The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Young, Chair
Senator Passidomo, Vice Chair

MEETING DATE: Tuesday, March 14, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Young, Chair; Senator Passidomo, Vice Chair; Senators Book, Hukill, Hutson, Montford, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 328** Grimsley (Similar CS/H 543, Compare H 7011)	Regulation of Nursing; Removing an obsolete qualification no longer sufficient to satisfy certain certification requirements; requiring certain continuing education courses to be approved by the Board of Nursing; removing a requirement that certain nursing program graduates complete a specific preparatory course; providing that accredited and nonaccredited nursing education programs must disclose probationary status, etc. HP 03/14/2017 Fav/CS ED RC	Fav/CS Yeas 6 Nays 0
2	**SB 496** Brandes (Similar CS/H 209)	Medical Faculty Certification; Revising the list of schools at which certain faculty members are eligible to receive a medical faculty certificate; authorizing a certificateholder to practice at certain specialty-licensed children's hospitals, etc. HP 03/14/2017 Fav/CS ED RC	Fav/CS Yeas 5 Nays 0
3	**SB 672** Bean (Similar CS/H 101, Compare H 103, Linked S 674)	Certificates of Nonviable Birth; Creating the "Grieving Families Act"; requiring certain health care practitioners and health care facilities to electronically file a registration of nonviable birth within a specified timeframe; requiring the Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent, etc. HP 03/14/2017 Favorable JU AP	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 674** Bean (Similar H 103, Compare CS/H 101, Linked S 672)	Public Records/Nonviable Birth Records; Providing that certain information included in nonviable birth records is confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. HP 03/14/2017 Fav/CS GO AP	Fav/CS Yeas 6 Nays 0
5	**SB 804** Brandes (Similar H 1371)	Electronic Health Records; Authorizing a person to donate his or her electronic health records, subject to certain requirements; authorizing electronic health records and qualified electronic health records to be donated to specified entities for specified purposes; requiring the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a program that encourages and authorizes persons to donate electronic health records and qualified electronic health records as part of a process of issuing and renewing identification cards and driver licenses, etc. HP 03/14/2017 Fav/CS TR AHS AP	Fav/CS Yeas 5 Nays 0
6	**SB 876** Young (Similar CS/H 229)	Programs for Impaired Health Care Practitioners; Revising provisions related to impaired practitioner programs; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department in intervention, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances, etc. HP 03/14/2017 Fav/CS AHS AP	Fav/CS Yeas 6 Nays 0
7	**SB 888** Bean (Identical H 589)	Prescription Drug Price Transparency; Requiring the Agency for Health Care Administration to collect data on the retail prices charged by pharmacies for the 300 most frequently prescribed medicines, etc. HP 03/14/2017 Favorable AHS AP	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1050** Simmons (Similar H 883)	Memory Disorder Clinics; Establishing a memory disorder clinic at Florida Hospital in Orange County, etc. HP 03/14/2017 Favorable AHS AP	Favorable Yeas 6 Nays 0
9	**SB 1130** Bean (Similar H 969)	Pregnancy Support Services; Requiring the Department of Health to contract with a not-for-profit statewide alliance of organizations to provide pregnancy support services through subcontractors; providing for subcontractor background screenings under certain circumstances; requiring services to be provided in a noncoercive manner and forbidding the inclusion of religious content, etc. HP 03/14/2017 Fav/CS AHS AP	Fav/CS Yeas 4 Nays 2
10	**SB 222** Steube (Similar H 145)	Recovery Care Services; Authorizing the Agency for Health Care Administration to establish separate standards for the care and treatment of patients in recovery care centers; directing the agency to enforce special-occupancy provisions of the Florida Building Code applicable to recovery care centers, etc. HP 03/14/2017 Fav/CS CA AHS AP	Fav/CS Yeas 4 Nays 1
11	**SB 102** Steube (Identical H 579)	Payment of Health Care Claims; Prohibiting a health insurer from retroactively denying a claim under specified circumstances, etc. BI 02/21/2017 Favorable HP 03/14/2017 Favorable RC	Favorable Yeas 5 Nays 0
12	**SB 634** Campbell (Identical H 645, Compare H 7011, S 1756)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination, etc. HP 03/14/2017 Favorable CF JU RC	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	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 328
INTRODUCER:	Health Policy Committee and Senators Grimsley and Perry
SUBJECT:	Regulation of Nursing
DATE:	March 15, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**FAV/CS**
2.			ED	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 328 removes an obsolete pathway for certification as an advanced registered nurse practitioner (ARNP) and modifies provisions pertaining to the approval of nursing education programs.

The bill authorizes the BON to conduct an on-site evaluation of applicants for nursing education programs, and modifies the program approval process as follows:

- Applies the minimum graduate passage rate standard to all first-time test takers;
- Removes the requirement that a graduate who does not take the licensure examination within 6 months of graduation must complete an examination preparatory course;
- Clarifies when programs in probationary status must be terminated;
- Requires accredited and non-accredited programs to disclose probationary status and its implication to students;
- Prohibits a terminated or closed program from seeking approval for a certain time;
- Requires the termination of a program that fails to meet accreditation requirements;
- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Authorizes the BON to adopt rules relating to nursing curriculum, including rules relating to the use and limitations of simulation technology; and
- Removes the responsibility of the Office of Program Policy Analysis and Government Accountability (OPPAGA) from preparing certain reports and performing certain tasks, and places responsibility for those tasks and reports on Florida Center of Nursing (FCN).

The bill takes effect July 1, 2017.

II. Present Situation:

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH)[1] and are regulated by the Board of Nursing (BON).[2] Currently a nurse desiring to practice nursing in the state of Florida must obtain a Florida license by examination or endorsement.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN), among other requirements, must:

- Graduate from an approved program or its equivalent, as determined by the BON;[3]
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;[4] and
- Pass the National Council Licensure Examination (NCLEX).[5]

Licensure by endorsement requirements include submitting an application and fee, passing a criminal background screening, and:

- Holding a valid license to practice professional or practical nursing in another state or territory of the United States that when issued the licensure requirements met or exceeded those in Florida at that time;
- Meeting the requirements for licensure in Florida and having successfully completed an examination in another state that is substantially equivalent to the examination in Florida; or
- Having actively practiced nursing in another state or jurisdiction, or territory of the United States for two of the preceding 3 years without having his or her license acted against by the licensing authority of any jurisdiction.[6]

In 2016, the Legislature created s. 464.0095, F.S., the Nurse Licensure Compact (NLC), which adopts the revised NLC in its entirety into state law. It is effective on December 31, 2018, or upon enactment of the revised NLC into law by 26 states, whichever occurs first. When effective, this legislation will allow licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse's primary state of residence. To date, ten states, including Florida, have adopted the revised NLC.[7]

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[1] Section 464.008, F.S.

[2] The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.

[3] Section 464.008(1)(c), F.S.

[4] Section 464.008(1), F.S.

[5] Section 464.008(2), F.S.

[6] Section 464.009, F.S.

[7] The National Council of State Boards of Nursing administers the NLC. They refer to it as the enhanced NLC. *See* https://www.nursecompact.com/ (last visited on Feb. 28, 2017).

Advanced Registered Nurse Certification

Any nurse desiring to obtain Florida certification as an ARNP must submit to the DOH proof that he or she holds a current Florida professional nursing license as a RN and meets at least one of the following additional requirements:

- Satisfactory completion of a formal post-basic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice;
- Certification by an appropriate specialty board such as a registered nurse anesthetist, psychiatric nurse, or nurse midwife; or
- Graduation from a nursing education program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.[8]

According to the DOH, all recent applicants across the country are graduates of programs for the preparation of nurse practitioners, or are graduates of master's degree programs in a clinical nursing specialty, who meet specific educational requirements for certification. Accordingly, the first pathway to certification is now obsolete.[9]

Nursing Education Program Approval and Accreditation

Florida law requires an institution desiring to offer a prelicensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency if the institution is accredited.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.[10] Currently the DOH is not authorized to conduct an on-site evaluation to document the applicant's compliance with the required program standards.

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny.[11]

Nursing programs currently offered in Florida include: public school districts, community colleges, state universities, private institutions licensed by the Commission for Independent Education (CIE), private institutions that are members of the Independent Colleges and

[8] Section 464.012(1), F.S.
[9] Department of Health, *Senate Bill 328 Analysis* (January 11, 2017) p. 2, (on file with the Senate Committee on Health Policy).
[10] Section 464.019(1), F.S.
[11] Section 464.019(2), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

Universities of Florida (ICUF), and Pensacola Christian College, which is statutorily authorized to offer a bachelor of science in nursing degree by s. 1005.06(1)(e), F.S.[12]

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.[13]

An "accredited program" is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.[14] The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.[15]

A BON approved nursing education program[16] is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards, and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.[17]

The BON posts the following information on its website:

- A list of all accredited programs and graduation rates for the most recent 2 years;
- A list of all approved programs that are not accredited;
- All documentation submitted in a program's application;
- A summary of the program's compliance with program standards;
- A program's accreditation status, probationary status, graduate passage rates for the most recent 2 years, and retention rates.[18]

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[12] Office of Program Policy Analysis and Government Accountability, *Florida's Nursing Education Programs Continued to Expand in 2013, While Licensure Exams Passage Rates of New Programs Declined*, Report No. 14-03, 2 (Jan. 2014), *available at* http://floridasnursing.gov/forms/oppaga-report-2014.pdf. (last visited Feb. 6, 2017). OPPAGA notes that "[n]ursing education programs in Florida that hold specialized nursing accreditation by the National League for Nursing Accrediting Commission (NLNAC) or by the Collegiate Commission on Nursing Education (CCNE) are not regulated by the Florida Board of Nursing." *Id.* Section 1005.06(1)(e), F.S., exempts schools from the CIE's licensure requirements if the institution had been so exempted in 2001 under s. 246.085(1)(b), F.S. (2001), and maintains the following qualifying criteria: the institution is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; the institution was exempt under that category prior to July 1, 1982, and the institution does not enroll any students who receive state or federal financial aid. Two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

[13] The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

[14] Section 464.003(1), F.S.

[15] United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited Feb. 3, 2017).

[16] Section 464.003(4), F.S., defines an "approved program" as "a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status."

[17] Section 464.019(4), F.S

[18] Section 464.019(5), F.S.

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year.[19] Fifteen schools are currently on probation. Of these, five are LPN and 10 are RN programs. Of the RN programs, nine are associate degree programs.[20]

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.[21]

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.[22]

An approved program graduate who does not take the licensure examination within 6 months after graduation must enroll in, and successfully complete, a licensure examination preparatory course pursuant to s. 464.008, F.S.

To improve program quality, the 2014 Legislature revised Florida law to require nursing education programs that prepare students for the practice of professional nursing (RNs) to become accredited within 5 years of certain triggering dates. A program approved before July 1, 2014, is required to become accredited by July 1, 2019. If a program was approved but had not enrolled students before July 1, 2014, then the program must become accredited within 5 years of enrolling the first students. A program approved after June 30, 2014, has 5 years after enrolling the program's first students to become accredited.[23]

The BON does not have rulemaking authority for the approval of nursing education programs, except as to the format for submitting applications and the format for the required annual report.[24]

The FCN and OPPAGA are tasked with studying the nursing education approval process, and submitting reports to the Governor, the President of the Senate, and Speaker of the House of Representatives, annually through January 30, 2020. The report is to be based on data received from programs from the previous academic year to determine whether the program approval

[19] Section. 464.019(6)(a), F.S.
[20] *Supra,* note 22.
[21] Section 464.019(5)(c), F.S.
[22] Section 464.019(9)(b), F.S.
[23] Section 464.019(11), F.S. Pensacola Christian College is exempt from this certification requirement due to its status under s. 1005.06(1)(e), F.S.
[24] Section 464.019(8), F.S.

process is increasing the availability of nursing education programs and producing quality nurses.[25] If the FNC does not receive funding for any legislative fiscal year, the education policy arm of OPPAGA must perform the duties assigned to the FCN.[26] The FCN did not receive funding in the fiscal year 2016-2017 from the Florida Legislature, and must rely on grants, donations, and savings to complete the tasks and reports on the nursing workforce and improving the Florida nursing environment in Florida.[27]

The 2015 data indicates that approximately 42 percent of nursing programs had licensure examination passage rates that were ten percent or more below the national average. This a 36 percent increase over 2014. Most of the nursing programs below the required passage rate were created since 2009 and are unaccredited.[28] As of December 2016, 93 of the 350 nursing education programs in Florida were accredited by the BON.[29]

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 464.012, F.S., to delete an obsolete pathway that permitted an RN to be certified as an ARNP if he or she completed a formal postbasic education program of at least one academic year. This is no longer sufficient for current graduate education and certification standards. This pathway is also deleted from chapter laws which passed last year, but which do not go into effect until the Nurse Licensure Compact goes into effect on December 31, 2018, or when 26 states have adopted the compact.

Section 3 amends s. 464.019, F.S., to revise provisions relating to nursing education programs, including:

- Authorizing the BON to conduct on site-evaluations of nursing education program applicants, if necessary, to confirm compliance with the requirements s. 464.019(1), F.S.
- Requiring approved programs to demonstrate a licensure exam passage rate of no more than 10 percent below the average pass rate for all United States educated, first time exam takers of the NCLEX. Currently the measure is calculated for first-time test takers who take the exam within 6 months after graduation from the program.
- Repealing the requirement that a graduate who does not take the licensure examination within six months after graduation must complete an examination preparatory course.
- Clarifying that the BON shall terminate a program, whether accredited or non-accredited, which has been placed on probationary status for failing to achieve the examination passage rate if it is not granted a 1-year extension or fails to achieve the required passage rate.
- Imposing the sanction of program termination if a program fails to submit the annual report within 6 months after it is due or if a program director for an approved program fails to appear before the board to explain the reason for failing to submit the annual report timely.

[25] Section 464.019(10), F.S.
[26] Id.
[27] Florida Center for Nursing, *About Us*, available at https://www.flcenterfornursing.org/Donations/HowyourdonationshelptheFCN.aspx, (last visited Feb. 6, 2017).
[28] Office of Program Policy Analysis and Government Accountability, *Approximately 42% of Nursing Programs Had Licensure Passage Rates Below the Required Legislative Standard in 2015*, Report No. 16-05, (July. 2016), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1605rpt.pdf (last visited Feb. 3, 2017).
[29] Office of Program Policy Analysis and Government Accountability, *Review of Florida's Nursing Education Programs, 2016*, Report No. 17-03 (Jan. 2017), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1703rpt.pdf, (last visited Feb. 5, 2017).

- Requiring an accredited or non-accredited program which has been placed on probationary status to disclose in its notification of that status an explanation of the implications on the students and applicants.
- Providing for termination of a nursing education program that fails to become accredited within the required timeframes.
- Prohibiting a program that is terminated or closed from seeking subsequent program approval under its original name, a new program or institutional name, or a new institution with the same ownership, for a minimum of 3 years after the date of termination or closing.
- Providing additional rulemaking authority for the BON to adopt rules related to nursing curriculum, including rules relating to the uses and limitations of simulation technology.
- Extending certain accountability provisions, that previously only applied to approved programs, to accredited programs. This includes the standard that the passage rate for first-time test takers may not be more than 10 percentage points lower than the average passage rate for graduates of comparable degree programs on the NCLEX; and the implications if the passage rate is below that standard. The second provision relates to the contents of the notification to various parties when a nursing education program has been placed on probationary status. The third provision authorizes excluding the test scores of students who transfer more than 12 credits from a terminated program to an approved or accredited program when calculating the passage rate of the receiving program.

This section of the bill also removes the OPPAGA as a partner with the FCN to study and annually report to the Governor, President of the Senate and the Speaker of the House of Representatives on the previous year's availability of nursing education programs and the production of quality nurses through January 2020. In addition to existing report requirements, the FCN is to complete an assessment of the status of each program's progress in the accreditation process.

Section 4 provides an effective date of July 1, 2017, except as expressly provided otherwise.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FNC may require governmental funding to perform the implementation study tasks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.012, 464.013, 464.019 and Chapters 2016-139, 2016-224, and 2016-231, Laws of Florida.

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 March 14, 2017:
The CS:

- Removes from the bill language changing the approving entity for ARNP continuing education on the safe and effective prescription of controlled substances to the BON;
- Removes the requirement that nursing education programs placed on probation disclose to students and applicants the specific implications of the school's probationary status on an applicant's employment and educational opportunities; but retains the programs requirement to disclose the implications of the probation on the students and applicants;
- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Removes BON rulemaking authority for program implementation, termination and closure, and the procedure to seek subsequent approval; and
- Provides for removing the test scores of students transferring more than 12 hours from a closed program when calculating passage rates.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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The Committee on Health Policy (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and

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submit proof that he or she holds a current license to practice professional nursing and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, psychiatric nurse, or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists, psychiatric nurses, and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 2. Effective December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first, subsection (1) of section 464.012, Florida Statutes, as amended by section 8 of chapter 2016-139, section 12 of chapter 2016-224, and section 7 of chapter 2016-231, Laws

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of Florida, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, psychiatric nurse, or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists, psychiatric nurses, and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree

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program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 3. Paragraph (b) of subsection (2), subsection (5), subsection (8), paragraph (a) of subsection (9), and subsection (10) of section 464.019, Florida Statutes, are amended, paragraph (d) is added to subsection (7) of that section, and paragraph (e) is added to subsection (11) of that section, to read:

464.019 Approval of nursing education programs.—

(2) PROGRAM APPROVAL.—

(b) Following the department's receipt of a complete program application, the board may conduct an on-site evaluation if necessary to document the applicant's compliance with subsection (1). Within 90 days after the department's receipt of a complete program application, the board shall:

1. Approve the application if it documents compliance with subsection (1); or

2. Provide the educational institution with a notice of intent to deny the application if it does not document compliance with subsection (1). The notice must specify written reasons for the board's denial of the application. The board may not deny a program application because of an educational institution's failure to correct an error or omission that the department failed to provide notice of to the institution within the 30-day notice period under paragraph (a). The educational institution may request a hearing on the notice of intent to deny the program application pursuant to chapter 120.

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage


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rate for first-time test takers which ~~who take the licensure examination within 6 months after graduation from the program that~~ is not more than 10 percentage points lower than the average passage rate during the same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination, as calculated by the contract testing service of the National Council of State Boards of Nursing. ~~An approved program shall require a graduate from the program who does not take the licensure examination within 6 months after graduation to enroll in and successfully complete a licensure examination preparatory course pursuant to s. 464.008.~~ For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. Beginning with graduate passage rates for calendar year 2010, if an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall appear before the board to present a plan for remediation, which shall include specific benchmarks to identify


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progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. If the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board ~~shall terminate the program pursuant to chapter 120. However, the board~~ may extend the program's probationary status for 1 additional year, provided ~~if~~ the program has demonstrated ~~demonstrates~~ adequate progress toward the graduate passage rate goal by meeting a majority of the benchmarks established in the remediation plan. If the program is not granted the 1-year extension or fails to achieve the required passage rate by the end of such extension, the board shall terminate the program pursuant to chapter 120.

(b) If an approved program fails to submit the annual report required in subsection (3), the board shall notify the program director and president or chief executive officer of the educational institution in writing within 15 days after the due date of the annual report. The program director shall appear

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before the board at the board's next regularly scheduled meeting to explain the reason for the delay. The board shall terminate the program pursuant to chapter 120 if the program director fails to appear before the board, as required under this paragraph, or if the program ~~it~~ does not submit the annual report within 6 months after the due date.

(c) A nursing education ~~An approved~~ program, whether accredited or nonaccredited, which has been placed on probationary status shall disclose its probationary status in writing to the program's students and applicants. The notification must include an explanation of the implications of the program's probationary status on the students or applicants.

(d) If students from a program that is terminated pursuant to this subsection transfer to an approved or an accredited program under the direction of the Commission for Independent Education, the board shall recalculate the passage rates of the programs receiving the transferring students, excluding the test scores of those students transferring more than 12 credits.

(7) PROGRAM CLOSURE.—

(d) A program that is terminated or closed under this section may not seek program approval under its original name or a new program name for a minimum of 3 years after the date of termination or closing. An institutional name change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

(8) RULEMAKING.—The board does not have rulemaking authority to administer this section, except that the board shall adopt rules that prescribe the format for submitting program applications under subsection (1) and annual reports

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under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11). The board may adopt rules relating to the nursing curriculum, including rules relating to the uses and limitations of simulation technology. The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section.

(9) APPLICABILITY TO ACCREDITED PROGRAMS.—

(a) Subsections (1)-(3), paragraph (4)(b), and paragraph (5)(b) ~~subsection (5)~~ do not apply to an accredited program.

(10) IMPLEMENTATION STUDY.—The Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall study the administration of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by January 30, through January 30, 2020. The annual reports shall address the previous academic year; provide data on the measures specified in paragraphs (a) and (b), as such data becomes available; and include an evaluation of such data for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~.

(a) The Florida Center for Nursing ~~education policy area of the Office of Program Policy Analysis and Government~~


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~~Accountability~~ shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:

1. The number of programs and student slots available.

2. The number of student applications submitted, the number of qualified applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in the state.

(b) The Florida Center for Nursing shall evaluate the board's implementation of the:

1. Program application approval process, including, but not limited to, the number of program applications submitted under subsection (1); the number of program applications approved and denied by the board under subsection (2); the number of denials of program applications reviewed under chapter 120; and a description of the outcomes of those reviews.

2. Accountability processes, including, but not limited to, the number of programs on probationary status, the number of approved programs for which the program director is required to appear before the board under subsection (5), the number of approved programs terminated by the board, the number of terminations reviewed under chapter 120, and a description of the outcomes of those reviews.

(c) The Florida Center for Nursing shall complete an annual

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assessment of compliance by programs with the accreditation requirements of subsection (11), include in the assessment a determination of the accreditation process status for each program, and submit the assessment as part of the reports required ~~For any state fiscal year in which The Florida Center for Nursing does not receive legislative appropriations, the education policy area of the Office of Program Policy Analysis and Government Accountability shall perform the duties assigned~~ by this subsection ~~to the Florida Center for Nursing~~.

(11) ACCREDITATION REQUIRED.—

(e) A nursing education program that fails to meet the accreditation requirements shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of 3 years after the date of termination. An institutional name change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

========== 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 the regulation of nursing; amending s. 464.012, F.S.; removing an obsolete qualification no longer sufficient to satisfy certain nursing certification requirements; amending s. 464.019, F.S.;

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authorizing the Board of Nursing to conduct certain on-site evaluations; removing a limiting criterion from the requirement to measure graduate passage rates; removing a requirement that certain nursing program graduates complete a specific preparatory course; clarifying circumstances when programs in probationary status must be terminated; providing that accredited and nonaccredited nursing education programs must disclose probationary status; requiring notification of probationary status to include certain information; prohibiting a terminated or closed program from seeking program approval for a certain time; providing that a name change or the creation of a new educational institution does not reduce the waiting period for reapplication; authorizing the board to adopt certain rules; removing requirements that the Office of Program Policy Analysis and Government Accountability perform certain tasks; requiring the Florida Center for Nursing to make an annual assessment of compliance by nursing programs with certain accreditation requirements; requiring the center to include its assessment in a report to the Governor and the Legislature; requiring the termination of a program under certain circumstances; providing effective dates.

By Senator Grimsley

26-00100C-17 2017328__

A bill to be entitled

An act relating to the regulation of nursing; amending s. 464.012, F.S.; removing an obsolete qualification no longer sufficient to satisfy certain certification requirements; amending chapter 2016-139, Laws of Florida; removing an obsolete qualification no longer sufficient to satisfy certain certification requirements from an act with a future effective date; amending s. 464.013, F.S.; requiring certain continuing education courses to be approved by the Board of Nursing; removing a requirement that certain continuing education courses be offered by specified entities; amending s. 464.019, F.S.; authorizing the board to conduct certain on-site evaluations; removing a limiting criterion from the requirement to measure graduate passage rates; removing a requirement that certain nursing program graduates complete a specific preparatory course; clarifying circumstances when programs in probationary status must be terminated; providing that accredited and nonaccredited nursing education programs must disclose probationary status; requiring notification of probationary status to include certain information; prohibiting a terminated or closed program from seeking program approval for a certain time; authorizing the board to adopt certain rules; requiring accredited programs to meet program accountability requirements and requirements to provide notification of probationary status; removing requirements that the Office of Program Policy Analysis and Government Accountability perform certain tasks; requiring the Florida Center for Nursing to make an annual assessment of compliance by nursing

26-00100C-17 2017328__

programs with certain accreditation requirements; requiring the center to include its assessment in a report to the Governor and the Legislature; removing the requirement that the Office of Program Policy Analysis and Government Accountability perform specified duties under certain circumstances; requiring the termination of a program under certain circumstances; providing effective dates.

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

Section 1. Subsection (1) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, psychiatric nurse, or nurse midwife. The board may by rule provide for provisional state certification of graduate

nurse anesthetists, psychiatric nurses, and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 2. Effective December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first, section 8 of chapter 2016-139, Laws of Florida, is amended to read:

Section 8. Subsection (1) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary~~

~~purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 3. Subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education biennially as a condition for renewal of a license or certificate.

(a) A nurse who is certified by a health care specialty program accredited by the National Commission for Certifying Agencies or the Accreditation Board for Specialty Nursing Certification is exempt from continuing education requirements.

The criteria for programs must be approved by the board.

(b) Notwithstanding the exemption in paragraph (a), as part of the maximum 30 hours of continuing education ~~hours~~ required under this subsection, advanced registered nurse practitioners certified under s. 464.012 must complete at least 3 hours of continuing education on the safe and effective prescription of controlled substances. Such continuing education courses must be approved by the board and ~~must be offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 credit, the American Nurses Credentialing Center, the American Association of Nurse Anesthetists, or the American Association of Nurse Practitioners and~~ may be offered in a distance learning format.

Section 4. Paragraph (b) of subsection (2), subsection (5), subsection (8), paragraph (a) of subsection (9), and subsection (10) of section 464.019, Florida Statutes, are amended, paragraph (d) is added to subsection (7) of that section, and paragraph (e) is added to subsection (11) of that section, to read:

464.019 Approval of nursing education programs.—

(2) PROGRAM APPROVAL.—

(b) Following the department's receipt of a complete program application, the board may conduct an on-site evaluation if necessary to document the applicant's compliance with subsection (1). Within 90 days after the department's receipt of a complete program application, the board shall:

1. Approve the application if it documents compliance with

subsection (1); or

2. Provide the educational institution with a notice of intent to deny the application if it does not document compliance with subsection (1). The notice must specify written reasons for the board's denial of the application. The board may not deny a program application because of an educational institution's failure to correct an error or omission that the department failed to provide notice of to the institution within the 30-day notice period under paragraph (a). The educational institution may request a hearing on the notice of intent to deny the program application pursuant to chapter 120.

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate for first-time test takers which ~~who take the licensure examination within 6 months after graduation from the program that~~ is not more than 10 percentage points lower than the average passage rate during the same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination, as calculated by the contract testing service of the National Council of State Boards of Nursing. ~~An approved program shall require a graduate from the program who does not take the licensure examination within 6 months after graduation to enroll in and successfully complete a licensure examination preparatory course pursuant to s. 464.008.~~ For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate

in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. Beginning with graduate passage rates for calendar year 2010, if an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall appear before the board to present a plan for remediation, which shall include specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. If the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board ~~shall terminate the program pursuant to chapter 120. However,~~

~~the board~~ may extend the program's probationary status for 1 additional year, provided ~~if~~ the program has demonstrated ~~demonstrates~~ adequate progress toward the graduate passage rate goal by meeting a majority of the benchmarks established in the remediation plan. If the program is not granted the 1-year extension or fails to achieve the required passage rate by the end of such extension, the board shall terminate the program pursuant to chapter 120.

(b) If an approved program fails to submit the annual report required in subsection (3), the board shall notify the program director and president or chief executive officer of the educational institution in writing within 15 days after the due date of the annual report. The program director shall appear before the board at the board's next regularly scheduled meeting to explain the reason for the delay. The board shall terminate the program pursuant to chapter 120 if the program director fails to appear before the board, as required under this paragraph, or if the program ~~it~~ does not submit the annual report within 6 months after the due date.

(c) A nursing education ~~An approved~~ program, whether accredited or nonaccredited, which has been placed on probationary status shall disclose its probationary status in writing to the program's students and applicants. The notification must include an explanation of the implications of the program's probationary status on student and applicant employment and educational opportunities, including the prospects a student wishing to matriculate at a university will face.

(d) If students from a program that is terminated pursuant

to this subsection transfer to an approved or an accredited program under the direction of the Commission for Independent Education, the board shall recalculate the passage rates of the programs receiving the transferring students, excluding the test scores of those students transferring more than 12 credits.

(7) PROGRAM CLOSURE.—

(d) A program that is terminated or closed under this section may not seek program approval under its original name or a new program name for a minimum of 3 years after the date of termination or closing.

(8) RULEMAKING.—The board does not have rulemaking authority to administer this section, except that the board shall adopt rules that prescribe the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11). The board may adopt rules related to the nursing curriculum and nursing program implementation plans, which may include definitions of the various types and uses of simulation technology and limitations on the technology's use. The board may also adopt rules related to program termination or closure under this section and the procedure for a program that is terminated or closed under this section to seek subsequent program approval. The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section.

(9) APPLICABILITY TO ACCREDITED PROGRAMS.—

(a) Subsections (1)-(3), paragraph (4)(b), and paragraphs

(5)(b) and (d) ~~subsection (5)~~ do not apply to an accredited program.

(10) IMPLEMENTATION STUDY.—The Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall study the administration of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by January 30, through January 30, 2020. The annual reports shall address the previous academic year; provide data on the measures specified in paragraphs (a) and (b), as such data becomes available; and include an evaluation of such data for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~.

(a) The Florida Center for Nursing ~~education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:

1. The number of programs and student slots available.

2. The number of student applications submitted, the number of qualified applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in the state.

(b) The Florida Center for Nursing shall evaluate the board's implementation of the:

1. Program application approval process, including, but not limited to, the number of program applications submitted under subsection (1); the number of program applications approved and denied by the board under subsection (2); the number of denials of program applications reviewed under chapter 120; and a description of the outcomes of those reviews.

2. Accountability processes, including, but not limited to, the number of programs on probationary status, the number of approved programs for which the program director is required to appear before the board under subsection (5), the number of approved programs terminated by the board, the number of terminations reviewed under chapter 120, and a description of the outcomes of those reviews.

(c) The Florida Center for Nursing shall complete an annual assessment of compliance by programs with the accreditation requirements of subsection (11), include in the assessment a determination of the accreditation process status for each program, and submit the assessment as part of the report required by this subsection ~~For any state fiscal year in which The Florida Center for Nursing does not receive legislative appropriations, the education policy area of the Office of Program Policy Analysis and Government Accountability shall perform the duties assigned by this subsection to the Florida~~

~~Center for Nursing~~.

(11) ACCREDITATION REQUIRED.—

(e) A nursing education program that fails to meet the accreditation requirements shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of 3 years after the date of termination.

Section 5. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: January 25, 2017

I respectfully request that **Senate Bill #328**, relating to Health Policy, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

3-14-17
Meeting Date

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

328
Bill Number (if applicable)

706938
Amendment Barcode (if applicable)

Topic Nursing

Name Bob Harris

Job Title

Address 2618 Centennial Place
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 222-0720

Email bharris@lawfla.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Chamberlain College of Nursing | DeVry University

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)

Mar 14, 2017
Meeting Date

328
Bill Number (if applicable)

Topic Nursing

Amendment Barcode (if applicable)

Name Curtis Austin

Job Title Executive Director

Address P.O. Box 13654
Street

Tallahassee FL 32317
City *State* *Zip*

Phone 850-577-3135

Email Curtis@fapsc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Assn of Postsecondary Schools & Colleges

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)

3-14-17
Meeting Date

328
Bill Number (if applicable)

Topic NURSING EDUCATION PROGRAMS

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing

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Street

Phone 850 222 9800

TLH FL 32301
City *State* *Zip*

Email martha@fha.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital 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)

3/14/17
Meeting Date

328
Bill Number (if applicable)

Topic Regulation of Nursing

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344
Street

Phone 443-1319

Tallahassee, FL
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurses 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)

14 Mar 2017
Meeting Date

SB 328
Bill Number (if applicable)

Topic Nursing

Amendment Barcode (if applicable)

Name Sandra J Wortham

Job Title

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Street

Phone 850-251-2283

Tallahassee FL 32311
City *State* *Zip*

Email Smortham@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Ramussen College

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 496
INTRODUCER:	Health Policy Committee and Senators Brandes and Passidomo
SUBJECT:	Medical Faculty Certification
DATE:	March 15, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.			ED	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 496 expands the criteria under which the Department of Health (DOH) may issue a medical faculty certificate to include a medical physician who has been offered, and accepted, a full time faculty position at a specialty-licensed children's hospital, affiliated with any accredited medical school, and its affiliated clinics. Current law authorizes a medical faculty certificate to be issued to a non-Florida licensed physician to practice in conjunction with his or her faculty position at an accredited medical school in Florida and its affiliated clinical facilities or teaching hospitals. The bill adds the Johns Hopkins All Children's Hospital (All Children's Hospital), in St. Petersburg, Florida, to the list of programs of medicine for which a medical faculty certificate may be issued to a full time faculty appointee.

The bill authorizes the DOH to process an application for a temporary certificate for a visiting physician for the limited purpose of the physician providing educational training for medical residents up to five days in a year, using a unique personal identification number if the physician does not have a social security number, but otherwise meets the credentialing criteria.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Medical Faculty Certificates

To become a licensed medical doctor in Florida an individual generally has two paths to licensure: licensure by examination,[1] or licensure by endorsement.[2] However, s. 458.3145, F.S., provides another limited path to practice in Florida by teaching in a program of medicine. Under s. 458.3145, F.S., the DOH is authorized to issue a medical faculty certificate to a qualified medical physician to practice in conjunction with his or her full time faculty position at a medical school, if the physician has been offered, and accepted, a full time faculty appointment to teach at the following programs in medical schools with campuses in Florida:

- University of Florida;
- University of Miami;
- University of South Florida;
- Florida State University;
- Florida International University;
- University of Central Florida;
- Mayo Medical School at the Mayo Clinic in Jacksonville, Florida; or
- The Florida Atlantic University.[3,4]

A medical faculty certificate authorizes the holder to practice medicine only in conjunction with his or her faculty position at an accredited medical school, and its affiliated clinical facilities or teaching hospitals that are registered with the Board of Medicine as sites at which certificate holders will be practicing. The medical faculty certificate is valid until the earlier of termination of the physician's relationship with the medical school, or after a period of 24 months. The certificate is renewable, and may be extended for two years, if the physician provides a certification from the dean of the medical school that the physician is a distinguished medical scholar and an outstanding practicing physician. The maximum number of extended medical

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[1] *See* s. 458.311, F.S., and Florida Board of Medicine, *Medical Doctor - Unrestricted*, available at http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted (last visited Mar. 2, 2017). Medical licensure by examination is the most frequent method of obtaining a Florida medical license. Licensure by examination requires an applicant, who has passed all parts of a national medical examination (NBME, FLEX, or USMLE), and does not hold a valid medical license in any state, to among other things, meet certain educational and training requirements, demonstrate competency in English if instruction at the medical school was not in English, have completed an approved residency program, and pass certain background screening requirements.

[2] *See* s. 458.313, F.S., and Board of Medicine, *Medical Doctor - Unrestricted*, available at http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted, (last visited Mar. 2, 2017). Medical licensure by endorsement requirements include, among other things, be a graduate from a qualifying medical school, completed certain residency requirements, have passed a qualifying examination, and is licensed in another jurisdiction to practice medicine.

[3] Section 458.3145(1)(i), F.S.

[4] Section 458.3145(1), F.S., also requires applicants for a *medical faculty certificate* to meet the following additional requirements: 1) Be a graduate of an accredited medical school or its equivalent, or a foreign medical school listed with the World Health Organization; 2) Hold a valid, current license to practice medicine in another jurisdiction; 4) Have completed the application and paid a fee; 5) Have completed an approved residency or fellowship of at least one year or has received training which has been determined by the board to be equivalent to the one-year residency requirement; 6) Are at least 21 years of age; 7) Are of good moral character; 8) Have not committed any act in this or any other jurisdiction which would constitute the basis for disciplinary action; and 9) For those applicants who graduated after October 1, 1992, to have completed before entering medical school, the equivalent of two academic years of pre-professional, postsecondary education, which includes courses in anatomy, biology, and chemistry[4].

faculty certificate holders is limited to 30 persons per each medical school, with the exception of the Mayo medical school located at the Mayo Clinic in Jacksonville, Florida, which is limited to 10 certificate holders.[5]

A physician holding an unrestricted Florida medical license is not required to obtain a medical faculty certificate to hold a medical faculty teaching position. Additionally, an individual may teach at any Florida medical school, without a Florida medical license or medical faculty certificate, if offered a position, including the medical schools listed in s. 458.3145, F.S., if the person does not practice medicine. Practicing medicine in Florida is defined as the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.[6]

As of the date of this analysis, there are 52 physicians holding medical faculty certificates in Florida, with 12 of those residing out-of-state.[7]

Florida Medical Schools and Graduate Medical Education Programs

Medical education programs in the U.S. are approved and recognized by the U.S. Office of Education. The U.S. Office of Education does not accredit medical educational programs; medical education programs are accredited by the Liaison Committee on Medical Education (LCME) and the World Foundation for Medical Education (WFME). LCME accreditation is a voluntary, peer-reviewed process of quality assurance that determines whether a U.S. or Canadian medical education program meets established standards.[8]

Florida has eight LCME accredited allopathic medical schools operating within its borders and they are all listed in s. 458.3145, F.S.

To obtain an unrestricted Florida allopathic medical license a medical school graduate must do, among other things, at least a one year of residency.[9] The Accreditation Council for Graduate Medical Education (ACGME) sets the standards for U.S. graduate medical education programs (internships, residencies and fellowships) and the institutions that sponsor them. ACGME accreditation provides assurance that a sponsoring institution or program meets the quality standards of the specialty or subspecialty practice(s) for which it prepares its graduates. [10]

A graduate of a U.S. or Canadian medical school, approved and recognized by the U.S. Office of Education, who obtains an internship, residency or house physician[11] position in a Florida

[5] Section 458.3145, F.S.
[6] Section 458.305(1)(d), F.S.
[7] Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2015-2016*, p. 10, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1516.pdf, (last visited Feb. 7, 2017).
[8] *See* U.S. Department of Education, *Overview of Accreditation in the United States* (last modified March 8, 2017) *available at* https://www2.ed.gov/admins/finaid/accred/accreditation.html, (last visited Mar. 6, 2017).
[9] *See* footnote 1.
[10] Accreditation Council for Graduate Medical Education, *What We Do*, available at http://www.acgme.org/What-We-Do/Overview (last visited Mar. 2, 2017).
[11] A house physician is a person who holds a degree as a medical doctor, or its equivalent, but who does not have and has never had a license to practice medicine in Florida and is employed and paid by a hospital. Chapter 64B8-6.006 (F.A.C.).

ACGME approved program, and does not hold a current, active Florida medical license, will begin their graduate medical education as an unlicensed physician.[12] These unlicensed physicians must register with the DOH,[13] and after one year of residency may apply for an unrestricted Florida medical license.[14] During this first year these unlicensed physicians work under a Florida licensed supervising physician or a physician holding a medical faculty certificate who also holds a full time faculty position with a Florida medical school.[15]

According to the ACGME, during the 2016-2017 academic year, Florida had 4,186 total medical residents, in 195 medical and surgical residency programs, in 52 sponsoring institutions.[16] Eleven of the 195 ACGME accredited residency programs provided 479 approved pediatric residencies, which included 36 at All Children's Hospital.[17] Nine of the 11 ACGME accredited pediatric residency programs in Florida are affiliated with Class II Specialty Hospitals for Children, which includes All Children's Hospital.[18]

All Children's Hospital is not a Florida campus for Johns Hopkins School of Medicine, but a Florida non-profit hospital corporation that is 100 percent owned by The Johns Hopkins Health System Corporation,[19] a private, multinational non-profit corporation incorporated in Maryland. All Children's Hospital operates a pediatric residency program as a joint venture with Johns Hopkins Medicine (JHM). It is the only JMH affiliated hospital outside of the Baltimore/ Washington D.C. metro area.[20] JHM and All Children's Hospital received approval from the

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[12] An unlicensed physician is a person holding a degree as a medical doctor or its equivalent, but not licensed by the Board of Medicine. For the purpose of administering this rule chapter, such unlicensed physicians shall embrace and include resident physicians, assistant resident physicians, house physicians, interns, or fellows in fellowship training which leads to subspecialty board certification or in fellowship training in a teaching hospital in this state as defined in s. 408.07(45) or s. 395.805(2), F.S., as these terms are hereinafter defined. *See* s. 458.345, F.S., and Chapter 64B8-6 (F.A.C.).

[13] Section 458.345, F.S.

[14] Section 458.311 and 458.313, F.S.

[15] Section 458.3145, F.S.

[16] Graduate Medical Education Totals by State, Academic Year 2016-2017, *available at* https://apps.acgme.org/ads/Public/Reports/ReportRun?ReportId=13&CurrentYear=2016&AcademicYearId=2016, (last visited Mar. 2, 2017).

[17] Accreditation Council for Graduate Medical Education, Advanced Program Search, *Florida, Pediatrics*, available at https://apps.acgme.org/ads/Public/Programs/Search?stateId=10&specialtyId=65&city= (last visited Mar. 2, 2017).

[18] The two ACGME accredited pediatric residencies, not children's hospitals are Broward Health Medical Center, Ft. Lauderdale, and Sacred Heart Hospital, Pensacola. Florida Agency for Healthcare Administration, Florida Health Finder, *Facility Locator* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (last visited Mar. 2, 2017).

[19] The Johns Hopkins Health System Corporation was created in 1986 by the Johns Hopkins Hospital board of trustees to serve as the parent corporation for its six hospitals. In 1997 Johns Hopkins Medicine (JHM) was created through a joint venture between The Johns Hopkins Health System Corporation and The Johns Hopkins University. JHM is an $8 billion integrated global health care system. See Johns Hopkins Medicine, *About Johns Hopkins Medicine*, available at http://www.hopkinsmedicine.org/about/index.html, and *Governance and Leadership*, available at http://www.hopkinsmedicine.org/about/governance (last visited Feb. 7, 2017).

[20] Johns Hopkins Medicine, News and Publications, *All Children's Hospital Announces New Pediatric Residency Program*, (July 31, 2012) *available at* http://www.hopkinsmedicine.org/news/media/releases/all_childrens_hospital_announces_new_pediatric_residency_program, (last visited Feb. 7, 2017). The JHM system offers patient care at the following six hospitals and other medical facilities:

- The Johns Hopkins Hospital, Baltimore, MD (including Brady Urological Institute, Johns Hopkins Children's Center, Kimmel Comprehensive Cancer Center and Wilmer Eye Institute);
- Johns Hopkins Bayview Medical Center, Inc., Baltimore, MD;
- Howard County General Hospital, Columbia, MD;
- Sibley Memorial Hospital, D.C.;

ACGME to establish a pediatric residency program at All Children's Hospital July 1, 2013, and the first class of resident physicians entered the program in July 2014.[21]

Temporary Certificates for Visiting Physicians

The DOH is authorized to issue temporary certificates to physicians who are not licensed in Florida for limited privileges for educational purposes, to help teach plastic surgery or other medical or surgical procedures to residents; or residents who are part of a training program at a teaching hospital. Temporary certificates may also be issued to-out-of-state and foreign physicians for educational purposes to educate residents within this state in conjunction with a nationally sponsored educational symposium or an educational symposium held by a state medical school or teaching hospital.[22]

The DOH grants temporary certificates to physicians for up to five days per year. Each certificate expires one year after issuance and the DOH may not issue more than 12 temporary certificates for a single educational symposium.

The organization sponsoring the educational symposium must pay for any medical judgments incurred by a physician receiving a certificate pursuant to this law if the physician is not licensed to practice medicine in the U.S. The sponsoring organization may demonstrate its ability to meet this requirement by obtaining a surety bond, establishing a certificate of deposit or a guaranteed letter of credit, or providing proof that the physician is covered under a teaching hospital's or medical school's medical malpractice insurance. The amount of the bond, certificate of deposit, or guaranteed letter of credit must be at least $250,000.

Applicants for a temporary medical certificate must meet all of the following:
- Be a graduate of an LCME accredited medical school, or its equivalent, or a graduate of a foreign medical school listed with the World Health Organization;
- Hold a valid, unencumbered license to practice medicine in another state or country;
- Be a recognized expert in a specific area of plastic surgery or another field of medicine or surgery, as demonstrated by peer-reviewed publications, invited lectureships, and academic affiliations;
- Have completed an application form adopted by the board and remitted an application fee;
- Have not committed an act in this or any other jurisdiction that would constitute a basis for disciplining a physician; and
- Meet the financial responsibility requirements.

- Suburban Hospital, Bethesda, MD;
- The Johns Hopkins All Children's Hospital in St. Petersburg, FL;
- Johns Hopkins Community Physicians, MD and D.C.;
- The Johns Hopkins Home Care Group, MD and D.C.;
- Johns Hopkins Medicine International; and
- The Johns Hopkins University School of Medicine, Baltimore, MD.

See Johns Hopkins Medicine, *Patient Care Locations* http://www.hopkinsmedicine.org/patient_care/hospital_locations.html, (last visited Feb. 7, 2017).

[21] *See* footnote 22.

[22] Section 458.3137, F.S.

III. Effect of Proposed Changes:

The bill expands the criteria under which the DOH may issue medical faculty certificates to practice medicine in Florida to include out-of-state licensed physicians who have been offered, and accepted, a full time faculty position at a specialty-licensed children's hospital affiliated with any accredited medical school, and its affiliated clinics or teaching hospitals. A medical faculty certificate, issued by DOH under current s. 458.3145, F.S., authorizes the holder to practice only in conjunction with his or her medical school faculty position at its affiliated clinics and teaching hospitals in the state.

The bill adds to the list of Florida medical schools, a Florida hospital, Johns Hopkin All Children's Hospital in St. Petersburg, Florida, which is currently not a Florida medical school, or affiliated with a Florida medical school, but a specialty children's teaching hospital affiliated with an out-of-state accredited medical school. This bill would allow a physician to practice medicine in Florida at that hospital, without obtaining a Florida medical license, if the physician meets the criteria of s. 458.3145(1)(a)-(h), F.S., and has been offered, and accepted, a full time faculty appointment at All Children's Hospital in St. Petersburg, Florida.

The bill applies the cap of 30 medical faculty certificates that may be extended at each institution to All Children's Hospital.

The bill authorizes the DOH to process applications for temporary certificates under s. 458.3137, F.S., for visiting foreign physicians, who are recognized experts in their field, to enable them to provide educational opportunities to the state's medical residents even though the physician does not have a social security number but otherwise meets the credentialing criteria. The bill also authorizes a teaching hospital to directly sponsor the visiting physician without going through a medical school to extend the invitation and submit the application or supporting documentation to the DOH. This will improve efficiencies for the teaching hospital and medical school.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All Children's Hospital may be able to enhance its medical faculty by enabling non-Florida licensed physicians, who are equally qualified to both teach and practice medicine in conjunction with a faculty positon.

C. Government Sector Impact:

CS/SB 496 may increase the number of medical faculty certificates and temporary certificates applied for in the state and may create an additional, although minimal, expense for the DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. None. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 456.013, 458.3137, and 458.3145.

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 March 14, 2017:
The CS authorizes the DOH to process applications for temporary certificates for visiting foreign physicians, to enable them to provide educational opportunities to the state's medical residents even though they do not have a social security number but otherwise meet the credentialing criteria. It also authorizes teaching hospitals to sponsor the visiting physician directly, without going through the medical school.

B. Amendments:

None.

147462

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment (with title amendment)

Before line 15
insert:
Section 1. Subsection (1) of section 456.013, Florida Statutes, is amended to read:
456.013 Department; general licensing provisions.—
(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The

application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraphs ~~paragraph~~ (b) and (c). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

(b) If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is

147462

otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

(c) Notwithstanding any other provision of law, if an applicant for a temporary certificate as set forth in s. 458.3137 has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department shall process the application using a unique personal identification number. If such applicant is otherwise eligible for the temporary certificate, the board, or the department when there is no board, shall issue the temporary certificate without requiring the applicant to provide a social security number.

Section 2. Subsection (1) of section 458.3137, Florida Statutes, is amended to read:

458.3137 Temporary certificate for visiting physicians to obtain medical privileges for instructional purposes in conjunction with certain plastic surgery or other medical or surgical training programs and educational symposiums.—

(1) A physician who has been invited by:

(a) A plastic surgery or other medical or surgical training program affiliated with a medical school in this state which is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or ~~which is part of~~ a teaching hospital as defined in s. 408.07; or

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(b) An educational symposium cosponsored by the American Society of Plastic Surgeons, the Plastic Surgery Educational Foundation, the American Society for Aesthetic Plastic Surgery, or any other medical or surgical society in conjunction with a medical school or teaching hospital as defined in s. 408.07,

may be issued a temporary certificate for limited privileges solely for purposes of providing educational training in plastic surgery or other medical or surgical procedures, as appropriate, in accordance with the restrictions set forth in this section.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 406.013, F.S.; providing criteria for an applicant of a temporary certificate for visiting physicians to obtain medical privileges for instructional purposes who has not been issued a social security number; amending s. 458.3137, F.S.; revising the circumstances under which visiting physicians may be issued a temporary certificate to obtain medical privileges for instructional purposes;

329434

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 95 - 102

and insert:

provided in paragraph (1)(i) ~~within this state~~ and reported to the Board of Medicine.

(6) Notwithstanding subsection (1), any physician, when providing medical care or treatment in connection with the education of students, residents, or faculty at the request of the dean of an accredited medical school within this state or at

329434

the request of the medical director of a statutory teaching hospital as defined in s. 408.07 or a specialty-licensed children's hospital licensed under chapter 395 which is affiliated with an accredited medical school and its affiliated clinics, may do so upon

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

authorize the medical director of certain specialty-licensed children's hospitals to request the provision by physicians, under certain circumstances, of

429680

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/14/2017	.	
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The Committee on Health Policy (Powell) recommended the following:

Senate Amendment (with title amendment)

Between lines 115 and 116
insert:

Section 2. Subsection (3) is added to section 458.3485, Florida Statutes, to read:

458.3485 Medical assistant.—

(3) CERTIFICATION.—To obtain the designation of a certified medical assistant, the medical assistant must receive certification from a certification program accredited by the

429680

National Commission for Certifying Agencies.

Section 3. Subsection (7) of section 483.291, Florida Statutes, is amended to read:

483.291 Powers and duties of the agency; rules.—The agency shall adopt rules to implement this part and part II of chapter 408, which rules must include the following:

(7) PERSONNEL.—The agency shall prescribe minimum qualifications for center personnel. A center may employ as a medical assistant a person who has at least one of the following qualifications:

(a) Prior experience of not less than 6 months as a medical assistant in the office of a licensed medical doctor or osteopathic physician or in a hospital, an ambulatory surgical center, a home health agency, or a health maintenance organization.

(b) Certification and registration from a certification program accredited by the National Commission for Certifying Agencies and ~~by the American Medical Technologists Association or other similar professional association~~ approved by the agency.

(c) Prior employment as a medical assistant in a licensed center for at least 6 consecutive months at some time during the preceding 2 years.

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

And the title is amended as follows:

Delete lines 2 - 11

and insert:

An act relating to medical faculty and medical

assistant certification; amending s. 458.3145, F.S.; revising the list of schools at which certain faculty members are eligible to receive a medical faculty certificate; authorizing a certificateholder to practice at certain specialty-licensed children's hospitals; revising provisions to allow the dean of a medical school outside the state to make an annual review or request the provision of medical care or treatment in connection with education; amending s. 458.3485, F.S.; providing for the certification of medical assistants; amending s. 483.291, F.S.; revising qualifications for employment as a medical assistant; providing an effective date.

By Senator Brandes

24-00465A-17 2017496__

A bill to be entitled

An act relating to medical faculty certification; amending s. 458.3145, F.S.; revising the list of schools at which certain faculty members are eligible to receive a medical faculty certificate; authorizing a certificateholder to practice at certain specialty-licensed children's hospitals; revising provisions to allow the dean of a medical school outside the state to make an annual review or request the provision of medical care or treatment in connection with education; providing an effective date.

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

Section 1. Section 458.3145, Florida Statutes, is amended to read:

458.3145 Medical faculty certificate.—

(1) A medical faculty certificate may be issued without examination to an individual who:

(a) Is a graduate of an accredited medical school or its equivalent, or is a graduate of a foreign medical school listed with the World Health Organization;

(b) Holds a valid, current license to practice medicine in another jurisdiction;

(c) Has completed the application form and remitted a nonrefundable application fee not to exceed $500;

(d) Has completed an approved residency or fellowship of at least 1 year or has received training which has been determined by the board to be equivalent to the 1-year residency requirement;

(e) Is at least 21 years of age;

(f) Is of good moral character;

24-00465A-17 2017496__

(g) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under s. 458.331;

(h) For any applicant who has graduated from medical school after October 1, 1992, has completed, before entering medical school, the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which must include, at a minimum, courses in such fields as anatomy, biology, and chemistry; and

(i) Has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at:

1. The University of Florida;

2. The University of Miami;

3. The University of South Florida;

4. The Florida State University;

5. The Florida International University;

6. The University of Central Florida;

7. The Mayo Clinic College of Medicine in Jacksonville, Florida; ~~or~~

8. The Florida Atlantic University; or

9. The Johns Hopkins All Children's Hospital in St. Petersburg, Florida.

(2) The certificate authorizes the holder to practice only in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals that are registered with the Board of Medicine as sites at which holders of medical faculty certificates will be practicing, or a specialty-licensed children's hospital licensed under chapter 395 that is

affiliated with an accredited medical school and its affiliated clinics. Such certificate automatically expires when the holder's relationship with the medical school is terminated or after a period of 24 months, whichever occurs sooner, and is renewable every 2 years by a holder who applies to the board on a form prescribed by the board and provides certification by the dean of the medical school that the holder is a distinguished medical scholar and an outstanding practicing physician.

(3) The holder of a medical faculty certificate issued under this section has all rights and responsibilities prescribed by law for the holder of a license issued under s. 458.311, except as specifically provided otherwise by law. Such responsibilities include compliance with continuing medical education requirements as set forth by rule of the board. A hospital or ambulatory surgical center licensed under chapter 395, health maintenance organization certified under chapter 641, insurer as defined in s. 624.03, multiple-employer welfare arrangement as defined in s. 624.437, or any other entity in this state, in considering and acting upon an application for staff membership, clinical privileges, or other credentials as a health care provider, may not deny the application of an otherwise qualified physician for such staff membership, clinical privileges, or other credentials solely because the applicant is a holder of a medical faculty certificate under this section.

(4) In any year, the maximum number of extended medical faculty certificateholders as provided in subsection (2) may not exceed 30 persons at each institution named in subparagraphs (1)(i)1.-6., 8., and 9. ~~and 8.~~ and at the facility named in s.

1004.43 and may not exceed 10 persons at the institution named in subparagraph (1)(i)7.

(5) Annual review of all such certificate recipients will be made by the deans of the accredited 4-year medical schools ~~within this state~~ and reported to the Board of Medicine.

(6) Notwithstanding subsection (1), any physician, when providing medical care or treatment in connection with the education of students, residents, or faculty at the request of the dean of an accredited medical school ~~within this state~~ or at the request of the medical director of a statutory teaching hospital as defined in s. 408.07 or a specialty-licensed children's hospital licensed under chapter 395, may do so upon registration with the board and demonstration of financial responsibility pursuant to s. 458.320(1) or (2) unless such physician is exempt under s. 458.320(5)(a). The performance of such medical care or treatment must be limited to a single period of time, which may not exceed 180 consecutive days, and must be rendered within a facility registered under subsection (2) or within a statutory teaching hospital as defined in s. 408.07. A registration fee not to exceed $300, as set by the board, is required of each physician registered under this subsection. However, no more than three physicians per year per institution may be registered under this subsection, and an exemption under this subsection may not be granted to a physician more than once in any given 5-year period.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana Young, Committee on Health Policy

Subject: Committee Agenda Request

Date: February 10th, 2017

I respectfully request that **Senate Bill #496**, relating to **Medical Faculty Certification**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

Waive - Support Amendment

3-14-17
Meeting Date

496
Bill Number (if applicable)

329434
Amendment Barcode (if applicable)

Topic Medical Faculty Certificate

Name TERRY MEEK

Job Title —

Address P.O. 13441
Street

Phone [redacted]

TLH FL 32317
City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Council of Florida Medical School Deans

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 672
INTRODUCER:	Senator Bean
SUBJECT:	Certificates of Nonviable Birth
DATE:	March 13, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.			JU	
3.			AP	

I. Summary:

SB 672 creates the "Grieving Families Act" which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a "nonviable birth" as an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

The Department of Health, Bureau of Vital Statistics (BVS) must establish a process for registering nonviable births pursuant to information submitted by certain health care practitioners and facilities in response to a parent's request for such submission and for issuing a certificate of nonviable birth upon the parent's request.

The bill prohibits using a certificate of nonviable birth in the calculation of live birth statistics.

The bill specifies that the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

II. Present Situation:

Vital Statistics

Vital Statistics consists of official records of birth, death, fetal death, marriage, and dissolution of marriage. Official collection of Florida's birth and death records started in 1917. Florida became a nationally recognized death registration jurisdiction in 1919 and a nationally recognized birth

registration jurisdiction in 1924. Marriage and dissolution records have been filed with Florida's Bureau of Vital Statistics since June 1927.[1]

The BVS within the Department of Health (DOH or department) is responsible for the uniform registration, compilation, storage, and preservation of all vital records in the state.[2] In addition to the state office which operates under the direction of the state registrar, district offices operate under the direction of local registrars.

Birth Registration

A certificate for each live birth that occurs in this state must be filed within five days after the birth. The certificate may be filed with the local registrar of the district in which the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons depending upon the location in which the birth occurs. For example, if the birth occurs in a hospital, birth center, or other health care facility, or in route thereto, the person in charge of the facility is responsible for filing the certificate. The health care practitioner in attendance is responsible for providing the facility with the information required by the birth certificate. If the birth occurs outside a facility and a physician, certified nurse midwife, midwife, or a public health nurse was in attendance, then that person must file the certificate.[3]

Death and Fetal Death Registration

A certificate for each death or fetal death[4] that occurs in this state must be filed within five days after the death. The certificate may be filed with the local registrar of the district in which the death or fetal death occurred or submitted electronically to the state registrar.

Katherine's Law - Certificate of Birth Resulting in Stillbirth

In 2006, Florida's governor signed into law legislation that allows for the creation and issuance of a Certificate of Birth Resulting in Stillbirth.[5] This law is known as Katherine's Law.[6]

The Certificate of Birth Resulting in Stillbirth is not proof of live birth and may not be used to establish identity. Gestation must be 20 weeks or more, and there must be a fetal death certificate on file with the BVS in order for a certificate to be prepared. The information included on the certificate comes from the fetal death certificate.

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[1] Department of Health, Florida Vital Statistics Annual Report, August 2016, Page *vii*, http://www.flpublichealth.com/VSBOOK/pdf/2015/Intro.pdf (last visited March 8, 2017).
[2] Section 382.003, F.S. The statutes refer to an Office of Vital Statistics, however, the department has established this responsibility at the bureau level. *See* the Department's Organizational chart available at: http://www.floridahealth.gov/about-the-department-of-health/_documents/orgchart.pdf (last visited March 8, 2017).
[3] Section 382.013, F.S.
[4] Section 382.002(8), F.S., defines "fetal death" as death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th week of gestation has been reached and the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.
[5] Section 382.002(16), F.S., defines "stillbirth" as an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.
[6] *See* s. 382.0085, F.S.

Miscarriage

Miscarriage is the spontaneous loss of a pregnancy before the 20th week. About 10 to 20 percent of known pregnancies end in miscarriage. But the actual number is likely higher because many miscarriages occur so early in pregnancy that a woman doesn't realize she is pregnant.[7]

Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the Stephanie Saboor Grieving Parents Act[8] which requires a physician, physician assistant, nurse, or midwife;[9] or a hospital, ambulatory surgical center, or birth center,[10] having custody of fetal remains following a spontaneous fetal demise occurring after a gestation period of less than 20 completed weeks, to notify the mother of her option to arrange for the burial or cremation of the fetal remains, as well as the procedures provided by general law.[11]

III. Effect of Proposed Changes:

SB 672 creates the "Grieving Families Act" which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage.

The bill defines a "nonviable birth" as an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

A parent who experiences a nonviable birth may request a licensed nurse or licensed midwife who attends or diagnoses a nonviable birth; or a hospital, ambulatory surgical center, or birthing center at which a nonviable birth occurs, to electronically file, or submit a form for, a registration of nonviable birth. The health care practitioner or facility must electronically file, or submit the form to the BVS within 30 days after receipt of the request.

These health care practitioners or facilities must advise a parent who experiences a nonviable birth of the opportunity to request the preparation of a certificate of nonviable birth, how to contact the BVS in order to obtain the certificate of nonviable birth, and that a copy of the original is available as a public record.

The DOH must issue a certificate of nonviable birth within 60 days after receipt of a properly completed request from a parent named on the registration of nonviable birth. The bill requires the request for a certificate of nonviable birth to be on a form adopted by department rule and include the date of the nonviable birth and the county in which the nonviable birth occurred.

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[7] *See for example*, The Mayo Clinic, Miscarriage website at: http://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/home/ovc-20213664, (last visited on March 12, 2017).
[8] Chapter 2003-52, L.O.F., codified at s. 383.33625, F.S.
[9] *See* s. 383.33625(2), F.S., which requires a health care practitioner licensed pursuant to ch. 458, ch. 459, ch, 464, or ch, 467, F.S., to provide the notification.
[10] Section 383.33625(4), F.S., requires a facility licensed pursuant to ch. 383 or ch. 395, F.S., to provide the notification.
[11] Fetal remains of less than 20 completed weeks of gestation would be considered biomedical waste, which is governed by s. 381.0098, F.S.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use "baby boy," "baby girl," or "baby" if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate: "This certificate is not proof of a live birth."

Only a parent named on the nonviable birth registration may request the BVS to issue a certificate of nonviable birth. This request may be made at any time. The bill provides that the BVS may refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration; and that this refusal is final agency action that is not subject to review under ch. 120, F.S., the Administrative Procedures Act. Once the certificate has been issued however, any person may request a copy of that certificate pursuant to a public records request.

The bill further provides:

- That the BVS may not use a certificate of nonviable birth in the calculation of live birth statistics.
- That the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.
- Rulemaking authority for the department to prescribe the form, content, and process for issuance of a certificate of nonviable birth.
- Authority for the department to impose a fee of between $3 and $5 for processing and filing a new certificate of nonviable birth.

The act takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A parent who requests the issuance of a certificate of nonviable birth will be expected to pay a fee of not less than $3 or more than $5.

The specified health care practitioners and health care facilities will incur an administrative expense related to informing patients who have experienced a nonviable birth about their option to request the preparation of a registration of nonviable birth, the issuance of a certificate of nonviable birth, and the information related to that process. An additional administrative expense will be incurred if a parent requests the registration of nonviable birth be filed with the BVS.

C. Government Sector Impact:

To the extent that the health care practitioners and health care facilities are governmental entities or engaged in governmental functions when responsibilities under this bill are triggered, they will experience similar administrative expenses as those in the private sector.

The DOH will need to develop a web based nonviable birth module for the existing electronic registry and develop forms for registration and certification of nonviable births. System and database changes are estimated at $50,000.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 creates an exemption from the public records law for information relating to the cause of death and the parentage, marital status, and medical information in all nonviable birth records, except for health research purposes. The bills are linked and SB 674, if enacted, will take effect when this bill, or a similar one takes effect.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.008, 382.0085, and 382.0255.

This bill creates section 382.0086 of the Florida Statutes.

[12] Department of Health 2017 Legislative Bill Analysis for HB 101, dated January 9, 2017, which is similar to SB 672, at page 3, on file with the Senate Health Policy Committee.

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

4-00514A-17 2017672__

A bill to be entitled

An act relating to certificates of nonviable birth; creating the "Grieving Families Act"; amending s. 382.002, F.S.; providing a definition; amending s. 382.008, F.S.; authorizing the State Registrar of the Office of Vital Statistics of the Department of Health to electronically receive a certificate of nonviable birth; requiring certain health care practitioners and health care facilities to electronically file a registration of nonviable birth within a specified timeframe; amending s. 382.0085, F.S.; conforming a cross-reference; creating s. 382.0086, F.S.; requiring the Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent; requiring the person registering the nonviable birth to advise the parent that a certificate of nonviable birth is available and that the certificate of nonviable birth is a public record; requiring the request for a certificate of nonviable birth to be on a form prescribed by the department and to include certain information; providing requirements for the certificate of nonviable birth; authorizing a parent to request a certificate of nonviable birth regardless of the date on which the nonviable birth occurred; designating the refusal to issue a certificate of nonviable birth to certain persons as final agency action that is not subject to administrative review; prohibiting the use of certificates of nonviable birth to calculate live birth statistics; prohibiting specified provisions from being used in certain civil actions; authorizing the department to adopt rules; amending s. 382.0255,

4-00514A-17 2017672__

F.S.; authorizing the department to collect fees for processing and filing a new certificate of nonviable birth; providing an effective date.

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

Section 1. This act may be cited as the "Grieving Families Act."

Section 2. Subsections (14) through (18) of section 382.002, Florida Statutes, are renumbered as subsections (15) through (19), respectively, and a new subsection (14) is added to that section, to read:

382.002 Definitions.—As used in this chapter, the term:

(14) "Nonviable birth" means an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

Section 3. Section 382.008, Florida Statutes, is amended to read:

382.008 Death, ~~and~~ fetal death, and nonviable birth registration.—

(1) A certificate for each death and fetal death which occurs in this state shall be filed electronically on the department electronic death registration system or on a form prescribed by the department with the department or local registrar of the district in which the death occurred within 5 days after such death and prior to final disposition, and shall be registered by the department if it has been completed and filed in accordance with this chapter or adopted rules. The

certificate shall include the decedent's social security number, if available. In addition, each certificate of death or fetal death:

(a) If requested by the informant, shall include aliases or "also known as" (AKA) names of a decedent in addition to the decedent's name of record. Aliases shall be entered on the face of the death certificate in the space provided for name if there is sufficient space;

(b) If the place of death is unknown, shall be registered in the registration district in which the dead body or fetus is found within 5 days after such occurrence; and

(c) If death occurs in a moving conveyance, shall be registered in the registration district in which the dead body was first removed from such conveyance.

(2)(a) The funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death or the district medical examiner of the county in which the death occurred or the body was found shall file the certificate of death or fetal death. The person who files the certificate shall obtain personal data from a legally authorized person as described in s. 497.005 or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail or electronic transfer, by the physician or medical examiner responsible for furnishing such information. For fetal deaths, the physician, midwife, or hospital administrator shall provide any medical or health information to the funeral director within

72 hours after expulsion or extraction.

(b) The State Registrar may receive electronically a certificate of death, ~~or~~ fetal death, or nonviable birth which is required to be filed with the registrar under this chapter through facsimile or other electronic transfer for the purpose of filing the certificate. The receipt of a certificate of death, ~~or~~ fetal death, or nonviable birth by electronic transfer constitutes delivery to the State Registrar as required by law.

(3) Within 72 hours after receipt of a death or fetal death certificate from the funeral director, the medical certification of cause of death shall be completed and made available to the funeral director by the decedent's primary or attending physician or, if s. 382.011 applies, the district medical examiner of the county in which the death occurred or the body was found. The primary or attending physician or medical examiner shall certify over his or her signature the cause of death to the best of his or her knowledge and belief. As used in this section, the term "primary or attending physician" means a physician who treated the decedent through examination, medical advice, or medication during the 12 months preceding the date of death.

(a) The department may grant the funeral director an extension of time upon a good and sufficient showing of any of the following conditions:

1. An autopsy is pending.

2. Toxicology, laboratory, or other diagnostic reports have not been completed.

3. The identity of the decedent is unknown and further investigation or identification is required.

(b) If the decedent's primary or attending physician or district medical examiner of the county in which the death occurred or the body was found indicates that he or she will sign and complete the medical certification of cause of death but will not be available until after the 5-day registration deadline, the local registrar may grant an extension of 5 days. If a further extension is required, the funeral director must provide written justification to the registrar.

(4) If the department or local registrar grants an extension of time to provide the medical certification of cause of death, the funeral director shall file a temporary certificate of death or fetal death which shall contain all available information, including the fact that the cause of death is pending. The decedent's primary or attending physician or the district medical examiner of the county in which the death occurred or the body was found shall provide an estimated date for completion of the permanent certificate.

(5) A permanent certificate of death or fetal death, containing the cause of death and any other information that was previously unavailable, shall be registered as a replacement for the temporary certificate. The permanent certificate may also include corrected information if the items being corrected are noted on the back of the certificate and dated and signed by the funeral director, physician, or district medical examiner of the county in which the death occurred or the body was found, as appropriate.

(6) The original certificate of death or fetal death shall contain all the information required by the department for legal, social, and health research purposes. All information

relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records of this state are confidential and exempt from the provisions of s. 119.07(1), except for health research purposes as approved by the department; nor may copies of the same be issued except as provided in s. 382.025.

(7) Upon the request of a parent who experiences a nonviable birth, a health care practitioner licensed pursuant to chapter 464 or chapter 467 who attends or diagnoses a nonviable birth, or a health care facility licensed pursuant to chapter 383 or chapter 395 at which a nonviable birth occurs, shall electronically file a registration of nonviable birth on the department electronic death registration system or on a form prescribed by the department with the department or local registrar of the district in which the nonviable birth occurred within 30 days after receipt of such request and shall be registered with the department if it has been completed and filed in accordance with this chapter or adopted rules.

Section 4. Subsection (9) of section 382.0085, Florida Statutes, is amended to read:

382.0085 Stillbirth registration.—

(9) This section or s. 382.002(17) ~~382.002(16)~~ may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

Section 5. Section 382.0086, Florida Statutes, is created to read:

382.0086 Certificate of nonviable birth.—

(1) For any nonviable birth occurring in this state, the department shall issue a certificate of nonviable birth within 60 days upon the request of a parent named on the registration of nonviable birth.

(2) The person who is required to register a nonviable birth under this chapter shall advise a parent who experiences a nonviable birth:

(a) That the parent may request the preparation of a certificate of nonviable birth.

(b) That the parent may obtain a certificate of nonviable birth by contacting the Office of Vital Statistics.

(c) How the parent may contact the Office of Vital Statistics to request a certificate of nonviable birth.

(d) That a copy of the original certificate of nonviable birth is available as a public record when held by an agency as defined in s. 119.011(2).

(3) The request for a certificate of nonviable birth must be on a form prescribed by department rule and include the date of the nonviable birth and the county in which the nonviable birth occurred.

(4) The certificate of nonviable birth must contain all of the following:

(a) The date of the nonviable birth.

(b) The county in which the nonviable birth occurred.

(c) The name of the fetus, as provided on the registration of nonviable birth pursuant to s. 382.008. If a name does not appear on the original or amended registration of nonviable birth and the requesting parent does not wish to provide a name, the Office of Vital Statistics shall fill in the certificate of

nonviable birth with the name "baby boy" or "baby girl" and the last name of the parents as provided in s. 382.013(3). If the sex of the child is unknown, the Office of Vital Statistics shall fill in the certificate of nonviable birth with the name "baby" and the last name of the parents as provided in s. 382.013(3).

(d) The following statement, which must appear on the front of the certificate: "This certificate is not proof of a live birth."

(5) A certificate of nonviable birth shall be a public record when held by an agency as defined in s. 119.011(2). The Office of Vital Statistics must inform any parent who requests a certificate of nonviable birth that a copy of the original certificate of nonviable birth is available as a public record.

(6) A parent may request that the Office of Vital Statistics issue a certificate of nonviable birth regardless of the date on which the nonviable birth occurred.

(7) It is final agency action, not subject to review under chapter 120, for the Office of Vital Statistics to refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration.

(8) The Office of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics.

(9) This section or s. 382.002(14) may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

(10) The department shall prescribe by rule the form,

content, and process for issuance of a certificate of nonviable birth.

Section 6. Paragraph (k) is added to subsection (1) of section 382.0255, Florida Statutes, to read:

382.0255 Fees.—

(1) The department is entitled to fees, as follows:

(k) Not less than $3 or more than $5 for processing and filing a new certificate of nonviable birth pursuant to s. 382.0086.

Section 7. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 20, 2017

I respectfully request that **Senate Bill #672**, relating to Certificates of Nonviable Birth, 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)

3-14-17
Meeting Date

672
Bill Number (if applicable)

Topic Certificates of Non Viable Birth

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 1625 E Brevard St
Street

Phone 257-4280

Tallahassee FL 32308
City *State* *Zip*

Email barbaradevane@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FL NOW

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)

3/14/17
Meeting Date

672
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Certificate of Non-viable births

Name Ron Watson

Job Title Lobbyist

Address 3738 Mundon Way
Street
Tallahassee FL 32309
City *State* *Zip*

Phone 850 567-1202

Email watson.strategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Midwives

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 674
INTRODUCER:	Health Policy Committee and Senator Bean
SUBJECT:	Public Records/Nonviable Birth Records
DATE:	March 14, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 674 creates a public records exemption for information relating to cause of death and the parentage, marital status, and medical information in all nonviable birth records.

The bill includes a constitutionally required public necessity statement. The exemption will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless it is reenacted.

This bill requires a two-thirds vote from each chamber for passage.

The bill has no fiscal impact.

The bill takes effect on July 1, 2017, contingent upon SB 672 or similar legislation becoming a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business

[1] FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

> it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements.[9] An exemption must pass by a two-thirds vote of the House and the Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

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[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] *Id.*
[11] *Id.*
[12] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[13] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as "exempt" are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.[14]

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[15] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[17] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[18]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[19] or
- It protects trade or business secrets.[20]

The OGSR also requires specified questions to be considered during the review process.[21] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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[13] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[14] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

[15] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[16] Section 119.15(3), F.S.

[17] Section 119.15(6)(b), F.S.

[18] Section 119.15(6)(b)1., F.S.

[19] Section 119.15(6)(b)2., F.S.

[20] Section 119.15(6)(b)3., F.S.

[21] Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[22] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[23]

Nonviable Birth Records

SB 672 (2017) creates the "Grieving Families Act" which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a "nonviable birth" as an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

In response to a parent's request, certain health care practitioners and facilities must submit information, as determined by rule by the Department of Health, Bureau of Vital Statistics (BVS), to the BVS in order to register a nonviable birth. This information will be used to issue a certificate of nonviable birth upon the parent's request. Only a parent named on the nonviable birth registration may request the BVS to issue a certificate of nonviable birth. However, once the certificate has been issued, any person may request a copy of that certificate pursuant to a public records request.

The certificate of nonviable birth must contain:
- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use "baby boy," "baby girl," or "baby" if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate: "This certificate is not proof of a live birth."

III. Effect of Proposed Changes:

The bill creates a public records exemption for information relating to cause of death and the parentage, marital status, and medical information in all nonviable birth records. This is similar to an existing exemption relating to the information in fetal death records, which is republished in this bill.

The underlying substantive bill, SB 672, makes available pursuant to a public records request, a copy of a previously issued certificate of nonviable birth. A certificate of nonviable birth includes the last name of the parents. Pursuant to this bill, that parentage information will need to be redacted from a copy of a certificate that has previously been issued to a parent. This bill may

[22] FLA. CONST. art. I, s. 24(c).
[23] Section 119.15(7), F.S.

also limit the names of the parents from appearing on the original certificate of nonviable birth as discussed more fully under related issues in this analysis.

The exemption will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless it is reenacted.

The bill includes a constitutionally required public necessity statement. The public necessity statement provides that the exemption is needed to protect the privacy rights of a woman who experiences a nonviable birth. Furthermore, the public disclosure of such information may discourage a woman from seeking medical care from a licensed health care practitioner or health care facility.

The bill takes effect on July 1, 2017, contingent upon SB 672 or similar legislation becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement
Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the privacy rights of a woman who experiences a nonviable birth. Furthermore, the public disclosure of such information may discourage a woman from seeking medical care from a licensed health care practitioner or health care facility.

Breadth of Exemption
Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts only the parentage, marital status, and medical information included in nonviable birth records. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

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:

This bill provides that the parentage in all nonviable birth records is confidential and exempt from the public records laws. However, the underlying substantive bill, SB 672, provides for the issuance of a certificate of nonviable birth pursuant to a parent's request. Under SB 672, a certificate of nonviable birth is required to include the last name of the parents. It might be appropriate to include an exception in this bill for the certificate of nonviable birth issued to the parents to include the parentage to give full effect to the intent in SB 672.

VIII. Statutes Affected:

This bill substantially amends section 382.008 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.)

CS by Health Policy on March 14, 2017:
The bill number of the linked substantive bill was inserted into the effective date.

B. Amendments:

None.

424198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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The Committee on Health Policy (Bean) recommended the following:

Senate Amendment

Delete line 51
and insert:
SB 672 or similar legislation takes effect, if such legislation

By Senator Bean

4-00515-17 2017674__

A bill to be entitled

An act relating to public records; amending s. 382.008, F.S.; providing that certain information included in nonviable birth records is confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) of section 382.008, Florida Statutes, is amended to read:

382.008 Death, ~~and~~ fetal death, and nonviable birth registration.—

(6)(a) The original certificate of death or fetal death shall contain all the information required by the department for legal, social, and health research purposes. All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records of this state are confidential and exempt from the provisions of s. 119.07(1), except for health research purposes as approved by the department; nor may copies of the same be issued except as provided in s. 382.025.

(b) All information relating to cause of death in all nonviable birth records and the parentage, marital status, and medical information included in all nonviable birth records of this state are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except for health research purposes as approved by the department. The department may not issue copies of nonviable birth records

4-00515-17 2017674__

except as provided in s. 382.025. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that cause of death, parentage, marital status, and medical information included in nonviable birth records be held confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to protect the privacy rights of a woman who experiences a nonviable birth. Currently, death and fetal death records containing such information are confidential and exempt from s. 119.07(1), Florida Statutes. The Legislature further finds that the public disclosure of such information may discourage such an individual from seeking medical care from a licensed health care practitioner or health care facility.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 20, 2017

I respectfully request that **Senate Bill #674**, relating to Public Records/Nonviable Birth Records, 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

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 804
INTRODUCER:	Health Policy Committee and Senator Brandes
SUBJECT:	Electronic Health Records
DATE:	March 14, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 804 allows a patient, or the patient's health care surrogate or proxy, to donate the patient's electronic health records (EHR) and qualified electronic health records (QEHR)[1] to an approved[2] medical or dental school; college; university; hospital; or repository that collects, stores, and shares de-identified electronic health records with the public. The health records may be used for the purposes of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations in order to improve health outcomes and reduce health care costs.

II. Present Situation:

The Florida Electronic Health Records Exchange Act

Section 408.051, F.S., establishes the Florida Health Records Exchange Act. The act requires a healthcare provider that receives an authorization form containing a request for the release of an identifiable health record to accept the form as a valid authorization to release the record.[3] Any release of health information after the receipt of an authorization form completed and submitted

[1] As defined in s. 408.051, F.S.
[2] By the Department of Health (DOH).
[3] Section 408.051(4)(c), F.S.

as prescribed by the Agency for Health Care Administration (AHCA) creates a rebuttable presumption that the release was appropriate.[4] For the purposes of the act, the term:

- "Electronic health record" means a record of a person's medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format;[5] and
- "Qualified electronic health record" means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such information from, other sources.[6]

In addition to the provisions contained within the Florida Electronic Health Records Exchange Act, s. 408.062(5), F.S., requires the AHCA to develop and implement a strategy for the adoption and use of electronic health records, including the development of an electronic health information network for the sharing of electronic health records among health care facilities, health care providers, and health insurers.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Authorization for Release of Protected Health Information

The HIPAA privacy rule is a federal rule that restricts the use and disclosure of individuals' health information — called "protected health information"[7] (PHI) by organizations subject to the Privacy Rule — called "covered entities,"[8] as well as standards for individuals' privacy rights to understand and control how their health information is used.[9] In general, HIPAA grants an individual the right to access his or her own PHI. Included within this right is the right to:

- Ask to see and get a copy the individual's own health records from most doctors, hospitals, and other health care providers;
- Get either a paper or electronic copy, if the records are kept electronically, of the health records; and
- Have a copy of the records sent to someone else.[10]

[4] Section 408.051(4)(e), F.S.; however, pursuant to s. 408.051(4)(d), F.S., the use of the form adopted by the AHCA is not required to authorize release of protected health information.
[5] Section 408.051(2)(a), F.S.
[6] Section 408.051(2)(b), F.S.
[7] Protected health information is all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.
[8] In general, covered entities are health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA.
[9] U.S. Department of Health and Human Services, Health Information Privacy, *Summary of HIPAA Privacy Rule*, https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/ (last visited Mar. 8, 2017)
[10] Message from Jocelyn Samuels, Director, Office of Civil Rights, U.S. Department of Health and Human Services, *Right to Access* (September 28, 2015) https://www.hhs.gov/sites/default/files/righttoaccessmemo.pdf, (last visited Mar. 3, 2017).

HIPAA and De-Identified Health Information

For the purposes of HIPAA, Protected health information is information, including demographic information, which relates to:

- The individual's past, present, or future physical or mental health or condition;
- The provision of health care to the individual; or
- The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual. Protected health information includes many common identifiers (e.g., name, address, birth date, Social Security Number) when they can be associated with the health information listed above.

However, information that is not individually identifiable to a particular patient is not considered PHI and, therefore is not covered by HIPAA. For example, a health plan report that only noted the average age of health plan members was 45 years would not be PHI because that information, although developed by aggregating information from individual plan member records, does not identify any individual plan members and there is no reasonable basis to believe that it could be used to identify an individual.[11]

Potential Rationale for Donation of Electronic Health Records

In addition to pure research related to specific medical conditions, recently, new technologies have been developed that are able to scan large amounts of data and apply the results to individual medical decisions. For example IBM has begun using its computing system, Watson (of Jeopardy fame), within the healthcare field. IBM states that Watson's applications extend over many health fields including genomics, drug discovery, health patient engagement, oncology, and care management.[12] Watson is able to store significant amounts of data, analyze it, and find patterns and meaning within the data must quicker and more efficiently than any human. The abilities of Watson, and other computing systems like it, will be further enhanced by the availability of large of amounts of data to work with. Donating EHR and QEHR could help these future technologies become more effective in providing better overall outcomes within the healthcare system.

III. Effect of Proposed Changes:

CS/SB 804 amends ch. 765, F.S., relating to health care advance directives, to allow a patient, or the patient's health care surrogate or proxy, to donate the patient's EHR and QEHR[13] to an approved[14] medical or dental school, college, university, hospital, or repository that collects, stores, and shares de-identified electronic health records with the public. The bill authorizes the donation of EHR and QEHR after the patient's death.

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[11] U.S. Department of Health and Human Services, Health Information Privacy, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule* https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html#protected (last visited Mar. 8, 2017).

[12] See IBM Watson Health, https://www.ibm.com/watson/health/ (last visited Mar. 8, 2017).

[13] The bill references the definitions of EHR and QEHR in s. 408.051, F.S. (See Present Situation for definitions of these terms).

[14] By the DOH.

Donations of EHR and QEHR by the Patient

The bill specifies that a person may donate all or part of his or her EHR or QEHR by:
- Signing an EHR donor card;
- Indicating an intent to donate on his or her driver license or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV);
- Expressing the wish to donate in a living will or other advance directive;
- Expressing the wish to donate in a will;[15] or
- Expressing a wish to donate in another document that has been signed by the donor (or his or her designee) and two witnesses.
    - The bill provides a standard form that may be used to indicate the wish to donate EHR and QEHR.

De-identified EHR may be given to one or more donees that are accredited medical or dental schools, colleges, universities, hospitals, or repositories for the purpose of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations to improve health outcomes and reduce health care costs. Donees must be approved by the DOH and may be specified by name. The bill specifies that identified information may be donated with the written consent of the donor.

Additionally, a person may revoke or amend the terms of a donation of EHR by:
- The execution and delivery to the donee of a signed statement witnessed by at least two adults, one of whom is a disinterested witness;
- An oral statement made in the presence of two adult witnesses, one of whom is not a family member. The statement must be communicated to the donor's family, to the donor's attorney, or to the donee and the donee must have actual notice of the revocation;
- An oral statement communicated during a terminal illness or injury to the primary physician who must communicate the revocation to the donee;
- A signed document found on or about the donor's person;
- A later-executed document of donation which amends or revokes a previous health records donation;
- The destruction or cancellation, with the intent to revoke the donation, of the document, or portion of the document, that indicates the intent to donate.

Donation of EHR and QEHR by the Patient's Health Care Surrogate or Proxy

The bill also allows a patient's health care surrogate or proxy to donate the patient's EHR and QEHR. The bill amends the definition of "health care decision" in s. 765.101, F.S., to include the right of the health care surrogate or proxy to donate the principal's EHR and QEHR upon the principal's death and amends the suggested form of designation of a health care surrogate in s. 765.203, F.S., to include the authorization for the health care surrogate to donate the

[15] The bill specifies that, when a wish to donate is expressed in a will, the donation becomes effective upon the death of the testator without entering probate and that the donation is considered valid if made in good faith even if the will is found to be invalid for testamentary purposes.

principal's EHR and QEHR. The bill requires that information donated by a health care surrogate be de-identified.

Donation Encouragement Program

The bill requires the AHCA and the DHSMV to develop and implement a program to encourage and authorize persons to donate EHR and QEHR as part of the process of issuing and renewing identification cards and driver licenses. Donor cards distributed by the DHSMV must include the information and signatures necessary to authorize the donation of EHR and may include any additional information determined necessary by the DHSMV.

The bill also requires the DHSMV to develop and implement a program to identify donors including notations on their identification cards or driver licenses to clearly indicate their intent to donate their EHR.[16] The AHCA is required to provide necessary supplies and forms and the DHSMV is required to provide the necessary recordkeeping system. The DHSMV is also required to maintain a link on its webpage referring visitors renewing identification cards and driver licenses to an electronic health records repository, if such repository is available.

The bill exempts the DHSMV and the AHCA from liability in connection with the performance of any act regarding these programs, and the bill requires the DHSMV, after consultation and concurrence with the AHCA, to adopt rules to implement the programs.

The bill establishes an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[16] The DHSMV currently implements a similar program for organ donation. See s. 765.521, F.S.

B. Private Sector Impact:

CS/SB 804 may have a minor negative fiscal impact on health care facilities that are required to de-identify and electronically transfer records pursuant to a donation as detailed in the bill.

C. Government Sector Impact:

The bill may have a negative fiscal impact on the AHCA and the DHSMV related to the implementation of the donation encouragement program. The AHCA estimates an initial cost to the agency of $438,432 and a recurring cost of $438,432.[17] Of the $438,432 recurring costs, the AHCA estimates an annual cost of $300,000 for the production of supplies and forms. The remainder of the recurring costs to the agency are for the hiring of two full-time program staff to facilitate outreach with the DHSMV and to conduct training and education at each of the state's 67 county tax collector offices.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 765.101 and 765.203 of the Florida Statutes.
This bill creates sections 765.114 and 765.1141 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 Committee on March 14, 2017:
The CS amends SB 804 to specify that identified EHR and QEHR may be donated with the written consent of the donor and to make other technical changes.

B. Amendments:

None.

[17] AHCA, *Senate Bill 804 Analysis* (Feb. 14, 2017) (on file with the Senate Committee on Health Policy.

521710

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 118 - 133

and insert:

(2) The de-identified electronic health records or qualified electronic health records may be given to one or more donees that are accredited medical or dental schools, colleges, universities, hospitals, or repositories for the purposes of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations to improve health

521710

outcomes and reduce health care costs. Electronic health records or qualified electronic health records with a donor's identifying information may be given to a donee upon written consent of the donor. The donees must be approved by the Department of Health and may be specified by name.

(3) Any electronic health records or qualified electronic health records donated by a health care surrogate or proxy designated by the decedent pursuant to part II of this chapter must be de-identified, unless the donee provides written consent stating that his or her identifying information may be included with such records, and such donation must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

(4) A donor may amend the terms of or revoke a donation of electronic health records or qualified electronic health records by any of the following means:

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

And the title is amended as follows:

Delete lines 12 - 13

and insert:

health records donated by a health care surrogate or proxy to be de-identified; authorizing electronic health records and qualified electronic health records to contain a donor's identifying information under certain conditions; authorizing a donor to amend the

By Senator Brandes

24-00700A-17 2017804__

A bill to be entitled

An act relating to electronic health records; amending s. 765.101, F.S.; redefining the terms "health care decision" and "incapacity" or "incompetent"; creating s. 765.114, F.S.; authorizing a person to donate his or her electronic health records, subject to certain requirements; authorizing electronic health records and qualified electronic health records to be donated to specified entities for specified purposes; providing a form for a uniform donor card; requiring electronic health records and qualified electronic health records donated by a health care surrogate to be de-identified; authorizing a donor to amend the terms or revoke an electronic health records donation in specified manners; creating s. 765.1141, F.S.; requiring the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a program that encourages and authorizes persons to donate electronic health records and qualified electronic health records as part of a process of issuing and renewing identification cards and driver licenses; requiring specified information to be included in the donor registration card distributed by the department; requiring the agency and the department to develop and implement a program to identify donors through notations on identification cards and driver licenses; requiring the agency to provide certain supplies and forms, and the department to provide a recordkeeping system; prohibiting the department and agency from incurring liability in connection with the performance of certain acts; requiring the department to maintain

24-00700A-17 2017804__

a link on its website referring visitors to an electronic health records repository under certain circumstances; requiring rulemaking; amending s. 765.203, F.S.; revising the suggested form for designation of a health care surrogate to expand health care decision authority of the health care surrogate; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (6) of section 765.101, Florida Statutes, and subsection (10) of that section is amended, to read:

765.101 Definitions.—As used in this chapter:

(6) "Health care decision" means:

(e) The right of a health care surrogate or proxy to donate the principal's electronic health records and qualified electronic health records, as defined in s. 408.051, upon the principal's death to an approved medical or dental school, college, university, hospital, or repository that collects, stores, and shares de-identified electronic health records in the public domain for purposes of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations in order to improve health outcomes and reduce health care costs. For purposes of this paragraph, the term "approved" means approved by the Department of Health.

(10) "Incapacity" or "incompetent" means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an

anatomical gift or donating electronic health records or qualified electronic health records, the term also includes a patient who is deceased.

Section 2. Section 765.114, Florida Statutes, is created to read:

765.114 Donating electronic health records and qualified electronic health records.—

(1) A person may donate all or part of his or her electronic health records or qualified electronic health records by doing any of the following:

(a) Signing an electronic health records donor card.

(b) Indicating an intent to donate on his or her driver license or identification card issued by the Department of Highway Safety and Motor Vehicles. Revocation, suspension, expiration, or cancellation of the driver license or identification card does not invalidate the intent to donate.

(c) Expressing a wish to donate in a living will or other advance directive.

(d) Expressing a wish to donate in a will. The donation becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the donation is nevertheless valid to the extent that it has been acted upon in good faith.

(e) Expressing a wish to donate in a document other than a will. The document must be signed by the donor in the presence of two adult witnesses, who must sign the document in the donor's presence. If the donor cannot sign, the document may be signed by another person at the donor's direction and in his or her presence and in the presence of two witnesses, who must sign

the document in the donor's presence. Delivery of the document during the donor's lifetime is not necessary to make the intent to donate valid. The following form of written document is sufficient for any person to make a donation of electronic health records or qualified electronic health records for the purposes of this part:

UNIFORM ELECTRONIC HEALTH RECORDS DONOR CARD

The undersigned hereby makes this health records donation, to take effect on death. The words and marks below indicate my desires:

I give:

1. .... all electronic health records;

2. .... only the following electronic health records:

...[Specify the health records]...

for the purpose of medical research or education.

Signed by the donor and the following witnesses in the presence of each other:

...(Signature of donor)... ...(Date of birth of donor)...

...(Date signed)... ...(City and State)...

...(Witness)... ...(Witness)...

...(Address)... ...(Address)...

(2) The de-identified electronic health records may be given to one or more donees that are accredited medical or

dental schools, colleges, universities, hospitals, or repositories for the purposes of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations to improve health outcomes and reduce health care costs. The donees must be approved by the Department of Health and may be specified by name.

(3) Any electronic health records donated by a health care surrogate designated by the decedent pursuant to part II of this chapter must be de-identified, and such donation must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

(4) A donor may amend the terms of or revoke a donation of electronic health records by any of the following means:

(a) The execution and delivery to the donee of a signed statement witnessed by at least two adults, one of whom is a disinterested witness.

(b) An oral statement that is made in the presence of two adult witnesses, one of whom is not a family member, and communicated to the donor's family or attorney or to the donee. An oral statement is effective only if the medical or dental school, college, university, hospital, or repository has actual notice of the oral amendment or revocation.

(c) An oral statement made during a terminal illness or injury addressed to the primary physician, who must communicate the revocation of the gift to the medical or dental school, college, university, hospital, or repository.

(d) A signed document found on or about the donor's person.

(e) A later-executed document of donation which amends or

revokes a previous health records donation or portion of a health records donation, either expressly or by inconsistency.

(f) The destruction or cancellation, with the intent to revoke the donation, of the document that indicates the intent to donate or the destruction or cancellation of that portion of the document which indicates the intent to donate.

Section 3. Section 765.1141, Florida Statutes, is created to read:

765.1141 Electronic health records donations as part of driver license or identification card process.—

(1) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement a program encouraging and authorizing persons to donate electronic health records and qualified electronic health records, as defined in s. 408.051, as a part of the process of issuing and renewing identification cards and driver licenses. The donor registration card distributed by the department must include the information and signatures required in the uniform electronic health records donor card under s. 765.114(1)(e) and such additional information as determined necessary by the department. The department shall also develop and implement a program to identify donors which includes notations on identification cards and driver licenses to clearly indicate the individual's intent to donate his or her electronic health records. The agency shall provide the necessary supplies and forms using appropriated funds or contributions from interested voluntary, nonprofit organizations. The department shall provide the necessary recordkeeping system using appropriated funds. The department and the agency do not incur liability in connection

with the performance of any act authorized in this section.

(2) The department shall maintain an integrated link on its website referring a visitor renewing an identification card or a driver license or conducting other business to an electronic health records repository if available.

(3) The department, after consultation with and concurrence by the agency, shall adopt rules to implement this section pursuant to chapter 120.

Section 4. Section 765.203, Florida Statutes, is amended to read:

765.203 Suggested form of designation.—A written designation of a health care surrogate executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE

I, ...(name)..., designate as my health care surrogate under s. 765.202, Florida Statutes:

Name: ...(name of health care surrogate)...
Address: ...(address)...
Phone: ...(telephone)...

If my health care surrogate is not willing, able, or reasonably available to perform his or her duties, I designate as my alternate health care surrogate:

Name: ...(name of alternate health care surrogate)...
Address: ...(address)...

Phone: ...(telephone)...

INSTRUCTIONS FOR HEALTH CARE

I authorize my health care surrogate to:

...(Initial here)... Receive any of my health information, whether oral or recorded in any form or medium, that:

1. Is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

2. Relates to my past, present, or future physical or mental health or condition; the provision of health care to me; or the past, present, or future payment for the provision of health care to me.

I further authorize my health care surrogate to:

...(Initial here)... Make all health care decisions for me, which means he or she has the authority to:

1. Provide informed consent, refusal of consent, or withdrawal of consent to any and all of my health care, including life-prolonging procedures.

2. Apply on my behalf for private, public, government, or veterans' benefits to defray the cost of health care.

3. Access my health information reasonably necessary for the health care surrogate to make decisions involving my health care and to apply for benefits for me.

4. Decide to make an anatomical gift pursuant to part V of chapter 765, Florida Statutes.

5. Donate my electronic health records and qualified

electronic health records, as defined in s. 408.051, Florida Statutes, to one or more accredited medical or dental schools, colleges, universities, hospitals, or repositories, approved by the Department of Health, to share my de-identified health records for purposes of developing diagnoses, treatment choices, policies, health care system designs, and innovations to improve health outcomes and reduce health care costs.

...(Initial here)... Specific instructions and restrictions: .....
.....
.....

While I have decisionmaking capacity, my wishes are controlling and my physicians and health care providers must clearly communicate to me the treatment plan or any change to the treatment plan prior to its implementation.

To the extent I am capable of understanding, my health care surrogate shall keep me reasonably informed of all decisions that he or she has made on my behalf and matters concerning me.

THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA STATUTES.

PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND THIS DESIGNATION BY:

(1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES

MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

(2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY DIRECTION;

(3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE THIS DESIGNATION; OR

(4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT FROM THIS DESIGNATION.

MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE FOLLOWING BOXES:

IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT IMMEDIATELY.

IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES, ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

SIGNATURES: Sign and date the form here:

...(date)... ...(sign your name)...

...(address)... ...(print your name)...

...(city)... ...(state)...

SIGNATURES OF WITNESSES:

First witness Second witness

...(print name)... ...(print name)...

...(address)... ...(address)...

...(city)... ...(state)... ...(city)... ...(state)...

...(signature of witness)... ...(signature of witness)...

...(date)... ...(date)...

Section 5. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana Young, Committee on Health Policy

Subject: Committee Agenda Request

Date: February 24th, 2017

I respectfully request that **Senate Bill #804**, relating to **Electronic Health Records**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 876
INTRODUCER:	Health Policy Committee; and Senator Young and others
SUBJECT:	Programs for Impaired Health Care Practitioners
DATE:	March 16, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 876 revises multiple statutory provisions relating to treatment programs for impaired healthcare providers. Primarily it clarifies in law the roles and responsibilities of the parties involved in the program, including the Department of Health (DOH or department), consultant, evaluator, treatment provider, and impaired practitioner. The bill no longer authorizes the DOH to specify by rule the manner in which consultants must work with DOH in intervening, evaluating, treating, monitoring, providing continuing care, or expelling a professional from the program. This will now be governed by a contract between the DOH and each consultant. The bill defines certain terms relating to impaired practitioner programs; and provides that a licensee may report an impaired practitioner to a consultant who operates an impaired practitioner program, rather than to the DOH, under certain circumstances.

The bill amends the provisions relating to the disqualification for health care practitioners for licensure or renewal to help ensure due process; and provides an exception for pretrial diversion.

The bill is effective upon becoming law.

II. Present Situation:

Treatment Programs for Impaired Practitioners

Section 456.076, F.S., provides resources to assist health care practitioners[1] who are impaired as a result of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, which could affect the practitioners' ability to practice with skill and safety. For professions that do not have impaired practitioner programs provided for them in their practice acts, the DOH designate**s** approved impaired practitioners programs**.**

The DOH is required to retain one or more impaired practitioner consultants who are each licensed under the jurisdiction of the Division of Medical Quality Assurance within the DOH and who must be:

- A practitioner or recovered practitioner licensed under chs. 458, 459, or part I, ch. 464, F.S.; or
- An entity that employs:
  - A medical director who must be a practitioner or recovered practitioner licensed under ch. 458 or ch. 459; or
  - An executive director who must be a registered nurse or a recovered registered nurse licensed under part I, ch. 464, F.S.

There are currently two department-approved treatment programs for impaired practitioners in Florida, the Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN).[2]

The PRN provides evaluations and treatment referrals, and monitoring, for all health professions, except nursing and certified nursing assistants.[3] The IPN provides those same services to nurses and certified nursing assistants.[4] The IPN and PRN initiate interventions, recommend evaluations, and refer impaired practitioners to department-approved treatment programs or treatment providers, and monitor the progress of impaired practitioners. PRN and IPN do not provide medical services. They act as liaisons between the DOH and approved treatment programs and providers. The DOH is not responsible for paying for the care provided by approved treatment providers or a consultant.

A medical school, nursing program or other health professional school, providing education for students enrolled in preparation for licensure as a health care professional, may also contract

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[1] Health care practitioners are defined in s. 456.001(4), F.S., to include licensed acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, practitioners of electrolysis, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among other professions. These practitioners are regulated by the MQA within the DOH.

[2] *See* Professionals Resource Network, *available at* http://www.flprn.org/ *and* http://www.ipnfl.org/ (last visited Mar. 7, 2017).

[3] Professionals Resource Network, *About Us, available at* http://www.flprn.org/about (last visited Mar. 9, 2017).

[4] Intervention Project for Nurses, *IPN History, available at* http://www.ipnfl.org/ipnhistory.html (last visited Mar. 9, 2017)

with the PRN or IPN, to provide services to an enrolled student, if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.[5]

The PRN also contracts with the Department of Business and Professional Regulation (DBPR) to provide evaluations, treatment referrals, and monitoring for veterinarians and veterinary students.[6] The DBPR regulates veterinarians and veterinary students, but has no statutory authority under the general provisions in ch. 455, F.S., to create its own impaired practitioner program for veterinarians and veterinary students. However, ch. 455, F.S., provides for disciplinary action against persons who do not fully participate in an impaired practitioner program operated by the DOH.[7] Further, s. 474.221, F.S., addresses impaired practitioner provisions for veterinarians licensed under ch. 474, F.S., and states that they shall be governed by the treatment of impaired practitioners under the provisions of s. 456.076, F.S.

The IPN and PRN, if requested, also serve as consultants to the DOH in cases that come before the practice boards or the DOH, including credentialing and monitoring of applicants, and assisting in the development of plans for licensee practice in a structured environment. They must also be available to testify in administrative hearings and other legal proceedings on behalf of the DOH.

If an impaired practitioner fails to satisfactorily progress, or continue in a treatment program, the PRN and IPN must follow specific procedures set forth in the contract with the DOH, up to, and including, sending notification to the DOH of the dismissal of a practitioner from the program and for the DOH to initiate disciplinary action. When a licensee is dismissed from a treatment program the consultant provides an evaluation of the licensee's impairment condition to the DOH. The evaluation is used by the DOH to determine if the licensee poses an immediate and serious danger to the public for the purpose of issuing an emergency order restricting or suspending his or her license to practice.

Whenever a PRN or IPN consultant, licensee, or approved treatment provider makes a disclosure of confidential information regarding a practitioner to the DOH pursuant to law, that individual is not subject to civil liability for such disclosure, or its consequences. If the contract with the consultant contains specified provisions, the consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH for purposes of s. 768.28, F.S., relating to sovereign immunity. The Department of Financial Services is required to defend any claim, suit, action, or proceeding, including proceedings for injunctive, affirmative, or declaratory relief, against a consultant, the consultant's officers, employees, or those acting at the direction of the consultant, for acts or omissions relating to an emergency intervention on behalf of a licensee or student, if the act or omission arises out of the course and scope of the consultant's duties under the DOH's contract.[8]

[5] Section 456.076(1)(c)2., F.S.
[6] Department of Business and Professional Regulation, *Senate Bill 876 Analysis* (March 2, 2017) (on file with the Senate Committee on Health Policy).
[7] Section 455.227(1)(u), F.S.
[8] Section 456.076(8), F.S.

When the DOH receives a legally sufficient written or oral complaint, alleging that a licensee is impaired as a result of the misuse or abuse of alcohol or drugs, or due to a mental or physical condition, that could affect the licensee's ability to practice with skill and safety; and no other complaint against the licensee exists, the reporting of such information does not constitute grounds for discipline if certain conditions are met.[9] Those conditions include, findings by the appropriate board's probable cause panel, or the DOH, if there is no board, that the licensee:

- Acknowledged the impairment problem;
- Enrolled in an appropriate, approved treatment program;
- Voluntarily withdrew from practice, or limit the scope of his or her practice, until he or she has successfully completed the treatment program; and
- Released his or her medical records to the consultant.

If, however, the DOH has not received a legally sufficient complaint, other than impairment, and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an evaluation and approved treatment program, if appropriate, neither the probable cause panel nor the DOH will become involved in the licensee's case.[10]

Section 456.072(1)(hh), F.S., sets forth, as grounds for disciplinary action against a health care practitioner, being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee; or for not successfully completing any drug treatment or alcohol treatment program.

Section 456.072, F.S., also requires practitioners to report to the DOH any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board,[11] which would include any person unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

Emergency medical technicians (EMTs), paramedics and emergency medical services[12] personnel (EMS) are not healthcare practitioners regulated under ch. 456, F.S.[13] All three are "certified" by the DOH under ch. 401, F.S., relating to Medical Telecommunications and Transportation. Section 456.076, F.S., requires the DOH to designate approved impaired practitioner programs for these professions, and PRN provides those services.[14] Section 401.411, F.S., sets forth disciplinary guidelines for the DOH to take action against EMTs, paramedics, and EMS personnel. The guidelines includes a penalty for failure to report any person known to be in violation of s. 401.411, F.S.;[15] and a penalty for practicing as an EMT, paramedic or EMS

[9] Section 456.076(4)(a), F.S.
[10] Section 456.076(4)(b), F.S.
[11] Section 456.072(1)(i), F.S.
[12] Section 401.107(3), F.S., defines "emergency medical services" as the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.
[13] Section 456.001(4), F.S., defines a "health care practitioner." See *supra* n.1.
[14] Professional Resource Network, "*About Us*" available at http://www.flprn.org/about, (last visited Mar. 9, 2017).
[15] Section 411.23(1)(l), F.S.

without reasonable skill and without regard for the safety of the public by reason of illness, drunkenness, or the use of drugs, narcotics, or chemicals or any other substance or as a result of any mental or physical condition.[16]

III. Effect of Proposed Changes:

CS/SB 876 revises the title of s. 456.076, F.S., from, "Treatment programs for impaired practitioners" to, "Impaired practitioner programs"; and specifically defines the terms "consultant," "evaluator," "impaired practitioner," "impaired practitioner program," "impairment," "inability to progress," "material noncompliance," "participant," "participant contract," "practitioner," "referral," "treatment program", and "treatment provider." Defining these terms would provide legislative guidance to the DOH for contractual purposes and in legal proceedings.

The bill expands the list of providers who may contract as a consultant, to operate the DOH's impaired practitioner program, to include a licensed practical nurse (LPN).[17] To operate the program a consultant must be:

- A practitioner licensed under ch. 458, ch. 459, or part I, ch. 464, F.S.;[18] or
- An entity that employs:
  - A medical director who is must be a practitioner licensed under chapter 458 or chapter 459; or
  - An executive director who is licensed under part I, ch. 464, F.S.[19]

The bill deletes the provisions authorizing the DOH to adopt, by rule, the manner in which consultants work with the DOH in interventions, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program. Much of the detail and the parameters for the program are provided in the bill and will be specified in the contract.

The bill requires that, if the DOH elects to retain one or more consultants to operate its impaired practitioner program, the terms and conditions of the impaired practitioner programs must be specified by the contract, which, at a minimum, must contain the following agreements,[20] to:

- Accept referrals;
- Arrange for evaluation and treatment of impaired practitioners when the consultant deems it necessary;
- Monitor the impaired practitioner's recovery process until monitoring is no longer needed or the practitioner is terminated for material non-compliance[21] or an inability to progress,[22] and

[16] Section 411.23(1)(k), F.S.
[17] SB 876, proposed s. 456.076(2), F.S.
[18] Part I, ch. 464, F.S., issues certificates and licenses to ARNPs, RNs and LPNs.
[19] Id.
[20] See s. 456.076(3) F.S., of the bill.
[21] The bill defines "Material noncompliance" to mean an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.
[22] "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with the treatment requirement and his or her participant contract.

- Not directly evaluate, treat, or otherwise provide patient care to a practitioner in the program.

This codifies current DOH practices, and thus, would not impact how the programs currently operate.[23]

The bill requires the consultant to execute a participant contract with an impaired practitioner that addresses, among other things, the terms of the monitoring. The consultant may modify the terms of the monitoring if the consultant concludes that extended, additional or amended terms are needed to protect the health, safety and welfare of the public.

The bill provides that an impaired practitioner may self-report, or report another impaired professional, to a consultant rather than the DOH under certain circumstances.

The bill provides that when the DOH receives a legally sufficient complaint alleging that a practitioner has an impairment, and no complaint exists other than impairment, the DOH must refer the practitioner to the consultant, along with all information in the DOH's possession relating to the impairment. The impairment does not constitute grounds for discipline pursuant to s. 456.072, F.S., or the applicable practice act, if the practitioner:

- Has acknowledged the impairment;
- Becomes a participant in an impaired practitioner program and successfully completes a participant contract;
- Has voluntarily withdrawn from practice, or has limited the scope of his or her practice, if required by the consultant;
- Has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and
- Has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the DOH and provide the department with copies of all information in the consultant's possession relating to the practitioner.[24]

The mandatory requirement that the practitioner release all records and information relating to the impairment from any source, and all other medical records of the practitioner requested by the consultant, may be broader than the release requirement under current law.[25] Current law requires the practitioner to authorize the release of all records of evaluations, diagnoses and

[23] Department of Health, *Senate Bill 876 Analysis*, (February 10, 2017) (on file with the Senate Committee on Health Policy).
[24] See s. 456.076(10)(a), F.S., of the bill.
[25] For example, in 2016. the Legislature enacted Senate Bill 964 authorizing, among other things, an impaired practitioner consultant indirect access to the Florida Prescription Drug Monitoring Program (PDMP) for the purpose of reviewing the database information of an impaired practitioner program participant or a referral who has separately agreed in writing to the consultant's access to and review of such information. *See* ss. 893.055(7)(c)5 and 893.0551(3)(h), F.S. This potentially creates a coercive method of requiring the practitioner to give up his or her PDMP records to the consultant, and by extension, to the DOH for disciplinary action. In order to attempt to avoid discipline for the practitioner, the requires the practitioner to release any information that relate to the practitioner's impairment; and any other records the consultant requests. The PDMP records would certainly be medical records related to the impairment and of the nature the consultant would request the practitioner to release. Were the practitioner then to be terminated from the impaired practitioner program for any reason, the consultant would be required to turn those records over to the DOH. The DOH does not have authority to access these PDMP records, either directly or indirectly.

treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant.

The bill modifies when a consultant must report an impaired practitioner in a treatment program to the DOH. To encourage practitioners who are or may be impaired to voluntarily self-refer to a consultant, the consultant may not provide information to the department relating to a self-referring participant if the consultant has no knowledge of a pending department investigation, complaint, or disciplinary action against the participant, and if the participant is in compliance and making progress with the terms of the impaired practitioner program and contract, unless authorized by the participant.[26]

When a referral or participant is terminated from the impaired practitioner program for a material noncompliance with a participant contract, an inability to progress, or any other reason than completion, the consultant is required to disclose all information in the consultant's possession relating to the practitioner to the DOH. Such disclosure constitutes a complaint that the DOH will then investigate. Whenever the consultant concludes that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant is required to immediately communicate such conclusion to the DOH and provide all information in the consultant's possession relating to the practitioner to the DOH.[27]

A consultant may request of an approved evaluator, treatment program, or treatment provider, with the authorization of the practitioner when required by law, all information in the evaluator's, treatment programs', or treatment provider's possession regarding a referral or participant. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.[28]

The confidential or exempt information obtained by the consultant, retains its confidential or exempt status.[29] However, the bill does not provide any protection for the information once sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

The bill protects the consultant, or a director, officer, employee, or agent of a consultant, from financial liability or any other cause of action for damages related to making a disclosure, or for any action or omission, against a license, registration, or certification.[30] Under current law a consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH, and have sovereign immunity while acting within the course and scope of their contract.[31] The bill extends that protection to include directors, officers, employees or agents of a consultant.[32] The provisions of s. 766.101, F.S., apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing

[26] See s. 465.076,(9)(b),F.S., of the bill
[27] See s. 456.076,(11)(b), F.S., of the bill.
[28] See s. 456.076,(11)(a), F.S., of the bill.
[29] See s 456.016,(2), F.S., of the bill.
[30] See s. 456.076,(13), F.S., of the bill.
[31] See s. 456.076,(15)(a), F.S., of the bill.
[32] See s. 456.076, (13), F.S., of the bill.

information relating to a participant to a medical review committee if the participant authorizes such disclosure.[33]

The bill directs the Department of Financial Services to defend the consultant, consultant's directors, officers, employees and agents against any claim, suit, action, or proceeding for injunction, affirmative, or declaratory relief, as the result of any action or omission relating to the impaired practitioner program.[34]

The bill also clarifies and reauthorized existing provisions and responsibilities of the DOH, boards, and the consultant. The bill provides that if another state agency retains a consultant under contract with DOH, that the provisions of this law apply to the consultant's operation of an impaired practitioner program for that agency. The bill also reauthorizes programs for health care students and certain DBPR practitioners.

A consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law. If a consultant discloses information to the DOH in accordance with this program, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or the DOH.[35]

The bill provides an exception to health care professionals' statutory duty to report themselves, or another professional, to the DOH when they know the professional is practicing without reasonable skill and safety by reason or illness, drunkenness,[36] or the use of alcohol drugs, narcotics, chemicals, or any other substance, or as a result of a mental or physical condition.[37] The exception is only applicable to impairment issues, and allows a professional to report himself or herself, or another impaired practitioner, to a consultant operating an approved impaired practitioner program. The bill similarly amends s. 401.411(1)(l), F.S., relating to disciplinary actions and penalties for EMTs, Paramedics and EMS personnel and ss. 455.227, F.S., and 474.221, F.S., for veterinarians.

This bill is effective upon becoming a law.

[33] See s. 456.076, (14), F.S., of the bill.
[34] See s. 456.076, (15)(b), F.S., of the bill.
[35] See s. 456.076, (17), F.S., of the bill.
[36] The term "drunkenness" is only used in s. 401.411, F.S., and perhaps should be deleted and replaced with the phrase "use of alcohol" for consistency with other similar statutory provision.
[37] The bill creates this exception in ch. 456, F.S., and all healthcare professional practice acts, except part I, ch. 486, F.S., regulating speech and language pathologists, and audiologists and part IV, ch. 483, F.S., governing medical physicists. However, a professional under these sections would have the exception available to them through the additional professional obligations imposed on them set out in ch. 456, F,S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill protects the confidential or exempt information obtained by the consultant from a public records request; but the bill does not protect any of the information sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill's definitions of, "inability to progress," and "material noncompliance," may create due process issues as conclusive presumptions.[38]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The authority for licensed healthcare professionals to report impairments directly to a consultant, may have a positive impact on reporting by licensees and self-reporting by impaired licensees if the perceived threat of discipline by the department is removed.

C. Government Sector Impact:

Due to the expansion of individuals who are afforded a defense by the Department of Financial Services for claims, actions, suits, etc., and the board nature of the protection, there may be a negative financial impact on that agency's Risk Management Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[38] A "conclusive presumption" is one in which proof of a basic fact renders the existence of the presumed fact conclusive and irrevocable regardless of any evidence to the contrary. Black's Law Dictionary, 6th Ed., 1992.

VIII. None. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.076, 401.411, 455.227, 456.0635, 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 464.204, 465.016, 466.028, 467.203, 468.217, 468.3101, 474.221, and 483.825.

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 March 14, 2017:
The CS:

- Amends the definition of referral to make it clear it includes self-referrals, referrals of one practitioner by another, and referrals reported by the DOH.
- Condenses and reorganizes the section which provides for contract terms and conditions with a consultant, but makes no substantive changes.
- Changes the terms "certify" and "decline to certify" to "approve" and "deny" to more accurately describe the actions.
- Clarifies that the consultant is not required to disclose information to the DOH on self- referring practitioners if the consultant has no knowledge of a complaint.
- Reinstates and amends the language that specifies that the consultant is an agent of the state for purposes of sovereign immunity when acting pursuant to its contract.
- Authorizes disclosure to the referral, participant or the legal representative of either, the documents and information received by the consultant pertaining to and supporting the participant's discharge or termination from an impaired practitioner program; and any information the consultant discloses to the DOH.
- Amends the provisions relation to disqualification for Licensure, and provides an exception for pretrial diversion.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 88 - 492

and insert:

(e) "Impairment" means an impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety.

(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and

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prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

(g) "Material noncompliance" means an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.

(h) "Participant" means a practitioner who is participating in the impaired practitioner program by having entered into a participant contract. A practitioner ceases to be a participant when the participant contract is successfully completed or is terminated for any reason.

(i) "Participant contract" means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner program, including the participant's monitoring plan.

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an applicant for a license, registration, or certification under the same laws.

(k) "Referral" means a practitioner who has been referred, either as a self-referral or otherwise, or reported to a consultant for impaired practitioner program services, but who is not under a participant contract.

(l) "Treatment program" means a department- or consultant-


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approved residential, intensive outpatient, partial hospitalization or other program through which an impaired practitioner is treated based on the impaired practitioner's diagnosis and the treatment plan approved by the consultant.

(m) "Treatment provider" means a department- or consultant-approved state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the practitioner's individual diagnosis and a treatment plan approved by the consultant ~~For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program~~.

(2)~~(a)~~ The department may ~~shall~~ retain one or more ~~impaired practitioner~~ consultants to operate its impaired practitioner program. Each consultant ~~who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who~~ must be:

(a)~~1.~~ A practitioner ~~or recovered practitioner~~ licensed under chapter 458, chapter 459, or part I of chapter 464; or


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(b)~~2.~~ An entity that employs:

1.~~a.~~ A medical director who is ~~must be a practitioner or recovered practitioner~~ licensed under chapter 458 or chapter 459; or

2.~~b.~~ An executive director who is ~~must be a registered nurse or a recovered registered nurse~~ licensed under part I of chapter 464.

(3) The terms and conditions of the impaired practitioner program must be established by the department by contract with a consultant for the protection of the health, safety, and welfare of the public and must provide, at a minimum, that the consultant:

(a) Accepts referrals;

(b) Arranges for the evaluation and treatment of impaired practitioners by a treatment provider, when the consultant deems the evaluation and treatment necessary;

(c) Monitors the recovery progress and status of impaired practitioners to ensure that such practitioners are able to practice their profession with skill and safety. Such monitoring must continue until the consultant or department concludes that monitoring by the consultant is no longer required for the protection of the public or until the practitioner's participation in the program is terminated for material noncompliance or inability to progress; and

(d) Does not directly evaluate, treat, or otherwise provide patient care to a practitioner in the operation of the impaired practitioner program.

(4) The department shall specify, in its contract with each consultant, the types of licenses, registrations, or

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certifications of the practitioners to be served by that consultant.

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public.

(6) ~~(b)~~ A ~~An entity retained as an impaired practitioner~~ consultant ~~under this section which employs a medical director or an executive director~~ is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(7) ~~(c)1.~~ Each ~~The~~ consultant shall assist the department and licensure boards on matters of impaired practitioners, including the determination of ~~probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine~~ whether a practitioner is, in fact, impaired, as specified in the consultant's contract with the department.

~~2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined~~


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~~in this chapter or as a veterinarian under chapter 474 if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.~~

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.~~

(8)~~(3)~~ Before issuing an approval of, or intent to deny, an application for licensure, each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine~~, before certifying or declining to certify an application for licensure to the department,~~ that an applicant for licensure under its


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jurisdiction may have an impairment ~~be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety~~. Upon such determination, the chair or other designee may refer the applicant to the consultant to facilitate ~~for~~ an evaluation before the board issues an approval of, ~~certifies~~ or intent to deny, ~~declines to certify~~ his or her application ~~to the department~~. If the applicant agrees to be evaluated ~~by the consultant~~, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation ~~by the consultant~~ is communicated to the board by the consultant. If the applicant declines to be evaluated ~~by the consultant~~, the board shall issue an approval of, or intent to deny, ~~certify or decline to certify~~ the applicant's application ~~to the department~~ notwithstanding the lack of an evaluation and recommendation by the consultant.

(9)(a) ~~(4)(a)~~ When ~~Whenever~~ the department receives a ~~written or oral~~ legally sufficient complaint alleging that a practitioner has an impairment ~~licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety,~~ and no complaint exists against the practitioner ~~licensee~~ other than impairment ~~exists~~, the department shall refer the practitioner to the consultant, along with all information in the department's possession relating to


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the impairment. The impairment does ~~reporting of such information shall~~ not constitute grounds for discipline pursuant to s. 456.072 or ~~the corresponding grounds for discipline within~~ the applicable practice act if ~~the probable cause panel of the appropriate board, or the department when there is no board, finds~~:

1. The practitioner ~~licensee~~ has acknowledged the impairment; ~~problem.~~

2. The practitioner becomes a participant ~~licensee has voluntarily enrolled~~ in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant; ~~appropriate, approved treatment program.~~

3. The practitioner ~~licensee~~ has voluntarily withdrawn from practice or has limited the scope of his or her practice if ~~as~~ required by the consultant;~~, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.~~

4. The practitioner ~~licensee~~ has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and ~~executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or~~


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~~her participation in a treatment program.~~

5. The practitioner has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) To encourage practitioners who are or may be impaired to voluntarily self-refer to a consultant, the consultant may not provide information to the department relating to a self-referring participant if the consultant has no knowledge of a pending department investigation, complaint, or disciplinary action against the participant and if the participant is in compliance with the terms of the impaired practitioner program and any participant contract, unless authorized by the participant ~~If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case~~.

~~(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.~~

~~(d) Whenever the department receives a legally sufficient~~

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~~complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.~~

~~(c) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).~~

~~(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

(10) ~~(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner ~~licensee~~ establishes the violation for which the practitioner ~~licensee~~ is being prosecuted was due to or connected with impairment and further establishes the practitioner ~~licensee~~ is satisfactorily progressing through or has successfully completed an impaired practitioner program ~~approved treatment program~~ pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in


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determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(11)(a) ~~(6)(a)~~ Upon request by the consultant, and with the authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall~~, upon request,~~ disclose to the consultant all information in its possession regarding a referral or participant ~~the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7)~~. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.

(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason, the consultant shall disclose ~~If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program,~~ all information ~~regarding the issue of a licensee's impairment and participation in a treatment program~~ in the consultant's possession relating to the practitioner ~~shall be disclosed~~ to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that impairment affects a practitioner's ~~licensee's~~ practice and constitutes an immediate, serious danger to the public health,


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safety, or welfare, the consultant shall immediately communicate such ~~that~~ conclusion ~~shall be communicated~~ to the department and disclose all information in the consultant's possession relating to the practitioner to the department ~~State Surgeon General~~.

(12) All information obtained by the consultant pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(13) ~~(7)~~ A consultant, or a director, officer, employee, or agent of a consultant, may not be held liable financially or may not have a cause of action for damages brought against him or her for making a disclosure pursuant to this section, for any other action or omission relating to the impaired practitioner program, or for the consequences of such disclosure or action or omission, including, without limitation, action by the department against a license, registration, or certification ~~licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences~~.

(14) The provisions of s. 766.101 apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure ~~officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section~~.

(15)(a) ~~(8)(a)~~ A consultant retained pursuant to this section and ~~subsection (2),~~ a consultant's directors, officers, ~~and~~ employees, or agents ~~and those acting at the direction of the consultant for the limited purpose of an emergency~~

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~~intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention~~ shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department ~~if the contract complies with the requirements of this section~~. ~~The contract must require that:~~

~~1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.~~

~~2. The consultant establish a quality assurance program to monitor services delivered under the contract.~~

~~3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.~~

~~4. The consultant's quality assurance program be subject to review and approval by the department.~~

~~5. The consultant operate under policies and procedures approved by the department.~~

~~6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.~~

~~7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.~~

~~8. All performance measures and standards be subject to verification and approval by the department.~~

~~9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.~~

(b) In accordance with s. 284.385, the Department of


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Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, ~~or~~ employees, and agents brought as the result of any action or omission relating to the impaired practitioner program ~~or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department~~.

(16) ~~(c)~~ If a ~~the~~ consultant retained by the department pursuant to this section ~~subsection (2)~~ is also retained by another ~~any other~~ state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that agency~~, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention~~


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~~shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant~~.

(17)~~(9)~~ A ~~An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The~~ consultant may disclose to a referral or participant documents, records, or other information from the consultant's file on the referral or participant ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only~~ to the extent that it is necessary to do so to carry out the consultant's duties under the impaired practitioner program and this section, or as otherwise required by law. ~~The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a disciplinary proceeding is pending, a referral or participant may obtain a complete copy of the consultant's file from the department as provided by ~~an impaired licensee may obtain such information from the department under~~ s. 456.073.

(18)(a) The consultant may contract with a school or

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

And the title is amended as follows:

Delete line 26

and insert:

practitioners; making technical changes; requiring the department to refer

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (420676) (with title amendment)

Delete lines 88 - 492
and insert:
(e) "Impairment" means a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety.

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(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

(g) "Material noncompliance" means an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.

(h) "Participant" means a practitioner who is participating in the impaired practitioner program by having entered into a participant contract. A practitioner ceases to be a participant when the participant contract is successfully completed or is terminated for any reason.

(i) "Participant contract" means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner program, including the participant's monitoring plan.

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an applicant for a license, registration, or certification under the same laws.

(k) "Referral" means a practitioner who has been referred, either as a self-referral or otherwise, or reported to a consultant for impaired practitioner program services, but who

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is not under a participant contract.

(l) "Treatment program" means a department- or consultant-approved residential, intensive outpatient, partial hospitalization or other program through which an impaired practitioner is treated based on the impaired practitioner's diagnosis and the treatment plan approved by the consultant.

(m) "Treatment provider" means a department- or consultant-approved state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the practitioner's individual diagnosis and a treatment plan approved by the consultant ~~For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program~~.

(2)~~(a)~~ The department may ~~shall~~ retain one or more ~~impaired practitioner~~ consultants to operate its impaired practitioner program. Each consultant ~~who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who~~ must be:

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(a)~~1.~~ A practitioner ~~or recovered practitioner~~ licensed under chapter 458, chapter 459, or part I of chapter 464; or

(b)~~2.~~ An entity that employs:

1.~~a.~~ A medical director who is ~~must be a practitioner or recovered practitioner~~ licensed under chapter 458 or chapter 459; or

2.~~b.~~ An executive director who is ~~must be a registered nurse or a recovered registered nurse~~ licensed under part I of chapter 464.

(3) The terms and conditions of the impaired practitioner program must be established by the department by contract with a consultant for the protection of the health, safety, and welfare of the public and must provide, at a minimum, that the consultant:

(a) Accepts referrals;

(b) Arranges for the evaluation and treatment of impaired practitioners by a treatment provider, when the consultant deems the evaluation and treatment necessary;

(c) Monitors the recovery progress and status of impaired practitioners to ensure that such practitioners are able to practice their profession with skill and safety. Such monitoring must continue until the consultant or department concludes that monitoring by the consultant is no longer required for the protection of the public or until the practitioner's participation in the program is terminated for material noncompliance or inability to progress; and

(d) Does not directly evaluate, treat, or otherwise provide patient care to a practitioner in the operation of the impaired practitioner program.

(4) The department shall specify, in its contract with each consultant, the types of licenses, registrations, or certifications of the practitioners to be served by that consultant.

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public.

(6) ~~(b)~~ A ~~An entity retained as an impaired practitioner~~ consultant ~~under this section which employs a medical director or an executive director~~ is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(7) ~~(c)1.~~ Each ~~The~~ consultant shall assist the department and licensure boards on matters of impaired practitioners, including the determination of ~~probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine~~ whether a practitioner is, in fact, impaired, as specified in the consultant's contract with the department.

~~2. The consultant may contract with a school or program to~~

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~~provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.~~

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.~~

(8)~~(3)~~ Before issuing an approval of, or intent to deny, an application for licensure, each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine~~, before certifying~~

~~or declining to certify an application for licensure to the department,~~ that an applicant for licensure under its jurisdiction may have an impairment ~~be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety~~. Upon such determination, the chair or other designee may refer the applicant to the consultant to facilitate ~~for~~ an evaluation before the board issues an approval of, ~~certifies~~ or intent to deny, ~~declines to certify~~ his or her application ~~to the department~~. If the applicant agrees to be evaluated ~~by the consultant~~, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation ~~by the consultant~~ is communicated to the board by the consultant. If the applicant declines to be evaluated ~~by the consultant~~, the board shall issue an approval of, or intent to deny, ~~certify or decline to certify~~ the applicant's application ~~to the department~~ notwithstanding the lack of an evaluation and recommendation by the consultant.

(9)(a)~~(4)(a)~~ When ~~Whenever~~ the department receives a ~~written or oral~~ legally sufficient complaint alleging that a practitioner has an impairment ~~licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety,~~ and no complaint exists against the practitioner ~~licensee~~ other than impairment ~~exists~~, the

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department shall refer the practitioner to the consultant, along with all information in the department's possession relating to the impairment. The impairment does ~~reporting of such information shall~~ not constitute grounds for discipline pursuant to s. 456.072 or ~~the corresponding grounds for discipline within~~ the applicable practice act if ~~the probable cause panel of the appropriate board, or the department when there is no board, finds~~:

1. The practitioner ~~licensee~~ has acknowledged the impairment; ~~problem.~~

2. The practitioner becomes a participant ~~licensee has voluntarily enrolled~~ in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant; ~~appropriate, approved treatment program.~~

3. The practitioner ~~licensee~~ has voluntarily withdrawn from practice or has limited the scope of his or her practice if ~~as~~ required by the consultant;~~, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.~~

4. The practitioner ~~licensee~~ has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and ~~executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant.~~

~~The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.~~

5. The practitioner has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) To encourage practitioners who are or may be impaired to voluntarily self-refer to a consultant, the consultant may not provide information to the department relating to a self-referring participant if the consultant has no knowledge of a pending department investigation, complaint, or disciplinary action against the participant and if the participant is in compliance and making progress with the terms of the impaired practitioner program and contract, unless authorized by the participant ~~If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case~~.

~~(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this~~

~~subsection.~~

~~(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.~~

~~(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).~~

~~(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

(10) ~~(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner ~~licensee~~ establishes the violation for which the practitioner ~~licensee~~ is being prosecuted was due to or connected with impairment and further establishes the practitioner ~~licensee~~ is satisfactorily progressing through or has successfully completed an impaired practitioner program ~~approved treatment program~~ pursuant to this

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section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(11)(a) ~~(6)(a)~~ Upon request by the consultant, and with the authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall~~, upon request,~~ disclose to the consultant all information in its possession regarding a referral or participant ~~the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7)~~. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.

(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason than completion, the consultant shall disclose ~~If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program,~~ all information ~~regarding the issue of a licensee's impairment and participation in a treatment program~~ in the consultant's possession relating to the practitioner ~~shall be disclosed~~ to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that

impairment affects a practitioner's ~~licensee's~~ practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant shall immediately communicate such ~~that~~ conclusion ~~shall be communicated~~ to the department and disclose all information in the consultant's possession relating to the practitioner to the department ~~State Surgeon General~~.

(12) All information obtained by the consultant pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(13) ~~(7)~~ A consultant, or a director, officer, employee, or agent of a consultant, may not be held liable financially or may not have a cause of action for damages brought against him or her for making a disclosure pursuant to this section, for any other action or omission relating to the impaired practitioner program, or for the consequences of such disclosure or action or omission, including, without limitation, action by the department against a license, registration, or certification ~~licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences~~.

(14) The provisions of s. 766.101 apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure ~~officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section~~.

(15)(a) ~~(8)(a)~~ A consultant retained pursuant to this section and ~~subsection (2),~~ a consultant's directors, officers,

318540

~~and~~ employees, or agents ~~and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention~~ shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department ~~if the contract complies with the requirements of this section~~. ~~The contract must require that:~~

~~1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.~~

~~2. The consultant establish a quality assurance program to monitor services delivered under the contract.~~

~~3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.~~

~~4. The consultant's quality assurance program be subject to review and approval by the department.~~

~~5. The consultant operate under policies and procedures approved by the department.~~

~~6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.~~

~~7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.~~

~~8. All performance measures and standards be subject to verification and approval by the department.~~

~~9. The department be entitled to terminate the contract~~

~~with the consultant for noncompliance with the contract.~~

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, ~~or~~ employees, and agents brought as the result of any action or omission relating to the impaired practitioner program ~~or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department~~.

(16) ~~(c)~~ If a ~~the~~ consultant retained by the department pursuant to this section ~~subsection (2)~~ is also retained by another ~~any other~~ state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that agency~~, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention~~

~~on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant~~.

(17)~~(9)~~ A ~~An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The~~ consultant may disclose to a referral or participant documents, records, or other information from the consultant's file on the referral or participant ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only~~ to the extent that it is necessary to do so to carry out the consultant's duties under the impaired practitioner program and this section, or as otherwise required by law. ~~The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a disciplinary proceeding is pending, a referral or participant may obtain a complete copy of the consultant's file from the department as provided by ~~an impaired licensee may obtain such information from the department under~~ s. 456.073.

(18)(a) The consultant may contract with a school or

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417 ================= T I T L E A M E N D M E N T ================
418 And the title is amended as follows:
419 Delete line 26
420 and insert:
421 practitioners; making technical changes; requiring the
422 department to refer

600816

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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	.	
	.	

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

Senate Amendment

Delete lines 475 - 491
and insert:
~~consultant. The~~ consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring

600816

contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a consultant discloses information to the department in accordance with this part, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or ~~disciplinary proceeding is pending, an impaired licensee may obtain such information from~~ the department under s. 456.073.

493956

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 546 and 547
insert:

Section 4. Subsections (2) and (3) of section 456.0635, Florida Statutes, are amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a

493956

candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;


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(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was enrolled on or before July 1, 2009, in an educational or training program that was recognized by a board or, if there is no board, recognized by the department and who applied for licensure, certification, or registration after July 1, 2012.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a pretrial diversion or drug

493956

court program that allows the withdrawal of the plea for that felony upon successful completion of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application. However, if the applicant was arrested or charged with such felony before July 1, 2009, he or she is not excluded from licensure renewal under this paragraph.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of

493956

the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

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

And the title is amended as follows:

Delete line 47

and insert:

changes made by the act; amending s. 456.0635, F.S.; providing that a specified board or the department is not required, under certain circumstances, to refuse to admit a candidate to an examination, to issue a license, certificate, or registration to an applicant, and to renew a license, certificate, or registration of an applicant if the candidate or applicant has successfully completed a pretrial diversion program; providing applicability; amending ss. 456.072,

427868

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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	.	
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The Committee on Health Policy (Young) recommended the following:

Senate Substitute for Amendment (493956) (with title amendment)

Between lines 546 and 547
insert:

Section 4. Subsections (2) and (3) of section 456.0635, Florida Statutes, are amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

427868

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such

conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was enrolled on or before July 1, 2009, in an educational or training program that was recognized by a board or, if there was no board, recognized by the department, and was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony

offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a pretrial diversion or drug court program that allows the withdrawal of the plea for that felony upon successful completion of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application. However, if the applicant was arrested or charged with such felony before July 1, 2009, he or she is not excluded from licensure renewal under this paragraph.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing


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with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

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

And the title is amended as follows:

Delete line 47

and insert:

changes made by the act; amending s. 456.0635, F.S.; providing that, under certain circumstances, a board or, if there is no board, the department, is not required to refuse to admit certain candidates to an examination, to issue a license, certificate, or registration to certain applicants, or to renew a license, certificate, or registration of certain applicants if they have successfully completed a pretrial diversion program; providing applicability; amending ss. 456.072,

By Senator Young

18-00542-17 2017876__

A bill to be entitled

An act relating to programs for impaired health care practitioners; amending s. 456.076, F.S.; revising provisions related to impaired practitioner programs; providing definitions; deleting a requirement that the Department of Health designate approved programs by rule; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department in intervention, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program; authorizing, instead of requiring, the department to retain one or more consultants to operate its impaired practitioner program; requiring the department to establish the terms and conditions of the program by contract; providing contract terms; requiring consultants to establish the terms of monitoring impaired practitioners; authorizing consultants to consider the recommendations of certain persons in establishing the terms of monitoring; authorizing consultants to modify monitoring terms to protect the health, safety, and welfare of the public; requiring consultants to assist the department and licensure boards on matters relating to impaired practitioners; requiring the department to refer practitioners to consultants under certain circumstances; authorizing consultants to withhold certain information about self-reporting participants from the department under certain circumstances to encourage self-reporting; requiring consultants to disclose all information relating to practitioners who

18-00542-17 2017876__

are terminated from the program for material noncompliance; providing that all information obtained by a consultant retains its confidential or exempt status; providing that consultants, and certain agents of consultants, may not be held liable financially or have a cause of action for damages brought against them for disclosing certain information or for any other act or omission relating to the program; authorizing consultants to contract with a school or program to provide services to certain students; amending s. 401.411, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 455.227, F.S.; conforming provisions to changes made by the act; amending ss. 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, and 464.018, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 464.204, F.S.; conforming provisions to changes made by the act; amending ss. 465.016, 466.028, 467.203, 468.217, and 468.3101, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 474.221, F.S.; conforming provisions to changes made by the act; amending s. 483.825, F.S.; providing that certain persons may be reported to a consultant rather than the department under certain circumstances; providing

an effective date.

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

Section 1. Section 456.076, Florida Statutes, is amended to read:

456.076 Impaired practitioner programs ~~Treatment programs for impaired practitioners~~.—

(1) As used in this section, the term:

(a) "Consultant" means the individual or entity who operates an approved impaired practitioner program pursuant to a contract with the department and who is retained by the department as provided in subsection (2).

(b) "Evaluator" means a state-licensed or nationally certified individual who has been approved by a consultant or the department, who has completed an evaluator training program established by the consultant, and who is therefore authorized to evaluate practitioners as part of an impaired practitioner program.

(c) "Impaired practitioner" means a practitioner with an impairment.

(d) "Impaired practitioner program" means a program established by the department by contract with one or more consultants to serve impaired and potentially impaired practitioners for the protection of the health, safety, and welfare of the public.

(e) "Impairment" means a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both or a mental or physical condition that could

affect a practitioner's ability to practice with skill and safety.

(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

(g) "Material noncompliance" means an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.

(h) "Participant" means a practitioner who is participating in the impaired practitioner program by having entered into a participant contract. A practitioner ceases to be a participant when the participant contract is successfully completed or is terminated for any reason.

(i) "Participant contract" means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner program, including the participant's monitoring plan.

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapters 457 through 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an applicant under the same laws.

(k) "Referral" means a practitioner who has been referred to a consultant for impaired practitioner program services, either as a self-referral or otherwise, but who is not under a

participant contract.

(l) "Treatment program" means a department- or consultant-approved residential, intensive outpatient, partial hospitalization, or other program through which an impaired practitioner is treated based on the impaired practitioner's diagnosis and the treatment plan approved by the consultant.

(m) "Treatment provider" means a department- or consultant-approved state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the practitioner's individual diagnosis and a treatment plan approved by the consultant ~~For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program~~.

(2)~~(a)~~ The department may ~~shall~~ retain one or more ~~impaired practitioner~~ consultants to operate its impaired practitioner program. Each consultant ~~who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who~~ must be:

(a)~~1.~~ A practitioner ~~or recovered practitioner~~ licensed under chapter 458, chapter 459, or part I of chapter 464; or

(b)~~2.~~ An entity that employs:

1.~~a.~~ A medical director who is ~~must be a practitioner or recovered practitioner~~ licensed under chapter 458 or chapter 459; or

2.~~b.~~ An executive director who is ~~must be a registered nurse or a recovered registered nurse~~ licensed under part I of chapter 464.

(3) The terms and conditions of the impaired practitioner program must be established by the department by contract with each consultant for the protection of the health, safety, and welfare of the public and must provide, at a minimum, for each consultant to accept referrals of practitioners who have or are suspected of having an impairment, arrange for the evaluation and treatment of such practitioners as recommended by the consultant, and monitor the recovery progress and status of impaired practitioners to ensure that such practitioners are able to practice the profession in which they are licensed with skill and safety until such time as the consultant or department concludes that monitoring by the consultant is no longer required for the protection of the public or the practitioner's participation in the program is terminated for material noncompliance or inability to progress.

(4) The department shall specify, in its contract with each consultant, the types of licenses, registrations, or certifications of the practitioners to be served by that consultant.

(5) A consultant shall establish the terms of monitoring of

an impaired practitioner and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public.

(6) A consultant may not evaluate, treat, or otherwise provide direct patient care to practitioners in the operation of the impaired practitioner program.

(7) ~~(b)~~ A ~~An entity retained as an impaired practitioner~~ consultant ~~under this section which employs a medical director or an executive director~~ is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(8) ~~(c)1.~~ Each ~~The~~ consultant shall assist the department and licensure boards on matters of impaired practitioners, including the determination of ~~probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine~~ whether a practitioner is, in fact, impaired, as specified in the consultant's contract with the department.

~~2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the~~

~~student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.~~

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.~~

(9) ~~(3)~~ Before certifying or declining to certify an application for licensure to the department, each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine~~, before certifying or declining to certify an application for licensure to the department,~~ that an applicant for licensure under its jurisdiction may have an impairment ~~be~~

~~impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety~~. Upon such determination, the chair or other designee may refer the applicant to the consultant to facilitate ~~for~~ an evaluation before the board certifies or declines to certify his or her application to the department. If the applicant agrees to be evaluated ~~by the consultant~~, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation ~~by the consultant~~ is communicated to the board by the consultant. If the applicant declines to be evaluated ~~by the consultant~~, the board shall certify or decline to certify the applicant's application to the department notwithstanding the lack of an evaluation and recommendation by the consultant.

(10)~~(4)~~(a) When ~~Whenever~~ the department receives a ~~written or oral~~ legally sufficient complaint alleging that a practitioner has an impairment ~~licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety,~~ and no complaint exists against the practitioner ~~licensee~~ other than impairment ~~exists~~, the department shall refer the practitioner to the consultant, along with all information in the department's possession relating to the impairment. The impairment does ~~reporting of such information shall~~ not constitute grounds for discipline pursuant

to s. 456.072 or ~~the corresponding grounds for discipline within~~ the applicable practice act if ~~the probable cause panel of the appropriate board, or the department when there is no board, finds~~:

1. The practitioner ~~licensee~~ has acknowledged the impairment ~~problem~~.

2. The practitioner becomes a participant ~~licensee has voluntarily enrolled~~ in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant ~~appropriate, approved treatment program~~.

3. The practitioner ~~licensee~~ has voluntarily withdrawn from practice or has limited the scope of his or her practice if ~~as~~ required by the consultant~~, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program~~.

4. The practitioner ~~licensee~~ has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant ~~executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program~~.

5. The practitioner has authorized the consultant, in the

event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) To encourage practitioners who are or may be impaired to voluntarily self-report to a consultant, the consultant may not provide information to the department relating to a self-reporting participant if there is no pending department investigation, complaint, or disciplinary action against the participant and if the participant is in compliance with the terms of the impaired practitioner program and any participant contract, unless authorized by the participant ~~If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case~~.

~~(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.~~

~~(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information~~

~~in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.~~

~~(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).~~

~~(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

(11) ~~(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner ~~licensee~~ establishes the violation for which the practitioner ~~licensee~~ is being prosecuted was due to or connected with impairment and further establishes the practitioner ~~licensee~~ is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(12) ~~(6)~~ (a) Upon request by the consultant, and with the

authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall~~, upon request,~~ disclose to the consultant all information in its possession regarding a referral or participant ~~the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7)~~. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.

(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason, the consultant shall disclose all information in the consultant's possession relating to the practitioner to the department ~~If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department~~. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that impairment affects a practitioner's ~~licensee's~~ practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant shall immediately communicate such ~~that~~ conclusion ~~shall be communicated~~ to the department and

disclose all information in the consultant's possession relating to the practitioner to the department ~~State Surgeon General~~.

(13) All confidential or exempt information obtained by the consultant pursuant to this section retains its confidential or exempt status when held by the consultant.

(14)~~(7)~~ An action for damages may not be brought against a consultant, or a director, an officer, an employee, or an agent of a consultant, and such person may not be held liable financially for making a disclosure pursuant to this section or for the consequences of such disclosure, or for any other action or omission or the consequences of such action or omission relating to the impaired practitioner program, including, without limitation, action by the department against a license, registration, or certification ~~licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences~~.

(15) The provisions of s. 766.101 apply to any consultant, or a director, an officer, an employee, or an agent of a consultant, in regard to providing information relating to a participant to a medical review committee if the participant authorized such disclosure ~~officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section~~.

~~(8)(a) A consultant retained pursuant to subsection (2), a consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as~~

~~described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department if the contract complies with the requirements of this section. The contract must require that:~~

~~1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.~~

~~2. The consultant establish a quality assurance program to monitor services delivered under the contract.~~

~~3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.~~

~~4. The consultant's quality assurance program be subject to review and approval by the department.~~

~~5. The consultant operate under policies and procedures approved by the department.~~

~~6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.~~

~~7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.~~

~~8. All performance measures and standards be subject to verification and approval by the department.~~

~~9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.~~

(16) ~~(b)~~ In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or

proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, ~~or~~ employees, and agents brought as the result of any action or omission relating to the impaired practitioner program ~~or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department~~.

(17) ~~(c)~~ If a ~~the~~ consultant retained by the department pursuant to this section ~~subsection (2)~~ is also retained by another ~~any other~~ state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that agency~~, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this~~

~~section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant~~.

(18)~~(9)~~ A ~~An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The~~ consultant may disclose to a referral or participant documents, records, or other information from the consultant's file on the referral or participant ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only~~ to the extent that it is necessary to do so to carry out the consultant's duties under the impaired practitioner program and this section, or as otherwise required by law. ~~The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a disciplinary proceeding is pending, a referral or participant may obtain a complete copy of the consultant's file from the department as provided by ~~an impaired licensee may obtain such information from the department under~~ s. 456.073.

(19)(a) The consultant may contract with a school or program to provide impaired practitioner program services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student has or is

suspected of having an impairment. The department is not responsible for paying for the care provided by approved treatment providers or approved treatment programs or for the services provided by a consultant to a student.

(b) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter, or a veterinarian under chapter 474, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

Section 2. Paragraph (l) of subsection (1) of section 401.411, Florida Statutes, is amended to read:

401.411 Disciplinary action; penalties.—

(1) The department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder, or other person operating under this part for any of the following grounds:

(l) The failure to report to the department any person known to be in violation of this part. However, a professional known to be operating under this part without reasonable skill and without regard for the safety of the public by reason of illness, drunkenness, or the use of drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 3. Paragraph (u) of subsection (1) of section 455.227, Florida Statutes, is amended to read:

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(u) Termination from an impaired practitioner program ~~a treatment program for impaired practitioners~~ as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

Section 4. Paragraphs (i) and (hh) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation

of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

(hh) Being terminated from an impaired practitioner program that ~~a treatment program for impaired practitioners, which~~ is overseen by a ~~an impaired practitioner~~ consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

Section 5. Paragraph (f) of subsection (1) of section 457.109, Florida Statutes, is amended to read:

457.109 Disciplinary actions; grounds; action by the board.—

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

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as

described in s. 456.076 rather than to the department.

Section 6. Paragraph (e) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

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

(e) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider approved pursuant to s. 456.076 shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 7. Paragraph (e) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

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

(e) Failing to report to the department or the department's impaired professional consultant any person who the licensee or certificateholder knows is in violation of this chapter or of

the rules of the department or the board. However, a person who the licensee knows is unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider, approved pursuant to s. 456.076, shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 8. Paragraph (g) of subsection (1) of section 460.413, Florida Statutes, is amended to read:

460.413 Grounds for disciplinary action; action by board or department.—

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

(g) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice chiropractic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 9. Paragraph (f) of subsection (1) of section 461.013, Florida Statutes, is amended to read:

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

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

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 10. Paragraph (f) of subsection (1) of section 462.14, Florida Statutes, is amended to read:

462.14 Grounds for disciplinary action; action by the department.—

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

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice naturopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 11. Paragraph (l) of subsection (1) of section 463.016, Florida Statutes, is amended to read:

463.016 Grounds for disciplinary action; action by the board.—

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

(l) Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board. However, a person who the licensee knows is unable to practice optometry with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 12. Paragraph (k) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

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

(k) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board. However, a person who the licensee knows is unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department~~; however,~~

~~if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant~~.

Section 13. Paragraph (c) of subsection (2) of section 464.204, Florida Statutes, is amended to read:

464.204 Denial, suspension, or revocation of certification; disciplinary actions.—

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(c) Imposition of probation or restriction of certification, including conditions such as corrective actions as retraining or compliance with the department's impaired practitioner program operated by a consultant as described in s. 456.076 ~~an approved treatment program for impaired practitioners~~.

Section 14. Paragraph (o) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.—

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

(o) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the pharmacist knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the pharmacist also provides services. However, a

person who the licensee knows is unable to practice medicine or osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 15. Paragraph (f) of subsection (1) of section 466.028, Florida Statutes, is amended to read:

466.028 Grounds for disciplinary action; action by the board.—

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

(f) Failing to report to the department any person who the licensee knows, or has reason to believe, is clearly in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows, or has reason to believe, is clearly unable to practice her or his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 16. Paragraph (h) of subsection (1) of section 467.203, Florida Statutes, is amended to read:

467.203 Disciplinary actions; penalties.—

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

(h) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice midwifery with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 17. Paragraph (f) of subsection (1) of section 468.217, Florida Statutes, is amended to read:

468.217 Denial of or refusal to renew license; suspension and revocation of license and other disciplinary measures.—

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

(f) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or of the board. However, a person who the licensee knows is unable to practice occupational therapy with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 18. Paragraph (n) of subsection (1) of section 468.3101, Florida Statutes, is amended to read:

468.3101 Disciplinary grounds and actions.—

(1) The department may make or require to be made any

investigations, inspections, evaluations, and tests, and require the submission of any documents and statements, which it considers necessary to determine whether a violation of this part has occurred. The following acts shall be grounds for disciplinary action as set forth in this section:

(n) Being terminated from an impaired practitioner program operated by a consultant as described in s. 456.076 for failure to comply, without good cause, with the terms of monitoring or a participant contract entered into by the licensee, or for not successfully completing a drug treatment or alcohol treatment program ~~Failing to comply with the recommendations of the department's impaired practitioner program for treatment, evaluation, or monitoring. A letter from the director of the impaired practitioner program that the certificateholder is not in compliance shall be considered conclusive proof under this part~~.

Section 19. Section 474.221, Florida Statutes, is amended to read:

474.221 Impaired practitioner provisions; applicability.—Notwithstanding the transfer of the Division of Medical Quality Assurance to the Department of Health or any other provision of law to the contrary, veterinarians licensed under this chapter shall be governed by the ~~treatment of~~ impaired practitioner program provisions of s. 456.076 as if they were under the jurisdiction of the Division of Medical Quality Assurance, except that for veterinarians the Department of Business and Professional Regulation shall, at its option, exercise any of the powers granted to the Department of Health by that section, and "board" shall mean board as defined in this chapter.

Section 20. Paragraph (o) of subsection (1) of section 483.825, Florida Statutes, is amended to read:

483.825 Grounds for disciplinary action.—

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

(o) Failing to report to the department a person or other licensee who the licensee knows is in violation of this chapter or the rules of the department or board adopted hereunder. However, a person or other licensee who the licensee knows is unable to perform or report on clinical laboratory examinations with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 21. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-2017
Meeting Date

SB 876
Bill Number (if applicable)

Topic IMPAIRED PRACTITIONERS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

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TALLAHASSEE FL 32301
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL 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.

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)

3/14/17
Meeting Date

876
Bill Number (if applicable)

Topic Programs for Impaired HealthCare Practitioners

Amendment Barcode (if applicable)

Name Eric Prutsman

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

Representing Florida Fire Chiefs 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.

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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)

3/14/17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Practitioners

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Intervention Project for Nurses

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)

3-14-17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Practitioners

Amendment Barcode (if applicable)

Name Dr. Martha Brown

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Professionals Resource Network

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

3/14/17
Meeting Date

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

876
Bill Number (if applicable)

Topic Impaired Practitioners Program

Amendment Barcode (if applicable)

Name Alisa LaPolt

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Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurses 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.

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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)

3/14/17
Meeting Date

SB 876
Bill Number (if applicable)

Topic Programs for Impaired Health Care Practitioners
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.

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)

3/14/17
Meeting Date

SB 876
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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Job Title _____

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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

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 888
INTRODUCER:	Senator Bean
SUBJECT:	Prescription Drug Price Transparency
DATE:	March 13, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.			AHS	
3.			AP	

I. Summary:

SB 888 requires the Agency for Health Care Administration (AHCA) to list on its website retail drug prices, by pharmacy, for a 30-day supply of the 300 most frequently prescribed medications. Currently, the AHCA lists 150 medications, although current statute only requires 100 medications. The bill requires the AHCA to update the prices monthly.

II. Present Situation:

Currently, s. 408.062, F.S., requires that the AHCA collect quarterly a statistically valid sample of data on the retail prices charged by pharmacies for the 100 most frequently prescribed medicines from any pharmacy licensed by this state as a special study authorized by the Legislature to be performed by the agency quarterly. If the drug is available generically, price data must be reported for both the generic drug and brand-named drug for which the generic drug is the equivalent. The AHCA is required to make available on its Internet website for each pharmacy, drug prices for a 30-day supply at a standard dose.

AHCA's website implementing s. 408.062, F.S., is MyFloridaRx.[1] The AHCA established the webpage in 2005 in collaboration with the Attorney General's Office. Currently, the AHCA collects and provides retail pricing information[2] for the 150 most commonly prescribed medications and the website is updated on a monthly basis. The source of the data is the usual and customary price[3] as reported to the AHCA on Medicaid fee for service pharmacy claims and Medicaid HMO encounters. Visitors to the website can search for pricing information by county, city, or name of the medication they need. The search output displays pharmacy name, address,

[1] See http://www.myfloridarx.com/

[2] Prices that reflect what an uninsured consumer would pay.

[3] Usual and customary price in this context means the average charge to all other customers during the same calendar quarter for the same drug, quantity, and strength.

and telephone number; pharmacy zip code; drug name and strength; most commonly dispensed quantity; and price.[4]

III. Effect of Proposed Changes:

SB 888 enhances price transparency for consumers of prescription medications by increasing the number of commonly prescribed medications for which the retail price is disclosed on the Internet to help consumers shop for the lowest price in their area for their prescription drugs.

The bill amends s. 408.062, F.S., to require the AHCA to list on its website retail drug prices, by pharmacy, for a 30-day supply of the 300 most frequently prescribed medications and to update the prices monthly. Currently, the AHCA lists 150 medications and updates the prices monthly, although current statute only requires 100 medications and quarterly updating. The bill also deletes reference to this disclosure as a special study.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[4] Agency for Health Care Administration, *Senate Bill 888 Analysis* (Feb. 3, 2017) (on file with the Senate Committee on Health Policy Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 408.062 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

4-01279-17 2017888__

A bill to be entitled

An act relating to prescription drug price transparency; amending s. 408.062, F.S.; requiring the Agency for Health Care Administration to collect data on the retail prices charged by pharmacies for the 300 most frequently prescribed medicines; requiring the agency to update its website monthly; providing an effective date.

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

Section 1. Paragraph (h) of subsection (1) of section 408.062, Florida Statutes, is amended to read:

408.062 Research, analyses, studies, and reports.—

(1) The agency shall conduct research, analyses, and studies relating to health care costs and access to and quality of health care services as access and quality are affected by changes in health care costs. Such research, analyses, and studies shall include, but not be limited to:

(h) The collection of a statistically valid sample of data on the retail prices charged by pharmacies for the 300 ~~100~~ most frequently prescribed medicines from any pharmacy licensed by this state ~~as a special study authorized by the Legislature to be performed by the agency quarterly~~. If the drug is available generically, price data shall be reported for the generic drug and price data of a brand-named drug for which the generic drug is the equivalent shall be reported. The agency shall make available on its Internet website for each pharmacy~~, no later than October 1, 2006,~~ drug prices for a 30-day supply at a

4-01279-17 2017888__

standard dose. The data collected shall be reported for each drug by pharmacy and by metropolitan statistical area or region and updated monthly ~~quarterly~~.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 23, 2017

I respectfully request that **Senate Bill # 888**, relating to Prescription Drug Price Transparency, 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)

3/14/17
Meeting Date

888
Bill Number (if applicable)

Topic Prescription Drug Price Transparency

Amendment Barcode (if applicable)

Name Chris Chaney

Job Title Lobbyist

Address 204 South Monroe St.
Street

Phone 222-8900

Tallahassee, FL 32301
City *State* *Zip*

Email cc@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of 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)

3-14-17
Meeting Date

SB 888
Bill Number (if applicable)

Topic Prescription Drug Price Transparency

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 West College Ave, Suite 304 Phone 850-228-6387
Street

Tall FL 32301 Email dobarker@aarp.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

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 1050
INTRODUCER:	Senator Simmons
SUBJECT:	Memory Disorder Clinics
DATE:	March 8, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.			AHS	
3.			AP	

I. Summary:

SB 1050 establishes a memory disorder clinic at Florida Hospital in Orange County. The bill also republishes s. 430.502, F.S., and s. 1004.445(3), F.S., to incorporate the amendment to s. 430.502, F.S.

The bill is effective July 1, 2017.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a degenerative brain disease and the most common cause of dementia.[1] It accounts for 60 to 80 percent of dementia cases.[2] An estimated 5.5 million Americans are living with the disease in 2017, including 1 in 10 people aged 65 and older. For Florida, the number is estimated to be 520,000 for 2017 and it is projected to grow to 720,00 by 2025, a growth rate of 38.5 percent.[3]

Dementia is a syndrome of the disease and is actually a group of symptoms that has a number of causes that include difficulties with memory, language, problem-solving, and other cognitive skills that affect a person's ability to perform everyday activities.[4] In Alzheimer's patients, these difficulties occur because of brain abnormalities. The nerve cells or neurons that are involved with cognitive brain function have been damaged or destroyed causing a loss of connection

[1] Alzheimer's Association, *2017 Alzheimer's Disease Facts and Figures,* http://www.alz.org/documents_custom/2017-facts-and-figures.pdf, p. 5, (last visited Mar. 8, 2017).
[2] Alzheimer's Association, *About Alzheimer's and Dementia,* http://www.alz.org/research/science/alzheimers_research.asp (last visited Mar. 9, 2017).
[3] *Id.* at 21.
[4] *Id.* at 5.

among brain cells.[5] Eventually, those with Alzheimer's disease become bed bound and require around the clock care. The disease is fatal and there is currently no cure.

The brains of individuals with Alzheimer's show inflammation, dramatic shrinkage from cell loss, and widespread debris from dead and dying neurons.[6] Other changes associated with Alzheimer's and other dementias include:

- Memory loss that disrupts daily life;
- Challenges in planning or solving problems;
- Difficulty completing familiar tasks;
- Confusion with time or place;
- Trouble understanding visual images and spatial relationships;
- New problems with words in speaking or writing;
- Misplacing things and losing the ability to retrace steps;
- Decreased or poor judgement;
- Withdrawal from work or social activities; or
- Change in mood and personality.[7]

For those living with Alzheimer's, management of the disease can lead to an improved quality of life. Active management of the disease may include:

- Appropriate use of available treatment options;
- Effective management of coexisting conditions;
- Coordination of care among physicians, other health care providers and lay caregivers;
- Participation in activities that are meaningful and bring purpose to one's life; and
- Have opportunities to connect with others living with dementia; support groups and supportive services.[8]

Florida Alzheimer's Disease Initiatives

Florida's Alzheimer's Disease Initiative (ADI) was created by the 1985 Legislature to meet the changing needs of individuals with Alzheimer's and similar memory disorders and their families. The Florida Department of Elder Affairs (department) coordinates and develops policy in conjunction with a 10-member advisory committee appointed by the Governor for the initiative. The program includes four components:

- Supportive services which include counseling, consumable medical supplies, and respite caregiver relief;
- Memory Disorder Clinics that provide diagnosis, research, treatment, education, and referrals;
- Model day care programs to test new care alternatives; and
- A brain bank to support research.[9]

[5] *Id.*
[6] *Id.*
[7] *Id.* at 9.
[8] *Id.* at 14.
[9] Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, http://elderaffairs.state.fl.us/doea/alz.php (last visited Mar. 9, 2017).

The ADI includes in-home, facility-based (usually at adult day care centers), emergency, and extended care (up to 30 days) for caregivers who serve patients with memory disorders.[10] During FY 2014-2015, 2,652 individuals received respite and support services, including case management, specialized medical equipment, services, and supplies, and caregiver counseling, support groups, and training.[11]

The 2016-2017 General Appropriations Act includes $22,139,517 in General Revenue Funds for the ADI, of which $1,559,200 has been earmarked for Alzheimer respite services to serve individuals on the statewide wait list and other smaller, nonrecurring amounts for local projects.[12] General Revenue funds are allocated to each of the Area Agencies on Aging to fund providers of model day care and respite care programs based on each county's population age 75 and older and probable number of Alzheimer's cases. Additional Alzheimer disease services are administered through contracts with designated Memory Disorder Clinics and the Florida Brain Bank. Remaining funds are allocated to special projects based on legislative proviso language in the General Appropriations Act.[13]

Participants in the ADI program are assessed co-payments and other partial payment amounts based on their ability pay and in accordance with Rule 58C-1.007, F.A.C. The co-pay schedule is set on a sliding scale, not to exceed 3 percent of an individual's monthly income in 2016.[14] Provider agencies are responsible for the collection of fees for ADI services and report their collections annually to the department.[15]

Respite for Caregiver Relief

Respite care programs for caregivers are established in all 67 of Florida's counties.[16] Many Alzheimer's patients require around the clock care, especially in the late stages of the disease. Caregivers may also receive supportive services such as training and support groups, counseling, consumable medical supplies, and nutritional supplements.

Memory Disorder Clinics

There are 15 state funded Memory Disorder Clinics in the state of Florida that provide comprehensive assessments, diagnostic services, and treatment to individuals who show signs of Alzheimer's disease and related memory disorders. The Memory Disorder Clinics are also required to conduct specific research in coordination with the department. The clinics are established at medical schools, teaching hospitals, and public and private, not-for-profit

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[10] Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, http://elderaffairs.state.fl.us/doea/alz.php , (last visited Mar. 9, 2017).
[11] *Id.*
[12] Chapter 2016-66, line 410, Laws of Fla. (General Appropriations Act, effective July 1, 2017).
[13] Dep't of Elder Affairs, *2016 Summary of Programs and Services - Section D*, p. 94, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited Mar. 9, 2017).
[14] Dep't of Elder Affairs, *Department of Elder Affairs Programs and Services Handbook, Appendix B - Co-Payment for Service Guidelines (ADI and CCE Programs), Attachment 2: 2016 Co-Pay Schedule for Individual*, http://elderaffairs.state.fl.us/doea/notices/July16/2016_Appendix_B_Co-Payment_for_Service_Guidelines.pdf, (last visited Mar. 9, 2017).
[15] *Id.* at B-34.
[16] *Id.*

hospitals.[17] From July 1, 2015 through June 30, 2016, the Memory Disorder Clinics completed 9,810 medical memory evaluations, saw 4,745 new patients, with 16,569 office visits made by patients and their caregivers.[18] Over 7,000 family caregivers also received educational training from the clinics on how to care for a loved one with dementia during this same time period.[19] For the 2015-2016 state fiscal year, the clinics used $3,463,683 in state funding to serve almost 7,000 unduplicated clients.[20]

The law currently provides that memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics. As of June 30, 1995, the following clinics were included in the statute:
A memory disorder at each of the three medical schools in the state;
A memory disorder clinic at a major non-profit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching hospitals;

- A memory disorder clinic at the Mayo clinic in Jacksonville;
- A memory disorder clinic at the West Florida Regional Medical Center;
- The Central Florida Memory Disorder Clinic at the Joint Center for Advanced Therapeutics and Biomedical Research at the Florida Institute of Technology and Holmes Regional Medical Center, Inc.; and
- A memory disorder clinic located at a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000.[21]

Florida Hospital in Central Florida opened a self-funded memory disorder program in 2012. The Florida Hospital Maturing Minds Clinic serves patients with Alzheimer's disease and related disorders in Orange, Seminole, and Osceola counties. It is estimated that 30,000 people with Alzheimer's disease live in these three counties.[22] The clinic conducts over 360 new patient memory loss evaluations each year and provides services and referrals to other local organizations.[23] The clinic does not plan to request state funding at this time, but will seek national and local grants and the state designation will assist the clinic in that process, according to local representatives.[24]

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[17] *Id*. The 15 Memory Disorder Clinics are: West Florida Hospital, Tallahassee Memorial Hospital, Mayo Clinic Jacksonville, University of Florida, Orlando Health Center for Aging, East Central Florida, Madonna Ptak Center for Memory Disorders at Morton Plant Mease, University of South Florida, St. Mary's Medical Center, Florida Atlantic University Louis and Anne Green Memory and Wellness Center, Sarasota Memorial Hospital, Lee Memorial Health System, Broward Health North, The Wien Center for Alzheimer's Disease and Memory Disorders Mt. Sinai Medical Center, and University of Miami Memory Disorders Center, Center on Aging Mental Health Hospital Center.
[18] Dep't of Elder Affairs, *2015-2016 Year End Summary - Alzheimer Disease Initiative,* p. 3, http://elderaffairs.state.fl.us/doea/alz/MDC_Year_End_Summary_2015-2016.pdf (last visited: Mar. 9, 2017).
[19] *Id*.
[20] Dep't of Elder Affairs, *2016 Summary of Programs and Services - Section D, Memory Disorder Clinics Appropriation History and Numbers Served,* p. 97, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited: Mar. 9, 2017).
[21] Chapter Law 1995-253, s. 1, Laws of Fla.
[22] Fla. Hospital, *Memory Disorder Clinics Handout - Support HB 883/SB 1050* (on file with the Senate Committee on Health Policy).
[23] Fla. Hospital, *Memory Disorder Clinics Handout - Support HB 883/SB 1050* (on file with the Senate Committee on Health Policy).
[24] Conversation with Jean Van Smith, Florida Hospital Representative (March 9, 2017).

Model Day Care

Model day care programs provide a safe environment where Alzheimer's patients can meet and socialize during the day as well as receive therapeutic interventions which improve their cognitive functioning. Model day care programs have been established in Gainesville, Tampa, and Miami.[25]

Florida Brain Bank

The Florida Brain Bank was created in 1987, is administered by Mount Sinai Medical Center, and facilitated by an additional four regional centers. The Florida Brain Bank conducts research related to Alzheimer's disease and other degenerative disorders of the brain. Participants elect to "bank" their brain making the patient's brain tissue available to researchers upon the patient's death.[26] Upon the patient's death, a final pathology report would also be made available to the patient's family and physicians. Currently, the only way to get an accurate diagnosis of Alzheimer's disease or related dementia disorders is a brain autopsy at the time of death.[27] The Brain Bank's 2015-2016 State General Revenue appropriation was $117,535 and the bank registered 87 individuals and conducted 79 autopsies during that fiscal year.[28]

The Alzheimer's Disease Advisory Committee is statutorily created under s. 430.501(2), F.S., and includes 10 members appointed by the Governor. The members advise the department on legislative, programmatic, and administrative matters that relate to individuals with Alzheimer's disease and their caregivers. Members serve 4-year, staggered terms and select one of its own members to serve as chair of the committee for a 1 year term.[29]

III. Effect of Proposed Changes:

Section 1 republishes and amends s. 430.502, F.S., relating to the establishment of the Alzheimer Disease Initiative program's memory disorder clinics and adds a memory disorder clinic at Florida Hospital in Orange County. The memory disorder clinics conduct research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders.

Current statute provides that any memory disorder clinic funded as of June 30, 1995 shall not receive decreased funding due solely to the subsequent additions of memory disorder clinics. The addition of Florida Hospital in Orange County makes 16 total memory disorder clinics created under the statute, of which at least seven have been added since June 30, 2015.

Section 2 reenacts s. 1004.445, F.S., relating to the Johnnie S. Byrd, Sr., Alzheimer Center and Research Institute, for the purpose of incorporating the amendment made to the underlying act, s. 430.502, F.S.

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[25] Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, http://elderaffairs.state.fl.us/doea/alz.php (last visited Mar. 9, 2017).
[26] Dep't of Elder Affairs, *The Florida Brain Bank*, http://elderaffairs.state.fl.us/doea/BrainBank/howto.php (last visited Mar. 9, 2017).
[27] *Id.*
[28] Department of Elder Affairs, *2016 Summary of Programs and Services - Section D, Brain Bank Appropriation History and Client Served*, p. 98, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited Mar. 9, 2017)
[29] Dep't of Elder Affairs, *Alzheimer's Disease Advisory Committee,* http://elderaffairs.state.fl.us/doea/advisory_alz.php (last visited Mar. 9, 2017).

Section 3 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The costs of the Memory Disorder Clinic at Florida Hospital in Orange County have been and will be self-funded through Florida Hospital. The hospital is looking at competing for several local, state, and national grants which would bring in additional funds and resources to the state for Alzheimer's research. Receiving a designation as a state Memory Disorder Clinic may help the hospital in its efforts to receive those grant and research dollars.

C. Government Sector Impact:

There is no current fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 430.502 and 1004.445.

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 Simmons

9-00495-17 20171050__

A bill to be entitled

An act relating to memory disorder clinics; amending s. 430.502, F.S.; establishing a memory disorder clinic at Florida Hospital in Orange County; reenacting s. 1004.445(3), F.S., relating to providing assistance to memory disorder clinics, to incorporate the amendment made to s. 430.502, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 430.502, Florida Statutes, is amended, and subsection (2) is republished, to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(1) There is established:

(a) A memory disorder clinic at each of the three medical schools in this state;

(b) A memory disorder clinic at a major private nonprofit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching hospitals;

(c) A memory disorder clinic at the Mayo Clinic in Jacksonville;

(d) A memory disorder clinic at the West Florida Regional Medical Center;

(e) A memory disorder clinic operated by Health First in Brevard County;

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(f) A memory disorder clinic at the Orlando Regional Healthcare System, Inc.;

(g) A memory disorder center located in a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000 persons;

(h) A memory disorder clinic at St. Mary's Medical Center in Palm Beach County;

(i) A memory disorder clinic at Tallahassee Memorial Healthcare;

(j) A memory disorder clinic at Lee Memorial Hospital created by chapter 63-1552, Laws of Florida, as amended;

(k) A memory disorder clinic at Sarasota Memorial Hospital in Sarasota County;

(l) A memory disorder clinic at Morton Plant Hospital, Clearwater, in Pinellas County; ~~and~~

(m) A memory disorder clinic at Florida Atlantic University, Boca Raton, in Palm Beach County; and

(n) A memory disorder clinic at Florida Hospital in Orange County,

for the purpose of conducting research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders. However, memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics in this subsection.

(2) It is the intent of the Legislature that research conducted by a memory disorder clinic and supported by state

funds pursuant to subsection (1) be applied research, be service-related, and be selected in conjunction with the department. Such research may address, but is not limited to, diagnostic technique, therapeutic interventions, and supportive services for persons suffering from Alzheimer's disease and related memory disorders and their caregivers. A memory disorder clinic shall conduct such research in accordance with a research plan developed by the clinic which establishes research objectives that are in accordance with this legislative intent. A memory disorder clinic shall also complete and submit to the department a report of the findings, conclusions, and recommendations of completed research. This subsection does not apply to those memory disorder clinics at the three medical schools in the state or at the major private nonprofit research-oriented teaching hospital or other affiliated teaching hospital.

Section 2. For the purpose of incorporating the amendment made by this act to section 430.502, Florida Statutes, in a reference thereto, subsection (3) of section 1004.445, Florida Statutes, is reenacted to read:

1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.—

(3) BUDGET.—The institute's budget shall include the moneys appropriated in the General Appropriations Act, donated, or otherwise provided to the institute from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities at the institute. Any appropriation to the institute shall be expended for the purposes specified in this section, including conducting

and supporting research and related clinical services, awarding institutional grants and investigator-initiated research grants to other persons within the state through a peer-reviewed competitive process, developing and operating integrated data projects, providing assistance to the memory disorder clinics established in s. 430.502, and providing for the operation of the institute.

Section 3. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill 1050**, relating to Memory Disorder Clinics, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

3/14/17
Meeting Date

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

1050
Bill Number (if applicable)

Topic SB1050 - Memory Disorder Clinics

Amendment Barcode (if applicable)

Name Dr. Rosemary Laird

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Email rosemary.laird.md@flhosp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital

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 1130
INTRODUCER:	Health Policy Committee and Senator Bean
SUBJECT:	Pregnancy Support Services
DATE:	March 14, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1130 creates s. 381.96, F.S., codifying the existing Pregnancy Support Services Program (program) which has been funded by the state since the 2005-2006 state fiscal year. The non-profit corporation provides pregnancy support and wellness support services, such as direct client services, program awareness activities, and communication activities, through a state-wide alliance of community organizations. The bill directs the department to specify contract deliverables with the program, including financial reports, staffing requirements, and timeframes for achieving obligations. The program is to contract only with providers that exclusively promote and support childbirth.

The bill has no fiscal impact as the services are being delivered today through the General Appropriations Act.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Florida's Birth Rate

For 2015, over 214,000 women aged 15 to 50 in Florida had a birth in the past 12 months.[1] Unlike the national trend which shows an upward tick in the birth rate, Florida's birth rate has been on a slow downward movement for several years.[2] Of Florida's total births, 42 percent of all births are to unwed mothers with 86 percent of the fathers acknowledged on the birth certificate.[3] The state covers 44 percent of all births in Florida through Medicaid making it one of the largest payors of prenatal and pregnancy services in the state.[4]

The state's infant mortality rate decreased to 6.0 infant deaths per 1,000 live births in 2014, the lowest rate in Florida's history. The department conducted an annual analysis through 2015 of expected infant mortality rates and low birth rates by county based on unique demographics of the area. Variables that were identified included the mother's race, marital status, and educational attainment.[5] Higher fluctuations in expected versus actual rates were seen in the smaller, rural counties compared to the larger, urban counties across the multi-year time period.

The Florida Pregnancy Care Network

The Florida Pregnancy Care Network (network) is a private, sec. 501(c)(3)[6] non-profit organization that provides financial and other support to pregnant women and their families through an alliance of pregnancy support organizations. The network includes 74 resource organizations throughout the state that provide counseling, referral, material support, training, and education to pregnant mothers as they prepare to parent or place their babies for adoption.[7]

Florida Pregnancy Support Services Program

The network administers the Florida Pregnancy Support Services Program (program) through a contract with the Florida Department of Health (department). The program has received state funding since the 1995-1996 state fiscal year, including $4 million in General Revenue Funds for the 2016-2017 state fiscal year.[8]

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[1] United States Census Bureau, *American Fact Finder - Selected Characteristics in the United States, 2011-2015 American Community Survey 5-Year Estimates*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_DP02&src=pt (last visited Mar. 10, 2017).
[2] *Id.*
[3] Department of Health, *FL Health Charts, Pregnancy and Young Child Profile*, http://www.flhealthcharts.com/charts/MICProfile.aspx?county=1&profileyear=2015&tn=30, (last visited: Mar. 10, 2017).
[4] *Id.* The time period measured is 2013-2015.
[5] Daniel Thompson and Cheryl Clark, Department of Health, Division of Community Health Promotion, Bureau of Family Health Services, *Infant Mortality and Low Birth Weight Actual Rates Compared to Expected Rates by County for Florida 2014*, http://www.floridahealth.gov/diseases-and-conditions/infant-mortality-and-adverse-birth-outcomes/_documents/expected-rates-by-county-2014.pdf (last visited Mar. 10, 2017).
[6] Section 501(c)(3) of the Internal Revenue Code. Organizations described in this section are commonly referred to as charitable organizations.
[7] Florida Pregnancy Care Network, *Introduction*, http://myfpcn.com/,(last visited Mar. 10, 2017).
[8] Chapter 2016-66, line 464, Laws of Fla.

Proviso language in the General Appropriations Act (GAA) permits the funds to be used for wellness services, including but not limited to, high blood pressure screening, flu vaccines, anemia testing, thyroid screening, cholesterol, diabetes screening, assistance with smoking cessation, and tetanus vaccines.[9] The GAA also requires that at least 85 percent of the funds appropriated be used for direct client services such as life skills, program awareness, and communications.[10] For the 2015-2016 state fiscal year, the program spent a total of 91 percent of the appropriation, of which 85 percent was spent on direct client services.[11] The department is directed to specifically contract with the program to provide these services as the current contract provider and to provide the contractual oversight. The department is authorized by the GAA to spend no more than $50,000 for agency program oversight activities. Similar proviso language has been present in the GAA since 2009.

Financial reimbursement through this contract is made to local pregnancy resource organizations for services to pregnant women and their families by the program.[12] While many participating organizations may be faith-based, they are not permitted to share religious information and contracting entities must ensure that they will strictly adhere to this regulation.[13]

The program also provides a state-wide toll free number[14] that is available 24/7 via phone or text message, a helpline via email,[15] and a website that can also connect women and their families to available resources.[16] All services are available to women and their families free of charge and can continue for up to 12 months after the birth of the child.

Pregnant women and their families may use the program to prepare for pregnancy, childbirth, and parenting. The program offers free counseling and classes that cover these topics as well as nutrition and infant care. Participants may also earn items such as maternity and baby clothing, diapers, formula and baby food, baby bath items, cribs and infant carriers by participating in on-site classes and training.[17] For state fiscal year 2015-2016, the program served 24,184 clients and has served 16,448 clients through January 2017 of the 2016-2017 state fiscal year.[18]

Background Screenings for Qualified Entities

Under s. 943.0542, F.S., certain business and organizations which provide care or care placement services or licenses or certifies to provide care or care placement services may have access to criminal history information from the Florida Department of Law Enforcement (FDLE) after

[9] *Id.*
[10] *Id.*
[11] E-Mail from Bryan Wendel, Florida Department of Health, (Mar. 13, 2017) (on file with the Senate Committee on Health Policy).
[12] Florida Pregnancy Care Network, *Florida Pregnancy Support Services Program,* http://myfpcn.com/about.html (last visited Mar. 10, 2017).
[13] *Id.*
[14] The toll-free number is 1-866-673-4673 or participants can text the word choice to 313131.
[15] The helpline via email is floridapregnancy@optionline.org.
[16] Florida Pregnancy Support Services, *I Might Be Pregnant* http://www.floridapregnancysupportservices.com/i-might-be-pregnant/ (last visited Mar. 10, 2017).
[17] Florida Pregnancy Support Services, *I Am Pregnant and Considering Terminating My Pregnancy,* http://www.floridapregnancysupportservices.com/i-am-pregnant-and-need-help/ (last visited Mar. 10, 2017).
[18] *Supra,* n. 11.

registering with the FDLE and payment of any fees. The qualified entity must submit fingerprints to the FDLE with its request for screening and maintain a signed waiver allowing the release of the state and national criminal history record to the qualified entity. The amount of the fee is set by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

The national criminal history data is available to qualified entities to use only for the purpose of screening employees and volunteers or persons applying to be employees or volunteers. The FDLE will provide the information directly to the qualified entity, as permitted by the written waiver. Whether or not the individual is fit to be an employee or volunteer around children or the elderly is for the qualified entity to determine; the FDLE will not make that determination. The qualified entity must notify the screened individual of his or her right to obtain a copy of the screening report, as well as any criminal records.

III. Effect of Proposed Changes:

Section 1 creates s. 381.96, F.S., which codifies the Pregnancy Support Services Program, a program that has been funded through the General Appropriations Act since the 2005-2006 state fiscal year. The bill implements most of the provisions from the current year's and previous years' provisos with a few exceptions and additions as noted below:

- A specific directive to spend at least 90 percent of the contract funds on pregnancy support and wellness services rather than 85 percent of appropriated funds on direct client services, including life skills, program awareness, and communications.
- A specific requirement for background screening under s. 943.0542, F.S., for all paid staff and volunteers of a subcontractor if those individuals provide direct client services to a client who is a minor or an elderly person who has a disability.

The bill also directs the department to specify the contract deliverables with the program, including requirements to:

- Establish the financial deliverables and delivery dates, the timeframes for achieving the contractual obligations, and any other requirements deemed necessary by the department, such as staffing and location requirements;
- Monitor subcontractors annually and to specify the sanctions that shall be imposed for noncompliance with the terms of a subcontract;
- Establish and manage the subcontracts with a sufficient number of networks to ensure availability of pregnancy support and wellness services and to maintain delivery of those services throughout the contract term;
- Offer wellness services or vouchers or other appropriate payment arrangements that allow for the purchase of services from providers;
- Subcontract only with providers that exclusively promote and support childbirth; and
- Ensure that information materials provided to eligible clients is accurate and current and cites a reference source of medical statement included in such materials.

The bill also provides several definitions for the program.

The "department" is defined as the Department of Health.

"Eligible client" is defined as a pregnant woman or a woman who suspects she is pregnant, and the family of such woman, who voluntarily seeks pregnancy support services. The woman and her family is eligible for such services for no more than 12 months after the birth of her child.

"Florida Pregnancy Care Network, Inc." or "network" is defined as the not-for-profit statewide alliance of pregnancy support organizations that provide pregnancy support services through a comprehensive system of care to women and their families.

"Pregnancy support services" means services that promote and encourage childbirth, including but not limited to: 1) Direct client services, such as pregnancy testing, counseling, referral, training, and education for pregnant women and their families; 2)Program awareness activities, including a promotional campaign to educate the public about the pregnancy support services offered by the network and a website that provides information on the location of providers in the user's area, as well as other available community resources; and 3) Communication activities, including the operation and maintenance of a hotline or call center with a single statewide toll-free number which is available 24 hours a day for an eligible client to obtain the location and contact information for a pregnancy center located in his or her area.

"Wellness services" means services or activities intended to maintain and improve health or prevent illness and injury, including, but not limited to, high blood pressure screening, flu vaccines, anemia testing, thyroid screening, cholesterol screening, diabetes screening, assistance with smoking cessation, and tetanus vaccines.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The program currently funds 74 resource organizations in the community. With codification of the program, the program may obtain a higher level of stability and this may impact the financial standing of the existing community programs.

Either the individual resource organizations or the program will be paying the costs of the criminal background checks at the cost of $36.00 per employee or $28.75 per volunteer.[19] The current contract between the program and the department requires the program's subcontractors to follow these same screening requirements.[20] The contract places this responsibility on the individual subcontractors.

C. Government Sector Impact:

The department is responsible for the contractual oversight of the state's funding of the program. In this year's proviso language, the department has received a maximum of $50,000 to administer the contract. The bill does not place a maximum or minimum funding amount for the department's administrative oversight functions.

The FDLE will be processing additional background checks for the program employees and volunteers. It is not known at this time how many employees or volunteers would be processed under this new requirement. The background check will cost $36.00 for employees and $28.75 for volunteers.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.96 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.)

CS by Health Policy Committee on March 13, 2017:
The CS corrects a technical issue as the bill contemplated the inclusion of both pregnancy

[19] Florida Department of Law Enforcement, *Criminal History Record Check Fee Schedule* (October 1, 2016) https://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx, p. 8, (last visited Mar. 10, 2017)
[20] State of Florida, Department of Health and Florida Pregnancy Care Network, Inc. (Contract #COHD2), (Feb. 2, 2017) (on file with the Senate Committee on Health Policy).
[21] *Supra* note 19.

support services and wellness services. For consistency, the CS added "wellness services," as appropriate to address the deficiency.

B. Amendments:

None.

 249662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
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	.	

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

Senate Amendment

Delete lines 32 - 57
and insert:
organizations that provide pregnancy support services and wellness services through a comprehensive system of care to women and their families.

(d) "Pregnancy support services" means services that promote and encourage childbirth, including, but not limited to:

1. Direct client services, such as pregnancy testing, counseling, referral, training, and education for pregnant women

249662

and their families.

2. Program awareness activities, including a promotional campaign to educate the public about the pregnancy support services offered by the network and a website that provides information on the location of providers in the user's area, as well as other available community resources.

3. Communication activities, including the operation and maintenance of a hotline or call center with a single statewide toll-free number which is available 24 hours a day for an eligible client to obtain the location and contact information for a pregnancy center located in his or her area.

(e) "Wellness services" means services or activities intended to maintain and improve health or prevent illness and injury, including, but not limited to, high blood pressure screening, flu vaccinations, anemia testing, thyroid screening, cholesterol screening, diabetes screening, assistance with smoking cessation, and tetanus vaccinations.

(2) DEPARTMENT DUTIES.—The department shall contract with the network for the management and delivery of pregnancy support services and wellness services to eligible clients.

By Senator Bean

4-01250A-17 20171130__

A bill to be entitled

An act relating to the pregnancy support services; creating s. 381.96, F.S.; providing definitions; requiring the Department of Health to contract with a not-for-profit statewide alliance of organizations to provide pregnancy support services through subcontractors; providing duties of the department; providing contract requirements; requiring the contractor to spend a specified percentage of funds on direct client services; requiring the contractor to annually monitor subcontractors; providing for subcontractor background screenings under certain circumstances; specifying the entities eligible for a subcontract; requiring services to be provided in a noncoercive manner and forbidding the inclusion of religious content; providing an effective date.

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

Section 1. Section 381.96, Florida Statutes, is created to read:

381.96 Pregnancy support services.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Health.

(b) "Eligible client" means a pregnant woman or a woman who suspects she is pregnant, and the family of such woman, who voluntarily seeks pregnancy support services. The woman and her family shall continue to be eligible clients for no more than 12 months after the birth of the child.

4-01250A-17 20171130__

(c) "Florida Pregnancy Care Network, Inc.," or "network" means the not-for-profit statewide alliance of pregnancy support organizations that provide pregnancy support services through a comprehensive system of care to women and their families.

(d) "Pregnancy support services" means services that promote and encourage childbirth, including, but not limited to:

1. Direct client services, such as pregnancy testing, counseling, referral, training, and education for pregnant women and their families.

2. Program awareness activities, including a promotional campaign to educate the public about the pregnancy support services offered by the network and a website that provides information on the location of providers in the user's area, as well as other available community resources.

3. Communication activities, including the operation and maintenance of a hotline or call center with a single statewide toll-free number which is available 24 hours a day for an eligible client to obtain the location and contact information for a pregnancy center located in his or her area.

(e) "Wellness services" means services or activities intended to maintain and improve health or prevent illness and injury, including, but not limited to, high blood pressure screening, flu vaccines, anemia testing, thyroid screening, cholesterol screening, diabetes screening, assistance with smoking cessation, and tetanus vaccines.

(2) DEPARTMENT DUTIES.—The department shall contract with the network for the management and delivery of pregnancy support services to eligible clients.

(3) CONTRACT REQUIREMENTS.—The department contract shall

specify the contract deliverables, including financial reports and other reports due to the department, timeframes for achieving contractual obligations, and any other requirements the department determines are necessary, such as staffing and location requirements. The contract shall require the network to:

(a) Establish, implement, and monitor a comprehensive system of care through subcontractors to meet the pregnancy support and wellness needs of eligible clients.

(b) Establish and manage subcontracts with a sufficient number of providers to ensure the availability of pregnancy support and wellness services for eligible clients, and maintain and manage the delivery of such services throughout the contract period.

(c) Spend at least 90 percent of the contract funds on pregnancy support and wellness services.

(d) Offer wellness services through vouchers or other appropriate arrangements that allow the purchase of services from qualified health care providers.

(e) Require a background screening under s. 943.0542 for all paid staff and volunteers of a subcontractor if such staff or volunteers provide direct client services to an eligible client who is a minor or an elderly person or who has a disability.

(f) Annually monitor its subcontractors and specify the sanctions that shall be imposed for noncompliance with the terms of a subcontract.

(g) Subcontract only with providers that exclusively promote and support childbirth.

(h) Ensure that informational materials provided to an eligible client by a provider are current and accurate and cite the reference source of any medical statement included in such materials.

(4) SERVICES.—Services provided pursuant to this section must be provided in a noncoercive manner and may not include any religious content.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Dana D. Young, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 7, 2017

I respectfully request that **Senate Bill # 1130**, relating to Pregnancy Support Services, 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)

3/4/17
Meeting Date

1130
Bill Number (if applicable)

Topic Pregnancy Support Centers

Amendment Barcode (if applicable)

Name Missy Wesolowski

Job Title Director of Public Policy

Address 2121 West Pensacola St Suite B-2
Street

Phone 561-291-9236

Tallahassee FL 32304
City *State* *Zip*

Email Missy@ppsenfl.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Alliance of Planned Parenthood Affiliates

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)

March 14, 2017
Meeting Date

SB 1130
Bill Number (if applicable)

Topic Pregnancy Support Services

Amendment Barcode (if applicable)

Name Erica Daniell

Job Title Political Commentator

Address 6091 Lake Front Dr
Street

Phone 918-772-0104

Ft. Myers FL 33908
City *State* *Zip*

Email erica.s.daniell@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Democratic Women's Club of Lee County

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)

3-14-17
Meeting Date

1130
Bill Number (if applicable)

Topic Pregnancy Support Services

Amendment Barcode (if applicable)

Name Barbara J DeVane

Job Title MS

Address 625 E Brevard St
Street

Tall FL 32308
City *State* *Zip*

Phone 251-4380

Email barbaradevane@fpcnet

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)

3-14-17
Meeting Date

SB 1130
Bill Number (if applicable)

Topic PREGNANCY SUPPORT SERVICES

Amendment Barcode (if applicable)

Name MICHAEL MCQUONE (MICK-CUE-ONE)

Job Title ASSOCIATE DIRECTOR FOR HEALTH

Address 201 W PARK AVE
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-284-9130

Email mmcquone@flaccb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

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)

3/14/17
Meeting Date

SB 1130
Bill Number (if applicable)

Topic Pregnancy Support Services

Amendment Barcode (if applicable)

Name Kate McDonald

Job Title Health Services Coordinator

Address 210 Dr. J A Wiltshire Ave E
Street

Lake Wales, FL 33853
City *State* *Zip*

Phone 8036355246

Email Kate.LWCC@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lake Wales Care Center and Pregnancy and Family Resource Alliance

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)

3/14/17
Meeting Date

SB 1130
Bill Number (if applicable)

Topic Pregnancy Support Services

Amendment Barcode (if applicable)

Name Rebecca Klein

Job Title Executive Director

Address 716 Lake Eloise Pl.
Street

Winter Haven, FL 33884
City *State* *Zip*

Phone 8632684245

Email joerebk@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)

3/14/17
Meeting Date

Bill Number (if applicable)

Topic Florida Pregnancy Care Network

Amendment Barcode (if applicable)

Name Cheryl Bennett

Job Title Executive Director

Address 7084 Mariner Blvd.
Street

Phone 352-544-0911

Spring Hill, FL 34601
City *State* *Zip*

Email cbennett@purhope.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing A New Generation

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)

3.13.17
Meeting Date

1103
Bill Number (if applicable)

Topic PREGNANCY SUPPORT SERVICES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644 *Street*

Phone 813-264-8977

City TAMPA State FL Zip 33694

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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)

3.13.17
Meeting Date

1130
Bill Number (if applicable)

Topic PREGNANCY SUPPORT CENTERS

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title DIRECTOR of OPERATIONS AND POLICY

Address 4853 S. ORANGE AVE
Street

ORLANDO FL 32806
City *State* *Zip*

Phone 407-418-0250

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY ACTION

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)

3.14.17
Meeting Date

Bill Number (if applicable)

Topic Pregnancy Support Services

Amendment Barcode (if applicable)

Name Denisse Macias

Job Title

Address 1402 ~~Plant City~~ Plantation
Street

Phone

~~Plant City~~ FL 33606
City *State* *Zip*

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

APPEARANCE RECORD

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

3/14/17
Meeting Date

1130
Bill Number (if applicable)

Topic Pregnancy Support SVS

Amendment Barcode (if applicable)

Name Catherine Price

Job Title RN, MPH

Address 813 Campbell Ave
Street

Lake Wales, FL 33853
City *State* *Zip*

Phone (863) 676-2199

Email catprice2190@verizon

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self - Florida Dem. Women's Club

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)

3/14/17
Meeting Date

SB 1130
Bill Number (if applicable)

Topic Pregnancy Care

Amendment Barcode (if applicable)

Name Patricia DeWitt

Job Title AAUW

Address 2207 Ivylgate Dr
Street

Jacksonville
City *State* *Zip*

Phone 706-766-5068

Email aauwfldewitt@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing AAUW of 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

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 222
INTRODUCER:	Health Policy Committee and Senators Steube and Brandes
SUBJECT:	The Length of Time a Patient May Stay at an Ambulatory Surgical Center
DATE:	March 14, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 222 amends s. 395.002, F.S., to allow patients in an ambulatory surgical center (ASC) to stay in the center for up to 24 hours. Current law requires that patients in an ASC be discharged on the same working day and restricts patients from staying overnight in an ASC.

II. Present Situation:

Ambulatory Surgical Centers

An ASC is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.[1]

[1] Section 395.002(3), F.S, defines "Ambulatory surgical center" to mean a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003, F.S.

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 432 licensed ASCs in Florida.[2]

Between July 2015 and June 2016, there were 3,046,297 visits to ASCs in Florida.[3] Hospital outpatient facilities accounted for 1,419,020 (46.5 percent) visits and free standing ASCs accounted for 1,627,277 (53.5 percent) visits. Freestanding ASC average charges range from $3,034 to $7,902 and hospital based ASC average charges range from $8,669 to $28,624 for the same time period.[4] Two of the most popular procedures to have performed at an ASC include cataract procedures with 264,530 performed and colonoscopies with 232,667 performed, also during the same time period.[5]

ASC Licensure

ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals.[6] Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including the:

- Affidavit of compliance with fictitious name;
- Registration of articles of incorporation; and
- ASC's zoning certificate or proof of compliance with zoning requirements.[7]

Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including the:

- Governing body bylaws, rules, and regulations;
- Roster of registered nurses and licensed practical nurses with current license numbers;
- Fire plan; and
- Comprehensive Emergency Management Plan.[8]

Rules for ASCs

Pursuant to s. 395.1055, F.S., the AHCA is authorized to adopt rules for hospitals and ASCs. Separate standards may be provided for general and specialty hospitals, ASCs, mobile surgical facilities, and statutory rural hospitals, but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

- 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;

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[2] Agency for Health Care Administration, *Senate Bill 222 Analysis* (Jan. 4, 2017) (on file with the Senate Committee on Health Policy).
[3] Agency for Health Care Administration, *Florida Health Finder*, http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx (last viewed Mar. 8, 2017).
[4] Id.
[5] Id.
[6] Sections 395.001-395.1065, F.S., and part II, ch. 408, F.S.
[7] Fla. Admin. R. 59A-5.003(4).
[8] Fla. Admin. R. 59A-5.003(5).

- 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.

Rule 59A-5 of the Florida Administrative Code, implements the minimum standards for ASCs. Those rules also require policies and procedures to ensure the protection of patient rights.

Staff and Personnel Rules

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, laboratory services, and radiologic services. In providing these services, ACSs are required to have certain professional staff available, including:

- A qualified person responsible for the daily functioning and maintenance of the surgical suite;
- An anesthesiologist, physician, a certified registered nurse anesthetist under the on-site medical direction of a licensed physician, or an anesthesiologist assistant under the direct supervision of an anesthesiologist who must be in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged;
- A registered professional nurse who is responsible for coordinating and supervising all nursing services;
- A registered professional circulating nurse for a patient during that patient's surgical procedure; and
- A registered professional nurse who must be in the recovery area at all times when a patient is present.[9]

Infection Control Rules

ASCs are required to establish an infection control program involving members of the medical, nursing, and administrative staff. The program must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every 2 years by the infection control program members. The infection control program must include:

- Surveillance, prevention, and control of infection among patients and personnel;
- A system for identifying, reporting, evaluating and maintaining records of infections;
- Ongoing review and evaluation of aseptic, isolation and sanitation techniques employed by the ASC; and
- Development and coordination of training programs in infection control for all personnel.[10]

Emergency Management Plan Rules

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency. The ASC must review the plan and update it annually.[11]

[9] Fla. Admin. Code R. 59A-5.0085
[10] Fla. Admin. Code R. 59A-5.011
[11] Fla. Admin. Code R. 59A-5.018.

Accreditation

ASCs may seek voluntary accreditation by the Joint Commission or the AAAHC. The AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. The AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. The AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.[12]

The AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.[13]

Medicare Requirements

ASCs are required to have an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. CMS defines "ASC" as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.[14]

The CMS may deem an ASC to be in compliance with all of the conditions for coverage if the ASC is accredited by a national accrediting body, or licensed by a state agency, and CMS determines that such accreditation or licensure provides reasonable assurance that the conditions for coverage are met.[15] All of the CMS conditions for coverage requirements are specifically required in Rule 59A-5, F.A.C., and apply to all ASCs in Florida. The conditions for coverage require ASCs to have a:

- Governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation;
- Quality assessment and performance improvement program;
- Transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- Disaster preparedness plan;
- Organized medical staff;
- Fire control plan;
- Sanitary environment;
- Infection control program; and
- Procedure for patient admission, assessment and discharge.

[12] Fla. Admin. Code R. 59A-5.004.
[13] Id.
[14] 42 C.F.R. s. 416.2.
[15] 42 C.F.R. s. 416.26(a)(1).

Effect of Proposed Changes:

CS/SB 222 amends the definition of "ambulatory surgical center" in s. 395.002, F.S., to allow a patient to be admitted and discharged from an ASC within 24 hours. This comports with the federal CMS definition of an ASC.[16] Current law requires that patients be discharged from an ASC within the same working day and restricts patients from staying at an ASC overnight.

The bill establishes an effective date of July 1, 2017.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 222 may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

[16] See supra note 14.

VII. Statutes Affected:

This bill substantially amends section 395.002 of the Florida Statutes.

VIII. Additional Information:

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

CS by Health Policy on March 14, 2017:
The CS eliminates all provisions in the bill except a change to the definition of "ambulatory surgical center" to allow patients to recover in an ASC for up to 24 hours before being discharged.

B. Amendments:

None.

752562

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted

752562

to and discharged from such facility within 24 hours ~~the same working day and is not permitted to stay overnight,~~ and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

Section 2. This act shall take effect July 1, 2017.

========== 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 ambulatory surgical centers; amending s. 395.002, F.S.; revising the term "ambulatory surgical center"; providing an effective date.

863130

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (752562) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to

863130

provide elective surgical care, in which the patient is admitted to and discharged from such facility within 24 hours ~~the same working day and is not permitted to stay overnight~~, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

Section 2. This act shall take effect July 1, 2017.

========== 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 the length of time a patient may stay at an ambulatory surgical center or mobile surgical center; amending s. 395.002, F.S.; revising the definition of ambulatory surgical center and mobile surgical facility; providing an effective date.

By Senator Steube

23-00396-17 2017222__

A bill to be entitled

An act relating to recovery care services; amending s. 395.001, F.S.; providing legislative intent regarding recovery care centers; amending s. 395.002, F.S.; revising and defining terms; amending s. 395.003, F.S.; including recovery care centers as facilities licensed under ch. 395, F.S.; creating s. 395.0171, F.S.; providing admission criteria for a recovery care center; requiring emergency care, transfer, and discharge protocols; authorizing the Agency for Health Care Administration to adopt rules; amending s. 395.1055, F.S.; authorizing the agency to establish separate standards for the care and treatment of patients in recovery care centers; providing for rulemaking that includes establishing certain minimum standards for recovery care centers; amending s. 395.10973, F.S.; directing the agency to enforce special-occupancy provisions of the Florida Building Code applicable to recovery care centers; amending s. 408.802, F.S.; providing applicability of the Health Care Licensing Procedures Act to recovery care centers; amending s. 408.820, F.S.; exempting recovery care centers from specified minimum licensure requirements; amending ss. 385.211, 394.4787, 409.975, and 627.64194, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 395.001, Florida Statutes, is amended to read:

395.001 Legislative intent.—It is the intent of the

23-00396-17 2017222__

Legislature to provide for the protection of public health and safety in the establishment, construction, maintenance, and operation of hospitals, ambulatory surgical centers, recovery care centers, and mobile surgical facilities by providing for licensure of same and for the development, establishment, and enforcement of minimum standards with respect thereto.

Section 2. Subsections (3), (16), and (23) of section 395.002, Florida Statutes, are amended, present subsections (25) through (33) are renumbered as subsections (27) through (35), respectively, and new subsections (25) and (26) are added to that section, to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within 24 hours ~~the same working day and is not permitted to stay overnight,~~ and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical

facility.

(16) "Licensed facility" means a hospital, ambulatory surgical center, recovery care center, or mobile surgical facility licensed in accordance with this chapter.

(23) "Premises" means those buildings, beds, and equipment located at the address of the licensed facility and all other buildings, beds, and equipment for the provision of hospital, ambulatory surgical, recovery, or mobile surgical care located in such reasonable proximity to the address of the licensed facility as to appear to the public to be under the dominion and control of the licensee. For any licensee that is a teaching hospital as defined in s. 408.07(45), reasonable proximity includes any buildings, beds, services, programs, and equipment under the dominion and control of the licensee that are located at a site with a main address that is within 1 mile of the main address of the licensed facility; and all such buildings, beds, and equipment may, at the request of a licensee or applicant, be included on the facility license as a single premises.

(25) "Recovery care center" means a facility the primary purpose of which is to provide recovery care services, to which a patient is admitted and then discharged within 72 hours, and which is not part of a hospital.

(26) "Recovery care services" means postsurgical and postdiagnostic medical and general nursing care provided to patients for whom acute care hospitalization is not required and an uncomplicated recovery is reasonably expected. The term includes postsurgical rehabilitation services. The term does not include intensive care, coronary care, or critical care services.

Section 3. Subsection (1) of section 395.003, Florida Statutes, is amended to read:

395.003 Licensure; denial, suspension, and revocation.—

(1)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 395.001-395.1065 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 395.001-395.1065. A license issued by the agency is required in order to operate a hospital, ambulatory surgical center, recovery care center, or mobile surgical facility in this state.

(b)1. It is unlawful for a person to use or advertise to the public, in any way or by any medium whatsoever, any facility as a "hospital," "ambulatory surgical center," "recovery care center," or "mobile surgical facility" unless such facility has first secured a license under ~~the provisions of~~ this part.

2. This part does not apply to veterinary hospitals or to commercial business establishments using the word "hospital," "ambulatory surgical center," "recovery care center," or "mobile surgical facility" as a part of a trade name if no treatment of human beings is performed on the premises of such establishments.

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

Section 4. Section 395.0171, Florida Statutes, is created to read:

395.0171 Recovery care center admissions; emergency care and transfer protocols; discharge planning and protocols.—

(1) Admissions to a recovery care center are restricted to patients who need recovery care services.

(2) Each patient must be certified by his or her attending or referring physician or by a physician on staff at the recovery care center as medically stable and not in need of acute care hospitalization before admission.

(3) A patient may be admitted for recovery care services upon discharge from a hospital or an ambulatory surgical center. A patient may also be admitted postdiagnosis or posttreatment for recovery care services.

(4) A recovery care center must have emergency care and transfer protocols, including transportation arrangements, and referral or admission agreements with at least one hospital.

(5) A recovery care center must have procedures for discharge planning and discharge protocols.

(6) The agency may adopt rules to implement this section.

Section 5. Subsections (2) and (8) of section 395.1055, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

395.1055 Rules and enforcement.—

(2) Separate standards may be provided for general and specialty hospitals, ambulatory surgical centers, recovery care centers, mobile surgical facilities, and statutory rural hospitals as defined in s. 395.602.

(8) The agency may not adopt any rule governing the design, construction, erection, alteration, modification, repair, or demolition of any public or private hospital, intermediate residential treatment facility, recovery care center, or ambulatory surgical center. It is the intent of the Legislature

to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. However, the agency shall provide technical assistance to the commission and the State Fire Marshal in updating the construction standards of the Florida Building Code and the Florida Fire Prevention Code which govern hospitals, intermediate residential treatment facilities, recovery care centers, and ambulatory surgical centers.

(10) The agency shall adopt rules for recovery care centers which include fair and reasonable minimum standards for ensuring that recovery care centers have:

(a) A dietetic department, service, or other similarly titled unit, either on the premises or under contract, which shall be organized, directed, and staffed to ensure the provision of appropriate nutritional care and quality food service.

(b) Procedures to ensure the proper administration of medications. Such procedures must address the prescribing, ordering, preparing, and dispensing of medications and appropriate monitoring of the effects of the medications on the patient.

(c) A pharmacy, pharmaceutical department, or pharmaceutical service, or similarly titled unit, on the premises or under contract.

Section 6. Subsection (8) of section 395.10973, Florida Statutes, is amended to read:

395.10973 Powers and duties of the agency.—It is the function of the agency to:

(8) Enforce the special-occupancy provisions of the Florida Building Code which apply to hospitals, intermediate residential treatment facilities, recovery care centers, and ambulatory surgical centers in conducting any inspection authorized by this chapter and part II of chapter 408.

Section 7. Subsection (30) is added to section 408.802, Florida Statutes, to read:

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

(30) Recovery care centers, as provided under part I of chapter 395.

Section 8. Subsection (29) is added to section 408.820, Florida Statutes, to read:

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

(29) Recovery care centers, as provided under part I of chapter 395, are exempt from s. 408.810(7)-(10).

Section 9. Subsection (2) of section 385.211, Florida Statutes, is amended to read:

385.211 Refractory and intractable epilepsy treatment and research at recognized medical centers.—

(2) Notwithstanding chapter 893, medical centers recognized pursuant to s. 381.925, or an academic medical research institution legally affiliated with a licensed children's specialty hospital as defined in s. 395.002(30) ~~395.002(28)~~ that

contracts with the Department of Health, may conduct research on cannabidiol and low-THC cannabis. This research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of cannabidiol and low-THC cannabis for the treatment for refractory or intractable epilepsy. The authority for recognized medical centers to conduct this research is derived from 21 C.F.R. parts 312 and 316. Current state or privately obtained research funds may be used to support the activities described in this section.

Section 10. Subsection (7) of section 394.4787, Florida Statutes, is amended to read:

394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and 394.4789.—As used in this section and ss. 394.4786, 394.4788, and 394.4789:

(7) "Specialty psychiatric hospital" means a hospital licensed by the agency pursuant to s. 395.002(30) ~~395.002(28)~~ and part II of chapter 408 as a specialty psychiatric hospital.

Section 11. Paragraph (b) of subsection (1) of section 409.975, Florida Statutes, is amended to read:

409.975 Managed care plan accountability.—In addition to the requirements of s. 409.967, plans and providers participating in the managed medical assistance program shall comply with the requirements of this section.

(1) PROVIDER NETWORKS.—Managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c). Except as provided in this section, managed care plans may limit the providers in their networks based on

credentials, quality indicators, and price.

(b) Certain providers are statewide resources and essential providers for all managed care plans in all regions. All managed care plans must include these essential providers in their networks. Statewide essential providers include:

1. Faculty plans of Florida medical schools.

2. Regional perinatal intensive care centers as defined in s. 383.16(2).

3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(30) ~~395.002(28)~~.

4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children's hospitals shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

Section 12. Paragraphs (b) and (e) of subsection (1) of section 627.64194, Florida Statutes, are amended to read:

627.64194 Coverage requirements for services provided by nonparticipating providers; payment collection limitations.—

(1) As used in this section, the term:

(b) "Facility" means a licensed facility as defined in s. 395.002(16) and an urgent care center as defined in s. 395.002(32) ~~395.002(30)~~.

(e) "Nonparticipating provider" means a provider who is not a preferred provider as defined in s. 627.6471 or a provider who is not an exclusive provider as defined in s. 627.6472. For purposes of covered emergency services under this section, a facility licensed under chapter 395 or an urgent care center defined in s. 395.002(32) ~~395.002(30)~~ is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.

Section 13. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

January 24, 2017

The Honorable Dana Young
Florida Senate
316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Young,

I am writing this letter because my bill, SB 222 Recovery Care Services, has been referred to the Senate Health Policy Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
❒ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17
Meeting Date

SB 222
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Recovery Care Services

Name David Ashburn

Job Title Outside General Counsel - Florida Hospital Association

Address 101 E. College Avenue
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-6891

Email ashburnd@gtlaw.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Hospital 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)

3/14/17
Meeting Date

222
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

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Street

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 Society of Plastic Surgeons

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)

SB 222

Meeting Date

Bill Number (if applicable)

Topic Recovery Care Services

Amendment Barcode (if applicable)

Name Dr Paul Bruning

Job Title Chief Operating officer

Address 3334 Capital Med Blvd
Street

Phone 850 877 8174

TLH FL 32308
City *State* *Zip*

Email paul.bruning@TLHoc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Med. Assoc. & FL Orthopedic Assoc

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)

03/14/17
Meeting Date

SB 222
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic AMBULATORY SURGICAL CENTERS

Name DAVID SHAPIRO, M.D.

Job Title PHYSICIAN

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Phone 8505086787

Email dshapiromd@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FSASC FLORIDA SOCIETY OF AMBULATORY SURGERY CENTERS

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)

3/14/17
Meeting Date

~~SB~~ 722
Bill Number (if applicable)

Topic 24 Hour - ASC

Amendment Barcode (if applicable)

Name Michael Madewell

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Email mymadewell@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Panama City Surgery Center

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)

3/14/17
Meeting Date

222
Bill Number (if applicable)

Topic Recovery Care Centers

Amendment Barcode (if applicable)

Name Steve Ecenia

Job Title attorney

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Email steve@reuphlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing HCA

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)

3/14
Meeting Date

SB 222
Bill Number (if applicable)

Topic Re

Amendment Barcode (if applicable)

Name Phillis Oaters

Job Title V.P. Govt Relations Baptist Health South Florida

Address _____ Phone _____
Street

Coral Gables, FL
City *State* *Zip*

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Baptist Health South Florida

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)

3/14/17
Meeting Date

SB 222
Bill Number (if applicable)

Topic Ambulatory Surgery Centers

Amendment Barcode (if applicable)

Name David Christian

Job Title Director - Gov't Relations

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Adventist Health System

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)

SB 222

Meeting Date

Bill Number (if applicable)

Topic SB AM Valet Law Corr

Amendment Barcode (if applicable)

Name David McGaha, MD

Job Title

Address 1955 1st Ave W

Street

Phone 8222500

St Pete

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida chapter - Assoc of American Physicians Surgeons

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

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 102
INTRODUCER:	Senator Steube
SUBJECT:	Payment of Health Care Claims
DATE:	March 13, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Lloyd	Stovall	HP	**Favorable**
3.			RC	

I. Summary:

SB 102 prohibits health insurers and health maintenance organizations (HMOs) from retroactively denying a claim, if at any time, the insurer or HMO verified the eligibility of an insured or subscriber at the time of treatment and provided an authorization number. Currently, a health insurer or HMO may retroactively deny a claim because of an insured's ineligibility up to 1 year after the payment of the claim. Under existing law, the patient is responsible for those claims, which potentially exposes the physician to financial risk if the patient does not pay the claims.

II. Present Situation:

Denial of Claims

According to the American Medical Association (AMA), health care providers lose a significant amount of administrative time and revenue due to denied claims. In 2013, the AMA estimated that more than $43 billion in savings could have been realized since 2010 if commercial insurers had consistently paid claims correctly.[1]

Coverage for medical services can be denied before or after the service has been provided, through denial of preauthorization requests, through denial of claims for payment, or a retroactive denial of payment. As a condition for coverage of some services, providers or insureds are required to request authorization prior to providing or receiving the service. The full claim or certain lines of the claim may be denied, such as a surgery with charges for multiple procedures and supplies.

[1] Amednews.com, *Claims Analysis Shows Doctors the Way to Fight Insurer Denials* (July 15, 2013) (on file with the Senate Committee on Banking and Insurance).

There are many possible reasons for claim denials. Claims may be denied due to an incorrect diagnosis code, incomplete claim submission, or the submission of a duplicate claim. Eligibility issues can cause claims to be denied. For example, a claim may be submitted for a service provided prior to an individual's effective date of coverage or after it has been terminated. Finally, claim denials can occur when a determination is made that the service provided was not covered or it was not medically necessary. Under state and federal laws, denied claims may be appealed.

After an insurer or HMO pays a claim, the insurer or HMO may conduct a claims audit to verify claims were paid appropriately and accurately. Such an audit can be triggered by a variety of reasons. Some of these situations include new billing guidelines have been established by regulators; the provider has made significant changes to the original bill, such as the diagnosis of the patient; the plan is notified that the enrollee's coverage is terminated due to non-payment of premiums; or the plan is notified that the enrollee has other health insurance coverage. After the audit, an insurer or HMO may retrospectively deny a claim for a preauthorized service and try to recoup the payment from the provider. Reasons for the retroactive denial may include fraud, submission of incomplete or inaccurate information; nonpayment of premiums; exhaustion of benefits; coordination of benefits; or if the individual was not enrolled or eligible for coverage at the time services were rendered. As a result, an insurer or HMO may try to recoup payment from a provider by retroactively denying a previously paid claim.

Group Health Plans Retroactive Termination of Coverage

Retroactive termination of insurance coverage to an earlier date due to an employee's discharge is an increasing problem for some providers and consumers. Some plans may allow an employer to cancel coverage of an employee retroactively more than 90 days post termination. Other plans will accept retroactive terminations for up to the preceding 3 months, if the plan has not paid any claims for the enrollee during that period. If claims have been paid within the previous 60 days, the coverage termination date may be established as of the end of the month in which services were rendered.

When a provider is notified of a retroactive termination, the provider may have already verified that the patient was covered, rendered services in reliance and expectation of payment, and even received payment. Retroactive terminations often result in the provider or the consumer bearing the loss, despite the verified eligibility.

Individuals' Exchange Plans and Premium Tax Credits

The federal Patient Protection and Affordable Care Act (PPACA)[2] guarantees access to coverage and mandates certain essential health benefits and other requirements. To address affordability issues, federal premium tax credits and cost-sharing subsidies are available to assist eligible low and moderate-income individuals to purchase qualified health plans (QHPs) on a state or federal

[2] The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended several provisions of the PPACA, was enacted on March 30, 2010.

exchange.[3] In Florida, 1,588,628 individuals (or 91 percent of the total individuals) enrolled through the federal exchange received premium tax credits for plan year 2016.[4]

Under PPACA, insurers and HMOs must provide a grace period[5] of at least three consecutive months[6] before cancelling the policy or contract of a federally subsidized enrollee who is delinquent if the enrollee previously paid 1-month's premium. During the grace period, the insurer must pay all appropriate claims for services provided during the first month of the grace period. For the second and third months, an insurer may pend claims. Issuers must notify providers that may be affected that an enrollee has lapsed in his or her payment of premiums and there is a possibility the issuer may deny the payment of claims incurred during the second and third months.[7]

If the enrollee resolves all outstanding premium payments by the end of the grace period, then the pended claims would be paid as appropriate. If not, the claims for the second and third month would be denied. If coverage is terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any payment for claims made during the first month of the grace period. At the end of grace period, the provider may seek payment for the medical services the insurer denied for months two and three. Providers note that it will be extremely difficult to obtain direct payment from patients receiving federal subsidies given their low or moderate income.[8] According to a 2014 survey, 48 percent of the providers not participating with any PPACA exchange products cited concerns about assuming financial liability during the grace period as a reason for their decision.[9]

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[10] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a

[3] In general, individuals and families may be eligible for the premium tax credit if their household income for the year is at least 100 percent but no more than 400 percent of the federal poverty line for their family size. For residents of one of the 48 contiguous states or Washington, D.C., the following illustrates when household income would be at least 100 percent but no more than 400 percent of the federal poverty line in computing your premium tax credit for 2015:
$11,880 (100%) up to $46,680 (400%) for one individual; $16,020 (100%) up to $62,920 (400%) for a family of two; and $20,160 (100%) up to $95,400 (400%) for a family of four. ASPE Research Brief, *Health Plan Choice and Premiums in the 2017 Health Insurance Marketplace*, (Oct. 24, 2016) available at https://www.irs.gov/affordable-care-act/individuals-and-families/questions-and-answers-on-the-premium-tax-credit (last viewed Mar. 9, 2017).
[4] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Health Insurance Marketplace Premiums After Shopping, Switching, and Premium Tax Credits, 2015-2016* (Apr. 12, 2016), *available at* https://aspe.hhs.gov/pdf-report/marketplace-premiums-after-shopping-switching-and-premium-tax-credits-2015-2016 (last viewed Mar. 9, 2017).
[5] Example of grace period: Premium is not paid in May. Premium payments are made in June and July. Grace period would end July 31. Coverage would be cancelled retroactively to the last day of May. See https://www.healthcare.gov/apply-and-enroll/health-insurance-grace-period/ (last viewed Mar. 9, 2017).
[6] 45 C.F.R. s. 155.430.
[7] 45 C.F.R. s. 156.270.
[8] American Hospital Association, *et al*, Letter to Ms. Tavenner, Centers for Medicare and Medicaid Services (Aug. 15, 2013) (on file with the Senate Committee on Banking and Insurance).
[9] Tracy Gnadinger, Health Policy Brief: The Ninety-Day Grace Period, (Oct. 16, 2014) *available at* http://healthaffairs.org/blog/2014/10/17/health-policy-brief-the-ninety-day-grace-period/ (last viewed Mar. 9, 2017).
[10] Section 20.121(3), F.S.

certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from AHCA.[11]

Florida's Prompt Payment Laws

Florida's prompt payment laws govern payment of provider claims submitted to insurers and HMOs, including Medicaid managed care plans in accordance with ss. 627.6131 and 641.3155, F.S., respectively.[12] These provisions delineate the rights and responsibilities of insurers, HMOs, and providers for the payment of claims. An insurer or HMO has 12 months after payment is made to a provider to make a claim for overpayment against the provider, if the provider is licensed under ch. 458, F.S., (physicians), ch. 459, F.S., (osteopaths), ch. 460, F.S., (chiropractors), ch. 461, F.S., (podiatrists), or ch. 466, F.S., (dentists). For all other types of providers, an insurer or HMO has up to 30 months after such payment to make a claim for overpayment.[13] The law provides a process and timeline for providers to pay, deny, or contest the claim. Further, the law prohibits an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid.

Grace Periods

The federal regulation governing grace periods for federally subsidized policies or contracts does not affect policies or contracts of individuals who are not enrolled in an exchange QHP or who are enrolled in an exchange QHP and do not receive a subsidy. The grace period for these individual policies or contracts remain at the length required under Florida law,[14] which varies by the duration of the premium payment interval. During the grace period, the policy or contract stays in force. The policy is in force during the grace period, thus the insurer or HMO must affirm that an individual is insured, even when the payment is late and remains unpaid during the grace period. If the insurer or HMO does not receive the full payment of the premium by the end of the grace period, coverage terminates as of the grace period start date and the insurer or HMO may retroactively deny any claims incurred during the grace period.

Division of State Group Insurance

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the

[11] Section 641.21(1), F.S.

[12] The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization , and individual and group contracts that only provide direct payments to dentists.

[13] Section 627.6131, F.S., and 641.3155, F.S., provide exceptions to this time limit in cases relating to fraud.

[14] Sections 627.608 and 641.31(15), F.S. The grace period of an individual policy must be a minimum of 7 days for weekly premium; 10 days for a monthly premium; and 31 days for all other periods. The grace period of a HMO contract must be at least 10 days. For group policies, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due. [Section 627.6645, F.S.]. See 45 C.F.R. s. 155.735 for provisions relating to the termination of Small Business Health Options Program (SHOP) enrollment or coverage obtained through an exchange.

state group health insurance program, DMS contracts with third party administrators for self-insured health plans and insured health maintenance organizations (HMOs), as well as a pharmacy benefits manager for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

Florida's Statewide Medicaid Managed Care Program

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (AHCA) oversees the Medicaid program. The Department of Children and Families (DCF) conducts Medicaid eligibility determinations.[15] The Statewide Medicaid Managed Care (SMMC) program[16] has two components: the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) program. The AHCA contracts with managed care plans to provide services to eligible recipients. The MMA program covers medical and acute care services for plan enrollees. Most Florida Medicaid recipients who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The LTC program covers nursing facility and home and community-based services to eligible adults.

Medicaid managed care plans are responsible for paying claims in accordance with federal and state law and contractual requirements. Florida Medicaid managed care plans are required to comply with s. 641.3155, F.S.,[17] which allows HMOs to deny a claim retroactively because of an insured or subscriber ineligibility up to one year after the date of payment of the claim.

After paying claims pursuant with the deadlines in s. 641.3155, F.S., an HMO may audit claims to verify payment was appropriate and accurate. As a result, an HMO may try to recoup payment from a provider for claims paid in error. It may do this by reducing payments currently owed the provider, withholding future payments, or otherwise requiring a refund from the provider.

Section 409.913(1)(e), F.S., defines "overpayment" to include any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake. Section 409.907, F.S., prohibits the AHCA from demanding repayment from a provider in any instance in which the Medicaid overpayment is attributable to error of the DCF in the determination of eligibility of a recipient, which is an insignificant number.[18]

The Insurance Codes does not define the term "eligibility." In the context of the Medicaid program, the term "eligibility" may refer to the recipient's financial eligibility for the Medicaid program (income and general requirements, such as a resident of the state) or clinical eligibility

[15] See http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/medicaid. The Social Security Administration makes determination for recipients of Supplemental Security Income. (last viewed Feb. 17, 2017).
[16] Part IV of ch. 409, F.S.
[17] Section 409.967(2)(j), F.S.
[18] The Department of Children and Families conducts random sample quality control reviews on all programs for which they determine eligibility. The DCF provided data for calendar year 2016. For the Family Medicaid program, 24,278 reviews conducted; three errors were found for retroactive Medicaid approved but not applied for; and 132 errors were found for retroactive Medicaid requested but not approved when it should have been. For the Medically Needy program, 9,621 reviews were conducted; four errors were found for retroactive Medicaid approved but not applied for and 19 errors were found for retroactive Medicaid requested but not approved when it should have been. Email from the Department of Children and Families (Feb. 20, 2017) (on file with Senate Banking and Insurance Committee).

(e.g., whether the service is medically necessary). An individual can be deemed ineligible retroactively if the individual provided inaccurate or incomplete information during the application or renewal process, failed to report a change, or DCF made an error when determining eligibility.[19]

The Florida Medicaid Provider General Handbook and Florida Medicaid service-specific coverage policies and handbooks, incorporated by reference in the SMMC contract, require providers to verify each recipient's eligibility each time they render a service. A managed care plan may issue prior authorization for services, ranging from a single event to months of service. When a prior authorization is tied to multiple dates of service, the provider must be responsible for re-verifying the recipient's eligibility at the time each service is delivered, as the managed care plan is not involved in, and will not know, the individualized schedule for delivery of the service. Furthermore, when an authorization spans multiple dates of service, an enrollee's eligibility for service may change from one month to the next. An authorization may be granted on a date when eligibility is confirmed, but the enrollee may become ineligible in a subsequent month. Although an enrollee may have eligibility on file at the time the service was authorized, the enrollee may have become ineligible on the date of service for additional reasons (e.g., enrollee has become deceased or moved to a setting in which Medicaid payment is prohibited).

Section 1903(d)(2)(C) of the Social Security Act states, "When an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 1 year in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the one year period, whether or not recovery was made."

Federal regulation[20] implementing this requirement distinguishes between discovery of an overpayment attributable to fraud or abuse as compared with other overpayment situations. While in most situations, discovery of an overpayment is deemed to occur when any state official first notifies a provider in writing of an overpayment and specifies an overpayment amount, the regulations[21] provide that [a]n overpayment that results from fraud is discovered on the date of the final written notice of the state's overpayment determination that a Medicaid agency official or other state official sends to the provider. Florida Medicaid managed care plans are contractually required to comply with both of the above provisions. Because of recoupment of overpayments, states are required to return the federal matching portion on recoveries made by the state or the health plan.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill amend ss. 627.6131 and 641.3155, F.S., respectively, to prohibit a health insurer or an HMO from retroactively denying a claim because of an insured's ineligibility

[19] Memorandum from Department of Children and Families (Jananuary 25, 2017) (on file with the Senate Committee on Banking and Insurance). Examples of changes affecting eligibility include pregnancy, birth of child, receipt of new or increased earnings, termination of employment, changes in living arrangement, and address.
[20] 42 C.F.R. s. 433.316.
[21] 42 C.F.R. s. 433.304 and 42 C.F.R. s. 433.316(d).

at any time if the health insurer or HMO had previously verified the eligibility of an insured at the time of treatment and provided an authorization for payment.

Sections 627.608, F.S., and 641.31(15), F.S., require individual health insurance policies and all health maintenance contracts, excluding federally subsidized plans, to have a grace period of not less than 7 days and up to 31 days. If any required premium is not paid on or before the due date, it may be paid during the following grace period. During the grace period, the contract stays in force. If full payment of the premium is not received by the end of the grace period, coverage terminates as of the grace period start date, and the insurer or HMO will retroactively deny any claims incurred during the grace period. For a group policy, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due. [22]

Currently ss. 627.6131, F.S., and 641.3155, F.S., limit the ability of a HMO or insurer to deny a claim retroactively because of insured ineligibility to one year after the date of payment of the claim. The bill would require HMOs and insurers to pay claims incurred during the grace period and any other time for policies or contracts that were not eligible for the federal premium tax credit , if the provider verified the insured as eligible at the time of treatment and was provided an authorization number by the insurer or HMO.

Section 3 provides this act takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[22] Section 627.6645, F.S.

B. Private Sector Impact:

Eliminating the ability of a health insurer or HMO to recoup the payment of a claim for an authorized treatment for an individual previously deemed eligible will prevent unanticipated additional financial obligations to a patient and potential unexpected loss of revenues to a provider. This will simultaneously impose additional financial liability on a health insurer or HMO that provides authorization for an individual who is later deemed ineligible for coverage.

Federal regulations govern the grace period and payment of claims of individuals receiving federally subsidized products on the exchange. This bill would not apply to such claims.

C. Government Sector Impact:

Division of State Group Insurance. According to DMS, the two fully insured plans (Capital Health Plan and Florida Health Care Plans), would be impacted by the bill. The initial estimated impact ranges from seven cents (+.07) per member, per month, to a yearly impact of up to $1.4 million. The financial impact of the bill may be shifted to the state by way of a rate adjustment to offset associated losses.[23]

Florida's Medicaid Program. According to the AHCA, the bill would prevent Florida Medicaid managed care plans from recouping overpayments from their providers if they had previously verified eligibility and provided an authorization number. The State of Florida is responsible for submitting to the federal government the federal share of any overpayments recovered by the state or a health plan. To ensure Florida Medicaid managed care plans can continue to seek return of payment from a provider because of audit findings and meet the state's obligation to return federal matching funds, the bill may require clarification of the Florida Medicaid managed care plans' ability to recoup overpayments in the case of inappropriate payments.[24]

This bill would result in an indeterminate fiscal impact to Florida Medicaid. Florida Medicaid payments to managed care plans could potentially increase due to managed care plans not being able to demand or recoup overpayments from their providers for retroactive denials.[25]

VI. Technical Deficiencies:

None.

[23] Department of Management Services, *Senate Bill 102 Fiscal Analysis* (Dec. 28, 2016) (on file with the Senate Committee on Banking and Insurance).
[24] Agency for Health Care Administration, *Senate Bill 102 Fiscal Analysis* (Dec. 9, 2016) (on file with the Senate Committee on Banking and Insurance).
[25] *Id.*

VII. Related Issues:

Internally, an insurer may understand an authorization to be a pre-service approval for certain benefits or services, a voluntary pre-certification request, or a pre-admission certification. Not all benefits or procedures require prior authorization. A plan may offer a reference number for the call. An insured, member, or provider may consider this their authorization number.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6131 and 641.3155.

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 Steube

23-00267-17 2017102__

A bill to be entitled

An act relating to the payment of health care claims; amending s. 627.6131, F.S.; prohibiting a health insurer from retroactively denying a claim under specified circumstances; amending s. 641.3155, F.S.; prohibiting a health maintenance organization from retroactively denying a claim under specified circumstances; providing an effective date.

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

Section 1. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) At any time, if the health insurer verified the eligibility of an insured at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

Section 2. Subsection (10) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not retroactively deny a claim because of subscriber ineligibility:

(a) At any time, if the health maintenance organization verified the eligibility of an insured at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

February 21, 2017

The Honorable Dana Young
Florida Senate
316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Young,

I am writing this letter because my bill, SB 102 – Payment of Health Care Claims, has been referred to the Senate Health Policy Committee. This bill passed the Senate Banking and Insurance Committee on February 21. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
❒ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 202

Meeting Date

Bill Number (if applicable)

Topic 23 hour stay ASC

Amendment Barcode (if applicable)

Name Dr Paul Brunling

Job Title Chief Operating Officer

Address 3334 Capital Med Blvd. (Street)

Phone 850 877 8174

TLH FL 32308 (City / State / Zip)

Email paul.brunling@TLHOC.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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-14-17
Meeting Date

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

102
Bill Number (if applicable)

Topic Retroactive Denial

Amendment Barcode (if applicable)

Name Marnie George

Job Title Sr. Advisor- Buchanan Ingersoll & Rooney

Address 101 N. Monroe St Suite 1090
Street

Phone 850-510-8866

Tallahassee FL 32303
City *State* *Zip*

Email marnie.george@bipc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. Chapter, American College of Cardiology

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)

3/14/17
Meeting Date

SB 102
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payment of Health Care Claims

Name Joe Anne Hart

Job Title Dir of Governmental Affairs

Address 118 E. Jefferson St
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-1089

Email jahart@floridadental.org

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

3-14-17
Meeting Date

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

SB102
Bill Number (if applicable)

Topic Payment of Health Claims

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title

Address 325 W. College Ave
Street
Tallahassee, FL 32312
City *State* *Zip*

Phone 425-4000

Email jcr@meenanlaw

Speaking: ☐ For ☒ Against ☐ Information

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

Representing America's Health Insurance Plans

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)

3-14-17
Meeting Date

SB 102
Bill Number (if applicable)

Topic SB 102 - Payment of claims

Amendment Barcode (if applicable)

Name David McKalip, M.D.

Job Title ~~Elect~~ President

Address 1955 Pasadena N. #101
Street
St. Pete FL 33710
City *State* *Zip*

Phone 727-822-3508

Email DMCKALIP@NEOSOF.NET

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chapter - Assoc. of American Physicians & Surgeons

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)

3-14-2017
Meeting Date

SB 102
Bill Number (if applicable)

Topic HEALTH CARE CLAIMS PMT.

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title Govt. Affairs Dir.

Address 2861 Executive Dr #100
Street

Phone 727-560-3323

Clearwater FL 33762
City *State* *Zip*

Email JACK@THEMALIARDGROUP.com

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

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S-001 (10/14/14)

(11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17
Meeting Date

SB 102
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payment of Heath Care Claims

Name Dorne Barker

Job Title Associate State Director

Address 200 W. College Ave, St 304
Street

Tall FL 32301
City *State* *Zip*

Phone 850 228-6387

Email dobarker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

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)

3/14/17
Meeting Date

102
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #240
Street

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

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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)

3/14/17
Meeting Date

102
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payment of Health Care Claims

Name Wences Troncoso

Job Title Vice President + General Counsel

Address 200 W. College Ave
Street

Phone 850-786-2904

City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Health Plans

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)

3/14
Meeting Date

102
Bill Number (if applicable)

Topic Health Care Claims

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address 405 E. Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 577-0444

Email Chansen@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Podiatric Medical Association

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

3-14-17
Meeting Date

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

SB 102
Bill Number (if applicable)

Topic Retroactive Denials

Amendment Barcode (if applicable)

Name Dr. Charles J. Chase

Job Title Physician Anesthesiologist

Address 2065 Venetian Way
Street
Winter Park FL 32789
City *State* *Zip*

Phone 407-947-1954

Email charles.chase@sher.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association, Florida Society of Anesthesiologists

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 634
INTRODUCER:	Senator Campbell
SUBJECT:	Involuntary Examinations Under the Baker Act
DATE:	March 10, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Favorable**
2.			CF	
3.			JU	
4.			RC	

I. Summary:

SB 634 adds advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to the list of health care practitioners who may initiate an involuntary mental examination of a person under the Florida Mental Health Act, also known as the Baker Act.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Involuntary Examination Under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act, also known as, "The Baker Act," which is codified in Part I, ch. 394, F.S., to address mental health needs in the state.[1] The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers The Baker Act through receiving facilities, which are designated by the DCF. The facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act may be public or private.[2] If, after an examination at a receiving facility,[3] a person requires further treatment he or she may be transported to a treatment facility.[4] Treatment facilities, designated by DCF, are state

[1] Chapter 71-131, s. 1, Laws of Fla.
[2] Section 394.455(39), F.S.
[3] Id.
[4] Treatment facilities, designated by DCF, are state hospitals, which provide extended treatment and hospitalization beyond what is provided in a receiving facility. Section 394.55(47), F.S.

hospitals, which provide extended treatment and hospitalization beyond what is provided in a receiving facility.

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.[5]

A person may be subjected to an involuntary examination under s. 394.463, F.S., if there is reason to believe a person has a mental illness, and because of the illness, that person:

- Has refused a voluntary examination after the purpose of the exam has been explained, or
- Is unable to determine for himself or herself that an examination is needed; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior.[6]

A circuit or county court, law enforcement officers, and certain health care practitioners may initiate an involuntary examination of a person.[7]

A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport that person to a receiving facility for examination.

Health care practitioners may initiate an involuntary examination if the health care practitioner has examined the person within the last 48 hours, and finds that the person meets the criteria for an involuntary examination; and states on a form[8] adopted by the DCF, a Certificate of a Professional Initiating an Involuntary Examination, the observations upon which that conclusion is based.[9] The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person.[10]

The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders;

[5] Section 394.463(2)(g), F.S.
[6] Section 394.463(1), F.S.
[7] Section 394.463(2), F.S.
[8] *See* Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C.*t* http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf. (last visited Mar. 10, 2017).
[9] Section 394.463(2)(a), F.S.
[10] *See* Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C. http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf. (last visited Mar. 10, 2017).

- A physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense;
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure;
- A psychologist employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense that qualifies as a receiving or treatment facility;
- A psychiatric nurse, who is an ARNP, with a master's degree or doctoral degree in psychiatric nursing, who holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician;[11]
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.[12]

Physician Assistants

Physician assistant (PA) licensure in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses to PAs. PAs are regulated by the Florida Board of Medicine for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S., and the Florida Council on Physician Assistants. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act. In 2016, there were 7,015 PAs holding active licenses in Florida.[13]

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.[14] A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.[15] The supervising physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.[16]

To be licensed as a PA in Florida, an applicant must demonstrate:
- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;[17]

[11] Section 455(35), F.S.;
[12] Section 464.
[13] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2015-2016*, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html, (last visited Mar. 10, 2017).
[14] Sections 458.347(2)(f) and 459.022(2)(f), F.S., are identical and define "supervision" as, "responsible supervision" and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.
[15] Sections 458.347(12) and 459.022(12), F.S.
[16] Sections 458.347(15) and 459.022(15), F.S.
[17] The application fee is $100 and the initial license fee is $205. *See* http://flboardofmedicine.gov/licensing/physician-assistant-licensure/ (last visited Mar. 10, 2017).

- Completion of an approved PA training program;
- Acknowledgement of any prior felony convictions;
- Acknowledgement of any previous revocation or denial of licensure in any state;
- Two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.[18]

Licenses are renewed biennially.[19] At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit an acknowledgement that he or she has not been convicted of any felony in the previous two years.[20]

Current Florida law does not expressly allow PAs to refer for, or initiate, an involuntary examination of a person under the Baker Act; however, in 2008, Attorney General Bill McCollum issued an opinion stating:

> . . . [A] physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.[21]

Legislation enacted in 2016, chapter 2016-125, Laws of Fla., authorizes licensed PA to perform services delegated by the supervising physician in the physician assistant's practice in accordance with his or her education and training unless expressly prohibited under chapter 458 or 459, or rules adopted under those chapters.[22]

PAs are not required by current Florida law to have any specific education, training or experience in the diagnosis or treatment of mental health or nervous disorders for licensure, or renewal.

According to the American Association of Physician Assistants, most PA programs are approximately 26 months (three academic years) and award master's degrees. They include classroom instruction and clinical rotations. A PA student receives classroom instruction in:

- Anatomy;
- Physiology;
- Biochemistry;
- Pharmacology;

[18] Sections 458.347(7) and 459.022(7), F.S.
[19] For timely renewed licenses, the renewal fee is $280 and the prescribing registration is $150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. Florida Board of Medicine, Renewals, Physician Assistants http://flboardofmedicine.gov/renewals/physician-assistants/ (last visited Mar. 10, 2017).
[20] Sections 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.
[21] Op. Att'y Gen. Fla. 08-31 (2008) at p. 4 http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf, (last visited Mar. 10, 2017).
[22] See ss. 458.347(4)(h) and 459.022(4)(g), F.S.

- Physical diagnosis;
- Pathophysiology;
- Microbiology;
- Clinical laboratory science;
- Behavioral science; and
- Medical ethics

PA students also complete more than 2,000 hours of clinical rotations, with an emphasis on primary care in ambulatory clinics, physician offices and acute or long-term care facilities. PA rotations could include:

- Family medicine;
- Internal medicine;
- Obstetrics and gynecology;
- Pediatrics;
- General surgery;
- Emergency medicine; and
- Psychiatry.[23]

PAs are not currently required under Florida law to have any specific education, training or experience in the diagnosis or treatment of mental health or nervous disorders for licensure, or renewal. However, a PA working under the supervision of a physician who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense might obtain training or experience in these areas.

Advanced Registered Nurse Practitioners

Nursing licensure is governed by part, I ch. 464, F.S. Nurses are licensed by the DOH and regulated by the Board of Nursing. Licensure requirements to practice nursing include completion of an approved educational course of study, passage of an examination approved by the DOH, acceptable criminal background screening results, and payment of applicable fees.[24]

A nurse who holds a current license to practice professional nursing may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP), under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Satisfactory completion of a formal post-basic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

[23] American Association of Physician Assistant, "*Attend a PA Program"*, https://www.aapa.org/career-central/become-a-pa/ (last visited Mar. 12, 2017).
[24] Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

Current law defines four categories of ARNPs: certified registered nurse anesthetists; certified nurse midwives; a nurse practitioner,[25] and a psychiatric nurse.[26] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.[27] ARNPs may carry out treatments as specified in statute, including:[28]

- Prescribing, dispensing, administering, or ordering any drug;[29]
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration patients in certain facilities; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.[30]

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.[31] Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[32]

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.[33] To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and two years post-master's clinical experience.

III. Effect of Proposed Changes:

SB 634 specifically authorizes PAs and ARNPs to initiate involuntary examinations under The Baker Act. The PA or ARNP must execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under s. 394.463, F.S., as currently enacted, only a physician with experience in the diagnosis and treatment of mental and nervous disorders, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may initiate an involuntary examination by executing such a certificate.

---

[25] Section 464.012(2), F.S.
[26] Section 394.455(35), F.S., defines a "Psychiatric nurse" as an ARNP certified under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.
[27] Section 464.012(3), F.S.
[28] *Id*.
[29] An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18.
[30] Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.
[31] Section 464.012(4), F.S.
[32] Section 464.012(4)(c)1., F.S.
[33] Section 394.463(2)(a), F.S.

The bill makes necessary conforming changes due to the statutory changes made by the bill.

The bill has an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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:

The bill defines a "physician assistant" and an "advanced registered nurse practitioner" in the same manner as their respective practice acts.[34] The bill does not direct any additional training, clinical or continuing education requirements for either the PA or the ARNP to be qualified to perform the examination, and execute the certificate, to subject a person to an involuntary mental health examination. All others health care providers authorized to initiate an involuntary examination have additional professional specialized training in psychiatric mental health.

[34] See ss. 458.347, 459.022, and 464.003, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007.

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 Campbell

38-00760-17 2017634__

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (5) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (6) through (49), respectively, a new subsection (5) is added to that section, and present subsection (33) is amended, to read:

394.455 Definitions.—As used in this part, the term:

(5) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(34)~~(33)~~ "Physician assistant" has the same meaning as defined in s. 458.347(2)(e) ~~means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders~~.

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

38-00760-17 2017634__

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department the next working day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The

officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or an advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department the next working day. The document may be submitted electronically through existing data systems, if applicable.

Section 3. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination

and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(16) ~~s. 394.455(15)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to

the department concerning that child.

Section 4. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~;

(c) A person who is under the direct supervision of a qualified professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491.

Section 5. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(25)(a)4., 397.311(25)(a)1., and 394.455(40) ~~394.455(39)~~, respectively.

Section 7. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455(48) ~~s. 394.455(47)~~.

Section 8. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455(48) ~~s. 394.455(47)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL
38th District

March 8, 2017

The Honorable Senator Dana D. Young
Chair, Committee on Health Policy
316 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

The Honorable Senator Daphne Campbell
District 38, Florida Senate
218 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Young,

Please consider this letter my formal request to have SB 634, relating to Involuntary Examinations Under the Baker Act, placed on the agenda for the next scheduled meeting of the Committee on Health Policy.

SB 634 authorizes physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination.

If you have any questions, please feel free to contact my office at 850-487-5038.

Sincerely,

Senator Daphne Campbell
District 38, Florida Senate

REPLY TO:
☐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17
Meeting Date

634
Bill Number (if applicable)

Topic Baker Act

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Consultant

Address 119 S. Monroe St
Street

Tallahassee FL
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Physician Assistants

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)

3/14/17
Meeting Date

634
Bill Number (if applicable)

Topic Involuntary Exams - Baker Act.

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344
Street

Phone 850-443-1319

TLH FL
City *State* *Zip*

Email alisa@gotopsail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurses 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

Tallahassee, Florida 32399-1100

COMMITTEES:
Education, *Chair*
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on the Environment and Natural Resources
Health Policy
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
14th District

March 10, 2016

The Honorable Dana D. Young
Health Policy Committee, Chair
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Re: Request for Excusal from Committee Meeting

Dear Chairwoman Young:

Please excuse me from the Health Policy Committee on March 14, 2017 at 10 a.m. as I will not be able to attend due to illness.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Dorothy L. Hukill

Dorothy L. Hukill
State Senator, District 14

cc: Sandra Stovall, Staff Director of the Health Policy Committee
Celia Georgiades, Committee Administrative Assistant of the Health Policy Committee

REPLY TO:
209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Committee on Health Policy **Judge:**

Started: 3/14/2017 10:04:58 AM
Ends: 3/14/2017 10:39:35 AM **Length: 00:34:38**

10:04:59 AM Meeting Called to order
10:05:14 AM Quorum present
10:05:52 AM Tab 8 SB 1050
10:06:30 AM Sen Simmons explains
10:06:55 AM Dr. Rosemary Laird, Medical Director Fl Hospital, speaking in favor
10:07:36 AM debate on the bill
10:08:35 AM Sen Simmons waives close
10:08:41 AM Roll Call
10:08:46 AM SB 1050 passes favorably
10:08:59 AM Tab 3 SB 672 Sen Bean
10:09:20 AM Sen Bean explains
10:09:54 AM Call for questions
10:10:18 AM Sen Bean waives to close
10:10:53 AM Roll Call
10:10:59 AM SB 672 passes favorably
10:11:10 AM Tab 4 SB 674
10:11:19 AM Sen Bean explains
10:11:31 AM A BC 424198
10:11:51 AM Amend adopted
10:11:55 AM Call for debate on the bill
10:12:01 AM Sen Bean waives close on SB 674
10:12:13 AM Sb 674 passes favorably
10:12:23 AM Tab 7 SB 888
10:12:29 AM Sen Bean explains
10:13:07 AM Sen Bean explains
10:13:09 AM Tab 7 Sb 888
10:13:16 AM Sen Bean explains
10:14:51 AM Dorene Barker, AARP, waives in support
10:14:59 AM Ms. Chaney, Associated Industries of Florida, waives in support
10:15:08 AM Sen Bean closes
10:15:35 AM SB 888 passes favorably
10:15:48 AM Tab 9 Sb 1130
10:15:55 AM Sen Bean explains
10:16:34 AM Sen Book question
10:17:33 AM Sen Bean responds
10:17:45 AM Sen Powell question
10:17:59 AM Sen Bean Responds
10:18:49 AM Sen Powell follow up
10:19:06 AM Sen Bean responds
10:19:12 AM Sen Powell follow up
10:19:16 AM Sen Bean response
10:20:02 AM Sen Montford question
10:20:22 AM Sen Bean responds
10:20:52 AM Sen Montford question
10:21:27 AM Sen Bean
10:21:31 AM Sen Montford
10:21:39 AM Sen Bean
10:22:27 AM Sen Montford
10:22:47 AM Sen Bean
10:23:07 AM Sen Book question
10:23:25 AM Sen Bean response
10:23:45 AM Am BC 249662 Sen Bean explains

10:24:06 AM Questions on the Amend
10:24:17 AM Bill as Amend
10:24:49 AM Missy Wesolowski, Planned parenthood, speaks in opposition
10:26:45 AM Erica Daniel, waives in opposition
10:27:46 AM Barbara DeVane, wiaes in oppositon
10:28:08 AM Micke
10:28:12 AM Kate Mcdonald, waives in support
10:28:25 AM Carol Bennet, waives in support
10:28:34 AM Bill Bunkley, waives in support
10:28:44 AM Amber Kelley, waives in support
10:28:51 AM Denise waives in support
10:28:57 AM Catherine Price, Demo womens club of florida waives in opposition
10:29:22 AM waives in opposition
10:29:43 AM Sen Bean waives close
10:30:02 AM Cs/Sb 1130 passes favorably
10:30:37 AM CS/SB 1130 passes favorably
10:30:53 AM Tab 6 SB 876
10:31:14 AM Sen Young explains
10:32:10 AM Amend 493956
10:33:31 AM Sen Young explains Amend 600816
10:34:01 AM A 493956
10:35:29 AM Sen Young explains the A
10:35:36 AM A adopted
10:35:45 AM Questions on bill as amended
10:35:59 AM Steven Wynn, waives in support
10:36:08 AM Eric waives in oppositoion
10:36:22 AM Linda Smith, waives in support
10:36:32 AM Dr. Martha Brown, waives in support
10:36:44 AM Elisa , waives in support
10:36:51 AM Joan Hart, waives in support
10:36:57 AM Jeff Scott, waives in support
10:37:05 AM debste on the bill
10:37:09 AM Sen Young waives close
10:37:17 AM Roll Call SB 876 passes favorably
10:37:38 AM Tab 12 SB 634
10:37:51 AM Sen Campbell explains
10:38:14 AM Alisa LaPolt, Florida Nurses Association, waives in support
10:38:32 AM Corinne Mixon, Florida Academy of Physician Assistants, waives in support
10:38:38 AM Sen campbell waives close
10:38:48 AM Roll call
10:38:51 AM SB 634 passes favorably
10:39:11 AM recess called

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Committee on Health Policy **Judge:**

Started: 3/14/2017 10:43:54 AM
Ends: 3/14/2017 11:35:28 AM **Length: 00:51:35**

10:43:56 AM Meeting called back to order
10:44:17 AM Tab 1 SB 328
10:44:47 AM Sen Grimsley explains
10:45:06 AM Questions on strike all
10:45:28 AM A adopted
10:45:35 AM Appearance Cards
10:45:43 AM Bob Harris, Chamberlain College of Nursing, waives in support
10:46:00 AM Alisa LaPolt, Florida Nurses Association, waives in support
10:46:15 AM Martha DeCastro, Florida Hospital Association, waives in support
10:46:16 AM Sandra Morton waives in support
10:46:17 AM Curtis Austin, Florida Assoc. of Postsecondary Schools & Colleges
10:46:18 AM Sen Grimsley waives to close
10:46:28 AM Roll Call
10:46:36 AM CS/SB 328 passes favorably
10:46:48 AM Recording Paused
10:46:54 AM
10:51:14 AM Recording Resumed
10:51:31 AM Sen Steube expains Bill
10:52:31 AM Tab 10 SB 222
10:53:00 AM BC 863130
10:53:18 AM Question on the amendmnt
10:53:23 AM Sen Book question
10:53:28 AM Sen Steube responds
10:53:45 AM A adopted
10:54:04 AM Sen Book question
10:54:16 AM Sen Steube responds
10:54:25 AM David Ashburn, Florida Hospital Association, speaking in opposition
10:54:59 AM Chirs Nuland, Florida Society of Plastic Surgeons, waives in support
10:55:06 AM Dr. Paul Bruning, Fl Orthopedic Assoc., speaking in favor
10:56:53 AM Sen Book question
10:57:05 AM Dr. Bruning responds
10:58:02 AM Dr. David Shapiro, Florida Society of Ambulatory Surgical Centers, speaks in favor
11:01:03 AM Micheal Madewell, Panama City Surgery Center, speaking in favor
11:03:03 AM Steve Ecenia, HCA, waives in support
11:03:19 AM Phillis Oeters, Baptist Health South Florida, waives in opposition
11:03:24 AM David Christian, Adventists Health System, waives in opposition
11:03:38 AM Dr. David McKalip, Florida Chapter-Assoc. of Am Phys. & Surg., waives in support
11:04:25 AM Sen Steube closes
11:05:26 AM Roll Call
11:05:41 AM CS SB 222 passes favorably
11:06:00 AM Tb 2 Sb 496
11:06:10 AM Sen Brandes explains
11:06:59 AM Am BC 147462
11:07:08 AM Sen Brandes explains
11:07:28 AM Questions on A
11:07:32 AM Amend adoped w/o objection
11:07:40 AM BC 329434
11:07:45 AM Sen Brandes explains
11:07:51 AM Questions on A
11:07:53 AM Amend adopted w/o objection
11:08:04 AM Question on bill
11:08:09 AM Terry Meek waives in support

11:08:15 AM Sen Brandes waives close
11:08:23 AM roll call
11:08:38 AM CS Sb 496 passes favorably
11:09:02 AM Sen Brandes explains bill
11:09:48 AM Bc 521710
11:10:08 AM A adopted
11:10:22 AM Roll Call
11:10:25 AM CS/SB 804 passes favorably
11:10:59 AM Tab 11 SB 102
11:11:20 AM Sen Steube explains
11:11:25 AM Sen Montford question
11:12:15 AM Sen Powell question
11:12:22 AM Sen Steube explains
11:12:43 AM Sen Powell follow up
11:12:59 AM Sen Steube responds
11:13:14 AM Sen Book question
11:13:25 AM Sen Steube responds
11:13:45 AM Sen Book follow up
11:14:14 AM Dorene Barker, AARP, waives in support
11:14:20 AM Chris Nuland, American College of Physicians, waives in support
11:14:37 AM Wences Troncoso, Fl Assoc of Health Plans, speaks in opposition
11:17:52 AM Sen Montford question
11:18:59 AM Troncoso responds
11:19:06 AM Sen Montford question
11:19:29 AM Troncoso responds
11:20:32 AM Sen Passidomo question
11:20:39 AM Tronosco responds
11:21:29 AM Chair Young question
11:21:49 AM Troncoso responds
11:22:24 AM Chris Hansen, FL Podiatric Medical Assoc., waives in support
11:22:42 AM Dr. Charles Chase, FMA, Soc. of Anesthes., waives in support
11:22:53 AM Joann Hart, Florida Dental Assoc., waives in support
11:23:10 AM Joy Ryan, America's Health Ins. Plans, speaks in opposition
11:25:40 AM Dr. David McKalip, Assoc. of American Phys & Surgeons, speaking in support
11:26:54 AM Jack Hebert, FL Chiropractic Assoc., waives in support
11:28:06 AM Dr. Paul Bruning, speaks in support
11:29:08 AM Vice Chair Passidomo question
11:29:31 AM Dr. Bruning to respond
11:30:09 AM Sen Montford question
11:31:20 AM Mckalib responds
11:31:26 AM Montford question
11:31:58 AM Mckalib responds
11:32:14 AM Vice Chair Passidomo comments
11:33:30 AM Sen Steube closes on the bill
11:34:24 AM Roll Call SB 102
11:34:40 AM SB 102 passes favorably
11:35:14 AM Meeting adjourned