loss, the statute also provides for referral to the state's Part C program of the Individuals with Disabilities Education Act[5] and Children's Medical Services' Early Intervention Program, Early Steps.[6]

The Department of Health also has a federal Health Resources and Services Administration (HRSA) grant which funds the salaries of four staff members, educational materials, and conference travel from April 1, 2017, through March 31, 2020.[7] Some of the goals of the grant are to increase the number of children diagnosed at an early age and to increase early intervention.

The current screening baseline in Florida that the grant seeks to improve upon are:

Florida Newborn Screening Baseline and 2020 Goal[8]	
Baseline/Goal Year	**Percent of Babies Diagnosed by 3 Months of Age**
2014	44 Percent
2016	54 Percent
2020	57 Percent

To help achieve its targets, the HRSA grant has dedicated 25 percent of its funding to a parent support organization to develop a deaf mentorship program.[9]

Hearing Loss in Children

One in eight people in the United States (13 percent, or 30 million) aged 12 years or older has hearing loss in both ears, based on standard hearing examinations. About two or three out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.

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[3] Section 383.145(3)(i), F.S.
[4] Section 383.145(3)(j), F.S.
[5] *See* Pub. Law No. 108-446. The federal Part C program provides benefits and services for infants and toddlers from birth to age 36 months. Florida's Part C program is known as Early Steps and is administered by the Department of Health's Children's Medical Services.
[6] The Early Steps program services infants and children from age birth to age 36 months with disabilities, developmental delays, or children with a physical or mental condition known to create a risk of a developmental delay. Children in the Early Steps program each have an individualized plan designed to meet their own unique needs and achieve their own milestones. *See* http://www.floridahealth.gov/AlternateSites/CMS-Kids/early_steps_directory/index.html (last visited March 27, 2019).
[7] Florida Department of Health, *The Early Hearing Detection & Intervention Program Overview* (April 11, 2018) http://www.floridahealth.gov/AlternateSites/CMS-Kids/early_steps_directory/index.html (last visited March 27, 2019).
[8] Florida Department of Health, *supra* note 7, slide 7.
[9] Florida Department of Health, *supra* note 7, slide 26.

For 2016, Florida's newborn hearing screening rate was 97 percent with 218,376 infants screened.[10] Of those screened, 287 were found to have total hearing loss.[11] Between 2005 and 2016, the national newborn screening programs have identified over 58,000 infants as either deaf or hard of hearing.[12]

Early detection of hearing loss can have an impact on an infant and child with learning and reaching developmental milestones, according to recent research. In the United States, researchers have reported that children have more favorable language outcomes, such as greater vocabulary and reading abilities, when hearing loss is identified sooner and the child receives hearing aids and interventions at an earlier age.[13]

A second article had a similar message noting that children who received hearing aids (HAs) and cochlear implants (CIs) earlier had better language outcomes, comparing language skills with the provision of a hearing aid at three months compared to 24 months.[14] The authors state:

> The younger the child received intervention, the better the language outcome. In addition, more substantial benefits of earlier access to useful HAs (hearing aids) and CI (cochlear implants) were obtained by those with worse hearing. Earlier intervening, rather than access to UNHS (universal newborn screening), improved outcomes.[15]

In both research articles, the findings were similar: the earlier the intervention, the larger the benefit to the child.

Mandated Health Insurance Coverages in Florida

Under the Patient Protection and Affordable Care Act, or PPACA,[16] individuals and small businesses can shop for health insurance coverage on the federal Marketplace. All non-

[10] Centers for Disease Control, *2016 CDC EHDI Hearing Screening & Follow Up Survey (HSFS),* https://www.cdc.gov/ncbddd/hearingloss/2016-data/02-2016-HSFS-Screen-h.pdf (last visited March 27, 2019).
[11] Centers for Disease Control, *2016 CDC EHDI Hearing Screening & Follow Up Survey (HSFS) – Loss to Follow-Up/Loss to Documentation*, https://www.cdc.gov/ncbddd/hearingloss/2016-data/09-2016-HSFS-EI-h.pdf *i* (last visited March 27, 2019).
[12] Centers for Disease Control, *Newborn Screening and Diagnosis,* https://www.cdc.gov/ncbddd/hearingloss/data.html (last visited March 27, 2019).
[13] Christine Yoshinaga-Itano, Ph.D., et al, *Early Hearing Detection and Vocabulary of Children with Hearing Loss,* PEDIATRICS, (Aug. 2017, Vol. 140, No. 2), https://pediatrics.aappublications.org/content/140/2/e20162964 (last visited March 27, 2019).
[14] Teresa Y.C. Ching, Ph.D., *Age at Intervention for Permanent Hearing Loss and 5-Year Language Outcomes,* Pediatrics, (Sept. 2017, Vol. 140, Issue 3), https://pediatrics.aappublications.org/content/140/3/e20164274 (last visited March 27, 2019).
[15] Teresa Y.C. Ching, *supra* note 15, at 5.
[16] H.R. 3590 – 111th Congress: Patient Protection and Affordable Care Act (March 27, 2009) https://www.govtrack.us/congress/bills/111/hr3590 (last visited March 27, 2019).

grandfathered plans[17] must include minimum essential coverage (MEC),[18] including an array of services that includes the 10 essential health benefits (EHBs). These 10 EHBs are further clarified or modified each year through the federal rulemaking process and are open for public comment before taking effect. The 10 general categories for the EHBs are:

- Ambulatory services (outpatient care).
- Emergency services.
- Hospitalization (inpatient care)
- Maternity and newborn care.
- Mental health and substance abuse disorder services.
- Prescription drugs.
- Rehabilitative services and habilitative services and devices.
- Laboratory services.
- Preventive care and chronic disease management.
- Pediatric services, including oral and vision care.[19]

Under the PPACA, certain wellness and preventive services must be provided without any out-of-pocket charges to the insured patient and without regard to whether the insured has met any required annual deductible. The EHBs and other requirements relating to EHBs do not apply to large group plans, self-funded plans, or plans with grandfathered status. Starting with Plan Year 2020, which is effective January 1, 2020, a proposed rule would allow individuals to purchase a plan from outside of his or her home state's EHB benchmark.

Florida law requires health insurance policies to contain certain required benefits to meet the state's benchmark benefits. Additionally, the state has added at least 18 supplemental benefits to different policies. A few examples of those supplemental benefits include:

- Coverage for certain diagnostic and surgical procedures involving bones or joints of the jaw and facial region (s. 627.419(7), F.S.);
- Coverage for bone marrow transplants (s. 627.4236, F.S.);
- Coverage for certain cancer drugs (s. 627.4239, F.S.);
- Coverage for any service performed in an ambulatory surgical center (s. 627.6616, F.S.);
- Diabetes treatment services (s. 627.6408, F.S.);
- Osteoporosis (s. 627.6409, F.S.);
- Certain coverage for newborn children (s. 627.641, F.S.);
- Child health supervision services (s. 627.6416, F.S.);
- Certain coverages related to mastectomies (s. 627.6417, F.S.);
- Mammograms (s. 627.6418, F.S.); and
- Treatment of cleft lip and cleft palate in children (s. 627.64193, F.S.).

[17] A "grandfathered health plan" are those health plans, both individual and employer plans, that maintain coverage that were in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010 while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* 26 U.S.C. 7805 and 26 CFR 54.9815-1251T.

[18] To meet the individual responsibility provision of the PPACA statute, a benefit plan or coverage plan must be recognized as providing minimum essential coverage (MEC). Employer based coverage, Medicaid, Medicare, CHIP (i.e.: Florida KidCare), and TriCare would meet this requirement.

[19] 42 U.S.C. section 18022.

Florida law does not require that health insurance policies cover hearing aids for adults or for children.

States are free to modify the EHBs that are offered in their states by adding coverage; however, because of concerns that federal funds would be used on costly mandated coverages that were not part of the required EHBs, PPACA contains a provision requiring that, starting in 2016, the states would have to pay for the cost of the coverage. As a result, Florida may be required to defray the costs of any additional benefits beyond the required EHBs put in place after 2011 when the EHBs were determined. [20] Florida has not enacted any mandated benefits since 2011.[21]

Hearing Aid Covering in Public Insurance Programs

Medicare

Traditional Medicare does not cover hearing aids or hearing exams. Some Medicare Advantage Plans offer hearing coverage.[22]

Medicaid

For adults, Florida's Medicaid program covers hearing aids. For recipients who have moderate hearing loss or greater, the program includes the following services:

- One new, complete, (not refurbished) hearing aid device per ear, every 3 years, per recipient;
- Up to three pairs of ear molds per year, per recipient; and
- One fitting and dispensing service per ear, every 3 years, per recipient.[23]

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the 1-year warranty period has expired.[24]

For children, Florida Medicaid covers services that are medically necessary to any eligible recipient under the age of 21 to correct or ameliorate a defect, condition, or a physical, or mental illness under the Early Periodic Screening and Diagnostic Testing (EPSDT) standard. Within this coverage standard, Medicaid recipients under the age of 21 receive all diagnostic services, treatment, equipment, supplies, and other measures that are described under Title 42 of the United States Code 1396d(a).[25] In addition to the coverage described above, Medicaid recipients under age 21 have coverage for the following relating to hearing services:

- For recipients who have documented, profound, severe hearing loss in one or both ears as follows:

[20] *See* 42 U.S.C. s. 18031(d)(3)(B)(ii).
[21] Centers for Medicare and Medicaid Services, *Florida – State Required Benefits*, https://downloads.cms.gov/cciio/State%20Required%20Benefits_FL.pdf (last visited March 27, 2019).
[22] *See* https://www.medicare.gov/coverage/hearing-aids (last visited March 13, 2019).
[23] *See* Rule 54G-4.110, Florida Administrative Code. The hearing services coverage policy from the Agency for Health Care Administration is https://www.flrules.org/Gateway/reference.asp?No=Ref-06744 (last visited March 13, 2019).
[24] *See* Rule 54G-4.110, Florida Administrative Code. The hearing services coverage policy from the Agency for Health Care Administration is https://www.flrules.org/Gateway/reference.asp?No=Ref-06744 (last visited March 13, 2019).
[25] Agency for Health Care Administration, *Hearing Services Coverage Policy* (June 2016), http://ahca.myflorida.com/medicaid/review/specific_policy.shtml (last visited March 27, 2019).

  - Implanted device for recipients age 5 years and older;
  - Non-implanted soft band device for recipients under age 5.
- Cochlear implants for recipient age 12 months and older who have documented, profound to severe, bilateral sensorineural hearing loss.
- One hearing assessment every 3 years for the purposes of determining hearing aid candidacy and the most appropriate hearing aid.
- Up to two newborn screenings for recipients under the age of 12 months. A second screening may be conducted only if the recipient did not pass the test in one or both ears.
- Hearing screenings on the same date as a child health check-up.[26]

These services in Medicaid are available to Medicaid recipients under the age of 21 without any copayments or other out of pocket charges.

Title XXI – Children's Health Insurance Program[27]

The Children's Health Insurance Program (CHIP) was created in 1997 through the 1997 Federal Balanced Budget Act legislation and it enacted Title XXI of the Social Security Act as a joint state-federal funding partnership to provide health insurance to children in low to moderate income households.[28] The Florida Healthy Kids Corporation[29] is one component of the Florida's Title XXI program known as Florida KidCare which was enacted by the Florida Legislature in 1998[30] and the only one which uses a non-Medicaid benefit package. The other program components, Medicaid for children, Medikids, and Children's Medical Services Network, follow the Medicaid benefit package.[31]

Under s. 409.815(2)(a), F.S., Healthy Kids enrollees receive preventive health care services which include those well-child care services which are recommended in the Guidelines for Health Supervision of Children and Youth as developed by the American Academy of Pediatrics, including an annual hearing screening. Additionally, under s. 409.815(2)(h), F.S., describing the benefits for durable medical equipment, covered services include:

> *…equipment and devices that are medically indicated to assist in the treatment of a medical condition and specifically prescribed as medically necessary, with the following limitations:*
> *…*
> *3. Hearing aids shall be covered only when medically indicated to assist in the treatment of a medical condition.*

The out of pocket costs for the well-child hearing screening and the provision of hearing aids are both $0 for subsidized Title XXI eligible children.[32] Healthy Kids also serves children who are not eligible for the subsidized coverage where the cost of services is offset with assistance from

[26] Agency for Health Care Administration, *supra* note 27.
[27] U.S.C. ss. 1397aa-1397mm, subchapter XXI, chapter 7, Title 42.
[28] The Balanced Budget Act of 1997, Pub. Law 105-33. 111 Stat. 251, enacted August 5, 1997.
[29] *See* 624.91-624.915, F.S.
[30] *See* ss. 409.810-409.821, F.S.
[31] *See* s. 409.815(2)(a), F.S., and s. 391.0315, F.S.
[32] Florida Healthy Kids Corporation, *Medical Benefits, https://www.healthykids.org/benefits/medical/* (last visited March 27, 2019).

federal and state government funds. For those who are enrolled in the "full pay" segment of Healthy Kids, the enrollee share includes a 25 percent co-insurance for the hearing aids.[33]

Veterans Administration

The federal Veterans Administration provides hearing aids for veterans in some circumstances.[34,35] To be eligible for hearing aids, a veteran must register first with the health administration section of the VA Medical Center of his or her choice and schedule an appointment for a clinical determination with an audiologist. If found clinically eligible, the hearing aids, repairs, and future batteries are made available at no future charge as long as the veteran remains eligible for health care services.[36]

Insurance Coverage for Hearing Aids

According to the Office of Insurance Regulation, two of the nine carriers in the individual market have forms that cover hearing aids. Four of the fourteen carriers in the small group market have forms that cover hearing aids.[37]

Twenty-four states appear to mandate health benefit plans to provide coverage for hearing aids for children.[38] Coverage requirements range from requiring a hearing aid every 24 months to every 5 years. Many states include caps on the amount the insurer must pay. These caps range from $1,000 to $4,000.[39]

State Requirement for Impact Study

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction a report which assesses the social and financial impacts of the proposed coverage. Proponents of SB 572 provided information to staff of the Senate Committee on Banking and Insurance relating to hearing loss in children, hearing aid insurance requirements in other states, and a projection of the number of children that will benefit from the bill, which does not include the statutorily-required report on the financial impacts of the proposed coverage.

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[33] Florida Healthy Kids Corporation, *Draft Insurer Contract No.: 2018 300-01-00 Medical Services, Attachment A: Benefit Schedule, pg. 2, https://www.healthykids.org/documents/itn/20180807/Attachment1DraftContractwithAttachments.pdf (released with Invitation to Negotiate 2018-300-01)* (last visited March 27, 2019).
[34] *See* https://www.military.com/benefits/veterans-health-care/va-health-care-hearing-aids.html (last visited March 13, 2019).
[35] *See* https://www.myhealth.va.gov/mhv-portal-web/hearing-aids?_ga=2.237892288.1976680439.1552503778-1097040133.1552503778 (last visited March 13, 2019).
[36] U.S. Department of Veterans Affairs, *Rehabilitation and Prosthetic Services, https://www.prosthetics.va.gov/psas/Hearing_Aids.asp* (last visited March 27, 2019).
[37] Email from Office of Insurance Regulation staff to Committee staff dated March 18, 2019 (on file with the Committee on Banking and Insurance.
[38] *See* information gathered by the American Speech-Language-Hearing Association at https://www.asha.org/advocacy/state/issues/ha_reimbursement.htm and Florida Coalition for Spoken Languages, *The Florida Hearing Care for Children Act* (on file with the Committee on Banking and Insurance).
[39] *See* https://www.asha.org/advocacy/state/issues/ha_reimbursement.htm (last visited March 14, 2019).

III. Effect of Proposed Changes:

This bill amends s. 627.6413, F.S., to require an individual health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.[40]

The bill requires such a policy to provide a minimum coverage amount of $3,500 per ear within a 24-month period. An insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.

The bill provides that if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

The bill applies to a policy that is issued or renewed on or after January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[40] The bill would not cover hearing aids dispensed by hearing aid specialists licensed under ss. 484.0401-484.059, F.S.

B. Private Sector Impact:

The Florida Coalition for Spoken Languages estimated that 1,709 children would obtain hearing aids under SB 572. This would cost insurance companies $11,662,204 in the first year, or $5,831,102 over 2 years. The group did not provide an estimate on how many additional hearing aids would be needed due to significant hearing changes in some children.[41]

C. Government Sector Impact:

The federal PPACA may require Florida to assume the costs of additional benefits that it requires of insurance companies.[42] The Office of Insurance Regulation reports that Florida may be required to defray the cost of any new mandate that raises the cost of subsidies paid by the federal government.[43]

This bill does not directly impact the state group health insurance program.[44]

VI. Technical Deficiencies:

The bill requires coverage for hearing aids for children; however, the term "hearing aid" is not defined. There are several different devices that are now used to assist a child with his or her hearing depending on the severity of the child's deafness, the age of the child, or other medical conditions of the child. For example, does a "hearing aid" mean coverage towards a cochlear implant? As science and technology progress, other options could also be available that could be described as "hearing aids."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.6413 of the Florida Statutes.

IX. Additional Information:

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

None.

[41] Florida Coalition for Spoken Languages, *The Florida Hearing Care for Children Act* (on file with the Committee on Banking and Insurance).
[42] *See* 42 U.S.C. s. 18031(3)(B)(ii).
[43] 2019 Agency Bill Analysis SB 572 by the Office of Insurance Regulation (February 4, 2019) (on file with the Senate Committee on Banking and Insurance).
[44] Email from Department of Management Services to Committee Staff dated March 14, 2019 (on file with the Senate Committee on Banking and Insurance).

B. Amendments:

None.

By Senator Baxley

12-01090-19 2019572__

A bill to be entitled

An act relating to insurance coverage for hearing aids for children; creating s. 627.6413, F.S.; requiring certain health insurance policies to provide hearing aid coverage for insured children; providing coverage requirements; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.6413, Florida Statutes, is created to read:

627.6413 Coverage for hearing aids for children.—

(1) A health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured must provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.

(2) An insurer must provide a minimum coverage amount of $3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

(3) An insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.

12-01090-19 2019572__

(4) This section applies to a policy that is issued or renewed on or after January 1, 2020.

Section 2. This act shall take effect January 1, 2020.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

March 19, 2019

The Honorable Gayle Harrell
310 Senate Office Building
Tallahassee, FL 32399

Dear Senator Harrell,

I would like to request SB 572 Insurance Coverage for Hearing Aids for Children be heard in your next Health Policy Committee meeting.

This bill requires an individual health insurance policy to provide coverage for hearing aids for children from birth through 21 years of age. The minimum coverage is $3,500 per ear within a 24 month period.

I appreciate your favorable consideration,

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Allen Brown, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

(1)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 572

Name Selena Snowden

Job Title Professor / Audiologist

Address 2121 La Rochelle Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-567-4107

Email SSnowden@fsu.edu

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

(2)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hearing Aids

Name Sean Ward

Job Title Student

Address 2677 old Bainbridge rd apt 512
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850 320 2010

Email swarduft@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/'19
Meeting Date

572
Bill Number (if applicable)

Topic Insurance / Hearing Aids

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University PKwy
Street

Phone 941-928-0278

Sarasota Fl 34243
City *State* *Zip*

Email aichildren@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Advocacy Institute For Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/01/2019
Meeting Date

572
Bill Number (if applicable)

Topic _____
Amendment Barcode (if applicable)

Name Paul P. Sanford

Job Title _____

Address 106 S. Monroe St.
Street

Phone 850-222-7200

Tallahassee FL 32301
City *State* *Zip*

Email _____

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Blue and Florida Insurance Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04/01/19
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

572
Bill Number (if applicable)

Topic Insurance Coverage for Hearing Aids

Amendment Barcode (if applicable)

Name Karen Mazzola

Job Title Treasurer FL PTA

Address 1747 Orlando Central Pkwy
Street

Orlando FL
City *State* *Zip*

Phone

Email treasurer@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance Coverage for Hearing Aids

Name Aimee Diaz Lyon

Job Title

Address 119 S. Monroe St.
Street

TLH
City *State* *Zip*

Phone 850 205 9000

Email aimee.diaz@mhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Family Practice

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

572
Bill Number (if applicable)

Topic Insurance Coverage for Hearing Aids

Amendment Barcode (if applicable)

Name Doug Bell

Job Title Attorney

Address 119 S. Monroe Street
Street

Phone 850-205-9000

Tallahassee FL
City *State* *Zip*

Email doug.bell@mhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chapter, American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

572
Bill Number (if applicable)

Topic HEARING AIDES

Amendment Barcode (if applicable)

Name DANIEL BOUDMAN

Job Title

Address 2408 DUNDEE DR.
Street

Phone 850-597-2584

TALLAHASSEE, FL. 32308
City *State* *Zip*

Email DANANDLESLEE@PANHOO.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

572
Bill Number (if applicable)

Topic Hearing Aid Coverage

Amendment Barcode (if applicable)

Name Julia Stern

Job Title Student / Research Assistant

Address 9132 Dupont Place
Street

Phone 561-628-0410

Wellington FL 33414
City *State* *Zip*

Email jps16@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-1-19
Meeting Date

572
Bill Number (if applicable)

Topic Hearing Aid Coverage

Amendment Barcode (if applicable)

Name Shannon Hall-Mills

Job Title Speech-Language Pathologist + University Faculty

Address 1508 Woodgate Way
Street

Phone 850-320-7721

Tallahassee FL 32308
City *State* *Zip*

Email shannon.hall-mills@ccifsu.edu

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Speech-Language Pathologists + Audiologists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB572
Bill Number (if applicable)

Topic Hearing aid coverage

Amendment Barcode (if applicable)

Name Amanda Prozeralik

Job Title student

Address 11582 Woodmount In
Street

Phone 239.405.5503

Estero FL 33928
City *State* *Zip*

Email ajp16u@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Children who are deaf + hard-of-hearing.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

572
Bill Number (if applicable)

Topic Hearing Aid Bill

Amendment Barcode (if applicable)

Name Debra Gainski

Job Title CEO

Address 6333 River Rd.
Street

New Port Richey FL 34652
City *State* *Zip*

Phone 727-372-3881

Email debra@familyhearing helpers.

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sertoma Speech & Hearing Foundation of FL Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/11/19
Meeting Date

SB 572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hearing Aid Coverage

Name Brennan Towns

Job Title Student

Address 12105 Fifth Ave
Street

Hudson FL 34667
City *State* *Zip*

Phone (727) 237-0701

Email btowns@dentistsforhearingchildren.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Dentists for Hearing Children

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hearing Aid coverage

Name Caroline Borst

Job Title student

Address 431 S Woodward Ave
Street

Phone 704-338-9235

Tallahassee FL 32304
City *State* *Zip*

Email csblab@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing children who are deaf & hard of hearing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

572
Bill Number (if applicable)

Topic Hearing aid Coverage

Amendment Barcode (if applicable)

Name Theresa Giralt

Job Title Student

Address 7217 Anhinga Farms Rd
Street
Tallahassee fl 32309
City *State* *Zip*

Phone 850-567-9250

Email tgiralt@deafkidscan.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Children who are deaf & Hard of Hearing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-1-19
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

572
Bill Number (if applicable)

Topic Hearing Aid Coverage

Amendment Barcode (if applicable)

Name Julia Bitar

Job Title Lab assistant / Student

Address 5246 Forest Edge Ct
Street

Phone 407-314-6800

Sanford FL 32771
City *State* *Zip*

Email jkb15c@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04-01-2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 572

Meeting Date *Bill Number (if applicable)*

Topic Hearing Aid Bill *Amendment Barcode (if applicable)*

Name Harvey Rhinehart

Job Title Sertoma Officer

Address 14116 Marlberry way Phone 813-777-4852

Street

Odessa FL 33556 Email hrjr@verizon.net

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Sertoma Speech + Hearing Foundation of FL, Inc

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/11/19
Meeting Date

SB 572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hearing Aids

Name Sarah Ward

Job Title Parent

Address 2677 Old Bainbridge Rd #512
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 813 549 9444

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/14
Meeting Date

SB 572
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic HEARING Aids

Name Theresa Bulger

Job Title Lobbyist

Address 253 Hayden
Street

Tallahassee
City *State* *Zip*

Phone 850-972-HEAR

Email tb@deafkidscan.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Spoken Language Options / FLAA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	CS/SB 1520
INTRODUCER:	Banking and Insurance Committee and Senator Bean
SUBJECT:	Direct Health Care Agreements
DATE:	March 29, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Brown	HP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 expands the scope of the current exemption from the Florida Insurance Code (code) for direct primary care agreements to apply to all direct health care agreements for specified health care practitioners, which would include dentists. The bill removes regulatory uncertainty as to whether such providers may use a direct contracting model without the possibility of such agreements being considered insurance products.

The bill does not impact state revenues or expenditures.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Direct Contracting with Health Care Providers

Direct primary care is a type of direct contracting that eliminates third party payers from the provider-patient relationship.[1] Through a direct contractual agreement with a health care

[1] The direct primary care or direct contracting model is compared to the concierge practice model. However, while both provide access to physician services for a periodic fee, the concierge model generally continues to bill third party payers, such as insurers on a fee for service basis, in addition to the collection of membership and retainer fees. *See* Phillip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of

provider, a patient generally pays a monthly retainer fee, on average $77 per individual,[2] to the health care provider for defined primary care services, such as office visits, preventive care, annual physical examination, and routine laboratory tests.

After paying the monthly fee, a patient can access all services under the agreement at no extra charge based on the terms of the agreement. Typically, direct contracting practices provide routine preventive services, screenings, or tests, like lab tests, mammograms, pap screenings, and vaccinations. A direct health care provider agreement can be designed to address most health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management. A direct contracting agreement may also include specialty physicians.

Individuals and employers may enter into such direct contracting agreements. A recent Willis Towers Watson survey found that only six percent of employers were contracting directly with providers in 2017, but 22 percent are considering it for 2019 to obtain greater savings for the delivery of health care services.[3]

Some of the potential benefits of the direct contracting model for providers include reducing patient volume, minimizing administrative and staffing expenses, increasing time with patients, and increasing revenues. The direct contracting provider eliminates administrative costs associated with filing and resolving insurance claims. Existing direct primary care practices claim to reduce expenses by more than 40 percent by eliminating administrative staff resources associated with third-party costs.[4]

In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients outside of standard insurance coverage. According to the AAPP, that number has increased around 25 percent per year since 2010.[5] The Direct Primary Care Coalition has adopted model state legislation for direct primary care agreements (DPC).[6] As of March 1, 2019, 25 states have adopted some type of direct contracting agreement provisions, such as DPC legislation, which defines a DPC agreement as an agreement between a primary care physician and a patient, and such agreement is outside the scope of state insurance regulation.[7] Missouri enacted a law in 2015 which provides that a medical retainer agreement was an agreement between a licensed

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Family Med. (Nov.-Dec. 2015) Vol. 28, No. 6, p. 797, *available at:* http://www.jabfm.org/content/28/6/793.full.pdf (last viewed March 28, 2019).

[2] *Id.* A study of 141 DPC practices found the average monthly retainer fee to be $77.38. Of the 141 practices identified, 116 (82 percent) have cost information available online. The average monthly cost to the patient was $93.26 (median monthly cost, $75.00; range, $26.67 to $562.50 per month) for these 116 practices. Of the 116 DPCs noted, 36 charged a one-time enrollment fee and the average enrollment fee was $78. Twenty-eight of 116 DPCs charged a fee for office visits in addition to the retainer fee, and the average visit fee was $16.

[3] Willis Towers Watson, *Best practices in health care employer survey* (2018), available at https://www.willistowerswatson.com/-/media/WTW/PDF/Insights/2018/01/2017-best-practices-in-health-care-employer-survey-wtw.pdf (last viewed Mar. 11, 2019).

[4] Lisa Zamosky, Direct-Pay Medical Practices Could Diminish Payer Headaches, MEDICAL ECONOMICS (Apr. 24, 2014).

[5] David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, Family Practice Management, No. 3, (May-June 2014), *available at:* http://www.aafp.org/fpm/2014/0500/p10.html (last viewed Oct. 19, 2017).

[6] Direct Primary Care Coalition Model State Legislation, *available at* http://www.dpcare.org/dpcc-model-legislation. (last viewed Mar. 9, 2019).

[7] See https://www.dpcare.org/state-level-progress-and-issues (last viewed Mar. 12, 2019).

physician and an individual patient and was not insurance, thereby not limiting the application of the law to direct primary care physicians.[8]

Federal Health Care Reform and Direct Primary Care

The federal Patient Protection and Affordable Care Act (PPACA)[9] requires health insurers to make guaranteed issue coverage available to all individuals and employers without exclusions for preexisting conditions. The PPACA also mandates that insurers that offer qualified health plans provide 10 categories of essential health benefits.[10]

An individual can enroll in a direct health care provider agreement and obtain coverage through a high deductible health plan (HDHP),[11] which would provide coverage for severe injuries or chronic conditions. Such an individual may benefit from enrolling in a direct health care provider agreement since it may provide a greater degree of access to health care for a monthly fee that is substantially less than the annual deductible of the HDHP.

State Regulation of Insurance

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities. These specified entities must meet certain requirements for licensure. Before receiving a certificate of authority from the OIR, a HMO and a prepaid health clinic must receive a health care provider certificate[12] from the Agency for Health Care Administration pursuant to part III of ch. 641, F.S.[13]

Currently, Florida law exempts direct primary care (DPC) agreements from regulation under the Insurance Code. Section 624.27, F.S., provides the following definitions and requirements for a DPC agreement to be exempt from the Insurance Code.

- A direct primary health care agreement is a contract between a health care provider and a patient, the patient's legal representative, or an employer which must satisfy the requirements regarding contract terms and disclosures and does not indemnify for services provided by a third party.
- A primary care provider is a licensed health care practitioner under ch. 458, F.S., (medical doctor or physician assistant); ch. 459, F.S., (osteopathic doctor or physician assistant); ch. 460, F.S., (chiropractic physician); or ch. 464, F.S., (nurses and advanced registered nurse practitioners); or a primary care group practice, which provides primary care services to patients.

[8] Missouri Law 2015 H.B. 769.

[9] Pub. Law No. 111-148 (Mar. 23, 2010) amended by Pub. Law. No. 111-152 (Mar. 30, 2010).

[10] 42 U.S.C. s. 18022.

[11] A high deductible health plan (HDHP) has a higher deductible than typical plans and a maximum limit on the amount of the annual deductible and out-of-pocket medical expenses an insured must pay for covered services. For 2019, for self-only coverage, the annual minimum deductible is $1,350 and the maximum is $6,650. See https://www.irs.gov/publications/p969#en_US_2016_publink1000204030 (last viewed Mar. 9, 2019).

[12] Section 641.49, F.S.

[13] Section 641.48, F.S., provides that the purpose of part III of ch. 641, F.S., is to ensure that HMOs and prepaid health clinics deliver high-quality care to their subscribers.

- Direct primary care services are screening, assessment, diagnosis, and treatment conducted within the competency and training of the primary care provider for the purpose of promoting health or detecting and managing disease or injury.

A DPC agreement must meet the following minimum requirements and disclosures:

- Be in writing and signed by the provider or the provider's agent and the patient, the patient's legal representative, or the patient's employer;
- Allow a party to terminate the agreement with 30 days' advance written notice and provide for the immediate termination of the agreement if the physician-patient relationship is violated or a party breaches the terms of the agreement;
- Describe the scope of health care services covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund of monthly fees paid in advance if the provider ceases to offer health care services for any reason; and
- Contain the following statements in contrasting color and 12-point or larger type on the same page as the applicant's signature:

> This agreement is not health insurance, and the health care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A. This agreement is not workers' compensation insurance and does not replace an employer's obligations under ch. 440, F.S.

Prepaid Health Clinics

Prepaid health clinics[14] are required to obtain a certificate of authority from the OIR pursuant to part II of ch. 641, F.S. The entity must meet minimum surplus requirements[15] and comply with solvency protections for the benefit of subscribers by securing insurance or filing a surety bond with the OIR.[16] Part II also provides that the procedures for offering basic services and offering and terminating contracts to subscribers may not unfairly discriminate based on age, health, or economic status.[17]

State Regulation of Health Care Practitioners

The Department of Health (DOH) is responsible for the licensure and regulation of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for

[14] Section 641.402, F.S., defines the term, "prepaid health clinic," to mean any organization authorized under part II that provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health. However, no clinic that provides or contracts for, either directly or indirectly, inpatient hospital services, hospital inpatient physician services, or indemnity against the cost of such services shall be a prepaid health clinic.
[15] Section 641.406, F.S.
[16] Section 641.409, F.S.
[17] Section 641.406, F.S.

each profession or occupation, ch. 456, F.S., provides the general regulatory provisions for health care professions within the DOH through the Division of Medical Quality Assurance.

Section 456.001, F.S., defines "health care practitioner" as any person licensed under chs. 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy); F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 624.27, F.S., to expand the current exemption of direct primary care agreements from the Insurance Code to apply to all direct health care agreements with the specified practitioners, and dentists licensed under ch. 466, F.S., are added to the list. The existing provisions of the section are revised to replace the term, "primary care" with the term, "health care." As a result, the terms, "direct primary care agreement," "primary care provider," and "primary care services," are replaced with the terms, "direct health care agreement," "health care provider," and "health care services," respectively. As a result, the section provides that the act of entering into a direct health provider agreement does not constitute the business of insurance and is not subject to the Florida Insurance Code, and such agreements are no longer limited to primary care.

Section 2 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[18] The miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1520 removes regulatory uncertainty for health care providers who are not primary care providers that contract directly with individuals or employers by providing that the direct health care agreement is not insurance if certain conditions are met, and as a result, the OIR does not regulate the agreements.

Additional health care providers may elect to pursue a direct health care model and establish direct health care practices that may increase patients' access to affordable health care services.

Many individuals have high deductible policies and must meet a significant out of pocket cost to access many types of medical care. The direct health care agreement may provide a less expensive option for accessing certain services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.27 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 18, 2019:
The CS provides that a direct health care agreement could include agreements with dentists.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Bean

597-03200-19 20191520c1

A bill to be entitled

An act relating to direct health care agreements; amending s. 624.27, F.S.; expanding the scope of direct primary care agreements that are exempt from the Florida Insurance Code and renaming them direct health care agreements; adding health care providers who may market, sell, or offer to sell such agreements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.27, Florida Statutes, is amended to read:

624.27 Direct health ~~primary~~ care agreements; exemption from code.—

(1) As used in this section, the term:

(a) "Direct health ~~primary~~ care agreement" means a contract between a health ~~primary~~ care provider and a patient, a patient's legal representative, or a patient's employer, which meets the requirements of subsection (4) and does not indemnify for services provided by a third party.

(b) "Health ~~Primary~~ care provider" means a health care provider licensed under chapter 458, chapter 459, chapter 460, ~~or~~ chapter 464, or chapter 466, or a health ~~primary~~ care group practice, who provides health ~~primary~~ care services to patients.

(c) "Health ~~Primary~~ care services" means the screening, assessment, diagnosis, and treatment of a patient conducted within the competency and training of the health ~~primary~~ care provider for the purpose of promoting health or detecting and

Florida Senate - 2019 **CS for SB 1520**

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managing disease or injury.

(2) A direct health ~~primary~~ care agreement does not constitute insurance and is not subject to the Florida Insurance Code. The act of entering into a direct health ~~primary~~ care agreement does not constitute the business of insurance and is not subject to the Florida Insurance Code.

(3) A health ~~primary~~ care provider or an agent of a health ~~primary~~ care provider is not required to obtain a certificate of authority or license under the Florida Insurance Code to market, sell, or offer to sell a direct health ~~primary~~ care agreement.

(4) For purposes of this section, a direct health ~~primary~~ care agreement must:

(a) Be in writing.

(b) Be signed by the health ~~primary~~ care provider or an agent of the health ~~primary~~ care provider and the patient, the patient's legal representative, or the patient's employer.

(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

(d) Describe the scope of health ~~primary~~ care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for health ~~primary~~ care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient, the patient's legal representative, or the patient's employer of monthly fees paid

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

in advance if the health ~~primary~~ care provider ceases to offer health ~~primary~~ care services for any reason.

(h) Contain, in contrasting color and in at least 12-point type, the following statement on the signature page: "This agreement is not health insurance and the health ~~primary~~ care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any health ~~primary~~ care services covered by the agreement. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A. This agreement is not workers' compensation insurance and does not replace an employer's obligations under chapter 440."

Section 2. This act shall take effect July 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 19, 2019

I respectfully request that **Senate Bill # 1520**, relating to Direct Health Care Agreements, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1520
Bill Number (if applicable)

Topic Direct Health Care Agreements

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W. College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 1, 2019
Meeting Date

1520
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Direct Health Agreements

Name Sal Nuzzo

Job Title Vice President of Policy

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Email snuzzo@jamesmadison.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1520
Bill Number (if applicable)

Topic Direct Health Care Agreements

Amendment Barcode (if applicable)

Name Joe Anne Hart

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Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

SB 1520
Bill Number (if applicable)

Topic Direct Health Care Agreements

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

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Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/1/19
Meeting Date

1520
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

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Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Health Policy

BILL:	SB 258
INTRODUCER:	Senators Bean and Benacquisto
SUBJECT:	Genetic Information Used for Insurance Purposes
DATE:	March 29, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Williams	Brown	HP	**Pre-meeting**
3.			RC	

I. Summary:

SB 258 prohibits life insurers, life insurers offering disability income insurance, and long-term care insurers from using genetic information in the absence of a diagnosis related to such information:

- To cancel, limit, or deny coverage;
- To establish differentials in premium rates; or
- For underwriting purposes.

Florida currently applies these prohibitions to health insurers.

The bill also amends the existing prohibition against health insurers soliciting genetic test results in any manner for any insurance purpose. Under the bill, the prohibition only applies in the absence of a diagnosis of a condition related to the genetic information. The bill applies the revised prohibition to life insurers and long-term care insurers.

The provisions of the bill will apply to policies issued or renewed by life insurers and long-term care insurers on or after January 1, 2020.

The bill has no fiscal impact on state government.

The bill has an effective date of July 1, 2019.

II. Present Situation:

Use of Genetic Information for Insurance Purposes – Florida Requirements

Insurance policies for life, disability income, and long-term care[1] are exempt from s. 627.4301, F.S., which provides standards for the use of genetic information by health insurers. Health insurers[2] may not, in the absence of a diagnosis of a condition related to genetic information, use such information to cancel, limit, or deny coverage, or establish differentials in premium rates. Health insurers are also prohibited from requiring or soliciting genetic information, using genetic test results, or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

Section 627.4031, F.S., defines "genetic information" to mean information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are:

- Scientifically or medically believed to cause a disease disorder, or syndrome, or are associated with a statistically increased risk of developing a disease; or
- Associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is producing or showing no symptoms at the time of testing.

Genetic testing, for purposes of s. 627.4031, F.S., does not include routine physical examinations or chemical, blood, or urine analysis, unless specifically conducted to obtain genetic information, or questions regarding family history.

Federal Laws on the Use of Genetic Information for Insurance Purposes

Federal law generally prohibits health insurers from soliciting genetic information and using such information for underwriting purposes. Federal law does not apply these prohibitions to life insurance, disability insurance, or long-term care insurance.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 (GINA) amended a number of existing federal laws to prohibit health insurers from using genetic information for underwriting purposes.[3] The act does not apply to life insurance, long-term care insurance, or disability insurance.

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[1] Section 627.4301(2)(c), F.S. Other types of insurance that are wholly exempt from the statute are accident-only policies, hospital indemnity or fixed indemnity policies, dental policies, and vision policies.

[2] Section 627.4301(1)(b), F.S., defines health insurer to mean, "an authorized insurer offering health insurance as defined in s. 624.603, F.S., a self-insured plan as defined in s. 624.031, F.S., a multiple-employer welfare arrangement as defined in s. 624.437, F.S., a prepaid limited health service organization as defined in s. 636.003, F.S., a health maintenance organization as defined in s. 641.19, F.S., a prepaid health clinic as defined in s. 641.402, F.S., a fraternal benefit society as defined in s. 632.601, F.S., or any health care arrangement whereby risk is assumed."

[3] Pub. Law No. 110-233, s. 122 Stat. 881-921 (2008). https://www.gpo.gov/fdsys/pkg/PLAW-110publ233/pdf/PLAW-110publ233.pdf (last accessed March 7, 2019).

Title I of GINA provides protections against discrimination by health insurers on the basis of genetic information.[4] GINA prohibits health insurers and health plan administrators from using genetic information to make rating or coverage decisions.[5] These decisions include eligibility for coverage and setting premium or contribution amounts.

GINA generally prohibits health insurers and health plan administrators from requesting or requiring genetic information of an individual or the individual's family members,[6] nor may such information be requested, required or purchased for underwriting purposes.[7] Underwriting purposes include rules for eligibility, determining coverage or benefits, cost-sharing mechanisms, calculating premiums or contribution amounts, rebates, payments in kind, pre-existing condition exclusions, and other activities related to the creation, renewal, or replacement of health insurance or health benefits. Underwriting purposes does not include determining medical appropriateness where an individual seeks a health benefit under a plan, coverage, or policy.[8] Genetic information may be used by an insurer to make a determination regarding the payment of benefits, for example, as the basis of a diagnosis that then would lead to benefits being provided under the insurance policy.

The protections in GINA apply to the individual and group health markets, including employer sponsored plans under the Employee Retirement Income Security Act of 1974 (ERISA).[9] GINA generally expanded many of the genetic information protections in the Health Insurance Portability and Accountability Act of 1996[10] (HIPAA) and applied them to the individual, group and Medicare supplemental marketplaces.[11] The protections enacted in GINA do not apply to Medicare or Medicaid because both programs bar the use of genetic information as a condition of eligibility.[12] GINA also prohibits employment discrimination on the basis of genetic information.[13]

States may provide stronger protections than GINA, which provides a baseline level of protection against prohibited discrimination on the basis of genetic information.

Health Insurance Portability and Accountability Act of 1996

HIPAA establishes national standards to ensure the privacy and nondisclosure of personal health information. The rule applies to "covered entities" which means a health plan, health care

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[4] 110th Congress, *Summary: H.R.493 Public Law* (May 21, 2008) (last accessed February 1, 2018).
[5] *See* 29 USC 1182; 42 USC 300gg-1; and 42 USC 300gg-53.
[6] Department of Health and Human Services, *"GINA" The Genetic Information Nondiscrimination Act of 2008: Information for Researchers and Health Care Professionals*, (April 6, 2009). https://www.genome.gov/pages/policyethics/geneticdiscrimination/ginainfodoc.pdf (last accessed March 7, 2019).
[7] *See* 29 USC 1182(d); 42 USC 300gg-4(d); and 42 USC 300gg-53(e).
[8] *See* 45 CFR 164.502(a)(5)(i)(4)(B).
[9] Perry W. Payne, Jr. et al, *Health Insurance and the Genetic Information Nondiscrimination Act of 2008: Implications for Public Health Policy and Practice*, Public Health Rep., Vol. 124 (March-April 2009), 328, 331.
[10] Codified 42 USC 300gg, 29 USC 1181 et seq., and 42 USC 1320d et seq.
[11] *See* Payne at pg. 329.
[12] National Institutes of Health, *The Genetic Information Nondiscrimination Act (GINA)*.
[13] *See* 29 CFR 1635(a), which prohibits the use of genetic information in employment decision making; restricts employers and other entities from requesting, requiring, or purchasing genetic information; requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information; and provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of GINA.

clearinghouse, other health care providers, and their business associates.[14] HIPAA provides standards for the use and disclosure of protected health information and generally prohibits covered entities and their business associates from disclosing protected health information, except as otherwise permitted or required.[15] Covered entities generally may not sell protected health information.[16] HIPPA, as modified by GINA, also prohibits health plans from using or disclosing protected health information that is genetic information for underwriting purposes.[17]

Patient Protection and Affordable Care Act of 2010

The Patient Protection and Affordable Care Act of 2010 (ACA) requires all individual and group health plans to enroll applicants regardless of their health status, age, gender, or other factors that might predict the use of health services.[18] These guaranteed issue and guaranteed renewability requirements apply to genetic testing.

Use of Genetic Information for Insurance Purposes – Requirements in Other States

Federal law under GINA applies to all states and provides a baseline level of protection that states may exceed. The NIH has identified 105 state statutes addressing health insurance nondiscrimination across 48 states and the District of Columbia.[19] Fewer states address genetic testing regarding other lines of insurance such as life insurance, disability insurance, and long-term care insurance.[20]

Examples of such statutes include Oregon, which requires informed consent to conduct testing, prohibits the use of genetic information for underwriting or ratemaking for any policy for hospital and medical expense, and prohibits using the genetic information of a blood relative for underwriting purposes regarding any insurance policy.[21] Informed consent when an insurer requests genetic testing for life or disability insurance is required in California, New Jersey, and New York.[22] Massachusetts prohibits unfair discrimination based on genetic information or a genetic test and prohibits requiring an applicant or existing policyholder to undergo genetic testing.[23] Arizona prohibits the use of genetic information for underwriting or rating disability insurance in the absence of a diagnosis, and life and disability insurance policies may not use genetic information for underwriting or ratemaking unless supported by the applicant's medical condition, medical history, and either claims experience or actuarial projections.[24]

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[14] See 45 CFR 160.103.
[15] See 45 CFR 164.502(a).
[16] See 45 CFR 164.502(a)(5)(ii)(A).
[17] See 45 CFR 164.502(a)(5)(i).
[18] See 42 USC 300gg-1 and 42 USC 300gg-2.
[19] National Institutes of Health, *Genome Statute and Legislation Database Search*. https://www.genome.gov/policyethics/legdatabase/pubsearch.cfm (database search for "state statute," "health insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on March 7, 2019).
[20] *See id*. (database search for "state statute," "other lines of insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on March 7, 2019).
[21] Section 746.135, O.R.S.
[22] *See* Cal. Ins. Code s. 10146 et seq.; s. 17B:30-12, N.J.S.; and ISC s. 2615, N.Y.C.L.
[23] Chapter 175 sections 108I and 120E, M.G.L.
[24] Section 20-448, A.R.S.

Genetic Testing

Genetic testing includes a number of medical tests that identify and examine chromosomes, genes, or proteins for the purpose of obtaining genetic information.[25] Genetic testing is often used for medical or genealogical purposes.

Medical Genetic Testing

Genetic testing can be done to diagnose a genetic disorder, to predict the possibility of future illness, and predict a patient's response to therapy.[26] More than 2,000 genetic tests are currently available and more tests are constantly being developed.[27] The National Institutes of Health[28] (NIH) have identified the following available types of medical genetic testing:[29]

- *Diagnostic testing* identifies or rules out a specific genetic or chromosomal condition, and is often used to confirm a diagnosis when a particular condition is suspected based on the individual's symptoms. For example, a person experiencing abnormal muscle weakness may undergo diagnostic testing that screens for various muscular dystrophies.
- *Predictive and presymptomatic testing* is used to detect gene mutations associated with disorders that appear after birth, often later in life. This testing is often used by people who are asymptomatic, but have a family member with a genetic disorder. Predictive testing can identify mutations that will result in genetic disorder, or that increase a person's risk of developing disorders with a genetic basis, such as cancer.
- *Carrier testing* identifies people who carry one copy of a gene mutation that, when present in two copies, causes a genetic disorder. This test is often used by parents to determine their risk of having a child with a genetic disorder.
- *Preimplantation testing* is used to detect genetic changes in embryos developed by assisted reproductive techniques such as in-vitro fertilization. Small numbers of cells are taken from the embryos and tested for genetic changes prior to implantation of a fertilized egg.
- *Prenatal testing* detects changes in a baby's genes or chromosomes before birth. Such testing is often offered if there is an increased risk the baby will have a genetic or chromosomal disorder.
- *Newborn screening* is performed shortly after birth to identify genetic disorders that can be treated early in life. Florida screens for 31 disorders recommended by the United States Department of Health and Human Services Recommended Uniform Screening Panel and 22 secondary disorders, unless a parent objects in writing.[30]

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[25] National Institutes of Health, *Genetic Testing*, pg. 3 (January 30, 2018). Available for download at https://ghr.nlm.nih.gov/primer/testing/uses (last accessed March 26, 2019).
[26] Francis S. Collins, *A Brief Primer on Genetic Testing* (January 24, 2003). https://www.genome.gov/10506784/a-brief-primer-on-genetic-testing/ (last accessed March 7, 2019).
[27] *See* Ohio State University Wexner Medical Center, *Facts About Testing*. https://wexnermedical.osu.edu/genetics/facts-about-testing (last accessed March 7, 2019).
[28] The National Institutes of Health is the medical research agency of the United States federal government. The NIH is part of the United States Department of Health and Human Services. The NIH is made of 27 different Institutes and Centers, each having a specific research agenda.
[29] *Supra* note 25, at pgs. 5-6.
[30] Florida Department of Health, *Newborn Screening*. http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/index.html (last accessed March 7, 2019).

Genetic testing is often used for research purposes. For example, genetic testing may be used to discover genes or increase understanding of genes that are newly discovered or not well understood.[31] Testing results as part of a research study are usually not available to patients or health care providers.[32]

The Human Genome Project, which in April 2003 successfully sequenced and mapped all of the genes of humans, and a variety of other genetic testing, has led to multiple medical advances. For example, genetic testing identified that the reason the drug Plavix, which is commonly used to prevent blood clots in patients at risk for heart attacks and strokes, does not work for approximately 30 percent of the United States population because variations in the CYP2C19 gene account for the lack of a response.[33] Thus, genetic testing can identify persons for whom the drug will not be effective.

The American Medical Association supports broad protections against genetic discrimination because it believes genetic testing and genetic information is essential to advancements in medical knowledge and care.[34] Accordingly, the organization supports comprehensive federal protection against genetic discrimination because "patients remain at-risk of discrimination in a broad array of areas such as life, long-term care, and disability insurance as well as housing, education, public accommodations, mortgage lending, and elections."

Methods of genetic testing used for medical purposes include:

- Molecular genetic tests (Gene tests) that study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder.
- Chromosomal genetic tests that analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition.
- Biochemical genetic tests that study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.

Genetic Ancestry Testing

Genetic ancestry testing, also called genetic genealogy, is used to identify relationships between families and identify patterns of genetic variation that are often shared among people of particular backgrounds.[35] According to the NIH, genetic ancestry testing results may differ between providers because they compare genetic information to different databases. The tests can yield unexpected results because human populations migrate and mix with other nearby groups. Scientists can use large numbers of genetic ancestry test results to explore the history of populations. Three common types of genetic ancestry testing include:[36]

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[31] *Supra* note 27.
[32] National Institutes of Health, *Genetic Testing*, at pg. 24.
[33] Francis S. Collins, Perspectives on the Human Genome Project, pg. 50 (June 7, 2010). https://www.genome.gov/pages/newsroom/webcasts/2010sciencereportersworkshop/collins_nhgrisciencewriters060710.pdf (last accessed March 7, 2019).
[34] American Medical Association, *Genetic Discrimination – Appendix II. AMA Legislative Principles on Genetic Discrimination and Surreptitious Testing*, (March 2013) https://www.ama-assn.org/sites/default/files/media-browser/public/genetic-discrimination-policy-paper.pdf (last accessed March 7, 2019).
[35] National Institutes of Health, *Genetic Testing*, at pg. 25.
[36] National Institutes of Health, *Genetic Testing*, at pg. 26.

- Single nucleotide polymorphism testing to evaluate large numbers of variations across a person's entire genome. The results are compared with those of others who have taken the tests to provide an estimate of a person's ethnic background.
- Mitochondrial DNA testing to identify genetic variations in mitochondrial DNA, which provides information about the direct female ancestral lines.
- Y chromosome testing, performed exclusively on males, often used to investigate whether two families with the same surname are related.

Direct to Consumer Genetic Testing

Traditionally, genetic testing was available only through health care providers.[37] Direct-to-consumer genetic testing provides access to genetic testing outside the health care context. Generally, the consumer purchases a genetic testing kit from a vendor that mails the kit to the consumer. The consumer collects a DNA sample and mails it back to the vendor. The vendor uses a laboratory to conduct the test. The consumer is then notified of the test results.

Direct-to-consumer genetic testing has primarily been used for genealogical purposes, but increasing numbers of products now provide medical information. For example, the vendor 23andME offers, with FDA approval, genetic testing that examines the consumer's risks for certain diseases including Parkinson's disease, celiac disease, and late-onset Alzheimer's disease.[38]

Direct to consumer genetic testing is increasing in popularity, with one company reporting having sold approximately 1.5 million genetic testing kits from November 24, 2017, through November 27, 2017.[39] The increased proliferation of such testing is accompanied by increased concerns about the privacy of such information. The privacy protections of HIPAA usually do not apply to direct-to-consumer genetic testing because the vendors selling such tests are often not "covered entities" and thus not subject to HIPAA. The Federal Trade Commission has recently warned consumers to consider the privacy implications of genetic testing kits.[40]

Life Insurance, Disability Insurance, and Long-Term Care Insurance

Life insurance is the insurance of human lives.[41] Life insurance can be purchased in the following forms:[42]

- Term life insurance provides coverage for a set term of years and pays a death benefit if the insured dies during the term.[43]

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[37] National Institutes of Health, *Genetic Testing*, at pg. 11.
[38] 23andMe, *Find Out What Your DNA Says About Your Health, Traits and Ancestry* https://www.23andme.com/dna-health-ancestry/ (last accessed Feb. 4, 2018).
[39] Megan Molteni, *Ancestry's Genetic Testing Kits Are Heading For Your Stocking This Year*, Wired, (December 1, 2017) https://www.wired.com/story/ancestrys-genetic-testing-kits-are-heading-for-your-stocking-this-year/ (last accessed March 7, 2019).
[40] Federal Trade Commission, *DNA Test Kits: Consider the Privacy Implications*, (Dec. 12, 2017).https://www.consumer.ftc.gov/blog/2017/12/dna-test-kits-consider-privacy-implications (last accessed March 7, 2019).
[41] Section 624.602, F.S.
[42] National Association of Insurance Commissioners, *Life Insurance – Considerations for All Life Situations*, http://www.insureuonline.org/insureu_type_life.htm (last accessed March 7, 2019).
[43] National Association of Insurance Commissioners, *Life Insurance FAQs*, http://www.insureuonline.org/consumer_life_faqs.htm (last accessed March 7, 2019).

- Permanent life insurance remains in place if the insured pays premiums, and the coverage pays a death benefit. Such policies have an actual cash value component that increases over time and from which the policy owner may borrow. There are four types of permanent life insurance:
  - Whole life insurance offers a fixed premium, guaranteed annual cash value growth and a guaranteed death benefit. It does not provide investment flexibility and the policy coverage, once established, may not be changed.
  - Universal life insurance allows the policyholder to determine the amount and timing of premium payments within certain limits. The coverage level may be adjusted. It guarantees certain levels of annual cash value growth but not investment flexibility.
  - Variable life insurance allows allocation of investment funds, but does not guarantee minimum cash value because of fluctuations in the value of investments.
  - Variable universal life insurance combines variable and universal life insurance.[44]

Life insurance also encompasses annuities and disability policies.[45] An annuity is a contract between a customer and an insurer wherein the customer makes a lump-sum payment or a series of payments to an insurer that in return agrees to make periodic payments to the annuitant at a future date, either for the annuitant's life or a specified period. Disability insurance pays a weekly or monthly income for a set period if the insured becomes disabled and cannot continue working or obtain work.

Life insurance underwriters seek to identify and classify the risk represented by a proposed insured and then classify those risks into pools of similar mortality or morbidity risk.[46] Insureds within the same risk classification pay the same premiums, which must be adequate to ensure solvency, pay claims, and provide the insurer (with investment income) a reasonable rate of return.

Disability insurance compensates the insured for a portion of income lost because of a disabling injury or illness.[47] There are two types of disability insurance: short-term and long-term. A short-term policy typically replaces a portion of lost income from three to six months following the disability. Long-term policies generally begin six months after the disability and can last a set number of years or until retirement age. Disability insurance is sometimes offered by life insurers.

Insurance policy forms for insurance sold in Florida must be filed and approved by the Office of Insurance Regulation (OIR).[48] The Unfair Insurance Trade Practices Act prohibits "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and expectation of life, in the rates charged for a life insurance or annuity

[44] *See* "What are the different types of permanent life insurance policies?" *available at* https://www.iii.org/article/what-are-different-types-permanent-life-insurance-policies (last accessed March 26, 2019).
[45] Section 624.602, F.S.
[46] American Council of Life Insurers, *Life Insurer Issues*. (On file with the Senate Committee on Banking and Insurance).
[47] *See* National Association of Insurance Commissioners, *A Worker's Most Valuable Asset: Protecting Your Financial Future with Disability Insurance* http://www.naic.org/documents/consumer_alert_protecting_financial_future_disability_insurance.htm (last accessed March 7, 2019).
[48] Section 624.410, F.S.

contract, in the dividends or other benefits payable thereon, or in any other term or condition of such contract."[49] Similarly, the act prohibits knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class, as determined at the time of initial issuance of the coverage, and essentially the same hazard, in the amount of premium, policy fees, or rates charged for a policy or contract of disability insurance, in benefits payable, in the terms or conditions of the contract, or in any other manner.[50]

Long-term care (LTC) insurance covers the costs of nursing homes, assisted living, home health care, and other long-term care services. A long-term care insurance policy provides coverage for medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital.[51] Long-term care insurance usually pays fixed-dollar amounts or the actual costs of care, often subject to a maximum daily benefit amount.[52]

The LTC insurance market provides an example of the negative effects of insurers not accurately projecting their underwriting risk. LTC insurers made incorrect assumptions when selling the coverage, particularly in the 1980s and 1990s.[53] The LTC insurers overestimated the number of people that would cancel their coverage or allow it to lapse, underestimated the life span of insureds and the time span of the treatment they would receive, and overestimated earnings on LTC premiums which were negatively affected by dropping interest rates.[54] As a result, long-term care insurance premiums have been rising, often substantially, for the past decade.[55]

In response to substantial LTC premium increases, Florida law prohibits LTC rate increases that would result in a premium in excess of that charged on a newly issued policy, except to reflect benefit differences.[56] If the insurer is not writing new LTC policies, the rate cannot exceed the new business rate of insurers representing 80 percent of the carriers in the marketplace. In January 2017, the OIR issued consent orders allowing two of the state's largest LTC insurers, Metropolitan Life Insurance Company and Unum Life Insurance Company of America, to substantially raise LTC monthly premiums, phased in over three years.[57] Many insurers that

[49] Section 626.9541(1)(g)1., F.S.
[50] Section 626.9541(1)(g)2., F.S.
[51] Section 627.9404(1), F.S.
[52] Florida Department of Financial Services, *Long-Term Care: A Guide for Consumers,* pg. 5. https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/LTCGuide.pdf (last accessed March 7, 2019).
[53] *See* Leslie Scism, *Millions Bought Insurance to Cover Retirement Health Costs. Now They Face an Awful Choice,* Wall Street Journal (January 17, 2018) https://www.wsj.com/articles/millions-bought-insurance-to-cover-retirement-health-costs-now-they-face-an-awful-choice-1516206708 (last accessed March 7, 2019).
[54] *See* Office of Insurance Regulation, *Long-Term Care Public Rate Hearings*. (The Internet page references a rate filing decision made by the OIR on Jan. 12, 2017, related to LTC products for two insurers). https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed March 7, 2019); See Scism at fn. 35
[55] *See* Scism at fn. 35; See Office of Insurance Regulation at fn. 36. https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed March 7, 2019).
[56] Section 627.9407(7)(c), F.S.
[57] *See* Office of Insurance Regulation, *Consent Order In the Matter of: Metropolitan Life Insurance Company*, Case No. 200646-16-CO (Jan. 12, 2017) https://www.floir.com/siteDocuments/MetLife200646-16-CO.pdf (last accessed March 7, 2019); Office of Insurance Regulation, *Consent Order In The Matter of Unum Life Insurance Company of America*, Case No. 200879-16-CO (Jan. 12, 2017) https://www.floir.com/siteDocuments/Unum200879-16-CO.pdf (last accessed March 7, 2019).

write LTC insurance have taken substantial losses. Recently, General Electric announced a $6.2 billion charge against earnings and a $15 billion shortfall in insurance reserves related to LTC insurance obligations.[58]

The American Council of Life Insurers has expressed concerns that the proliferation of genetic testing could increase adverse selection and impact the availability and affordability of products over time.[59] Studies addressing whether genetic testing leads to adverse selection have reached varying conclusions. Studies of women tested for the BRCA1 gene mutation (linked to breast cancer risk)[60] and adults tested for Alzheimer's risk[61] found little evidence of adverse selection in the life insurance market. However, the study regarding Alzheimer's risk found evidence of adverse selection for long-term care insurance, as 17 percent of those who tested positive subsequently changed their LTC policy in the year after testing positive of Alzheimer's risk, in comparison with two percent of those who tested negative and four percent of those who did not receive test results.[62]

III. Effect of Proposed Changes:

Section 1 amends s. 627.4301, F.S., to prohibit life insurers, including life insurers providing disability insurance, and long-term care insurers from canceling, limiting, or denying coverage or establishing differentials in premium rates, based on genetic information, if there is no diagnosis of a condition related to the genetic information. Such insurer also may not use such genetic information for underwriting purposes.

The bill amends the existing prohibition against health insurers soliciting genetic test results in any manner for any insurance purpose. Under the bill, the prohibition only applies in the absence of a diagnosis of a condition related to the genetic information. The bill applies the revised prohibition to life insurers and long-term care insurers.

For purposes of s. 627.4301, F.S., the bill defines the following terms:

- "Life insurer" has the same meaning as in s. 624.602, F.S., and includes an insurer issuing life insurance contracts that grant additional benefits if the insured is disabled. Section 624.602, F.S., defines a life insurer as an insurer engaged in the business of issuing life insurance contracts, including contracts of combined life and health and accident insurance.

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[58] Sonali Basak, Katherine Chiglinsky, et al, *GE's Surprise $15 Billion Shortfall Was 14 Years in the Making*, Chicago Tribune, (January 25, 2018) http://www.chicagotribune.com/business/ct-biz-ge-general-electric-accounting-20180125-story.html (last accessed March 7, 2019); Steve Lohr and Chad Bray, *At G.E., $6.2 Billion Charge for Finance Unit Hurts C.E.O.'s Turnaround Push*, New York Times, (January 16, 2018). https://www.nytimes.com/2018/01/16/business/dealbook/general-electric-ge-capital.html (last accessed March 7, 2019).

[59] Gina Kolata, *New Gene Tests Pose a Threat to Insurers*, New York Times (May 12, 2017) https://www.nytimes.com/2017/05/12/health/new-gene-tests-pose-a-threat-to-insurers.html (last accessed March 7, 2019).

[60] Cathleen D. Zick, et. al., *Genetic Testing, Adverse Selection, and the Demand for Life Insurance*, pgs. 29-39 American Journal of Medical Genetics (July 2000) (Abstract provided by NIH at https://www.ncbi.nlm.nih.gov/pubmed/10861679 (last accessed March 7, 2019)).

[61] Cathleen D. Zick, *Genetic Testing For Alzheimer's Disease And Its Impact on Insurance Purchasing Behavior*, pgs. 483-490, Health Affairs vol. 23, no. 2 (March/April 2005) https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.24.2.483 (last accessed March 7, 2019).

[62] *See* Zick fn. 60 at pgs. 487-488.

- "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404, F.S.

Section 2 applies the act to policies entered into or renewed after January 1, 2020.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 258 may lead to more individuals undergoing genetic testing, which in the aggregate may lead to advancements in medical research and, regarding the individual, can be useful in identifying and treating disease and disability.

The bill, to the extent it encourages adverse selection of life, disability, or long-term care insurance, could result in the improper classification of risks for such policies, leading to inadequate rates and, eventually, higher premiums. Such insurers' use of genetic information in underwriting, risk classification, and ratemaking could result in individuals either not being able to procure such coverages because the insurer is unwilling to offer the coverage, or offers it at a rate that is unaffordable to the consumer.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4301 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Bean

4-00114-19 2019258__

A bill to be entitled

An act relating to genetic information used for insurance purposes; amending s. 627.4301, F.S.; defining terms; prohibiting life insurers and long-term care insurers, except under certain circumstances, from canceling, limiting, or denying coverage, or establishing differentials in premium rates, based on genetic information; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose; revising a prohibition on the use of genetic test results by health insurers; revising and providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.4301, Florida Statutes, is amended to read:

627.4301 Genetic information for insurance purposes.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Genetic information" means information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome, or are associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is asymptomatic at the time of testing. Such testing does not include routine physical examinations or chemical, blood, or

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urine analysis, unless conducted purposefully to obtain genetic information, or questions regarding family history.

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a self-insured plan as defined in s. 624.031, a multiple-employer welfare arrangement as defined in s. 624.437, a prepaid limited health service organization as defined in s. 636.003, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, a fraternal benefit society as defined in s. 632.601, or any health care arrangement whereby risk is assumed.

(c) "Life insurer" has the same meaning as in s. 624.602 and includes an insurer issuing life insurance contracts that grant additional benefits in the event of the insured's disability.

(d) "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404.

(2) USE OF GENETIC INFORMATION.—

(a) In the absence of a diagnosis of a condition related to genetic information, no health insurer, life insurer, or long-term care insurer authorized to transact insurance in this state may cancel, limit, or deny coverage, or establish differentials in premium rates, based on such information.

(b) Health insurers, life insurers, and long-term care insurers may not require or solicit genetic information, use genetic test results in the absence of a diagnosis of a condition related to genetic information, or consider a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

(c) This section does not apply to the underwriting or issuance of an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy or any other actions of an insurer directly related to an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy.

Section 2. This act applies to policies entered into or renewed on or after January 1, 2020.

Section 3. This act shall take effect July 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 19, 2019

I respectfully request that **Senate Bill # 258**, relating to Genetic Information Used for Insurance Purposes, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Policy Committee **Judge:**

Started: 4/1/2019 1:31:39 PM
Ends: 4/1/2019 3:29:01 PM Length: 01:57:23

1:31:38 PM Meeting called to order
1:31:52 PM Chair Comments to audience
1:32:00 PM Roll Call - Quorum is present
1:32:27 PM SB 258 by Senator Bean -TP'd
1:33:35 PM Motion to TP SB 258. Objections? None Motion is adopted
1:33:43 PM Vice Chair Berman in Chair
1:34:07 PM Tab 1 - SB 1712 by Senator Harrell - Hospital Licensure
1:34:30 PM Strike All amendment 455382 by Senator Harrell
1:38:14 PM Chair
1:39:17 PM Questions?
1:39:27 PM Senator Baxley
1:39:49 PM Senator Harrell
1:39:54 PM Chair
1:39:59 PM Amend. to Amend. 349374 by Senator Harrell
1:40:05 PM Questions?
1:41:05 PM Objection?
1:41:08 PM Amend. to Amend. 349374 is adopted
1:41:11 PM Amendment to Amendment 818512 By Senator Bean
1:42:18 PM Questions? Debate?
1:43:19 PM Senator Bean waives to close
1:43:28 PM Amendment to Amendment is adopted
1:43:36 PM Amendment to Amendment 590662 by Senator Bean
1:44:57 PM Questions?
1:45:10 PM Debate?
1:45:15 PM Senator Harrell
1:45:19 PM Senator Bean waives close
1:45:31 PM Amend to Amend is adopted
1:45:36 PM Back on Strike all as amend
1:46:01 PM Monica Rodriguez, Government Affairs Director, UF Health Shands Gainesville, waives in support
1:46:17 PM Nathan Ray, Governmental Affairs Director, Jackson Memorial, waives in support
1:46:23 PM Dr. Elaine Thompson, President and Chief Executive Officer, Lakeland Regional Health, speaking against amendment 455382
1:49:17 PM Chair
1:50:18 PM Debate?
1:50:23 PM Sen. Harrell strike all waives close
1:50:34 PM Amendment is adopted
1:50:37 PM Back on the bill as amended
1:50:45 PM Appearance Cards
1:50:54 PM Sal Nuzzo, Vice President of Policy, The James Madison Institute, speaking for the bill
1:50:58 PM Justin Pearson, Florida Office Managing Attorney, Institute for Justice, speaking for the bill
1:51:03 PM Monica Rodriguez, waives in support
1:54:34 PM Nathan Ray, Government Affairs Director, Jackson Memorial, waives in support
1:54:39 PM Megan Flocken, teacher, representing self, waives in opposition
1:54:46 PM Donald Pearson, Teacher, representing self, waives in opposition
1:54:55 PM Phil Cerulli, Deputy Sheriff, representing self, waives in opposition
1:55:01 PM Anthony Marciano, representing self, waives in opposition
1:55:09 PM Jhonny Rugama, representing self, waives in opposition
1:55:17 PM Amy Datz, representing self, waives in opposition
1:55:27 PM Jeremiah Tattersall, representing self, waives in opposition
1:55:37 PM Rony Carballa, representing self, waives in opposition
1:55:45 PM Emily McQuaig, representing self, waives in opposition
1:55:53 PM Kim Simpson, representing self, waives in opposition

1:56:02 PM Richard Haynes, representing self, waives in opposition
1:56:17 PM Senator Bean
1:56:53 PM Robert Chandler, representing self, waives in opposition
1:57:01 PM Brittany Weeman, representing self, waives in opposition
1:57:12 PM James Jones, representing self, waives in opposition
1:57:22 PM Tom Schwartz, Political Coordinator, United Food & Commercial Workers Union, Local 1625, speaking in opposition
1:58:32 PM Diego Echeverri, Director Coalitions, Concerned Veterans for America, speaking in support
2:00:12 PM Phillip Suderman, Policy Director, Americans for Prosperity, speaking in support
2:01:21 PM Dr. Richard Templin, Florida AFL-CIO, speaking against
2:03:46 PM Aaron Carmella, representing self, waives in opposition
2:04:34 PM Belinda Davis, representing self, waives in opposition
2:04:44 PM Iran Acevedo, representing self, waives in opposition
2:05:01 PM Debate?
2:05:10 PM Senator Bean
2:07:28 PM Senator Baxley
2:09:20 PM Senator Cruz
2:10:59 PM Senator Mayfield
2:13:10 PM Senator Rouson
2:14:36 PM Chair
2:14:49 PM Senator Harrell to close
2:17:15 PM Roll Call SB 1712 - favorable
2:18:40 PM Chair Harrell back in Chair
2:18:55 PM Tab 2 - SB 630 by Senator Perry, Nonopioid Directives
2:19:03 PM Strike all amendment 422752 by Senator Perry
2:19:38 PM Amendment to amendment 461754 by Senator Perry
2:19:55 PM Questions?
2:19:59 PM Appearance Cards on amendment to amendment
2:20:21 PM Lorinne Mixon, Florida Oriental Medical Association, waives in support
2:20:28 PM Senator Perry waives close
2:20:40 PM Amendment to amendment is adopted
2:20:46 PM Strike all as amended
2:20:49 PM Questions?
2:20:52 PM Senator Berman
2:20:56 PM Senator Perry
2:21:24 PM Senator Berman
2:21:28 PM Senator Perry
2:21:38 PM Appearance Cards on strike all as amended
2:21:49 PM Anita Berry, Lobbyist, Florida Occupational Therapy Association, waives in support
2:21:52 PM Jack Herbert, Florida Chiropractic Association, waives in support
2:21:59 PM Chris Lyon, Florida Association of Norm Anesthetist, waives in support
2:22:07 PM Janet Mabry, Lobbyist, American Massage Therapy Association, waives in support
2:22:15 PM Greg Pound, representing self, speaking against
2:23:23 PM Debate on amendment as amended.
2:23:26 PM Amendment to Amendment is adopted. Debate? None
2:23:29 PM Senator Perry to close
2:24:17 PM Roll Call on CS/SB 630 - Favorable
2:24:48 PM Tab 9 - SB 572 by Senator Baxley, Insurance Coverage for Hearing Aids for Children
2:27:29 PM Questions?
2:28:33 PM Appearance Cards?
2:28:38 PM Selena Snowden, representing self, Professor/Audiologist speaking for bill
2:31:11 PM Senator Book
2:32:13 PM Selena Snowden, Professor/Audiologist, speaking for the bill
2:32:44 PM Sean Ward, representing himself, speaking in support
2:33:50 PM Mary Lynn, waives in support
2:34:49 PM Paul Sanford, Florida Blue and Florida Insurance Council, speaking against
2:35:35 PM Therssa Bulger, Florida Coalition for Spoken Language Options/ FLAA, waives in support
2:35:43 PM Sarah Ward, representing self, waives in support
2:35:48 PM Harvey Rheinhart, Sertoma Officer, Sertoma Speed and Hearing Foundation of Fla., Inc., waives in support
2:35:53 PM Julia Bitar, representing self, waives in support
2:35:59 PM Teresa Gualt, representing self, waives in support

2:36:06 PM Caroline Borst, representing self, waives in support
2:36:12 PM Brennan Tonello, representing self, waives in support
2:36:22 PM Debra Gainshi, representing self, waives in support
2:36:30 PM Amanda Prozeralik, representing self, waives in support
2:36:35 PM Shannon Mullmilk, Florida Association of Speech-Language Pathologists Association, waives in support
2:36:41 PM Julia Stern, representing self, waives in support
2:36:46 PM Daniel Boltman, representing self, waives in support
2:37:02 PM Doug Bell, Attorney, Florida Chapter, American Academy of Pediatrics, waives in support
2:37:08 PM Aimee Diaz Lyon, Florida Association of Family Practice, waives in support
2:37:14 PM Karen Mazzola, Treasurer, Florida PTA, waives in support
2:37:19 PM Mary-Lynn Cullen, Legislative Liaison, Advocacy Institute for Children, waives in support
2:37:23 PM Chair
2:37:25 PM Debate?
2:37:27 PM Senator Berman
2:37:42 PM Senator Hooper
2:38:36 PM Senator Mayfield
2:39:49 PM Senator Harrell
2:39:55 PM Senator Baxley to close
2:40:08 PM Roll Call SB 572 - Favorable
2:40:35 PM Senator Bean
2:41:39 PM Tab 4 - SB 1518 by Senator Wright- Alternative Treatment Options for Veterans
2:42:40 PM Amendment 351442 by Senator Wright
2:43:41 PM Questions on amendment?
2:44:15 PM Appearance Cards?
2:44:19 PM Debate?
2:44:22 PM Opposition to amendment?
2:44:27 PM Amendment 351442 favorable
2:44:32 PM Questions on bill as amended?
2:44:38 PM Appearance Forms?
2:44:44 PM Loranne Mixon, Florida Music Therapy Association, waives in support
2:44:50 PM Katlin Gardner, Consultant, United Way Suncoast, waives in support
2:44:58 PM Washington Sanchez, Col. USA, VP, Tallahassee Veterans Legal Collaborative, waives in support
2:45:10 PM Julie Smith, CEO/Founder Veterans Lodge, waives in support
2:45:18 PM Troy Shelien, representing self, waives in support
2:47:32 PM Brian Anderson, Retired Green Beret/CEO, Veteran's Alternative, speaking in support
2:48:45 PM Julie Sanderson, CEO. Patriot Service Dogs, speaking in support
2:49:18 PM Dennis Baker, President, Florida Veteran's Foundation, waives in support
2:49:20 PM Jack Hebert, Govt. Affairs Director, Florida Chiropractic Association, waives in support
2:49:27 PM John Haynes, Chairman Emeritos, Florida Veteran's Foundation, waives in support
2:49:33 PM Secretary Danny Burgess, The Florida Department of Veteran's Affairs, waives in support
2:49:43 PM Jessee Diaz, Outreach Coordinator, Veteran's Alternative, waives in support
2:49:52 PM Brittany Rosoto, Florida Music Therapy Task Force, waives in support
2:49:59 PM Cicie Gutierrez, Florida Music Therapy Task Force, waives in support
2:50:07 PM Greg Pond, representing self, speaking
2:50:53 PM Debate?
2:50:55 PM Senator Book
2:51:06 PM Senator Mayfield
2:52:14 PM Senator Wright to close
2:52:20 PM Roll Call - SB 1518 - favorable
2:52:51 PM Tab 6 - CS/SB 418, by Senator Simpson, Essential Health Benefits Under Health Plans, presented by Senator Bean
2:54:07 PM Questions?
2:54:10 PM Senator Berman
2:54:39 PM Senator Bean
2:54:53 PM Senator Berman
2:54:58 PM Senator Bean
2:55:29 PM Appearance Cards?
2:55:34 PM Debate?
2:55:35 PM Senator Bean waives to close
2:55:42 PM Roll Call CS/SB 418 - favorable
2:56:03 PM Tab 8 - SB 1280 by Senator Rouson - Controlled Substance Prescribing
2:57:05 PM Questions?

2:57:08 PM Senator Harrell
2:57:20 PM Senator Rouson
2:57:45 PM Appearance Cards?
2:57:54 PM Debate?
2:57:58 PM Senator Rouson waives close
2:58:05 PM Roll Call on SB 1280 - favorable
2:58:18 PM Tab 3 - SB 884 by Senator Baxley - Social Workers, Family Therapists, and Mental Health Counselors
3:00:20 PM Amendment 561328 by Senator Baxley
3:00:36 PM Questions?
3:01:01 PM Appearance Cards on amendment?
3:01:08 PM Jim Akin, Executive Director, NPSW-FL, waives in support
3:01:18 PM Corinne Mixon, Florida Mental Health Counselors Association, waives in support
3:01:44 PM Debate?
3:01:47 PM Senator Baxley waives close
3:01:52 PM objection?
3:01:55 PM Amendment passed
3:02:00 PM Questions on bill as amended?
3:02:21 PM Greg Pound, representing self, speaking
3:03:44 PM Debate?
3:03:46 PM Senator Baxley to close
3:04:03 PM Roll call SB 884 - favorable
3:05:03 PM Tab 5 - SB 1700 by Senator Lee - Prescription Drug
3:06:22 PM Strike All amendment 428208 by Senator Lee
3:07:15 PM Questions?
3:08:14 PM Senator Rouson
3:08:20 PM Senator Lee
3:10:24 PM Senator Harrell
3:11:15 PM Senator Rouson
3:11:23 PM Senator Lee
3:12:23 PM Senator Rouson
3:12:54 PM Senator Lee
3:13:38 PM Senator Rouson
3:13:54 PM Senator Lee
3:15:47 PM Chair
3:15:51 PM Senator Hooper
3:15:57 PM Senator Lee
3:17:32 PM Senator Bean
3:17:49 PM Senator Lee
3:20:14 PM Senator Cruz
3:21:42 PM Appearance Cards?
3:21:47 PM William Large, President, Florida Justice Reform Institute, speaking against
3:22:34 PM Senator Mayfield - Motion to vote by 3:27
3:23:35 PM Amendment 428208 passed
3:23:42 PM Back on bill as amended
3:23:50 PM Lorena Holley, General Counsel, Fla. Retail Federation, speaking in opposition
3:24:25 PM Daniel Olson, Director, Government Relations, Attorney General's Office, waives in support
3:24:41 PM Debate?
3:24:48 PM Senator Baxley
3:25:27 PM Senator Cruz
3:25:48 PM Senator Lee waives lose
3:25:55 PM Roll Call SB 1700- favorable
3:26:03 PM Chair
3:26:17 PM Tab 10 - CS/SB 1520 by Senator Bean - Direct Health Care Agreements
3:26:45 PM Questions?
3:26:48 PM Appearance Forms?
3:26:52 PM Waiving in support, Chris Noland, Fla. Chapter, American College of Physicians: Dorene Barker, AARP Florida: Joe Ann Hart, Florida Dental Association: Phil Suderman, Americans for Prosperity: Sal Nuzzo, The James Madison Institute
3:27:00 PM Debate?
3:27:05 PM Senator Berman
3:27:12 PM Roll Call on CS/SB 1520 - Favorable
3:27:52 PM Tab 7 - SB 1242 by Senator Rouson - Chiropractors

3:28:23 PM SB 1242 by Senator Rouson TP'd
3:28:27 PM Chair
3:28:37 PM Senator to record vote? None
3:28:46 PM Senator Bean moves to adjourn. Is there objection? Seeing none, show the motion adopted. We are adjourned.