The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Monday, March 23, 2015
TIME: 1:30 —3:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Braynon, Flores, Gaetz, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1400** Lee (Identical H 1119)	Contact Lens Pricing Practices; Prohibiting certain acts by manufacturers of prescription contact lenses relating to the retail sale, advertising, pricing, and distribution of contact lenses; prohibiting the use of a contact lens distributor for certain purposes; providing for enforcement under the Florida Deceptive and Unfair Trade Practices Act, etc. HP 03/23/2015 Favorable CM AP	Favorable Yeas 6 Nays 3
2	**SB 1180** Latvala (Similar H 981, Compare CS/H 1049)	Practice of Pharmacy; Providing that the Florida Pharmacy Act does not prohibit the dispensing of a compounded drug by a veterinarian, etc. HP 03/23/2015 Fav/CS RI FP	Fav/CS Yeas 9 Nays 0
3	**SB 728** Benacquisto (Identical H 1021)	Health Insurance Coverage for Opioids; Providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product, etc. BI 03/10/2015 Favorable HP 03/23/2015 Favorable AP	Favorable Yeas 9 Nays 0
4	**SB 760** Bradley (Compare CS/H 1055)	Child Protection Teams; Requiring the Statewide Medical Director for Child Protection and the district medical directors to hold certain qualifications, etc. CF 03/05/2015 Favorable HP 03/23/2015 Fav/CS FP	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 1232** Simpson (Compare CS/H 915)	Building Codes; Requiring the Department of Health to conduct inspections of certain public pools with operating permits to ensure continued compliance with specified criteria; specifying that the department may close certain public pools or deny, suspend, or revoke operating permits for such pools if the Florida Building Code is violated; requiring local enforcing agencies to permit and inspect modifications and repairs made to certain public pools and public bathing places as a result of the department's inspections, etc. HP 03/23/2015 Fav/CS CA FP	Fav/CS Yeas 8 Nays 0
6	**SB 1526** Legg (Similar CS/H 541)	Athletic Trainers; Deleting the requirement for the Governor to appoint the initial members of the Board of Athletic Training; revising the board's authorization to adopt certain rules relating to communication between an athletic trainer and a supervising physician; revising responsibilities of athletic trainers to include requirements that a trainer must practice under the direction of a physician; revising general background screening provisions to include athletic trainers, etc. HP 03/23/2015 Fav/CS AHS FP	Fav/CS Yeas 8 Nays 0
7	**SB 926** Sobel (Similar H 795)	Underwater Pool Lighting Safety; Providing that underwater lighting inspections are not exempt from supervision or regulation; requiring county health departments to inspect underwater lighting in public pools; creating the "Calder Sloan Swim in Safety Act"; requiring the seller to provide a disclosure summary to a prospective purchaser upon sale of certain residential property of the dangers associated with underwater lighting in swimming pools, etc. HP 03/23/2015 Not Considered CA FP	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 738** Grimsley (Compare CS/CS/H 655)	Clinical Laboratories; Requiring certain licensed clinical laboratories to make their services available to specified licensed practitioners; prohibiting such clinical laboratories from charging different prices for its services based on the type of license a practitioner has; authorizing such clinical laboratories to refuse to perform a service if the service is not reimbursable by the applicable insurer or other payor or if there is a history of nonpayment for services by the requester of the service, etc. HP 03/23/2015 Fav/CS FP RC	Fav/CS Yeas 7 Nays 0
9	**SB 476** Grimsley (Compare CS/CS/H 335)	Florida Mental Health Act; Requiring that a psychiatric-mental health advanced registered nurse practitioner hold a specified national certification; authorizing a psychiatric-mental health advanced registered nurse practitioner to approve the involuntary examination or release of a patient from a receiving facility, etc. HP 03/23/2015 Fav/CS CF RC	Fav/CS Yeas 8 Nays 0
10	**SB 1040** Braynon (Identical H 475)	Infectious Disease Elimination Pilot Program; Creating the “Miami-Dade Infectious Disease Elimination Act (IDEA)”; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing for severability, etc. HP 03/23/2015 Favorable AHS FP	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 632** Garcia (Compare CS/H 403)	Newborn Adrenoleukodystrophy Screening; Directing the Department of Health to establish requirements for newborn adrenoleukodystrophy screening; providing certain insurance and managed care coverage; providing adrenoleukodystrophy screening as a covered benefit; providing an exemption; providing for documentation of objections to screening by the parent or legal guardian, etc. HP 03/23/2015 Fav/CS BI AP	Fav/CS Yeas 7 Nays 0
12	**SB 486** Sobel (Identical H 533)	Health Care Clinic Act; Prohibiting applicants for clinic licensure from having an arrest awaiting final disposition for, or having been convicted of, a felony or crime punishable by a specified minimum term of imprisonment; providing that a licensed clinic is subject to a specified administrative penalty if its medical director or clinic director fails to ensure that practitioners providing health care services or supplies to patients have a valid license, etc. HP 03/23/2015 Favorable AHS FP	Favorable Yeas 7 Nays 0
13	**CS/SB 784** Banking and Insurance / Gaetz (Compare H 863)	Health Care; Providing that this act shall be known as the “Right Medicine, Right Time Act”; creating the Clinical Practices Review Commission; requiring a managed care plan that establishes a prescribed drug formulary or preferred drug list to provide a broad range of therapeutic options to the patient; requiring sufficient clinical evidence to support a proposed coverage limitation at the point of service; requiring a health maintenance contract summary statement to include a statement of any limitations on benefits, the identification of specific prescription drugs, and certain procedures that are subject to specified restrictions and limitations, etc. BI 03/04/2015 Fav/CS HP 03/23/2015 Favorable AP	Favorable Yeas 8 Nays 0
14	**SB 816** Grimsley (Identical H 441)	Home Health Agencies; Revising the information that a home health agency is required to submit to the Agency for Health Care Administration for license renewal; removing the requirement that a home health agency submit quarterly reports, etc. HP 03/23/2015 Favorable AHS FP	Favorable Yeas 7 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:	SB 1400
INTRODUCER:	Senator Lee
SUBJECT:	Contact Lens Pricing Practices
DATE:	March 17, 2015
REVISED:	

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

I. Summary:

SB 1400 creates s. 501.161, F.S., which restricts manufacturers of prescription contact lenses, directly or through contact lens distributors, from preventing a retailer from selling or advertising a contact lens to a consumer below a specified price, limiting the ability of a retailer to determine prices for sale or advertisement of contact lenses, and discriminating in the distribution of contact lenses based on channel of trade or whether the retailer is, or is associated with, a prescriber of contact lenses. Any violation of the restrictions constitutes an unfair or deceptive trade practice within the meaning of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).[1]

II. Present Situation:

Contact Lens Prescribing and Sales

Chapter 484, F.S., defines contact lenses as prescribed medical devices intended to be worn directly against the cornea of the eye to correct vision conditions, act as a therapeutic device, or provide a cosmetic effect. There are four types of contact lenses: daily-wear soft contact lenses, rigid gas permeable contact lenses, extended wear contact lenses, and disposable contact lenses.[2] Allopathic or osteopathic physicians and licensed optometrists are authorized to prescribe contact lenses for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eye.[3] Licensed opticians may fill such prescriptions only to the extent authorized and under the supervision of the prescribing practitioner.[4] Contact lens prescriptions are good for

[1] Chapter 501, part II, F.S.
[2] U.S. Food and Drug Administration, *Types of Contact Lenses* (September 4, 2013) *available at* http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/ContactLenses/ucm062319.htm, (last visited Mar. 18, 2015).
[3] Sections 463.002(7) and 484.012, F.S.
[4] Rule 64B12-10.009, F.A.C.

2 years and the optometrist or physician who wrote the prescription or the optician who filled the prescription must make the prescription, or a copy of the prescription, available to the patient.[5] Contact lens prescriptions must include, among other things, a specific type or brand of contact lens.[6]

Currently, a contact lens consumer may purchase his or her contact lenses directly from the prescriber or may take the prescription to a third party, such as an optician or a discount contact lens retailer, to purchase the contact lenses.

Unilateral Pricing Policies for Contact Lenses

Recently, several major manufacturers of contact lenses have instituted unilateral pricing policies (UPP) for some of their contact lens products. A UPP, in general, is a restriction placed on a retailer by a manufacturer which requires the retailer to sell at or above the manufacturer's set minimum price for a product. If a retailer violates the UPP, often the manufacturer will refuse to sell to that retailer in the future.[7]

Generally, UPPs do not violate antitrust law (see analysis below). However, there have been no Florida cases which have challenged a UPP for contact lenses either under federal antitrust law or the FDUTPA. Due to the unique nature of contact lenses which require prescriptions and are often chosen by the prescriber rather than the consumer, versus other retail items with UPPs such as electronics and leather products, it is unclear what the result of such a challenge would be.

Antitrust Laws, the Sherman Act, and Cooperative Agreements

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. These antitrust laws proscribe unlawful mergers and business practices in general terms, leaving courts to decide which ones are illegal based on the facts of each case.[8]

The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." The Sherman Act does not prohibit every restraint of trade, only those that are unreasonable.[9] The United States Supreme Court uses two tests to determine if an act is illegal under the Sherman Act, the per se test or the rule of reason test.[10]

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[5] Sections 463.012 and 484.012, F.S.
[6] Rule 64B13-3.012, F.A.C.
[7] See 1-800 Contacts, What is http://www.1800contacts.com/connect/featured-articles/what-is-unilateral-pricing-policy-upp, (last visited on Mar. 19, 2015). See also What is Unilateral Pricing Policy (UPP), Johnson and Johnson Vision Care, on file with Senate Health Policy Committee staff.
[8] Federal Trade Commission, *The Antitrust Laws*, available at https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws, (last visited Mar. 18, 2015).
[9] Id.
[10] Federal Trade Commission and the U.S. Department of Justice, *Antitrust Guidelines for Collaborations Among Competitors*, p. 3, available at https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf, (last visited on Mar. 18, 2015).

Certain acts are considered so harmful to competition that they are almost always illegal. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids. These acts are "per se" violations of the Sherman Act; in other words, no defense or justification is allowed.[11]

All acts not challenged as per se illegal are analyzed by the courts under the rule of reason to determine their overall effect. These include agreements of a type that otherwise might be considered per se illegal, provided they are reasonably related to, and reasonably necessary to achieve procompetitive benefits from, an efficiency-enhancing integration of economic activity. Rule of reason analysis focuses on the state of competition with, as compared to without, the relevant agreement. The central question is whether the relevant agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement.[12]

Under Florida law, three elements must be proven to show an antitrust violation under the rule of reason:

- First, there must be a specifically defined market;
- Second, the defendants must have possessed the ability to affect price or output; and
- Third, the plaintiff's exclusion from the market did, or was intended, to affect the price or supply of goods on the market.[13]

Treatment of Minimum Price Agreements Under the Sherman Act

In 1911, the U.S. Supreme Court decided in *Dr. Miles Medical Co. v. John D. Park & Sons Co.* (Dr. Miles) that it is per se illegal for a manufacturer and a distributer to agree to set the minimum price which the distributer can charge for the manufacturer's goods.[14] In 1919, the Supreme Court began backing away from its decision in Dr. Miles by deciding in *U.S. v. Colgate & Co.* that a manufacturer can announce suggested resale prices and refuse to deal with distributors who do not follow them.[15] Afterwards, the court continued to distance from its original strict position on vertical restraints in Dr. Miles.[16] Most recently, in 2007, the Supreme Court decided *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (Leegin), in which it reversed its prior decision in Dr. Miles and determined that such agreements should be reviewed under the rule of reason test rather than be considered per se illegal.[17] In Leegin, the Supreme Court reasoned that "it cannot be stated with any degree of confidence that resale price maintenance always or almost always tends to restrict competition or decrease output" and that minimum resale prices can have both procompetitive and anticompetitive effects.[18]

[11] Supra note 8
[12] Supra note 10, at 4
[13] Parts Depot v. Florida Auto Supply, 669 So. 2d 321, 326 (Fla. 4th DCA, 1996)
[14] Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U. S. 373 (1911)
[15] United States v. Colgate & Co., 250 U. S. 300 (1919)
[16] Leegin Creative Leather Products, Inc. v. PSKS, Inc., 551 U.S. 877 (2007), p. 21, available at http://www.supremecourt.gov/opinions/06pdf/06-480.pdf, last visited on Mar. 18, 2015.
[17] Id.
[18] Id. at 14

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The FDUTPA, in part II of ch. 501, F.S., prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of trade or commerce.[19] The expressed purpose of the act is to:

- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.[20]

The statute authorizes enforcing agencies to bring actions under FDUTPA. An enforcing authority is either the Office of the State Attorney if the violation occurs in the office's jurisdiction, or the Department of Legal Affairs (department) if the violation occurs in or affects more than one judicial circuit or if a state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.[21] The enforcing authority may bring:

- An action to obtain declaratory judgment that an act or practice violates the FDUTPA;
- An action to enjoin any person who has violated, is violating, or is otherwise likely to violate the FDUTPA; and
- An action on behalf of one or more consumers or governmental entities for actual damages caused by an act or practice in violation of the FDUTPA.[22]

Under the FDUTPA, aggrieved individuals may bring an individual action to obtain a declaratory judgment that a practice or act violates the FDUTPA and to enjoin a person who has violated, is violating, or is likely to violate the act.

FDUTPA authorizes recovery of reasonable attorney fees and court costs from the nonprevailing party.[23] An individual may recover if he or she has suffered a loss. The enforcing authority may recover attorney fees and costs if the losing party commits bad faith or raises issues of law or fact that are not justiciable. However, damages, fees, and costs are not recoverable from a retailer, who in good faith disseminated the claims of a manufacturer or wholesaler without having actual knowledge that it violated the law.[24]

[19] Section 501.204, F.S.
[20] Section 501.202, F.S.
[21] Section 501.203(2), F.S.
[22] Section 501.207, F.S. Damages are not recoverable under this section against a retailer who, in good faith, disseminates the claims of a manufacturer or wholesaler without actual knowledge that it violated FTUDPA.
[23] Section 501.2105, F.S.
[24] Section 501.211, F.S.

In 2001, the Legislature enacted legislation to address unfair or deceptive acts or practices perpetrated by motor vehicle dealers.[25] The following constitutes unfair or deceptive acts or practices by a motor vehicle dealer:

- Representing the previous usage or status of a vehicle is something that it was not, or making usage or status representations unless the dealer has correct supporting information regarding the history of the vehicle.
- Representing the quality of care, regularity of servicing or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.
- Representing orally or in writing that a particular vehicle has not sustained structural or substantial external damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his or her agent to determine whether the vehicle has incurred such damage.
- Altering or changing the odometer mileage of a vehicle.
- Failing to honor a provided express or implied warranty unless properly disclaimed.

Misrepresenting warranty coverage, application period, or any warranty transfer cost or conditions to a customer.[26]

III. Effect of Proposed Changes:

SB 1400 creates s. 501.161, F.S., which restricts manufacturers of prescription contact lenses from:

- Preventing a retailer, by any means, including through unilateral policy or agreement, from selling or advertising a contact lens to a consumer below a specified price;
- Limiting the ability of a retailer to determine prices at which contact lenses are offered or advertised to the consumer; and
- Restricting options available to consumers by discriminating in the distribution of contact lenses based on channel of trade or whether the retailer is, or is associated with, a prescriber of contact lenses.

The bill forbids manufacturers from using contact lens distributors to avoid compliance with the listed restrictions.

Any Violation of the restrictions constitutes an unfair or deceptive trade practice within the meaning of the FDUTPA which may make the violator subject to civil or administrative action.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[25] Chapter 2001-196, L.O.F., codified as part VI, ch. 501, F.S.

[26] For a complete list of practices or acts by a dealer that constitute unfair or deceptive acts or practices and are actionable under the FDUTPA, see s. 501.976, F.S.

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 fiscal impact that SB 1400 may have on consumers of contact lenses is indeterminate. SB 1400 may allow certain retailers to sell contact lenses at prices lower than currently available due to UPPs set by contact lens manufacturers. However, the provisions of the bill may also generate additional expenses for contact lens manufacturers to sell in Florida since Florida's regulations will differ from much of the rest of the country. If SB 1400 generates such additional expenses, it is possible that those expenses will be passed on to the consumer.

C. Government Sector Impact:

The bill may have a negative fiscal impact on enforcing authorities, as defined in s. 501.203(2), F.S., who are required to enforce violations under part II of ch. 501, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.161 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 Lee

24-00711A-15 20151400__

A bill to be entitled

An act relating to contact lens pricing practices; creating s. 501.161, F.S.; prohibiting certain acts by manufacturers of prescription contact lenses relating to the retail sale, advertising, pricing, and distribution of contact lenses; prohibiting the use of a contact lens distributor for certain purposes; providing for enforcement under the Florida Deceptive and Unfair Trade Practices Act; providing an effective date.

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

Section 1. Section 501.161, Florida Statutes, is created to read:

501.161 Contact lens pricing practices.—

(1) A manufacturer of prescription contact lenses may not:

(a) Prevent, by any means, including through a unilateral policy or agreement, a retailer from selling or advertising contact lenses to consumers below any specified price.

(b) Limit the ability of a retailer to determine prices at which contact lenses are offered or advertised to consumers.

(c) Restrict options available to contact lens purchasers by discriminating in the distribution of contact lenses based on the channel of trade or based on whether the retailer is, or is associated with, a person or entity authorized by law to prescribe contact lenses.

(2) A manufacturer may not use a contact lens distributor to avoid compliance with this section.

(3) A violation of this section constitutes an unfair or deceptive act or practice within the meaning of the Florida Deceptive and Unfair Trade Practices Act, and the violator may be subject to civil or administrative action by an enforcing authority under part II of this chapter.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General Government
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

SENATOR TOM LEE
24th District

March 3, 2015

The Honorable Aaron Bean
Senate Committee on Health Policy, Chair
302 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Bean,

I respectfully request that SB 1400 related to *Contact Lens Pricing Practices*, be placed on the Senate Committee on Health Policy agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Sandra Stovall, Staff Director

REPLY TO:
❒ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
❒ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

SB 1400
Bill Number (if applicable)

Topic Contact Lens Pricing Practices

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave
Street

Phone 850-577-5163

Tallahassee FL 32301
City *State* *Zip*

Email zsmith@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

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)

3/23/15
Meeting Date

1400
Bill Number (if applicable)

Topic Contact lenses

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Director Government Affairs

Address 227 S Adams St.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email Melissa@FRF.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/23/2015
Meeting Date

1400
Bill Number (if applicable)

Topic Contact Lenses

Amendment Barcode (if applicable)

Name Sally West

Job Title Regional Director

Address
Street

Phone

Tallahassee
City *State* *Zip*

Email Sally.West@walgreens.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Walgreens

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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03/23/15
Meeting Date

1400
Bill Number (if applicable)

Topic CONTACT LENS PRICING POLICY

Amendment Barcode (if applicable)

Name CARY SAMOURKACHIAN

Job Title FOUNDER & CEO

Address 4730 S FORT APACHE RD #300
Street

LAS VEGAS NV 89147
City *State* *Zip*

Phone 800-407-8565

Email CARY@LENS.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing LENS.COM, INC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

#1

3/23
Meeting Date

SB1400
Bill Number (if applicable)

Topic SB1400

Amendment Barcode (if applicable)

Name Eric Helms

Job Title Pricing Manager

Address 11156 Belfair Ct
Street

Phone 904-631-0416

Jacksonville FL 32256
City *State* *Zip*

Email ehelms@jtj.jnj.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Johnson & Johnson

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

3-23-2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1400

Meeting Date *Bill Number (if applicable)*

Amendment Barcode (if applicable)

Topic Contact lens Pricing Practices

Name Denise Mogil

Job Title Director of Professional Services

Address 845 Lake Pl *Street*

Issaquah WA 98027 *City* *State* *Zip*

Phone 425-313-6694

Email dmogil@costco.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Costco Wholesale

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

SB 1400
Bill Number (if applicable)

Topic CONTACT LENSES PRICING PRACTICES

Amendment Barcode (if applicable)

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(The Chair will read this information into the record.)

Representing 1 800 CONTACTS

Appearing at request of Chair: [ ] Yes [X] 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)

#2

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

SB 1400
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1400

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Representing Johnson & Johnson (JJVCI)

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)

3/23/15
Meeting Date

1480
Bill Number (if applicable)

Topic CONTACT LENS PRICING

Amendment Barcode (if applicable)

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

Representing FL OPTOMETRIC ASSOC.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

3-23-15
Meeting Date

SB 1400
Bill Number (if applicable)

Topic CONTACT LENSES PRICING POLICY

Amendment Barcode (if applicable)

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Speaking: [X] For [ ] Against [ ] Information

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

Representing 1-800 CONTACTS

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

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 1180
INTRODUCER:	Health Policy Committee and Senator Latvala and others
SUBJECT:	Practice of Pharmacy
DATE:	March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.			RI	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1180 amends the Florida Pharmacy Act (the Act) to provide that the Act and rules adopted thereunder do not limit a veterinarian's practice under the Veterinary Practice Act.

II. Present Situation:

Veterinary Medical Practice

The Board of Veterinary Medicine within the Department of Business and Professional Regulation is charged with the regulation of the practice of veterinary medicine under ch. 474, F.S., the Veterinary Medical Practice Act (Veterinary Act). The legislative purpose for the act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice and veterinarians who are not normally competent or who otherwise present a danger to the public are disciplined or prohibited from practicing in Florida.

The practice of veterinary medicine includes:

- Diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof.
- Performing any manual procedures for the diagnosis of or treatment for pregnancy or fertility or infertility of animals.

- Representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions.
- Determining the health, fitness, or soundness of an animal.[1]

Veterinary medicine includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine.[2]

With several exceptions, a person must be licensed as a veterinarian under the act, prior to practicing veterinary medicine in this state.[3] Veterinarians who hold a valid federal controlled substance registry number are authorized to prescribe and dispense controlled substances pursuant to ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act.

Pharmacy Practice Act

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (Act) found in ch. 465, F.S.[4] The Board of Pharmacy (the board) is created within the Department of Health (DOH) to adopt rules to implement provisions of the Act and take other actions based upon duties conferred on it by the Act.

The practice of the profession of pharmacy includes:
- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug.
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations.
- Monitoring a patient's drug therapy, assisting the patient in managing his or her drug therapy, and reviewing the patient's drug therapy and communicating with the patient's prescribing health care provider or the provider's agent or other persons as specifically authorized by the patient, regarding the drug therapy.
- Transmitting information from persons authorized to prescribe medicinal drugs to their patients.
- Administering vaccines to adults.[5]

Compounding

Compounding is defined under the Act as combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.[6] Under the board's rules,[7] compounding includes the preparation of:
- Drugs or devices in anticipation of prescriptions based on routine, regularly-observed prescribing patterns;

[1] Section 474.202(9), F.S.
[2] Section 474.202(13), F.S.
[3] *See* ss. 474.203, 474.207, and 474.213, F.S.
[4] Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.
[5] Section 465.003(13), F.S.
[6] Section 465.003(18), F.S.
[7] *See* Rule 64B16-27.700, F.A.C.

- Drugs or devices, pursuant to a prescription, that are not commercially available; [8] or
- Commercially available products from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.

The rule goes on to say that the preparation of drugs or devices for sale or transfer to pharmacies, practitioners, or entities for purposes of dispensing or distribution is not compounding and it not within the practice of the profession of pharmacy...[9]

Historically and continuing today, a practitioner might prescribe a compounded preparation when a patient requires a different dosage form, such as a liquid rather than a pill or tablet, a different dosage strength than is commercially available, a product free of certain allergens, or a product that is not commercially available. Compounding and dispensing in this manner is typically patient-specific.

More recently, the practice of compounding medications has evolved and expanded to include compounding for office use. "Office use" is not currently defined in Florida Statutes, but is defined in rules of the board.

"Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy.[10] The rule authorizes a pharmacist to dispense and deliver a quantity of a compounded drug to a practitioner for office use by the practitioner provided:

- The quantity compounded does not exceed the amount a practitioner may use in his or her office before the expiration date of the drug;
- The quantity compounded is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice;
- The total quantity compounded does not exceed the pharmacy's capacity to comply with pharmaceutical standards;
- The pharmacy and practitioner enter into a written agreement that provides:
  - The compounded drug may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity;
  - The practitioner will record product identifying information in the patient's record;
  - The practitioner will provide notification to the patient regarding the reporting of an adverse reaction or complaint in order to facilitate a recall of the compounded product;
- The pharmacy maintains records of all compounded drugs ordered by practitioners for office use;

[8] The term "commercially available product" means any medicinal product that is legally distributed in Florida by a drug manufacturer or wholesaler. *See* Rule 64B16-27.700, F.A.C.

[9] The rules continues, except that the supply of patient specific compounded prescription to another pharmacy under the provisions of s. 465.0265, F.S., and Rule 64B16-28.450, F.A.C., is authorized. These provisions pertain to centralized prescription filling for another pharmacy.

[10] Rule 16B16-27.700, F.A.C.

- The pharmacy labels the compounded drug with specified information; and
- The pharmacy is an outsourcing facility and complies with those requirements.

Until recently, the regulation of compounded medications was without clear guidelines or oversight responsibility by the FDA or state agencies. The FDA traditionally regulated the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients. State boards of pharmacy historically have regulated the compounding of medications by a pharmacy under the practice of pharmacy that are requested for an identified patient.[11]

However, after a nationwide crisis in 2012 relating to contaminated human sterile drugs that had been compounded in pharmacies, enhanced regulation of sterile compounded human drugs was enacted at the federal level. President Barack Obama signed the Drug Quality and Security Act (DQSA)[12] into law on November 27, 2013. Under this law[13] a compounder of human drugs can become an outsourcing facility. An outsourcing facility is able to qualify for exemptions from, among other things, the FDA approval requirements for new drugs.

Compounding Animal Drugs

The DQSA does not cover the compounding of animal drugs.[14] In a footnote to FDA guidance on pharmacy compounding of human drug products after the DQSA, the FDA noted that the statutory and regulatory provisions governing the compounding of human drug products differ from those governing the compounding of animal products. All relevant statutory and regulatory requirements relating to the compounding of animal drug products remain in effect, subject to the requirements of section 512 of the Food Drug and Cosmetic Act.[15] Section 512 of the Food Drug and Cosmetic Act addresses the new animal drug approval requirements, which correspond to the approval process for new drugs for humans.

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[11] *See generally* U.S. Department of Health and Human Services, FDA, Regulatory Guidance for Compounded Drugs, *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 19, 2015).

[12] H.R. 3204, 113th Congress.

[13] *See* section 503B of the Food, Drug, and Cosmetic Act, available at: http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm376732.htm (last visited March 23, 2015).

[14] U.S. Department of Health and Human Services, FDA, Compounding and the FDA: Questions and Answers, question 12, at http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 19, 2015).

[15] U.S. Department of Health and Human Services, FDA, *Guidance for Pharmacy compounding of Human Drug Products Under Section 503A of the Federal Food, Drug and Cosmetic Act,* July 2014, footnote 3, available at: http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm377052.pdf (last visited March 19, 2015).

In the related information section on the FDA compounding website[16] information pertaining to animal drugs refers viewers to CPG Sec. 608.400 Compounding of Drugs for Use in Animals.[17] This document provides guidance to drug compounders, veterinarians, and the staff of the FDA on how the FDA intends to address compounding of drugs intended for use in animals. This guidance describes FDA's current thinking on what types of compounding might be subject to enforcement action. Generally the guidance articulates FDA's policy that it will defer to state authorities regarding the day-to-day regulation of compounding by veterinarians and pharmacists of animal and human drugs that are intended for use in animals. However, when the scope and nature of activities of veterinarians and pharmacists raise the kinds of concerns normally associated with a drug manufacturer and result in significant violations of the new animal drug, adulteration, or misbranding provisions of the Food, Drug and Cosmetic Act, the FDA will consider enforcement action. The guidance lists 13 factors, any of which may trigger enforcement action. Two of the thirteen factors involve compounding drugs for use in situations where the health of the animal is not threatened and where suffering or death of the animal is not likely to result from failure to treat, and compounding drugs for third parties who resell to individual patients.

Dispensing Practitioner

Section 465.0276, F.S., in the Act relates to dispensing practitioners. Under this section, a person is prohibiting from dispensing medicinal drugs unless licensed as a pharmacist or otherwise authorized under the Act to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section of law.

This section requires a practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind to register with her or his professional licensing board as a dispensing practitioner, pay a registration fee, and comply with and be subject to all laws and rules applicable to pharmacists and pharmacies. Additional responsibilities are placed on practitioners who register under this section. Because veterinarians do not dispense medicinal drugs for human consumption, and the Veterinary Act does not have a corresponding registration requirement, veterinarians do not register with the Board of Veterinary Medicine.

Dispensing, Prescribing, and Administering

"Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.[18]

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[16] U.S. Department of Health and Human Services, FDA, Compounding, last updated March 6, 2015, at: http://www.fda.gov/drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ (last visited March 19, 2015).
[17] The CPG is available at: http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074656.htm, (last visited March 19, 2019).
[18] *See* ss 465.003(6) and 893.02(7), F.S.

"Prescribing" is issuing a prescription. For purposes of the bill, a "prescription" includes an order for drugs that is written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a practitioner licensed by the laws of the state to prescribe such drugs, issued in good faith and in the course of professional practice, intended to be filled or dispensed by another person licensed to do so.[19]

"Administer," for purposes of the bill, means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.[20]

III. Effect of Proposed Changes:

The bill clarifies the reach of the Florida Pharmacy Act with respect to the practice of veterinary medicine by providing that neither the Act or rules adopted thereunder limit a Florida licensed veterinarian from engaging in an activity allowed under ch 474, F.S. As this affects veterinarians dispensing medicinal drugs, this means the Act would not prevent or dictate rules when a licensed veterinarian dispenses medicinal drugs to or for the veterinarian's animal patient.

The effective date of the bill is July 1, 2015.

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:

Veterinarians who are licensed and practicing under the Florida Veterinary Practice Act, ch. 494, F.S., may practice more freely and efficiently without concern that their activity is subject to regulation by the Act.

[19] *See* ss. 465.003(14) and 893.02(20), F.S.
[20] *See* ss. 465.003(1) and 893.02(1), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.027 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 23, 2015:
The CS removes the new definition for office use compounding and the new provision stating that nothing in the chapter or rule prohibit a veterinarian from dispensing a compounded drug to an animal patient or its owner or caretaker. Instead, the CS provides that neither the Florida Pharmacy Act or pharmacy rules limit a veterinarian from engaging in an activity allowed under the Veterinary Practice Act.

B. Amendments:

None.

606818

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 465.027, Florida Statutes, is amended to read:

465.027 Exceptions.—

(1) This chapter may ~~shall~~ not be construed to prohibit the sale of home remedies or preparations commonly known as patents or proprietary preparations which~~, when such~~ are sold only in

606818

original or unbroken packages or~~, nor shall this chapter be construed~~ to prevent businesses from engaging in the sale of sundries or patents or proprietary preparations.

(2) No provision in this chapter or rule adopted under this chapter limits a veterinarian licensed under chapter 474 from engaging in an activity allowed under chapter 474.

Section 2. This act shall take effect July 1, 2015.

========== 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 practice of pharmacy; amending s. 465.027, F.S.; providing that the Florida Pharmacy Act and rules adopted under the act do not limit a veterinarian from engaging in an activity allowed under ch. 474; providing an effective date.

By Senator Latvala

20-01281B-15 20151180__

A bill to be entitled

An act relating to the practice of pharmacy; amending s. 465.003, F.S.; defining a term; amending s. 465.0276, F.S.; providing that the Florida Pharmacy Act does not prohibit the dispensing of a compounded drug by a veterinarian; amending ss. 409.9201, 458.331, 459.015, 465.014, 465.015, 465.0156, 465.016, 465.0197, 465.022, 465.023, 465.1901, 499.003, and 893.02; conforming cross references; providing an effective date.

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

Section 1. Section 465.003, Florida Statutes, is reordered and amended, to read:

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

(1) "Administration" means the obtaining and giving of a single dose of medicinal drugs by a legally authorized person to a patient for her or his consumption.

(3) ~~(2)~~ "Board" means the Board of Pharmacy.

(7) ~~(3)~~ "Consultant pharmacist" means a pharmacist licensed by the department and certified as a consultant pharmacist pursuant to s. 465.0125.

(8) ~~(4)~~ "Data communication device" means an electronic device that receives electronic information from one source and transmits or routes it to another, including, but not limited to, any such bridge, router, switch, or gateway.

(9) ~~(5)~~ "Department" means the Department of Health.

(10) ~~(6)~~ "Dispense" means the transfer of possession of one

or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent. As an element of dispensing, the pharmacist shall, prior to the actual physical transfer, interpret and assess the prescription order for potential adverse reactions, interactions, and dosage regimen she or he deems appropriate in the exercise of her or his professional judgment, and the pharmacist shall certify that the medicinal drug called for by the prescription is ready for transfer. The pharmacist shall also provide counseling on proper drug usage, either orally or in writing, if in the exercise of her or his professional judgment counseling is necessary. The actual sales transaction and delivery of such drug shall not be considered dispensing. The administration shall not be considered dispensing.

(11) ~~(7)~~ "Institutional formulary system" means a method whereby the medical staff evaluates, appraises, and selects those medicinal drugs or proprietary preparations which in the medical staff's clinical judgment are most useful in patient care, and which are available for dispensing by a practicing pharmacist in a Class II institutional pharmacy.

(12) ~~(8)~~ "Medicinal drugs" or "drugs" means those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

(16) ~~(9)~~ "Patent or proprietary preparation" means a medicine in its unbroken, original package which is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof and which is not misbranded under

the provisions of the Florida Drug and Cosmetic Act.

(17) ~~(10)~~ "Pharmacist" means any person licensed pursuant to this chapter to practice the profession of pharmacy.

(18) ~~(11)~~(a) "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

5. The term "Internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill

prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. Any act described in this definition constitutes the practice of pharmacy as defined in subsection (20) ~~(13)~~.

(b) The pharmacy department of any permittee shall be considered closed whenever a Florida licensed pharmacist is not present and on duty. The term "not present and on duty" shall not be construed to prevent a pharmacist from exiting the prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers, attending to personal hygiene needs, or performing any other function for which the pharmacist is responsible, provided that such activities are conducted in a manner consistent with the pharmacist's responsibility to provide pharmacy services.

(19) ~~(12)~~ "Pharmacy intern" means a person who is currently registered in, and attending, a duly accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is duly and properly registered with the department as provided for under its rules.

(20) ~~(13)~~ "Practice of the profession of pharmacy" includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and other pharmaceutical services. For purposes of this subsection, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the

management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. However, nothing in this subsection may be interpreted to permit an alteration of a prescriber's directions, the diagnosis or treatment of any disease, the initiation of any drug therapy, the practice of medicine, or the practice of osteopathic medicine, unless otherwise permitted by law. "Practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults pursuant to s. 465.189.

(21) ~~(14)~~ "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in

a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness. The term "prescription" also includes a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

(13) ~~(15)~~ "Nuclear pharmacist" means a pharmacist licensed by the department and certified as a nuclear pharmacist pursuant to s. 465.0126.

(14) "Office use compounding" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or other treatment setting. In the case of veterinary drugs, office use compounding includes compounding for a veterinarian to dispense to the owner or caretaker of the animal patient.

(4) ~~(16)~~ "Centralized prescription filling" means the filling of a prescription by one pharmacy upon request by another pharmacy to fill or refill the prescription. The term includes the performance by one pharmacy for another pharmacy of other pharmacy duties such as drug utilization review, therapeutic drug utilization review, claims adjudication, and the obtaining of refill authorizations.

(2) ~~(17)~~ "Automated pharmacy system" means a mechanical system that delivers prescription drugs received from a Florida licensed pharmacy and maintains related transaction information.

(6)~~(18)~~ "Compounding" means combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.

(15)~~(19)~~ "Outsourcing facility" means a single physical location registered as an outsourcing facility under the federal Drug Quality and Security Act, Pub. L. No. 113-54, at which sterile compounding of a drug or product is conducted.

(5)~~(20)~~ "Compounded sterile product" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug or product that is required to be sterile under federal or state law or rule, which is produced through compounding, but is not approved by the United States Food and Drug Administration.

Section 2. A new subsection (6) is added to section 465.0276, Florida Statutes, to read:

465.0276 Dispensing practitioner.—

(6) Nothing in this chapter or the rules adopted thereunder prohibit a veterinarian from dispensing a compounded drug to an animal patient or its owner or caretaker.

Section 3. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

(1) As used in this section, the term:

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined in, or described in s. 503(b) of the Federal Food, Drug, and Cosmetic Act or in s. 465.003 ~~s. 465.003(8)~~, s. 499.003(52), s. 499.007(13), or s. 499.82(10).

The value of individual items of the legend drugs or goods or services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

Section 4. Paragraph (pp) 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):

(pp) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 458.3265(2).

Section 5. Paragraph (rr) 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):

(rr) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265

or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(2).

Section 6. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts must be performed under the direct supervision of a licensed pharmacist who is responsible for all such acts performed by persons under his or her supervision. A registered pharmacy technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one pharmacy technician.

Section 7. Paragraph (c) of subsection (2) of section 465.015, Florida Statutes, is amended to read:

465.015 Violations and penalties.—

(2) It is unlawful for any person:

(c) To sell or dispense drugs as defined in s. 465.003 ~~s. 465.003(8)~~ without first being furnished with a prescription.

Section 8. Subsection (9) of section 465.0156, Florida Statutes, is amended to read:

465.0156 Registration of nonresident pharmacies.—

(9) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the registered pharmacy and the pharmacist designated by the registered pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 9. Paragraph (s) 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):

(s) Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 10. Subsection (4) of section 465.0197, Florida Statutes, is amended to read:

465.0197 Internet pharmacy permits.—

(4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the Internet pharmacy and the pharmacist

designated by the Internet pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 11. Paragraph (j) of subsection (5) of section 465.022, Florida Statutes, is amended to read:

465.022 Pharmacies; general requirements; fees.—

(5) The department or board shall deny an application for a pharmacy permit if the applicant or an affiliated person, partner, officer, director, or prescription department manager or consultant pharmacist of record of the applicant:

(j) Has dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the department shall deny the application if upon final resolution of the case the licensee has failed to successfully complete the program.

Section 12. Paragraph (h) of subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.—

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on probation, or otherwise discipline any pharmacy permittee if the permittee, or any affiliated person, partner, officer, director, or agent of the permittee, including a person fingerprinted under s. 465.022(3), has:

(h) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 13. Section 465.1901, Florida Statutes, is amended to read:

465.1901 Practice of orthotics and pedorthics.—The provisions of chapter 468 relating to orthotics or pedorthics do not apply to any licensed pharmacist or to any person acting under the supervision of a licensed pharmacist. The practice of orthotics or pedorthics by a pharmacist or any of the pharmacist's employees acting under the supervision of a pharmacist shall be construed to be within the meaning of the term "practice of the profession of pharmacy" as set forth in s. 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in the same manner as any other pharmacy practice. The Board of Pharmacy shall develop rules regarding the practice of orthotics

and pedorthics by a pharmacist. Any pharmacist or person under the supervision of a pharmacist engaged in the practice of orthotics or pedorthics is not precluded from continuing that practice pending adoption of these rules.

Section 14. Subsection (43) of section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(43) "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), subsection (32), or subsection (52), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 15. Subsection (22) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(22) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by

the laws of the state to do so, and meeting the requirements of s. 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in s. 465.003 ~~s. 465.003(8)~~, which does not fall within the definition of a controlled substance as defined in this act.

Section 16. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 2, 2015

The Honorable Aaron Bean, Chairman
Senate Committee on Health Policy
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean:

I respectfully request consideration of Senate Bill 1180/Practice of Pharmacy by the Senate Health Policy Committee at your earliest convenience.

This bill will permit the administration of a compounded veterinary drug to a patient by a practitioner in the practitioner's office or other treatment setting or to the owner or caretaker of the patient.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Sandra Stovall, Staff Director; Celia Georgiades, Administrative Assistant

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
❒ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

March 23, 2015

Senator Aaron Bean
Chair, Health Policy Committee
Florida State Senate
404 South Monroe Street
Tallahassee, FL 32399

Dear Senator Bean:

I am writing to ask for a modification to S. 1180 related to veterinary pharmacy compounding. I am with the Animal Health Institute, the national trade association representing companies that make medicines for animals.

As you know, compounding has been in the news the past several years, due both to the two incidents of deaths of racehorses in Florida and the nationwide deaths sparked by the New England Compounding Pharmacy.

In veterinary health, we have been addressing illegal practices that threaten the life of animals. While federal law allows and we support compounding of approved products for use in individual animals at the prescription of a veterinarian, law does not allow veterinary compounding from bulk active ingredients. While FDA uses enforcement discretion to allow some limited compounding from bulk where no approved active ingredients exists, many pharmacies are engaged in widespread compounding from bulk; they are copying or making close approximations of FDA approved drugs, manufacturing and selling them in very large quantities.

Research has shown many of these compounding products to be substandard. They contain too much or too little active ingredient and in many cases are not stable and have shelf lives far shorter than advertised.

While we support legal compounding, we believe that S. 1180 is too broadly written. By allowing unlimited dispensing by veterinarians, it encourages compounding on a manufacturing scale. In doing so, animal health is placed at risk. The administration of compounded products that are mass produced with no FDA oversight and outside of the FDA approval process leaves both veterinarians and their clients with no guarantees of the safety and efficacy of the administered product.

We ask for a commonsense limit to be placed on this ability of veterinarians to dispense compounding products that will allow veterinarians to protect animal health in urgent situations but not pave the way for manufacturing of veterinary medicines under the guise

of compounding. For example, when this exact issue was addressed by the Virginia legislature, the legislature crafted a solution that balanced these concerns and provided that a pharmacy may compound for veterinary use in compliance with federal law and distribute to a veterinarian for dispensing to his own companion animal patients where it is necessary to treat an emergent condition when timely access to a compounding pharmacy is not available as determined by the prescribing veterinarian. *See* Va Code § 54.1-3301(2) & § 54.1-3410.2(C).

We ask that the Florida amendments to pharmacy law relative to compounding for office use and dispensing by a veterinarian that are under consideration include a limitation to dispensing no more than a 72-hour supply. We believe this addresses concerns about non-availability over a weekend or in other short term circumstances.

Thank you for your attention to this matter.

Sincerely,

Ron Phillips
Vice President, Public and Legislative Affairs

THE FLORIDA SENATE

APPEARANCE RECORD

23 March 2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1180

Meeting Date *Bill Number (if applicable)*

606818

Amendment Barcode (if applicable)

Topic Practice of Pharmacy

Name Patrick Gallagher

Job Title Attorney

Address 190 S. LaSalle St Phone 312-499-6759

Street

Chicago IL 60611 Email pcgallagher@duanemorris.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Coalition of Veterinary Compounding Pharmacies

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)

3/23/15
Meeting Date

SB 1180
Bill Number (if applicable)

606818
Amendment Barcode (if applicable)

Topic Practice of Pharmacy

Name Pat Mixon

Job Title Governmental Consultant

Address 119 E. Park Avenue
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-528-4442

Email PatMixonandassociates.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Veterinary Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

SB 1180
Bill Number (if applicable)

006818
Amendment Barcode (if applicable)

Topic GENERAL PRACTICE OF PHARMACY

Name Philip Hinkle

Job Title EXECUTIVE DIRECTOR - FLORIDA VETERINARY MEDICAL ASSOC

Address 7207 MONETARY Drive
Street

Phone 863 242 6500

ORLANDO FL 32809
City *State* *Zip*

Email phil.hinkle@fvma.org

Speaking: For Against Information IF NEEDED

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

Representing FLORIDA VETERINARY 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 728
INTRODUCER:	Senator Benacquisto
SUBJECT:	Health Insurance Coverage for Opioids
DATE:	March 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Lloyd	Stovall	HP	**Favorable**
3.			AP	

I. Summary:

SB 728 allows a health insurance policy providing coverage for opioid analgesic drug products to impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients, thereby reducing the potential for abuse, diversion, and misuse of the drug.

II. Present Situation:

The abuse of prescription drugs in the United States has been described as an epidemic. Every day in the United States, 120 people die because of drug overdose, and another 6,748 are treated in emergency rooms for the misuse or abuse of drugs.[1] In 2010, 16,651 people in the United States died from a drug overdose involving opioid analgesics, such as oxycodone, hydrocodone, and methadone.

Prescription opioid[2] analgesics are a critical component of pain management particularly for treating acute and chronic medical pain, providing humane hospice care for cancer patients, and

[1] Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Factsheet* (updated March 2, 2015) http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html (accessed March 7, 2015).

[2] Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine (e.g., Kadian, Avinza), codeine, and related drugs. Hydrocodone products are the most commonly prescribed for a variety of painful conditions, including dental and injury-related pain. Morphine is often used before and after surgical procedures to alleviate severe pain. Codeine, on the other hand, is often prescribed for mild pain. See National Institute on

treating patients in drug treatment programs. When used properly, opioid analgesic drugs provide significant benefits for patients. However, abuse and misuse of these products has created a serious and growing public health problem. In the United States, approximately 4.5 million[3] individuals use prescription pain medications for nonmedical purposes,[4] resulting in more than 16,000 deaths[5] annually. Recent studies indicate that pharmaceuticals, especially opioid analgesics have driven the increase in drug overdose deaths.[6] In 2007, the total U.S. societal costs of prescription opioid abuse[7] was estimated at $55.7 billion.[8]

Food and Drug Administration Guidance on Abuse-Deterrent Opioids

To reduce the misuse and abuse of prescription drugs, the Food and Drug Administration released draft guidance[9] to assist the pharmaceutical industry in developing new formulations of opioid drugs with abuse-deterrent properties. The goal of abuse-deterrence products is to limit access or attractiveness of the highly desired active ingredient for abusers while assuring the safe and effective release of the medication for patients. The document provides guidance about the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties, how the studies will be evaluated, and what labeling clams may be approved based on the results of the studies.

According to the guidance, opioid analgesics can be abused in a number of ways. For example, they can be swallowed whole, crushed and swallowed, crushed and snorted, crushed and smoked, or crushed, dissolved and injected. Abuse-deterrent formulations should target known or expected routes of abuse for the opioid drug substance for that formulation. As a general framework, the FDA guidance provides that abuse-deterrent formulations are categorized in one of the following groups:

- *Physical/Chemical barriers* – Physical barriers can prevent chewing, crushing, cutting, grating, or grinding. Chemical barriers can resist extraction of the opioid using common solvents like water, alcohol, or other organic solvents. Physical and chemical barriers can change the physical form of an oral drug rendering it less amenable to abuse.

Drug Abuse at http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/what-are-opioids (accessed March 7, 2015).

[3] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, The NSDUH Report, *Substance and Use and Mental Health Estimates from the 2013 National Survey on Drug Use and Health: Overview of Findings* (September 4, 2014), *available at* http://www.samhsa.gov/data/sites/default/files/NSDUH-SR200-RecoveryMonth-2014/NSDUH-SR200-RecoveryMonth-2014.htm (accessed February 20, 2015).

[4] Nonmedical use is defined as the use of prescription-type drugs that were not prescribed for the respondent or use only for the experience or feeling they caused. Nonmedical use of any prescription type drug does not include over-the-counter drugs.

[5] Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Factsheet* (updated March 2, 2015) *available at* http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html .

[6] Christopher Jones, et al., Pharmaceutical Overdose, United States, 2010, *Journal of American Medical Association*. 2013;309:657.

[7] Birnbaum, H.G., et al., Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States. Pain *Medicine*. 12:657-667.

[8] The breakout of this estimate is workplace costs $25.6 billion (46 percent), health care costs $25 billion (45 percent), and criminal justice costs $5.1 billion (9 percent). (USD in 2009).

[9] U.S. Food and Drug Administration, Draft Guidance for Industry, *Abuse-Deterrent Opioids-Evaluation and Labeling*, (January 2013) *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm334807.htm

- *Agonist/Antagonist combinations* – An opioid antagonist can be added to interfere with, reduce, or defeat the euphoria associated with abuse. The antagonist can be sequestered and released only upon manipulation of the product. For example, a drug product may be formulated such that the substance that acts as an antagonist is not clinically active when the product is swallowed but becomes active if the product is crushed and injected or snorted.
- *Aversion* – Substances can be combined to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or a higher dosage than directed is used.
- *Delivery System* (including depot injectable formulations and implants) – Certain drug release designs or the method of drug delivery can offer resistance to abuse. For example, a sustained-release depot injectable formulation that is administered intramuscularly or a subcutaneous implant can be more difficult to manipulate.
- *Prodrug* – A prodrug that lacks opioid activity until transformed in the gastrointestinal tract can be unattractive for intravenous injection or intranasal routes of abuse.
- *Combination* – Two or more of the above methods can be combined to deter abuse.

The guidance provides that it is critical that labeling claims regarding abuse-deterrent properties be based on robust, compelling, and accurate data and analysis, and that any characterization of a product's abuse-deterrent properties or potential to reduce abuse be clearly and fairly communicated. Labeling language regarding abuse deterrence should describe the product's specific abuse-deterrent properties as well as the specific routes of abuse that the product has been developed to deter. The FDA provides that there are four general tiers of label claims available to describe the potential abuse-deterrent properties of a product:

- Tier 1: Product is formulated with physiochemical barriers to abuse.
- Tier 2: Product is expected to reduce or block effect of the opioid when it is manipulated.
- Tier 3: Product is expected to reduce abuse.
- Tier 4: Product has demonstrated reduced abuse in the community.

The FDA has approved four extended release opioids with abuse deterrent labels, indicating that they are expected to result in meaningful reductions in abuse.[10] There are approximately twelve products in development.

The increasing use of abuse-deterrent opioids is expected to reduce overall medical costs. One study[11] estimated the potential cost savings from introducing abuse-deterrent opioids may be in the range of $0.6 billion to 1.6 billion per year in the United States. The study notes that cost data was extrapolated from claims data of privately-insured national employers. The study also states that privately insured population accounts for approximately 60 percent of the U.S. population, and the costs and abuse patterns for Medicaid, uninsured individuals, and small employers could be different.

[10] These include: Reformulated OxyContin, Embeda, Hysingla, and Targiniq.
[11] Birnbaum HG, White, AG, et al. Development of a Budget-Impact Model to Quantify Potential Cost Savings from Prescription Opioids Designed to Deter Abuse or Ease of Extraction. Appl Health Econ Health Policy. 2009; 7(1); 61-70.

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[12] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.[13]

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to first try a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period of time.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under the plan. A preferred drug list (PDL) is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required. Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

In some cases, plans require an insured to try one drug first to treat his or her medical condition before they will cover another drug for that condition. For example, if Drug A and Drug B both treat a medical condition, a plan may require doctors to prescribe Drug A first. If Drug A does not work for a beneficiary, then the plan will cover Drug B. Advocates of step therapy state that a step therapy approach requires the use of a clinically recognized first-line drug before approval of a more complex and often more expensive medication where the safety, effectiveness, and values has been well established before a second-line drug is authorized.

According to a published report by researchers affiliated with the National Institutes of Health, there is mixed evidence on the impact of step therapy policies.[14] A review of the literature by Brenda Motheral found that there is little good empirical evidence,[15] but other studies[16] suggest that step therapy policies have been effective at reducing drug costs without increasing the use of other medical services. However, some studies have found that the policies can increase total utilization costs over the long run because of increased inpatient admissions and emergency department visits.[17] One-step therapy policy for a typical antipsychotic medication in a Medicaid

[12] Section 20.121(3)(a)1., F.S.
[13] Section 641.21(1), F.S.
[14] Rahul K. Nayak and Steven D. Pearson, The Ethics Of "Fail First": Guidelines and Practical Scenarios for Step Therapy Coverage Policies, *Health Affairs,* Vol. 33, No.10, October 2014, pgs. 1779-1785.
[15] Brenda R. Motheral, RPh, MBA, PhD, Pharmaceutical Step Therapy Interventions: A Critical Review of the Literature, *Journal of Managed Care Pharmacy,* Vol. 17, No. 2, March 2011, pgs. 143-155.
[16] See fn. 11 at pg. 1780.
[17] See *id*.

program was associated with a higher rate of discontinuity in medication use, an outcome that was linked to increased risk for hospitalization.[18]

III. Effect of Proposed Changes:

Section 1 creates s. 627.64194, F.S., which provides requirements for opioid analgesic drug coverage. The terms, "abuse-deterrent opioid analgesic drug product" and "opioid analgesic drug product" are defined. An "abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse. The term, "opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

The bill allows a health insurance policy that provides coverage for opioid analgesic drug products to impose a prior authorization for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a health insurance policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients thereby reducing the potential for abuse and misuse of the drug.

Section 2 provides the bill takes effect July 1, 2015.

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.

[18] See *id*.

B. Private Sector Impact:

Indeterminate.

SB 728 will provide patients with greater access to abuse-deterrent opioid analgesic drug products, which is expected to reduce opioid drug misuse, abuse, and diversion. The increased use of abuse deterrent drugs is expected to reduce emergency room and drug treatment costs associated with the misuse or abuse of opioids without such abuse deterrent formulations.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 627.64194.

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 Benacquisto

30-00639C-15 2015728__

A bill to be entitled

An act relating to health insurance coverage for opioids; creating s. 627.64194, F.S.; defining terms; providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product; providing an effective date.

WHEREAS, the Legislature finds that the abuse of opioids is a serious problem that affects the health, social, and economic welfare of this state, and

WHEREAS, the Legislature finds that an estimated 2.1 million people in the United States suffered from substance use disorders related to prescription opioid pain relievers in 2012, and

WHEREAS, the Legislature finds that the number of unintentional overdose deaths from prescription pain relievers has more than quadrupled since 1999, and

WHEREAS, the Legislature is convinced that it is imperative for people suffering from pain to obtain the relief they need while minimizing the potential for negative consequences, NOW, THEREFORE,

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

Section 1. Section 627.64194, Florida Statutes, is created to read:

627.64194 Requirements for opioid coverage.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the United States Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse.

(b) "Opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

(2) COVERAGE REQUIREMENTS.—A health insurance policy that provides coverage for opioid analgesic drug products:

(a) May impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim which is covered by the policy.

(b) May not require use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR LIZBETH BENACQUISTO
30th District

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 10, 2013

The Honorable Aaron Bean
Senate Health Policy, Chair
302 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB728- Health Coverage for Opioids

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 728, Relating to Health Coverage for Opioids, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Sandra Stovall

REPLY TO:
❒ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB728
Bill Number (if applicable)

Topic Health Insurance Coverage for Opoids

Amendment Barcode (if applicable)

Name Jill Gram

Job Title Lobbyist

Address 2868 Mahan Dr.
Street

Phone (850) ~~251-8988~~ 878-2196

Tallahassee FL 32308
City *State* *Zip*

Email Jill@FADAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol and Drug Abuse 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

WAIVE TIME IN SUPPORT

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

3-23-2015
Meeting Date

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS Bill Number SB 728 *(if applicable)*

Name STEPHEN R. LOINOW Amendment Barcode *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY Phone 878-7364
Street

TALLAHASSEE FL 32301 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

728
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #115
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 Public Health 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)

Meeting Date

728
Bill Number (if applicable)

Topic Health Insurance for Opiods

Amendment Barcode (if applicable)

Name Beth LABASky

Job Title Consultant

Address 1401 Village Sq Blvd. (Street)

Phone 8503227335

Tallahassee FL 32312 (City / State / Zip)

Email bethlabasky@aol.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Informed Families of FIA, National Family Partnership Lock Your Meds Program

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)

3/28/15
Meeting Date

SB 728
Bill Number (if applicable)

Topic RIT Health Insurance Coverage For Opioids

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Dir. of Legislative Affairs

Address 204 S. Monroe St.
Street

Phone 321-223-4232

Tallahassee FL 32304
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Smart Justice 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.

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)

3.23.15
Meeting Date

728
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Albert Balido

Job Title _____

Address 201 W Park Ave
Street

Tall. fl 32301
City *State* *Zip*

Phone 8502513440

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Cancer Society

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 760
INTRODUCER:	Health Policy Committee and Senators Bradley and Sobel
SUBJECT:	Child Protection Teams
DATE:	March 24, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Harper	Stovall	HP	**Fav/CS**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 760 requires the Department of Health's Statewide Medical Director for Child Protection to be a physician licensed under ch. 458, F.S., or ch. 459, F.S., who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics.

The bill also requires each district medical director to be a physician licensed under ch. 458, F.S., or ch. 459, F.S., who is board certified in pediatrics. In addition, within 2 years after the date of employment as district medical director, he or she must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services of the Florida Department of Health in recognition of demonstrated specialized competence in child abuse.

The bill conforms authorization in the Medical Practice Act for a physician with an expert witness certificate to provide expert testimony in criminal child abuse cases with such authorization under existing law.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the Department of Children and Families (DCF or department) in cases of child abuse and neglect to supplement investigation activities.[1] Section 39.303, F.S., governs CPTs, providing that the Children's Medical Services Program (CMS) in the Department of Health (DOH) shall develop, maintain, and coordinate the services of multidisciplinary CPTs in each of the service districts of the DCF. Child protection team medical directors are responsible for oversight of the teams in the districts.[2]

Child protection teams provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.[3]

Child abuse, abandonment and neglect reports to the Child Abuse Hotline that must be referred to CPTs include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.[4]

Child Protection Team Medical Director(s)

There is currently no statutory requirement related to the qualifications of either the Statewide Medical Director for Child Protection or the district team medical directors. However, the Florida Administrative Code provides that each CPT function under the oversight of a CMS approved provider pediatrician whose title is Child Protection Team Medical Director.[5] According to the rule, the minimum qualifications for this position are:

- Graduation from an accredited school of medicine with board certification in pediatrics and licensed to practice in Florida.[6]

---

[1] Florida Department of Health, Children's Medical Services, *Child Protection Teams* (last modified August 30, 2012), *available at* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Mar. 17, 2015).
[2] Section 39.303, F.S.
[3] *Supra* note, at 1.
[4] *Supra* note, at 2.
[5] Chapter 64C-8.002, F.A.C.
[6] Chapter 64C-8.002(1)(a), F.A.C.

- An approved CMS physician provider.[7]
- Demonstrated interest in the field of child abuse and neglect and satisfactory completion of training deemed necessary by the department for evaluating alleged abuse and neglect.[8]

The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families, have the responsibility for the screening, employment, and any necessary termination of child protection team medical directors, both at the state and district level.[9]

Currently, there are 24 local CPT Medical Director positions in the state of Florida (as of February 24, 2015, twenty-three positions are full, one position is vacant, two districts also have an Associate Medical Director, and one district also has a Clinical Director).[10]

Specialty Certification for Child Abuse Pediatrics

Child abuse pediatricians are responsible for the diagnosis and treatment of children and adolescents who are suspected victims of child maltreatment. This includes physical abuse, sexual abuse, factitious illness (medical child abuse), neglect, and psychological/emotional abuse. These specialty pediatricians participate in multidisciplinary collaborative work within the medical, child welfare, and law enforcement systems. They are also often called to provide expert testimony in court proceedings.[11]

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and the American Board of Pediatrics issued the first certification exams in late 2009.[12] At that time, Dr. Ann S. Botash, M.D.,[13] stated that "Board certification is really necessary in a field like this… it's helpful in the medical setting when I'm working with other pediatricians who are good practitioners, but don't have the same experience in child abuse treatment that I have.[14] The certification may be a deciding factor in a disagreement between two practitioners, one a specialist and the other a generalist, about a diagnosis of child abuse…"[15]

Three-year child abuse fellowships are in various stages of development at academic medical centers as a result of the new specialty designation. Most of them are housed within children's hospitals across the country, and similar to other pediatric specialty fellowships, there will be

[7] Chapter 64C-8.002(1)(b), F.A.C.
[8] Chapter 64C-8.002(1)(c), F.A.C.
[9] *Supra* note, at 2.
[10] Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, (updated Feb. 24, 2015) *available at* http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf (last visited Mar. 18, 2015).
[11] Council of Pediatric Subspecialties. *Pediatric Child Abuse* (Updated Nov. 5, 2013), *available at* http://pedsubs.org/SubDes/ChildAbuse.cfm (last visited Mar. 17, 2015).
[12] The American Board of Pediatrics, *Workforce Databook 2013-2014*, *available at* https://www.abp.org/sites/abp/files/pdf/workforcebook.pdf (last visited Mar. 18, 2015).
[13] Professor of pediatrics at the State University of New York (SUNY) Upstate Medical University and Director of the University Hospital's Child Abuse Referral and Evaluation (CARE) program in Syracuse, NY.
[14] Emily Berry, *New Specialty Certification for Child Abuse Pediatrics* (Nov. 6, 2009). Health Leaders Media, *available at* http://www.healthleadersmedia.com/content/PHY-241751/New-Specialty-Certification-for-Child-Abuse-Pediatrics.html (last visited Mar. 17, 2015).
[15] *Id*.

both clinical and research training and a requirement for a scholarly project, which will help advance the field.[16]

Florida Pediatricians with Child Abuse Subspecialty

As of December 31, 2013, Florida has 12 Child Abuse Pediatrics Diplomates, out of 324 nationwide.[17] As of that same date, Florida has had a total of 2,793 physicians certified in General Pediatrics by the American Board of Pediatrics. Florida has a child population of over 4 million.[18]

According to the DOH, of the 12 certified diplomates in Florida, 9 are currently functioning as Child Protection Team Medical Directors.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to be a physician licensed under ch. 458, F.S., or ch. 459, F.S., who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics.

This will ensure that the Statewide Director who is responsible for supervising other pediatricians on child protection teams will hold the same or similar credentials.

The bill also requires each district medical director to be a physician licensed under ch. 458, F.S., or ch. 459, F.S., who is board certified in pediatrics. In addition, within 2 years after the date of employment as district medical director, he or she must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services in recognition of demonstrated specialized competence in child abuse.

This will ensure that all district medical directors have a recognized degree of competence.

Section 2 amends s. 458.3175(2), F.S., to authorize a physician with an expert witness certificate to provide expert testimony in a criminal child abuse case. This conforms with the authorizations in existing law in ss. 827.03 and 960.03, F.S., which were added in 2012 in ch. 2012-155, Laws of Florida.

Sections 3 – 4 reenact ss. 39.3031 and 391.026(2), F.S., to incorporate the amendment to s. 39.303, F.S.

Sections 5 – 7 reenact ss. 766.102(12), 827.03(3)(a), 827.03(3)(b), and 960.03(3)(a), F.S., to incorporate the amendment to s. 458.3175, F.S.

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[16] Giardino, A., Hanson, N., Hill, K.S, and Leventhal, J.M. Child Abuse Pediatrics: New Specialty, Renewed Mission. *Pediatrics* 2011; 128(1):156-159.
[17] *Supra* note 12.
[18] *Id*.
[19] Department of Health, *Senate Bill 760 Analysis*, (February 17, 2015) (on file with the Senate Committee on Health Policy).

Section 8 provides an effective date of July 1, 2015.

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:

Pediatricians will incur costs to obtain the required subspecialty certification. The exam fee for the subspecialty certification in Child Abuse is $2,900 and the certification period is 10 years. To maintain the subspecialty certification in Child Abuse, the physician must enroll in maintenance of certification requirements every 5 years.

C. Government Sector Impact:

The DOH indicates that it will incur costs associated with the issuance of certificates and verification of qualifications. The DOH may be required to administer an examination as a means of determining competence. According to the Florida Certification Board, non-recurring costs for credential development for an examination are estimated to be $70,000 and annual recurring costs are estimated to be $25,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not list specific criteria needed for the Deputy Secretary for Children's Medical Services to issue a certificate in recognition of demonstrated specialized competence in child abuse to a district medical director. Clarification may be needed to advise the DOH whether

regulatory responsibilities that are typically associated with the certification of a profession are intended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.303 and 458.3175.

This bill reenacts the following sections of the Florida Statutes: 39.3031, 391.026(2), 766.102(12), 827.03(3)(a), 827.03(3)(b), and 960.03(3)(a).

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 23, 2015:
The CS conforms provisions relating to activities an expert witness certificate issued by the DOH authorizes under ch. 458, F.S., with existing law. The CS reenacts the following sections of the Florida Statutes: 766.102(12), 827.03(3)(a), 827.03(3)(b), and 960.03(3)(a).

B. Amendments:

None.

503466

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 203 - 206
and insert:
Section 2. Paragraph (c) is added to subsection (2) of section 458.3175, Florida Statutes, to read:
458.3175 Expert witness certificate.—
(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:
(c) Provide expert testimony in a criminal child abuse case

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in this state.

Section 3. For the purpose of incorporating the amendment made by this act to section 39.303, Florida Statutes, in a reference thereto, section 39.3031, Florida Statutes, is reenacted to read:

39.3031 Rules for implementation of s. 39.303.—The Department of Health, in consultation with the Department of Children and Families, shall adopt rules governing the child protection teams pursuant to s. 39.303, including definitions, organization, roles and responsibilities, eligibility, services and their availability, qualifications of staff, and a waiver-request process.

Section 4. For the purpose of incorporating the amendment made by this act to section 39.303, Florida Statutes, in a reference thereto, subsection (2) of section 391.026, Florida Statutes, is reenacted to read:

391.026 Powers and duties of the department.—The department shall have the following powers, duties, and responsibilities:

(2) To provide services to abused and neglected children through child protection teams pursuant to s. 39.303.

Section 5. For the purpose of incorporating the amendment made by this act to section 458.3175, Florida Statutes, in a reference thereto, subsection (12) of section 766.102, Florida Statutes, is reenacted to read:

766.102 Medical negligence; standards of recovery; expert witness.—

(12) If a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 is the party against whom, or on whose behalf, expert testimony about the prevailing

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professional standard of care is offered, the expert witness must be licensed under chapter 458, chapter 459, or chapter 466 or possess a valid expert witness certificate issued under s. 458.3175, s. 459.0066, or s. 466.005.

Section 6. For the purpose of incorporating the amendment made by this act to section 458.3175, Florida Statutes, in a reference thereto, paragraphs (a) and (b) of subsection (3) of section 827.03, Florida Statutes, are reenacted to read:

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.—

(3) EXPERT TESTIMONY.—

(a) Except as provided in paragraph (b), a physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapter 458 or chapter 459 or has obtained certification as an expert witness pursuant to s. 458.3175.

(b) A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry or has obtained certification as an expert witness pursuant to s. 458.3175.

Section 7. For the purpose of incorporating the amendment made by this act to section 458.3175, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 960.03, Florida Statutes, is reenacted to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) “Crime” means:

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(a) A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury, as defined in s. 827.03, to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

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

And the title is amended as follows:

Delete lines 2 - 8

and insert:

An act relating to child protection; amending s. 39.303, F.S.; requiring the Statewide Medical Director for Child Protection and the district medical directors to hold certain qualifications; amending s. 458.3175, F.S.; authorizing a physician with an expert witness certificate to provide expert testimony in a criminal child abuse case; reenacting ss. 39.3031 and 391.026(2), F.S., relating to rules of implementation of s. 39.303, F.S., and powers and duties of the Department of Health, respectively, to incorporate the amendment made to s. 39.303, F.S., in references thereto; reenacting ss. 776.102(12), 827.03(3)(a) and

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(b), and 960.03(3)(a), F.S., relating to expert witnesses, expert testimony, and the definition of the term "crime," respectively, to incorporate the amendment made to s. 458.3175, F.S., in references thereto; providing an effective date.

By Senator Bradley

7-00912A-15 2015760__

A bill to be entitled

An act relating to child protection teams; amending s. 39.303, F.S.; requiring the Statewide Medical Director for Child Protection and the district medical directors to hold certain qualifications; reenacting ss. 39.3031 and 391.026(2), F.S., to incorporate the amendment made by this act to s. 39.303, F.S., in references thereto; providing an effective date.

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

Section 1. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.—The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Families. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Department of Health and the Department of Children and Families shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families, shall maintain the responsibility for the screening, employment, and, if necessary,

the termination of child protection team medical directors, at headquarters and in the 15 districts. The Statewide Medical Director for Child Protection at all times must be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics. Each district medical director must be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics and, within 2 years after the date of his or her employment as district medical director, must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services in recognition of demonstrated specialized competence in child abuse. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall use and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Families. This section does not remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of

providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection. A child protection team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of

the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a

child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter 459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection

team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or

(c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Families, shall avoid duplicating the provision of those services.

(6) The Department of Health child protection team quality assurance program and the Family Safety Program Office of the Department of Children and Families shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

Section 2. Section 39.3031 and subsection (2) of s.

391.026, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 39.303, Florida Statutes, in references thereto.

Section 3. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 6, 2015

I respectfully request that **Senate Bill # 760**, relating to Child Protection Team, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

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)

Meeting Date	Bill Number (if applicable)
	760 ✓

Amendment Barcode (if applicable) ✓

Topic Child Protection

Name Doug Bell

Job Title

Address 101 N. Monroe (Street)

Phone

Tall. (City) FL (State) (Zip)

Email douglas.bell@bipc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1232
INTRODUCER:	Health Policy Committee and Senator Simpson
SUBJECT:	Building Codes
DATE:	March 23, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			CA	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1232 amends various sections of the Florida Statutes related to building codes. The bill:

- Reduces the experience and training requirements to take the exam for certification as a building code inspector, plans examiner, or building code administrator;
- Requires the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates;
- Allows liquid petroleum gas installers to replace and service liquid petroleum gas water heaters without being certified as a plumbing contractor;
- Applies the requirements of the Florida Homeowner's Recovery Fund to division II contractors and caps payments from the fund for injuries caused by division II contractors to $15,000 per claim and $150,000 per transaction;
- Exempts landscapers from being certified as an electrical contractor when installing pre-wired low-voltage landscape lighting;
- Requires the Florida Building Code Compliance Mitigation Fund to fund, up to $30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to $15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshall;
- Allows local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board;
- Restricts appeals of decisions made by local fire officials to decisions regarding application, interpretation, or enforcement of the Florida Fire Prevention Code and decisions made by

local building officials to decisions regarding application, interpretation, or enforcement of the Florida Building Code;

- Requires newly installed or replacement water heaters to have leak detection devices in buildings other than one and two family detached single-family dwellings;
- Restricts the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.[1]
- Allows building officials to issue phased permits for the construction of parts of a building project;
- Requires the Department of Health (DOH) to inspect public swimming pools for their compliance with the Florida Building Code as well as authorizes the DOH to deny an operating certificate, impose fines, or close a public pool for code violations;
- Specifies the duties of local enforcement agencies in permitting and inspecting certain public swimming pool repairs;
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code and instead authorizes the development of code-related training;
- Adds Underwriters Laboratories, LLC, an independent safety consulting and certification company, to the list of entities that are authorized to produce information on which product approvals are based;
- Requires the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards; and
- Amends provisions related to fire prevention and control to:
  - Add a definition for "change of occupancy" and remove the definition of "use;"
  - Clarify who may require the State Fire Marshall to issue a declaratory statement relating to the Florida Fire Prevention Code and clarify that such statements are not intended to be an appeal of a decision made by a local fire official or local board;
  - Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
  - Require areas of refuge to be provided when required by the Florida Building Code-Accessibility and restricts dead-end corridors to a maximum length of 50 feet in apartment buildings protected by automatic sprinklers; and
  - Require fire prevention plan reviewers to be certified at a minimum as a Fire Inspector I or as the State Fire Marshall determines by rule.
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on standards for grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The report is due to the Governor, President, and Speaker by October 1, 2013, and the task force dissolves by December 31, 2015.

[1] Residential buildings containing sleeping units (such as hotels and motels) or more than two dwelling units (such as apartment house and dormitories). See 2010 Florida Building Code, Available at http://www.ecodes.biz/ecodes_support/free_resources/2010Florida/Building/PDFs/Chapter%203%20-%20Use%20and%20Occupancy%20Classification.pdf, p. 3.12-3.13, (Last visited on Mar. 23, 2015).

II. Present Situation:

Building Code Administrators, Plans Examiners, and Inspectors Certifications

Building Code Inspector and Plans Examiner

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

- Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review.
- Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review.
- Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued pursuant to ch. 633, F.S., has a minimum of 5 years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The FBCAIB shall establish by rule criteria for the development and implementation of the training programs.
- Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program of not less than 300 hours which is approved by the FBCAIB in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

Building Code Administrator

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

- Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of such experience in supervisory positions; or
- Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least 5 years of such total being experience in supervisory positions.

Water Heaters

Liquid Petroleum Gas Water Heater Installation

Currently, a person licensed as an liquid petroleum gas Installer C by the Department of Agriculture and Consumer Services (DACS) is authorized to install, service, alter, or modify appliances, equipment, piping, or tubing to convey liquefied petroleum gas to appliances or equipment.[2] A person with such a license is authorized to service or replace a liquid petroleum gas water heater and to hook up the water heater to the source of the gas, however, he or she may not hook the water heater to the home's plumbing without being certified as a plumbing contractor.[3] Currently, public and private natural gas utilities are exempt from the requirement to be certified as a plumbing contractor when servicing or replacing a water heater.

Water Heater Leak Detection Devices

Currently water heaters are not required to have leak detection devices with audible alarms attached to the drain pan area.

Florida Homeowner's Construction Recovery Fund

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. A claimant must be a homeowner and the damage must have been caused by a Division I contractor. Claims are filed with the department, which reviews them for completeness and statutory eligibility. The department then presents the claim to the board for review. The board makes the determination for an award.

Contractors

Division I contractors are described under s. 489.105, F.S., as general contractors, building contractors and residential contractors. *Division II contractors* are described under s. 489.105, F.S., as sheet metal contractors, roofing contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and specialty contractors.

Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB), within the Department of Business and Professional Regulation (DBPR), is responsible for licensing and regulating the construction industry in this state.[4] The CILB meets regularly to consider applications for licensure, to review

[2] Rule 5J-20.012, F.A.C.,
[3] Section 489.105, F.S.
[4] Section 489.107, F.S.

disciplinary cases, and to conduct informal hearings related to licensure and discipline.[5] The CILB engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.[6]

The CILB is divided into Division I and Division II members based on the definitions of Division I and Division II contractors. The jurisdiction falls to each division relative to their scope,[7] and five members constitute a quorum for each division.

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of specific acts, including the acts that may qualify a claim to the fund, which is discussed below. These acts are described under s. 489.129(1)(g), (j), and (k), F.S.

Violations Creating a Valid Claim

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project. Abandonment is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Section 489.129(1)(k), F.S, allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or

[5]Florida Department of Business and Professional Regulation, *Construction Industry Licensing Board*, available at http://www.myfloridalicense.com/DBPR/pro/cilb/index.html (Last visited Mar. 23, 2015).
[6] Section 489.108, F.S., grants rulemaking authority.
[7] *See supra* note 5 and *see* s. 489.107(4), F.S.

- Falsely indicating that workers' compensation and public liability insurance are provided.

Section 489.129, F.S., allows the CILB to take the following actions given the circumstances above:
- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of ch. 489, F.S.;
- Impose an administrative fine not to exceed $10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

Duty of Contractor to give Notice of Fund

Section 489.1425, F.S., provides that any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500. The written statement must be substantially in the form provided for by this statute.

Requirements to Collect

The claimant must have obtained a final judgment, arbitration award, or CILB issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is 1 year after the conclusion of an action or award in arbitration that is based on the misconduct.[8]

Completed claim forms must be submitted with:[9]
- A copy of the complaint that initiated action against the contractor;
- A certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;[10]
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents, and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the CILB to determine causation of injury or specific actual damages.

No claimant eligible for, or receiving, restitution shall be eligible to recover from the fund until two or more payments have been missed.[11] Prior to receiving any payments, such a claimant

[8] Section 61G4-21.003(5), F.A.C.
[9] Rule 61G4-21.003(2), F.A.C.
[10] Pursuant to Rule 61G4-21.003(3), F.A.C., if it is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those sections.
[11] Section 61G4-21.005(3), F.A.C.

shall provide the CILB with a written statement indicating any amount received to date under such an order or plan, the date and amount of the last payment, and how much is still due and owing under such an order or plan.[12]

Limits

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum.[13] For contracts entered prior to July 1, 2004, the fund claims are limited to $25,000.00 per claimant with a total lifetime aggregate limit of $250,000.00 per licensee.[14] For contracts entered after July 1, 2004, the per-claim payment limits are increased to $50,000.00 with a total lifetime aggregate of $500,000.00 per licensee.[15] The fund does not require a minimum contract amount for eligible claims.[16]

The fund is not permitted to compensate consumers who contracted with Division II contractors for types of work set forth in s. 489.105(3)(d)-(p), F.S., or to compensate consumers who have suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I, ch. 713, F.S.

Funding and Payouts

The fund is financed by a 1.5 percent surcharge on all building permits issued for the enforcement of the Florida Building Code.[17] The proceeds from the surcharge are allocated equally to fund the Florida Homeowner's Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board. The department may transfer excess cash to the Florida Homeowner's Construction Recovery Fund if it is determined that the excess cash is not needed to fund the operation of the Building Code Administrators and Inspectors Board. However, the department may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.[18]

Low-Voltage Landscape Lighting

Part II of ch. 489, F.S., regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.[19]

Section 489.503, F.S., provides exemptions to part II for persons performing various tasks such as, someone licensed as a fire protection system contractor while engaged in work as a fire

[12] Id.
[13] Department of Business and Professional Regulation *Senate Bill Analysis 1098*, (March 11, 2014).
[14] Id.
[15] Id.
[16] Id.
[17] Id.
[18] Section 438.631, F.S.
[19] Section 489.501, F.S.

protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

Swimming Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Rule 64E-9 of the Florida Administrative Code.

Swimming Pool Inspections

In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.[20]

A "public swimming pool" or "public pool" is defined as:

> A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.[21]

A "public bathing place" is defined as:

> A body of water, natural or modified by humans, for swimming, diving, and recreational bathing, together with adjacent shoreline or land area, buildings, equipment, and appurtenances pertaining thereto, used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.[22]

[20] Chapter 2012-184, s. 104, Laws of Fla.
[21] Section 514.011(2), F.S.
[22] Section 514.011(4), F.S.

Due to the 2012 changes to ch. 514, F.S., DOH does not have authority to cite violations of the Florida Building Code during its routine inspections of public swimming pools and public bathing places. These routine inspections are done to ensure the pools and bathing places continue to be operated and maintained in compliance with their original approval to protect public health and safety. The DOH notes that, from September 2013 through September 2014, DOH conducted 75,478 inspections of the 37,600 public pools in the state and found 127,413 code violations.[23] Local building officials do not perform routine inspections of public swimming pools but can respond to complaints received.

Swimming Pool Electrical Equipment

Current construction rules for public pools require that written approval must be received from the DOH before construction can begin.[24] Plans are required that show the pool layout, tile markings, size of the pool ladder, gutter heights and if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3 of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.[25]

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule as those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. Finally, as part of the plan approval, the electrical contractor or electrical inspector must certify as to a pool's compliance, on the form designated by the department.[26]

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.[27]

The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

Several news stories in South Florida in the past year have also highlighted the issue. Three children were shocked in a Hialeah condominium community pool in April 2014. The building

[23] Department of Health, *House Bill 915 Analysis* (February 25, 2015), p. 2.
[24] Rule 64E-9.005, F.A.C.
[25] Rule 64E-9.006(2)(c)3, F.AC.
[26] Rule 64E-9.006(2)(d), F.A.C.
[27] U.S. Product Safety Commission, *Safety Alert, CPSC Document #5059* (August 14, 2012), *http://www.cpsc.gov//PageFiles/118868/5039.pdf* (last visited Mar. 24, 2015).

inspector's report found that the pool pump was not properly grounded.[28] During the same month in North Miami, a 7 year old boy, Calder Sloan, was electrocuted in his family's North Miami swimming from faulty wiring.[29]

In October 2014, the Miami-Dade Board of County Commissioner passed the Swimming Pool Light Ordinance 14-95. The Ordinance modifies two sections of the Florida Building Code, which applies to commercial pools for underwater lighting and makes those requirements applicable to residential pools.[30] Existing pools will be required to comply with the new low voltage requirements at the time of repair or alteration or the homeowner may decide not to have an underwater pool light. The county permit to change an existing pool light to low voltage light or to remove a light without a replacement in unincorporated Miami-Dade County is $65.

Building Code Compliance and Mitigation Program

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.[31] The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.[32] The Florida Building Commission implemented the accreditation process required by statute through its standard process of gathering input from all affected stakeholders and has continued to regularly modify the process based on concerns identified by its users. To date, the Commission has accredited approximately 300 courses finding that the courses' content to be an accurate reflection of the Florida Building Code or related processes.[33]

Florida Building

Currently, s. 553.73(11), F.S., requires local building code enforcement officials and local fire code enforcement officials to resolve conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Florida Life Safety Code by agreement as to the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesaftey and equivalent method of construction. Additionally, decisions made by local fire officials and the local building officials may be appealed to local administrative boards having

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[28] Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Policy Say,* LOCAL 10.COM, (May 8, 2014) *http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796*. (last visited Mar. 24, 2015).
[29] Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, LOCAL10.COM, (April 17, 2014), http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944 (last visited Mar. 24, 2015).
[30] Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?* http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf (last visited Mar. 24, 2015).
[31] Section 553.841(2), F.S.
[32] Section 553.841(3), F.S.
[33] Department of Business and Professional Regulation, *Senate Bill 1232 Analysis* (March 17, 2015) (on file with Senate Committee on Health Policy).

firesafety responsibilities. All such decisions are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council.

Building Plan Review

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency. Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Commission within the code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.

Section 105.13 (phased permit approval), of the code provides the following:

> After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Product Approval:

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the Florida Building Commission rather than seeking approval in each local jurisdiction where the product is used. One method of obtaining a state approval uses product evaluation reports from an approved evaluation entity.
Section 553.842(8)(a), F.S., explicitly names the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control as evaluation entities.[34]

Underwriters Laboratories (UL) is a safety science company established in 1890 which certifies, validates, tests, inspects, audits, advises, and trains. According to their webpage, UL is "dedicated to promoting safe living and working environments, UL helps safeguard people, products and places in important ways, facilitating trade and providing peace of mind."[35]

[34] Supra note 34
[35] About UL, available at http://ul.com/aboutul/ (last visited on Mar. 19, 2015).

Duct and Air Infiltration Tests

On June 30, 2015, the new 5th Edition (2014) Florida Building Code, Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2. According to this section, a home constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

Section R402.4.1.2 (testing), of the code provides the following:

The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

Division of the State Fire Marshal

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.01, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.[36] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[37]

The Division of the State Fire Marshal consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year.

Every three years, the State Fire Marshall is required to adopt by rule the Florida Fire Prevention Code which must incorporate contain or incorporate by reference all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.

[36] The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.
[37] Section 633.0215(1), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 468.609, F.S., to

- Modify certain training requirements to take the certification exam for building code inspector by:
  - Reducing the number of years' experience in inspection or plan review from 5 to 3 years and lowers the hour requirements for the training program from 200 to 100 hours;
  - Lowering the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours; and
  - By adding the option to hold a standard certificate issued by the FBCAIB or a firesafety inspector license issued pursuant to ch. 633, F.S., and:
    - Have at least 5 years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and
    - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the FBCAIB. The FBCAIB shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.
- Modify certain training requirements to take the certification exam for building code administrator by:
  - Reducing the number of combined years' experience from 10 to 7 years and the required number of years of experience in supervisory positions from 5 to 3. The bill also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement; or
  - Reducing the number of combined years' experience from 10 to 7 years and the required number of years of experience in supervisory positions from 5 to 3. The bill adds a requirement of at least 20 hours but not more than 30 hours of training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

Section 2 amends s. 489.105, F.S., to clarify that the definition of a "plumbing contractor" does not require a person licensed for the sale of liquefied petroleum gas under ch. 527, F.S., to become certified or registered as a plumbing contractor in order to disconnect or reconnect water lines when servicing or replacing a hot water heater.

Sections 3-7 amend various sections of the Florida Statutes related to the Florida Homeowners' Construction Recovery Fund to include Division II contractors within the parameters of the fund.

The bill revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to $15,000 per claim with a $150,000 lifetime maximum per licensee. The bill

revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount. The bill also removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law.

Section 8 amends s. 489.503, F.S., to exempt persons who install low-voltage landscape lighting with a factory-installed electrical cord with a plug and which does not require installation, wiring, or modification to the electrical wiring of a structure from the requirement to be certified as an electrical contractor.

Sections 9, 10, and 13 amend various sections of the Florida Statutes related to the operation and maintenance of public pools.

Section 514.031, F.S., is amended to require the DOH to inspect permitted public swimming pools to ensure that they continue to be operated in compliance with DOH rules, the original plans and specifications for the pool, and provisions in the Florida Building Code[38] applicable to public pools. The DOH is authorized to adopt rules for such inspections and the bill specifies that DOH authority to inspect extends to the pool, the pool deck, the pool barrier,[39] and the bathroom facilities for pool patrons. Local enforcement agencies are required to permit and inspect repairs required as the result of DOH inspections and are authorized to take enforcement actions to ensure compliance. The DOH is required to ensure that rules enforced by the local enforcement agency are not inconsistent with the Florida Building Code.

Section 514.05, F.S., is amended to authorize the DOH to deny a permit, to impose administrative fines, or to close a public pool for noncompliance with applicable provisions in the Florida Building Code.

Section 553.79, F.S., is amended to comply with changes made in section 9 of the bill.

Section 11 amends s. 553.721, F.S., to require the Florida Building Code Compliance Mitigation Fund to fund from existing resources, up to $30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to $15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshall.

Section 12 amends s. 553.73, F.S., to:

- Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board;
- Restrict appeals of decisions made by local fire officials to decisions regarding application, interpretation, or enforcement of the Florida Fire Prevention Code;
- Restrict appeals of decisions made by local building officials to decisions regarding application, interpretation, or enforcement of the Florida Building Code;
- Require that newly installed and replacement water heaters, except those in one and two family single-family homes, have hard-wired or battery-operated water-level detection

[38] Chapter 533, F.S.
[39] As defined in s. 515.25, F.S.

devices secured to the drain pan area at a level lower than the drain connection. The device must have an audible alarm and, if battery operated, a 10-year low-batter notification; and
- Restrict the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.[40]

Section 13 also amends s. 553.79, F.S., to allow the local building official to issue a phased permit after an applicant submits the appropriate construction documents. If the building official issues a phased permit, an outside agency may not require additional reviews or approvals because the project will need additional outside agency reviews and approvals before the issuance of a master building permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

Section 14 amends s. 553.841, F.S., to remove the requirement that the DBPR maintain, update, develop, or cause to be developed advanced modules designed for use by each profession while administering the Florida Building Code Compliance and Mitigation Program. Instead the DBPR is authorized to develop or update code-related training for each profession. The bill also removes the requirement that the Florida Building Commission provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission.

Section 15 amends s. 553.842, F.S., to add Underwriters Laboratories, LLC, to the list of entities evaluation entities approved by the Florida Building Commission.

Section 16 amends s. 553.908, F.S., to require local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals including energy raters and HVAC contractors.

Sections 17-20 amend various sections of ch. 633, F.S., related to fire prevention and control, to:
- Strike the definition of "use" pertaining to property;
- Add a definition for "change of occupancy" to mean a change in the purpose of level of activity within a building which involves a change in application of the requirements of the Florida Fire Prevention Code;
- Specify that only people who will be or may be affected by the application of the Florida Fire Prevention Code to a property or building that the person owns, controls, or is considering purchasing, selling, designing, constructing, or altering may require the State Fire Marshall to issue a declaratory statement relating to the Florida Fire Prevention Code;
- Specify that a declaratory statement is not intended to be an appeal of a decision of a local fire official or an appeal of a local board reviewing a decision of a local fire official;
- Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;

[40] Supra note 1

- Require areas of refuge to be provided when required by the Florida Building Code-Accessibility and restricts dead-end corridors to a maximum length of 50 feet in apartment buildings protected by automatic sprinklers; and
- Require fire prevention plan reviewers to be certified at a minimum as a Fire Inspector I or as the State Fire Marshall determines by rule.

Section 21 creates a new, undesignated section of the Florida Statutes to establish the Calder Sloan Swimming Pool Electrical-Safety Task Force within the Florida Building Commission. The bill states the purpose of the task force is to study and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2015, on recommended revisions to the Florida Statutes concerning standards pertaining to grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The task force is comprised of 10 members including:

- The chair of the Florida Building Commission or his or her designee;
- The State Surgeon General or his or her designee; and
- Eight members appointed by the chair of the Florida Building Commission including:
  - A certified electrical contractor with experience with swimming pools;
  - A certified general contractor with experience with swimming pools;
  - A licensed swimming pool contractor;
  - A electric utility provider;
  - A county building code inspector;
  - A licensed real estate broker;
  - An owner of a public swimming pool; and
  - An owner of a private swimming pool.

The bill requires the task force to elect a chairperson and requires the Florida Building Commission to provide staff, information and other assistance as reasonably necessary to assist the task force in carrying out its responsibilities. Members of the task force serve without compensation, but may be reimbursed for travel and other necessary expenses. The task force is required to meet as often as necessary to fulfill its responsibilities and meetings may be conducted by conference call, teleconferencing, or other similar technology.

The provisions of this section expire December 31, 2015.

Section 22 establishes an effective date of July 1, 2015.

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:

Consumers who have their liquid petroleum gas water heaters serviced or replaced may see an indeterminate positive fiscal impact due to not being required to hire a plumbing contractor to hook the water heater to the water line. Additionally, liquid petroleum gas appliance installers may see an indeterminate positive fiscal impact due to not being required to be certified as a plumbing contractor to hook such water heaters to the water line. Plumbing contractors may see an indeterminate negative fiscal impact due to the loss of such hook-up business.

The requirement for hot water heaters to have leak detection devices may increase the costs when installing or replacing a water heater.

The exemption from the requirement to be certificated as an electrical contractor may reduce the costs of installing low-voltage landscape lighting.

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

C. Government Sector Impact:

The DOH reports that, "As the violations will be cited during inspections already being done at public swimming pools, the bill does not have a significant fiscal impact on the Department."[41]

The bill may cause an indeterminate negative fiscal impact on the Florida Building Commission due to the creation of the Calder Sloan Swimming Pool Electrical-Safety Task Force and the requirement that the commission support and assist the task force.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[41] Supra note 6.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.609, 489.105, 489.1401, 489.1402, 489.141, 489.1425, 489.143, 489.503, 514.031, 514.05, 553.721, 553.73, 553.79, 553.841, 553.842, 553.908, 633.102, 633.104, 633.202, and 633.216.

This bill creates one undesignated section of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 23, 2015:
The CS amends SB 1232 to:

- Amend current provisions in the bill to:
  - Exempt one and two family homes from the requirement to have a hot water heater leak detection device installed when installing or replacing hot water heaters; and
  - Make conforming changes to provisions related to swimming pool inspections.
- Create new provisions which:
  - Reduce the requirements for certification as a building code inspector, building code administrator, or a plans examiner and allows for a board certificate or a firesaftey inspector license to qualify along with 5 years' experience and required training.
  - Require the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates.
  - Apply the requirements of the Florida Homeowner's Recovery Fund to division II contractors and makes clarifying and technical changes to those sections related to the recovery fund.
  - Cap payments from the recovery fund for division II contractors.
  - Exempt landscapers from being certified as an electrical contractor when installing pre-wired low-voltage landscape lighting.
  - Clarify the DOH's authority to deny, revoke, or fine a public swimming pool permitee.
  - Require the Florida Building Code Compliance Mitigation Fund to fund, up to $30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to $15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshall.
  - Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board.
  - Restrict appeals of decisions made by local fire officials or local building officials.
  - Restrict the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.
  - Allow building officials to issue phased permits for the construction of parts of a building project.

- Require the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards.
- Amend provisions related to fire prevention and control to:
  - Revise definitions;
  - Clarify who may require the State Fire Marshall to issue a declaratory statement relating to the Florida Fire Prevention Code and clarify that such process is not intended to be an appeal of a decision made by a local fire official or local board;
  - Require new and, by certain dates, existing high-rise buildings to comply with minimum radio signal strength
  - Require areas of refuge to be provided under certain circumstances and restrict certain dead-end corridors; and
  - Require fire prevention plan reviewers to be certified.
- Create the Calder Sloan Swimming Pool Electrical-Safety Task Force.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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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. Subsections (2), (3), and (7) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this

part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate ~~as~~ issued by the board~~,~~ or a firesafety ~~fire safety~~ inspector license issued pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program that provides at least 100 hours but not more ~~of not less~~ than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the

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intent of the classroom component of the training program; ~~or~~

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections, and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more ~~of not less~~ than 300 hours of cross-training which is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least ~~not less than~~ 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; or

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 5 years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant

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to chapter 633; and

b. Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.

(3) A person may take the examination for certification as a building code administrator pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 7 ~~10~~ years' combined experience as an architect, engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent, with at least 3 ~~5~~ years of such experience in supervisory positions; or

2. Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent which totals 7 ~~10~~ years, with at least 3 ~~5~~ years of such total being experience in

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supervisory positions. In addition, the applicant must have completed training consisting of at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

(7)(a) The board shall ~~may~~ provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for a period longer than 3 years.

(b) No building code administrator, plans examiner, or building code inspector may have a provisional certificate extended beyond the specified period by renewal or otherwise.

(c) The board shall ~~may~~ provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters as the board may deem necessary to protect the public safety and health.

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a certified building

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code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

Section 2. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting

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business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a

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qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6)~~,~~ and does not require certification or registration under this part for a category I liquefied petroleum gas dealer, LP gas installer, or specialty installer who is licensed under chapter 527 or an ~~of any~~ authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 3. Subsections (2) and (3) of section 489.1401, Florida Statutes, are amended to read:

489.1401 Legislative intent.—

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate an ~~any~~ aggrieved claimant who contracted for the construction or improvement of the homeowner's residence located within this state and who has obtained a final judgment in a ~~any~~ court of competent jurisdiction, was awarded restitution by the Construction Industry Licensing Board, or received an award in arbitration against a licensee on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project. Such

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grievance must arise ~~and arising~~ directly out of a ~~any~~ transaction conducted when the judgment debtor was licensed and must involve an act ~~performed any of the activities~~ enumerated under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

(3) It is the intent of the Legislature that Division I and Division II contractors set apart funds for the specific objective of participating in the fund.

Section 4. Paragraphs (d), (i), (k), and (l) of subsection (1) of section 489.1402, Florida Statutes, are amended to read:

489.1402 Homeowners' Construction Recovery Fund; definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(d) "Contractor" means a Division I or Division II contractor performing his or her respective services described in s. 489.105(3)(a)-(q) ~~489.105(3)(a)-(c)~~.

(i) "Residence" means a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

(k) "Same transaction" means a contract, or a ~~any~~ series of contracts, between a claimant and a contractor or qualified business, when such contract or contracts involve the same property or contiguous properties and are entered into either at one time or serially.

(l) "Valid and current license," for the purpose of s. 489.141(2)(d), means a ~~any~~ license issued pursuant to this part to a licensee, including a license in an active, inactive,

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delinquent, or suspended status.

Section 5. Subsections (1) and (2) of section 489.141, Florida Statutes, are amended to read:

489.141 Conditions for recovery; eligibility.—

(1) A ~~Any~~ claimant is eligible to seek recovery from the recovery fund after making ~~having made~~ a claim and exhausting the limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance if~~, provided that~~ each of the following conditions is satisfied:

(a) The claimant has received a final judgment in a court of competent jurisdiction in this state or has received an award in arbitration or the Construction Industry Licensing Board has issued a final order directing the licensee to pay restitution to the claimant. The board may waive this requirement if:

1. The claimant is unable to secure a final judgment against the licensee due to the death of the licensee; or

2. The claimant has sought to have assets involving the transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent jurisdiction in this state and, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee.

(b) The judgment, award, or restitution is based upon a violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

(c) The violation was committed by a licensee.

(d) The judgment, award, or restitution order specifies the actual damages suffered as a consequence of such violation.

(e) The contract was executed and the violation occurred on or after July 1, 1993, and provided that:

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1. The claimant has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor or licensee liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's or licensee's property pursuant to such execution was insufficient to satisfy the judgment;

2. If the claimant is unable to comply with subparagraph 1. for a valid reason to be determined by the board, the claimant has made all reasonable searches and inquiries to ascertain whether the judgment debtor or licensee is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his or her search has discovered no property or assets or has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; and

3. The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board.

(f) A claim for recovery is made within 1 year after the conclusion of any civil, criminal, or administrative action or award in arbitration based on the act. This paragraph applies to any claim filed with the board after October 1, 1998.

(g) Any amounts recovered by the claimant from the judgment debtor or licensee, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board.

(h) The claimant is not a person who is precluded by this

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act from making a claim for recovery.

(2) A claimant is not qualified to make a claim for recovery from the recovery fund~~,~~ if:

(a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;

(b) The claimant is a licensee who acted as the contractor in the transaction that ~~which~~ is the subject of the claim;

(c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;

(d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

(e) The claimant was associated in a business relationship with the licensee other than the contract at issue; or

~~(f) The claimant has suffered damages as the result of making improper payments to a contractor as defined in part I of chapter 713; or~~

(f)~~(g)~~ The claimant has entered into a contract ~~contracted~~ with a licensee to perform a scope of work described in s. 489.105(3)(d)-(q) before July 1, 2015 ~~489.105(3)(d)-(p)~~.

Section 6. Subsection (1) of section 489.1425, Florida Statutes, is amended to read:

489.1425 Duty of contractor to notify residential property owner of recovery fund.—

(1) Each ~~Any~~ agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and

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materials does not exceed $2,500. The written statement must be substantially in the following form:

FLORIDA HOMEOWNERS' CONSTRUCTION
RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

The statement must ~~shall~~ be immediately followed by the board's address and telephone number as established by board rule.

Section 7. Section 489.143, Florida Statutes, is amended to read:

489.143 Payment from the fund.—

(1) The fund shall be disbursed as provided in s. 489.141 on a final order of the board.

(2) A ~~Any~~ claimant who meets all of the conditions prescribed in s. 489.141 may apply to the board to cause payment to be made to a claimant from the recovery fund in an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and only up to the maximum payment allowed for each

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respective Division I and Division II claim. Payment from the fund for other costs related to or pursuant to civil proceedings such as postjudgment interest, attorney ~~attorney's~~ fees, court costs, medical damages, and punitive damages is prohibited. The recovery fund is not obligated to pay a ~~any~~ judgment, an award, or a restitution order, or any portion thereof, which is not expressly based on one of the grounds for recovery set forth in s. 489.141.

(3) Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund shall be subject to a $50,000 maximum payment for each Division I claim. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund shall be subject to a $15,000 maximum payment for each Division II claim.

(4) ~~(3)~~ Upon receipt by a claimant under subsection (2) of payment from the recovery fund, the claimant shall assign his or her additional right, title, and interest in the judgment, award, or restitution order, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment, award, or restitution order, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the recovery fund.

(5) ~~(4)~~ Payments for claims arising out of the same transaction shall be limited, in the aggregate, to the lesser of the judgment, award, or restitution order or the maximum payment allowed for a Division I or Division II claim, regardless of the


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number of claimants involved in the transaction.

(6)~~(5)~~ For contracts entered into before July 1, 2004, payments for claims against any one licensee may ~~shall~~ not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law. Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of $500,000 for each Division I licensee. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund is subject only to a total aggregate cap of $150,000 for each Division II licensee.

(7)~~(6)~~ Claims shall be paid in the order filed, up to the aggregate limits for each transaction and licensee and to the limits of the amount appropriated to pay claims against the fund ~~for the fiscal year in which the claims were filed~~. Payments may not exceed the total aggregate cap per license or per claimant limits under this section.

(8)~~(7)~~ If the annual appropriation is exhausted with claims pending, such claims shall be carried forward to the next fiscal year. Any moneys in excess of pending claims remaining in the recovery fund at the end of the fiscal year shall be paid as provided in s. 468.631.

(9)~~(8)~~ Upon the payment of any amount from the recovery

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fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee as described in s. 489.141, the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee may ~~shall~~ not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

(10) ~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an association, or a ~~any~~ person acting in his or her individual capacity, who aids, abets, solicits, or conspires with another ~~any~~ person to knowingly present or cause to be presented a ~~any~~ false or fraudulent claim for the payment of a loss under this act commits ~~is guilty of~~ a third-degree felony, punishable as provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~ $30,000~~,~~ unless the value of the fraud exceeds that amount, ~~$30,000~~ in which event the fine may not exceed double the value of the fraud.

(11) ~~(10)~~ Each payment ~~All payments~~ and disbursement ~~disbursements~~ from the recovery fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department or the secretary's designee.

Section 8. Subsection (24) is added to section 489.503, Florida Statutes, to read:

489.503 Exemptions.—This part does not apply to:

(24) A person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with plug and does not require installation, wiring, or modification to the

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electrical wiring of a structure.

Section 9. Subsections (2) through (5) of section 514.031, Florida Statutes, are renumbered as subsections (3) through (6), respectively, and a new subsection (2) is added to that section to read:

514.031 Permit necessary to operate public swimming pool.—

(2) The department shall ensure through inspections that a public swimming pool with an operating permit continues to be operated and maintained in compliance with rules adopted under this section, the original approved plans and specifications or variances, and the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places. The department may adopt and enforce rules to implement this subsection, including provisions for closing those pools and bathing places not in compliance. For purposes of this subsection, the department's jurisdiction includes the pool, the pool deck, the barrier as defined in s. 515.25, and the bathroom facilities for pool patrons. The local enforcement agency shall permit and inspect repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance. The department shall ensure that the rules enforced by the local enforcement agency under this subsection are not inconsistent with the Florida Building Code adopted under chapter 553.

Section 10. Subsections (1), (2), and (5) of section 514.05, Florida Statutes, are amended to read:

514.05 Denial, suspension, or revocation of permit; administrative fines.—

(1) The department may deny an application for an ~~a~~

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operating permit, suspend or revoke a permit issued to any person or public body, or impose an administrative fine upon the failure of such person or public body to comply with the provisions of this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder.

(2) The department may impose an administrative fine, which shall not exceed $500 for each violation, for the violation of this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder and for the violation of ~~any of the provisions of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

(5) Under conditions specified by rule, the department may close a public pool that is not in compliance with this chapter, the original approved plans and specifications or variances, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted under this chapter.

Section 11. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the

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permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2015-2016 fiscal year. Funds collected from the surcharge shall also be used to fund Florida Fire Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The funds collected from the surcharge may not be

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used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 12. Subsection (11) of section 553.73, Florida Statutes is amended, and subsections (19) and (20) are added to that to read:

553.73 Florida Building Code.—

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code and the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either or both codes.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or ~~and~~ the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either or both

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codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board, or if


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none exists, the decisions of the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to the provisions of paragraph (1)(d). Decisions of the local administrative board solely in regard to the provisions of the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. 633.104 and 633.228. Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(19) In other than one- and two-family detached single-family dwellings, a local enforcing agency that requires a permit to install or replace a hot water heater shall require that a hard-wired or battery-operated water-level detection device be secured to the drain pan area at a level lower than

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the drain connection upon installation or replacement of the hot water heater. The device must include an audible alarm and, if battery-operated, must have a 10-year low-battery notification capability.

(20) The Florida Building Code may not require more than one fire access elevator in buildings that are Occupancy Group R-2.

Section 13. Subsections (6) and (11) of section 553.79, Florida Statutes, are amended to read:

553.79 Permits; applications; issuance; inspections.—

(6) A permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code. After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. No other agency review or approval may be required before the issuance of a phased permit due to the fact that the project will need all the necessary outside agencies' reviews and approvals before the issuance of a master building permit. The holder of such permit

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for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

(11)(a) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(b) If the department determines under s. 514.031(2) that a public pool or a public bathing place is not being operated or maintained in compliance with department's rules, the original approved plans and specifications or variances, and the Florida Building Code, the local enforcing agency shall permit and inspect the repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance.

Section 14. Subsections (4) and (7) of section 553.841, Florida Statutes, are amended, to read:

553.841 Building code compliance and mitigation program.—

(4) In administering the Florida Building Code Compliance and Mitigation Program, the department may ~~shall~~ maintain,


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update, develop, or cause to be developed code-related training and education ~~advanced modules designed~~ for use by each profession.

~~(7) The Florida Building Commission shall provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission. The commission shall establish qualifications of accreditors and criteria for the accreditation of courses by rule. The commission may revoke the accreditation of a course by an accreditor if the accreditation is demonstrated to violate this part or the rules of the commission.~~

Section 15. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved pursuant to this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

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Section 16. Section 553.908, Florida Statutes, is amended to read:

553.908 Inspection.—Before construction or renovation is completed, the local enforcement agency shall inspect buildings for compliance with the standards of this part. The local enforcement agency shall accept duct and air infiltration tests conducted in accordance with the Florida Building Code-Energy Conservation by individuals certified in accordance with s. 553.993(5) or (7) or individuals licensed under s. 489.105(3)(f), (g), or (i). The local enforcement agency may accept inspections in whole or in part by individuals certified in accordance with s. 553.993(5) or (7) or by individuals certified as energy inspectors by the International Code Council, provided that the inspection complies with the Florida Building Code-Energy Conservation.

Section 17. Present subsections (2) through (35) of section 633.102, Florida Statutes, are redesignated as subsections (3) through (36), a new subsection (2) is added to that section and present subsection (34) is amended, to read:

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

(2) "Change of occupancy" means a change in the purpose of level of activity within a building which involves a change in application of the requirements of the Florida Fire Prevention Code.

~~(34) "Use" means application, employment; that enjoyment of property which consists of its employment, occupation, exercise, or practice.~~

Section 18. Subsection (6) of section 633.104, Florida Statutes, is amended to read:

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633.104 State Fire Marshal; authority; duties; rules.—

(6) Only the State Fire Marshal may issue, and, when requested in writing by any substantially affected person or a local enforcing agency, the State Fire Marshal shall issue declaratory statements pursuant to s. 120.565 relating to the Florida Fire Prevention Code. For the purposes of this section, the term "substantially affected person" means a person who, will be, or may be affected by the application of the Florida Fire Prevention Code to a property or building that the person owns, controls, or is, or is considering purchasing, selling, designing, constructing, or altering. A petition for declaratory statement is not intended to be an appeal of a decision of a local fire official or an appeal of a local board reviewing a decision of a local fire official.

Section 19. Subsections (17), (18), and (19) are added to section 633.202, Florida Statutes, to read:

633.202 Florida Fire Prevention Code.—

(17) In all new high-rise and existing high-rise buildings, minimum radio signal strength for fire department communications shall be maintained at a level determined by the authority having jurisdiction. Existing buildings may not be required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022. Existing apartment buildings may not be required to comply until January 1, 2025.

(18) Areas of refuge shall be provided when required by the Florida Building Code-Accessibility. Required portions of an area of refuge shall be accessible from the space they serve by

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an accessible means of egress.

(19) Dead-end corridors within an apartment may not exceed 50-feet in buildings protected throughout by an approved automatic supervised sprinkler system.

Section 20. Subsection (10) is added to section 633.216, Florida Statutes, to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(10) In addition to any other requirements that may be imposed by this state, fire prevention plan reviewers shall, after 12 months from the effective date of this statute, be certified, at a minimum, as a Fire Inspector I by the State Fire Marshal. The State Fire Marshal may, by rule, determine alternative educational and experience requirements, or certifications, as equivalent.

Section 21. This act shall take effect July 1, 2015.

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========== 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 building codes; amending s. 468.609, F.S.; revising the certification examination requirements for building code inspectors, plans examiners, and building code administrators; requiring the Florida Building Code Administrators and Inspectors Board to provide for issuance of certain provisional certificates; amending s. 489.105, F.S.; revising the term "plumbing contractor"; amending s. 489.1401, F.S.; revising legislative intent with respect to the purpose of the Florida Homeowners' Construction Recovery Fund; providing legislative intent that Division II contractors set apart funds to participate in the fund; amending s. 489.1402, F.S.; revising terms; amending s. 489.141, F.S.; prohibiting certain claimants from making a claim against the recovery fund for certain contracts entered into before a specified date; amending s. 489.1425, F.S.; revising a notification provided by contractors to certain residential property owners to state that payment from the recovery fund is limited; amending s. 489.143, F.S.; revising provisions concerning payments from the recovery fund; specifying claim amounts for certain contracts entered into before or after specified dates; providing aggregate caps for


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payments; amending s. 489.503, F.S.; exempting certain low-voltage landscape lighting from licensed electrical contractor installation requirements; amending s. 514.031, F.S.; requiring the Department of Health to conduct inspections of certain public pools with operating permits to ensure continued compliance with specified criteria; authorizing the department to adopt rules; specifying the department's jurisdiction for purposes of inspecting certain public pools; specifying duties of local enforcement agencies regarding modifications and repairs made to certain public pools as a result of the department's inspections; requiring the department to ensure that certain rules enforced by local enforcement agencies comply with the Florida Building Code; amending s. 514.05, F.S.; specifying that the department may deny, suspend, or revoke operating permits for certain pools and bathing places if certain plans, variances, or requirements of the Florida Building Code are violated; specifying that the department may assess an administrative fine for violations by certain public pools and bathing places if certain plans, variances, or requirements of the Florida Building Code are violated; amending s. 553.721, F.S.; directing the Florida Building Code Compliance and Mitigation Program to fund, from existing resources, the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup; providing a limitation; requiring that a specified amount of

funds from the surcharge be used to fund certain Florida Fire Code informal interpretations; amending s. 553.73, F.S.; authorizing local boards created to address specified issues to combine the appeals boards to create a single, local board; authorizing the appeal to a local administrative board of specified decisions made by a local fire official; specifying the decisions of the local building official and the local fire official which are subject to review; requiring the permitted installation or replacement of a water heater in a conditioned or attic space to include a water leak detection device; prohibiting the Florida Building Code from requiring more than one fire access elevator in certain buildings; amending s. 553.79, F.S.; authorizing a building official to issue a permit for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; providing that the holder of such permit shall begin building at the holder’s own risk with the building operation and without assurance that a permit for the entire structure will be granted; requiring local enforcing agencies to permit and inspect modifications and repairs made to certain public pools and public bathing places as a result of the department’s inspections; amending s. 553.841, F.S.; authorizing the department to maintain, update, develop or cause to be developed code-related training and education;

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removing provisions related to the development of advanced courses with respect to the Florida Building Code Compliance and Mitigation Program and the accreditation of courses related to the Florida Building Code; amending s. 553.842, F.S.; providing that Underwriters Laboratories, LLC, is an approved evaluation entity; amending s. 553.908, F.S.; requiring local enforcement agencies to accept duct and air infiltration tests conducted in accordance with certain guidelines by specified individuals; amending s. 633.102, F.S.; revising terms; amending s. 633.104, F.S.; defining a term; clarifying intent; amending s. 633.202, F.S.; requiring all new high-rise and existing high-rise buildings to maintain a minimum radio signal strength for fire department communications; providing a transitory period for compliance; requiring areas of refuge to be required as determined by the Florida Building Code-Accessibility; prohibiting dead-end corridors within an apartment from exceeding a specified footage in specified buildings; amending s. 633.216, F.S.; requiring fire prevention plan reviewers to be certified by a specified date; authorizing the State Fire Marshal to determine alternative educational and experience requirements or certifications; providing an effective date.

555036

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (589274) (with title amendment)

Between lines 791 and 792
insert:

Section 21. Calder Sloan Swimming Pool Electrical-Safety Task Force.—There is established within the Florida Building Commission a Calder Sloan Swimming Pool Electrical-Safety Task Force, which is a task force as defined in s. 20.03, Florida Statutes.

555036

(1) The primary purpose of the task force is to study and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on recommended revisions to the Florida Statutes concerning standards pertaining to grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The task force report is due by October 1, 2015.

(2) The task force shall consist of 10 members, including the chair of the Florida Building Commission or her or his designee, the State Surgeon General or her or his designee, and 8 members who are appointed by the chair of the Florida Building Commission. Each appointed member must be or represent one of the following:

(a) An electrical contractor certified to do business in this state and actively engaged in the profession, who has experience with swimming pools.

(b) A general contractor certified to do business in this state and actively engaged in the profession, who has experience with swimming pools.

(c) A swimming pool contractor licensed to do business in this state and actively engaged in the profession.

(d) An electric utility provider doing business in this state.

(e) A county building code inspector.

(f) A licensed real estate broker.

(g) An owner of a public swimming pool as defined in s. 514.011, F.S.

(h) An owner of a private swimming pool as defined in s. 514.011, F.S.

555036

(3) The members of the task force shall elect the chair.

(4) The Florida Building Commission shall provide such staff, information, and other assistance as is reasonably necessary to assist the task force in carrying out its responsibilities.

(5) Members of the task force shall serve without compensation, but may receive reimbursement as provided in s. 112.061, Florida Statutes, for travel and other necessary expenses incurred in the performance of their official duties.

(6) The task force shall meet as often as necessary to fulfill its responsibilities and meetings may be conducted by conference call, teleconferencing, or similar technology.

(7) This section expires December 31, 2015.

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

And the title is amended as follows:

Delete line 905

and insert:

experience requirements or certifications; creating the Calder Sloan Swimming Pool Electrical-Safety Task Force within the Florida Building Commission; specifying the purpose of the task force; providing for membership; requiring members of the task force to elect the chair; requiring the Florida Building Commission to provide staff, information, and other assistance to the task force; authorizing the reimbursement of task force members for certain

555036

expenses; requiring a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a specified date; providing for future repeal of the task force; providing

By Senator Simpson

18-00538C-15 20151232__

A bill to be entitled

An act relating to building codes; amending s. 489.105, F.S.; revising the definition of the term "plumbing contractor"; amending s. 514.031, F.S.; requiring the Department of Health to conduct inspections of certain public pools with operating permits to ensure continued compliance with specified criteria; authorizing the department to adopt rules; specifying the department's jurisdiction for purposes of inspecting certain public pools; specifying duties of local enforcement agencies regarding modifications and repairs made to certain public pools as a result of the department's inspections; requiring the department to ensure certain rules enforced by local enforcement agencies comply with the Florida Building Code; amending s. 514.05, F.S.; specifying that the department may close certain public pools or deny, suspend, or revoke operating permits for such pools if the Florida Building Code is violated; specifying that the department may assess an administrative fine for operating permits for certain public pools if the Florida Building Code is violated; amending s. 553.73, F.S.; requiring the permitted installation or replacement of a hot water heater to include a water-level detection device; amending s. 553.79, F.S.; requiring local enforcing agencies to permit and inspect modifications and repairs made to certain public pools and public bathing places as a result of the department's inspections; amending s. 553.841,

F.S.; removing provisions related to the development of advanced courses with respect to the Florida Building Code Compliance and Mitigation Program and the accreditation of courses related to the Florida Building Code; amending s. 553.842, F.S.; providing that Underwriters Laboratories, LLC, is an approved evaluation entity; providing an effective date.

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

Section 1. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of

those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private

property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of a person licensed under chapter 527 or any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 2. Subsections (2) through (5) of section 514.031, Florida Statutes, are redesignated as subsections (3) through (6), respectively, and a new subsection (2) is added to that section, to read:

514.031 Permit necessary to operate public swimming pool.—

(2) The department shall ensure through inspections that a public swimming pool with an operating permit continues to be operated and maintained in compliance with rules adopted under this section, the original approved plans and specifications or variances, and the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places. The department may adopt and enforce rules to implement this

subsection, including provisions for closing those pools and bathing places not in compliance. For purposes of this subsection, the department's jurisdiction includes the pool, the pool deck, the barrier as defined in s. 515.25, and the bathroom facilities for pool patrons. The local enforcement agency shall permit and inspect repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance. The department shall ensure that the rules enforced by the local enforcement agency under this subsection are not inconsistent with the Florida Building Code adopted under chapter 553.

Section 3. Subsections (1), (2), and (5) of section 514.05, Florida Statutes, are amended to read:

514.05 Denial, suspension, or revocation of permit; administrative fines.—

(1) The department may deny an application for an ~~a~~ operating permit, suspend or revoke a permit issued to any person or public body, or impose an administrative fine upon the failure of such person or public body to comply with the provisions of this chapter, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder.

(2) The department may impose an administrative fine, which shall not exceed $500 for each violation, for the violation of this chapter, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted hereunder and for the violation of ~~any of the provisions of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each

day that a violation continues may constitute a separate violation.

(5) Under conditions specified by rule, the department may close a public pool that is not in compliance with this chapter, the Florida Building Code adopted under chapter 553 applicable to public pools or public bathing places, or the rules adopted under this chapter.

Section 4. Subsection (19) is added to section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(19) A local enforcing agency that requires a permit to install or replace a hot water heater shall require that a hard-wired or battery-operated water-level detection device be secured to the drain pan area at a level lower than the drain connection upon installation or replacement of the hot water heater. The device must include an audible alarm and, if battery-operated, must have a 10-year low-battery notification capability.

Section 5. Subsection (11) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(11)(a) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may

confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(b) If the department determines under s. 514.031(2) that a public pool or a public bathing place is not being operated or maintained in compliance with department rules, the original approved plans and specifications or variances, and the Florida Building Code, the local enforcing agency shall permit and inspect the repairs or modifications required as a result of the department's inspections and may take enforcement action to ensure compliance.

Section 6. Subsections (4) and (7) of section 553.841, Florida Statutes, are amended to read:

553.841 Building code compliance and mitigation program.—

~~(4) In administering the Florida Building Code Compliance and Mitigation Program, the department shall maintain, update, develop, or cause to be developed advanced modules designed for use by each profession.~~

~~(7) The Florida Building Commission shall provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission. The commission shall establish qualifications of accreditors and criteria for the accreditation of courses by rule. The commission may revoke the accreditation of a course by an accreditor if the accreditation is demonstrated to violate this part or the rules of the commission.~~

Section 7. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved pursuant to this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

Section 8. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 1232
Bill Number (if applicable)

555036
Amendment Barcode (if applicable)

Topic Pool Safety

Name Chris Sloan

Job Title

Address 1912 NE 118 RD
Street

NORTH MIAMI FL 33181
City *State* *Zip*

Phone 305-608-6259

Email Chris.sloan@2c.tv

Speaking: ☒ For ☐ Against ☐ Information

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

I wish to speak N/A

Representing Calder Sloan & Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

3/23/15
Meeting Date

1232
Bill Number (if applicable)

Topic Pool Electrical-Safety Task Force

555036
Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 231 West Bay Ave
Street

Phone 407 830 1882

Longwood FL 32750
City *State* *Zip*

Email RBKershner@att.net

Speaking: ☐ For ☐ Against ☑ Information

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

Representing United Pool & Spa Assn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

3/23/15
Meeting Date

[redacted] 1232
Bill Number (if applicable)

555036
Amendment Barcode (if applicable)

Topic Pool Electrical Safety Task Force

Name Jennifer Hatfield

Job Title

Address 729 Ocean Inlet Dr.
Street

Boynton Beach FL 33435
City *State* *Zip*

Phone 941-345-3243

Email jen@jhatfieldandassociates.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FL Swimming Pool Assoc.

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)

3/23/15
Meeting Date

SB 1232
Bill Number (if applicable)

Grimsley amdt # 589274
Amendment Barcode (if applicable)

Topic Building Code

Name JON PASQUALONE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325
Street

HOMOSASSA FL 34475
City *State* *Zip*

Phone 772-932-1555

Email jon.pasqualone@ffsfla.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Marshals & Inspectors 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)

3-23-15
Meeting Date

SB 1232
Bill Number (if applicable)

589724
Amendment Barcode (if applicable)

Topic BUILDING CODES

Name CAM FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGE SQUARE # 3-243
Street

TALL FL 32312
City *State* *Zip*

Phone 850-222-2772

Email AFENTRISS@AOL.COM

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA ASSN PLUMBING-HEATING COOLING CONTRACTORS

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)

3-23-15
Meeting Date

1232
Bill Number (if applicable)

Topic Building Code

Grimsley amdt # 589274
Amendment Barcode (if applicable)

Name Jonathan Kanziggg

Job Title Fire Chief

Address 1322 College Parkway
Street

Phone 850-232-5351

Gulf Breeze FL 32563
City *State* *Zip*

Email jonathan.kanziggg@Midwayfire.com

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

3/23/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1232

Meeting Date *Bill Number (if applicable)*

Topic Bldg Code *Amendment Barcode (if applicable)*

Name Bruce Kershner

Job Title

Address 231 West Bay Ave Phone 407-830-1882

Street

Longwood FL 32750 Email RBKershner@att.net

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing United Pool & Spa Assn

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

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

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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)

3/23/15
Meeting Date

1232
Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Jennifer Hatfield

Job Title

Address 729 Deep Inlet Dr.
Street

Phone 941-345-3263

Boynton Beach FL 33435
City *State* *Zip*

Email jen@jhatfieldandassociates.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Swimming Pool 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.

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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)

3-3-15
Meeting Date

1232
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title _____

Address PO Box 11026
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 681 0496

Email dale.calhoun@floridagas.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Propane Gas 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)

412 K

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1232
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Building Codes

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10038
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone 850 2220000

Email rich@rlwatsonandassociates.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Associated Builders and Contractors of FL

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)

3.23.15
Meeting Date

SB 1232
Bill Number (if applicable)

Topic Building and Fire Code Amendments

Amendment Barcode (if applicable)

Name Robert Fine

Job Title

Address 333 SE 2 Ave
Street

Phone 305-779-0826

Miami FL 33131
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing Florida Homebuilders

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

3-23-15
Meeting Date

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

SB 1232
Bill Number (if applicable)

Topic BUILDING & FIRE CODES

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title

Address 113 EAST COLLEGE AVE.
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-566-7824

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing FLORIDA HOME BUILDERS, LLC

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 1526
INTRODUCER:	Health Policy Committee and Senator Legg
SUBJECT:	Athletic Trainers
DATE:	March 23, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1526 updates the regulation of athletic trainers. The bill authorizes the practice of athletic training, under the direction of a physician, which is communicated through an oral or written prescription or protocols rather than only pursuant to a protocol with a supervising physician. An allopathic, osteopathic, or chiropractic physician will make the determination as to the appropriate method for communicating his or her direction for the provision of services and care by the athletic trainer. The board of athletic training is directed to adopt rules pertaining to mandatory requirements and guidelines for the communication.

The bill revises the legislative intent relating to athletic trainers, updates definitions, and revises the requirements for licensure as an athletic trainer. Applicants must pass the national examination to be certified by the Board of Certification (BOC). Background screening requirements for new applicants, applicants whose licenses have expired, and licensees undergoing disciplinary action go into effect on July 1, 2016.

The bill has a first year fiscal impact of $92,880 on the Florida Department of Law Enforcement (FDLE) for the costs of the level 2 background checks.

The bill's effective date is January 1, 2016.

II. Present Situation:

Athletic trainers are regulated by the Department of Health (department) and the Board of Athletic Training (board) within the department pursuant to part XIII of ch. 468, F.S. The Legislature created part XIII of ch. 468, F.S., in 1994.[1] The stated legislative intent was for athletes to be assisted by persons who are adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities, and to protect the public by licensing and fully regulating these trainers.[2]

The board consists of nine members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed athletic trainers, one must be a physician licensed under ch. 458, F.S., or ch. 459, F.S., one must be a physician licensed under ch. 460, F.S., and the remaining two members must be consumers who have never worked or have had a financial interest in athletic training or been a licensed health care practitioner.[3]

Services provided by athletic trainers include prevention, emergency care, clinical diagnosis, therapeutic intervention, and rehabilitation of injuries and medical conditions.[4] State law defines athletic training to mean the recognition, prevention, and treatment of athletic injuries.[5] An athletic injury is defined as an injury that is sustained which affects the athlete's ability to participate or perform in an athletic activity.[6] An athletic activity means participation in an activity, conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation, requiring any of the physical attributes of strength, agility, range of motion, speed, and stamina.[7]

Licensing Process

To be licensed in Florida today, an applicant must:

- Be at least 21 years of age;
- Have a bachelor's degree from a college or university accredited by a specified accrediting agency;
- If graduated after 2004, have completed an approved athletic training curriculum from a college or university accredited by a program recognized by the BOC;
- Have a current certification in cardiovascular pulmonary resuscitation (CPR) with an automated external defibrillator (AED) from the American Red Cross, the American Heart Association, American Safety and Health Institute, the National Safety Council, or an entity approved by the board as equivalent;
- Have passed the BOC Entry Level Certification examination and submit a certified copy of certificate;
- Submit proof of taking 2-hour course on the prevention of medical errors; and

[1] Chapter 94-119, Laws of Fla., and s. 468.70, F.S..
[2] Id.
[3] Section 468.703(2), F.S.
[4] Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) http://www.bocatc.org/about-us/defining-athletic-training (last visited Mar. 18, 2015).
[5] Section 468.701(5), F.S.
[6] Section 468.701(3), F.S.
[7] Section 468.701, (2), F.S.

- If licensed in another state, territory or jurisdiction of the United States, have a license verification form sent directly to the board office from that office that issued the license or certification.[8]

The biennial licensure fee is $230.00 for new applicants if the applicant is applying in the first year of the biennium or $180.00 if the applicant is applying in the second year of the biennium. The fees include a $100.00 application fee and an initial licensure fee of $125 for a two year licensure period or $75 for a 1-year licensure period.[9]

Currently there are 1,935 in-state athletic trainers in Florida.[10] There are an additional 196 active, out of state licensees and 3 active, military licensees.[11] During 2013-2014, the department reports 356 initial applications were received and 324 initial licensed were issued.[12]

Exemptions from licensure are made for those individuals who are acting within the professional scope of their department-issued license, an athletic training student under the direct supervision of a licensed athletic director; a person administering standard first aid to an athlete; a person licensed under ch. 548, F.S.,[13] if acting within the scope of such license; and a person providing personal training instructions for exercise, aerobics, or weightlifting, if the person does not represent himself or herself as an "athletic trainer."

All licenses expire on September 30 of even numbered years. To renew, a licensee needs to complete a renewal application, pay the renewal fees and show proof of current certification from the Board of Certification.[14] The cost to renew an active license for each biennium is $130.[15]

Continuing education requirements may not exceed 24 hours biennially and must include a current certification in CPR with an AED from the American Red Cross or the American Heart Association, or an equivalent training as determined by the board.[16]

Board of Certification

To become a certified athletic trainer, a student must earn a degree from a school with an athletic training curriculum accredited by the Commission on Accreditation of Athletic Training

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[8] Section 468.707, F.S., and Department of Health, Board of Athletic Training, *Licensing and Regulation,* (updated July 23, 2014) http://floridasathletictraining.gov/licensing/ (last visited Mar. 18, 2015).
[9] Department of Health, Board of Athletic Training, *Licensing and Registration - Fees,* http://floridasathletictraining.gov/licensing/, (last visited Mar. 18, 2015) and Rule 64B33-3001, F.A.C. The fees listed in the administrative rule do not match the fees on the board's website.
[10] Department of Health, *Senate Bill 1526 Analysis*, pg. 2 (February 26, 2015), (on file with the Senate Committee on Health Policy).
[11] Department of Health, *2013-14 Annual Report and Long Range Plan,* pg. 13 http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html, (last visited Mar. 18, 2015).
[12] Id at pg. 17.
[13] Chapter 548 regulates pugilistic exhibitions, including the attendance of a physician who serves as an agent of the Florida State Boxing Commission for each event.
[14] Department of Health, Board of Athletic Training, *Renewal Information - Requirements,* http://floridasathletictraining.gov/renewals/#tab-requirements (last visited Mar. 18, 2015).
[15] Id at Fees. *See also* Rule 64B33-3.001, F.A.C., which shows the biennial renewal fee as $125.
[16] Rule 64B33-2.003, F.A.C.

Education (CAATE).[17] The curriculum includes both formal instruction in injury/illness prevention, first aid and emergency care, assessment of injury/illness, human anatomy, and physiology, therapeutic modalities and nutrition as well as clinical education in practice settings.[18]

The Board of Certification, Inc., or Board of Certification for the Athletic Trainer was incorporated in 1989 to provide a certification program for entry-level athletic trainers. The BOC has been certifying athletic trainers since 1969 and is the only accredited certification program available.[19] The program is accredited through the National Commission for Certifying Agencies and undergoes reaccreditation by that agency every 5 years.[20]

The exam fee through the BOC is for first time candidates $300 and registration occurs through the BOC directly.[21]

Athletic Trainer Responsibilities

An athletic trainer practices under a written protocol with a licensed supervising physician or, if at an athletic event, under the direction of a licensed physician. A physician is defined as a provider licensed under chapters 458 (medical), 459 (osteopathic), 460 (chiropractic), or an individual otherwise authorized to practice medicine.[22]

The written protocol must require the athletic trainer to notify the supervising physician of new injuries as soon as practicable.

Violations, Penalties and Discipline

Sexual misconduct between an athletic trainer and an athlete is a violation of the mutual trust needed for an athletic trainer-athlete relationship and is prohibited.[23]

An athletic trainer is guilty of a first degree misdemeanor, punishable as provided under ss. 775.082 or 775.083, F.S., if any of the following occur:[24]

- Practicing athletic training for compensation without holding an active license;
- Using or attempting to use an athletic trainer license that has been suspended or revoked;
- Knowingly employing an unlicensed person in the practice of athletic training;

[17] Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) http://www.bocatc.org/about-us/defining-athletic-training (last visited Mar. 18, 2015).
[18] National Athletic Trainers' Association, *Athletic Training*, http://www.nata.org/about_AT/docs/GuideToAthleticTrainingServices.pdf (last visited Mar. 18, 2015).
[19] Board of Certification, *BOC Vision and Mission*, http://www.bocatc.org/about-us/boc-vision-mission (last visited: Mar. 18, 2015).
[20] Id.
[21] Board of Certification, *Register for Exam*, http://www.bocatc.org/candidates/register-for-exam (last visited Mar. 18, 2015).
[22] Section 468.713, F.S.
[23] Section 468.715, F.S.
[24] A first degree misdemeanor conviction under s. 775.082(4), F.S., is punishable by a definite term of imprisonment not to exceed 1 year. Under s. 775.083, F.S., a first degree misdemeanor conviction is punishable by a not to exceed $1,000, in addition to any punishment under s. 775.082, F.S.

- Obtaining or attempting to obtain an athletic trainer license by misleading statements or knowing misrepresentation; and
- Using the title "athletic trainer" without being licensed under this part.[25]

Disciplinary measures covered under current law provide actions which constitute grounds for denial of a license, imposition of a penalty, or disciplinary action. Examples of such acts in the practice of athletic training include:

- Failing to follow advertising guidelines;
- Committing incompetency or misconduct;
- Committing fraud or deceit;
- Committing negligence, gross negligence, or repeated negligence;
- Showing an inability to practice with reasonable skill and safety by reason of illness or use of alcohol or drugs, or as a result of any mental or physical condition;
- Violating any provision of chapter 468, F.S., or adopted rules; or
- Violating any provision of s. 456.072, F.S.[26]

The rules promulgated under this section provide more detail as to the recommended penalties for the violations and the discipline a licensee can expect on a first through third offense.[27] Recommended penalties can range from a letter of concern to large fines to revocation of a license, depending on the nature of the violation or how many times the licensee has offended on the same type of violation.

III. Effect of Proposed Changes:

CS/SB 1526 modifies the legislative intent to focus on athletic trainers meeting minimum requirements for the safe practice of athletic training and to protect the public by ensuring that athletic trainers who fall below the minimum standards are prohibited from practicing in this state.

In **Section 2,** the definitions under s. 468.701, F.S., are updated to reference current accrediting entities and to delete "athlete," "athlete activity," "athletic injury," "direct supervision," and "supervision." Focus is shifted from an athlete to a physically active person.

For *athletic trainer*, the education requirements of the Commission on Accreditation of Athletic Training (CAATE) education and the BOC are added. A licensed athletic trainer is also expressly prohibited from offering to provide any care or services for which he or she lacks the education, training or experience to provide or that he or she is prohibited in law from providing.

Athletic training is updated to mean service and care provided under the direction of a physician licensed under s. 468.713, F.S. Service and care are further defined to mean prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition while involved in exercise, sport, recreation, or another physical activity. An athletic trainer may use physical modalities,

[25] Section 468.717, F.S.
[26] Sections 468.717 and 468.719, F.S; and Rule 64B33-5.001, F.A.C.
[27] Rule 64B33-5.001, F.A.C.

including but not limited to, heat, light, sound, cold, electricity, and mechanical devices. The current definition of *athletic training* was limited to the recognition, prevention, and treatment of athletic injuries.

Section 3 deletes obsolete provisions of s. 468.703, F.S., relating to provisions for the initial staggered terms for members of the board.

Section 4 amends s. 468.705, F.S., relating to the board's authority on rulemaking to delete a requirement for a written protocol between the athletic trainer and a supervising physician. The bill authorizes the department to develop rules for requirements and guidelines addressing communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions. Existing requirements of the protocol require the athletic trainer to notify the supervising physician of new injuries as soon as practicable.

Section 5 amends the licensure requirements under s. 468.707, F.S. An applicant is required to submit information to the board and complete an application along with other qualifications that are set forth in this section.

Under the bill, the department shall license each applicant who:

- Has completed an application form and remitted the required fees;
- Has submitted to a background screening under s. 456.0135, F.S., if the applicant applied after July 1, 2016, and the board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action;
- Has obtained a bachelor's degree or higher from a college or university professional athletic training degree program accredited by CAATE or its successor recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation , and passed the national examination to be certified by the BOC;
- Has a current certification from the BOC if graduated before 2004;
- Has current certification in both CPR and the use of an AED as set forth in the continuing education requirements as determined by the board; and
- Has completed any other requirements as determined by the department and approved by the board.

The requirement that an applicant be at least 21 years of age has been removed under the bill.

Fingerprinting will be handled by FDLE for state processing and then by the Federal Bureau of Investigation (FBI) for national processing.[28] The cost for fingerprint processing is borne by the applicant under s. 456.0135, F.S.

CS/SB 1526 adds a provision requiring the applicant "to provide records or other evidence, as determined by the board, to prove he or she has met the requirements of this section." The bill leaves open to the board the ability to determine other records or requirements that are not

[28] Section 456.0135, F.S.

specifically listed in statute. Broad authority to require additional components or elements to the licensing or renewal process is also granted at the end of this section under subsection (6).

Section 6 deletes the examination fee from s. 468.709, F.S., because the examinations are now handled through the BOC.

Section 7 of the bill removes references to specific entities for the continuing education requirements for CPR and AED training under s. 468.711, F.S.

Section 8 amends s. 468.713, F.S., to require athletic trainers to practice under the direction of a physician licensed under chs. 458, 459, 460, F.S., or otherwise permitted to practice medicine under Florida law from current law which requires athletic trainers to practice under a written protocol with a supervising physician. References to practicing at an athletic event pursuant to direction of an authorized practitioner, a written protocol, and requirements for the athletic trainer to notify the supervising physician of new injuries as soon as practicable are deleted.

The physician may communicate his or her direction to the athletic trainer through an oral or written prescription or protocol, as deemed appropriate by the physician. The athletic trainer is to provide care and service in the manner dictated by the physician.

Section 9, relating to sexual misconduct under s. 468.715, F.S., removes the description of sexual misconduct from this section and prohibits sexual misconduct in the practice of athletic training with a cross reference to s. 456.063, F.S., which provides more extensive protections applicable to all licensed health care professions.

Section 10 amends s. 468.717, F.S., relating to violations and penalties for athletic trainers. Two violations which are first degree misdemeanor violations pertaining to unlicensed practice and the use of certain credentials are revised.

Section 11 revises s. 468.719, F.S., relating to disciplinary actions and removes as grounds for denial of a license or disciplinary action, the failure to adhere to certain advertising guidelines. The provision had required that an athletic trainer's name and license be included in any advertising, including letterhead and business cards, but not clothing or novelty items.

The disciplinary action related to an athletic trainer who is unable to practice with reasonable skill and safety is modified to add reasons related to the licensee's mental or physical condition, use of controlled substances, and any other substance that impairs one's ability to practice.

Section 12 revises s. 468.723, F.S., relating to exemptions from part XIII of ch. 468, F.S. The bill clarifies that a person licensed in this state under another chapter is not prohibited from engaging in the practice for which he or she is licensed.

"Direct supervision" is defined for the purposes of supervising an athletic training student. It means the physical presence of an athletic trainer who is immediately available to an athletic trainer student and able to intervene in accordance with the standards set by CAATE.

An exemption from licensure is granted to a person authorized to practice athletic training in another state when such person is employed by or a volunteer for an out-of-state secondary or post-secondary educational institution, or a recreation, competitive, or professional organization that is temporarily present in this state. The exemption does not further define what would be a recreation, competitive or professional organization or what length of time would be considered temporary. An exemption specific only to pugilistic exhibitions is deleted.

An exemption is also provided to third party payors to permit such organizations to reimburse employers of athletic trainers for covered services rendered by licensed athletic trainers.

Section 13 modifies the general background screening provisions of s. 456.0135, F.S., to incorporate athletic trainers.

Section 14 provides an effective date of January 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Broad authority is given to the department, which must be approved by the Board of Athletic Trainers, concerning additional requirements for licensure on lines 177 and 178 of the bill. This authority may raise the issue of unlawful delegation of legislative authority to an entity of the executive branch.

Article II, section 3 of the Florida Constitution, establishes a doctrine of separation of powers, providing that no branch may exercise powers pertaining to the other branches. Interpreting this doctrine in the context of the Legislature delegating authority to the executive branch, the Florida Supreme Court has stated that, "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine." *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978). However, "[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the

administrative body the power to say what the law shall be." *Conner v. Joe Hatton, Inc.* 216 So.2d 209 (Fla. 1968).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For a person who applies for licensure after July 1, 2016, a background screening through the FDLE will be required. According to FDLE, the cost for a state and national criminal history record check is $38.75, which is borne by the applicant.[29]

Background Screening - Year 1 Costs (Cumulative)
1,935 record checks x $75.75 ($38.75 state and national check + $24 for 5 years of state fingerprint retention + $13 lifetime FBI enrollment fee) = $146,576.25

Each applicant and licensee is also required to have CPR and AED certification. The legislation previously listed specific non-profit organizations from which to receive this training and now states that the applicants and licensees as set forth in the continuing education requirements. The fiscal impact to the applicants and licensees is unknown.

Similarly, the applicant may be required to provide records or other evidence or complete any other requirements as determined by the department and approved by the board for licensing. As these new requirements are unknown, the fiscal impact to applicants and renewing licensees is unknown.

C. Government Sector Impact:

Department of Health[30]
The department will incur non-recurring costs for rulemaking and modification of the application and forms which current budget authority is adequate to absorb.

The department may incur a recurring increase in workload associated with additional complaints, which current resources are adequate to absorb.

Florida Department of Law Enforcement[31]
The cost to retain fingerprints at the state level is $6 per applicant annually. The one-time cost to retain fingerprints at the FBI is $13, for as long as the subject is licensed as an athletic trainer. Since persons screened pursuant to this bill will be entered in the Care

[29] Department of Law Enforcement, *House Bill 541 Analysis,* (February 16, 2015), pg. 5, (on file with the Senate Committee on Health Policy).
[30] Department of Health, Board of Athletic Trainers, *Senate Bill 1526 Analysis,* (February 27, 2015), pg. 5, (on file with the Senate Committee on Health Policy).
[31] Department of Law Enforcement, *House Bill 541 Analysis,* (February 16, 2015), pg. 5, (on file with the Senate Committee on Health Policy).

Provider Screening Clearinghouse, they will pay for 5 years of state fingerprint retention up front ($24). A $13 FBI fee will be required when FDLE begins participation in the federal retention program.

No additional FTEs or other resources are anticipated for this bill.

Year 1 Costs:
1,935 record checks x $48 ($24 criminal state history + $24 state retention fee for 5 years) = $92,880

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill adds as a first degree misdemeanor for the use of the title "licensed athletic trainer," the abbreviation "AT," or "LAT," or a similar title or abbreviation that suggests licensure as an athletic trainer. It is unclear how it could be known what similar title or abbreviation, now or in the future, might suggest to an individual that someone is a licensed athletic trainer.

To better facilitate level 2 background checks, fingerprint retention, and inclusion in the clearinghouse, the FDLE recommends inserting language acknowledging that:

- The applicant is to submit a full set of fingerprints to the department or to an authorized vendor;
- Costs for the screening shall be borne by the applicant;
- FDLE will handle fingerprints for state processing and to forward to the FBI for national processing;
- Fingerprints shall be retained by FDLE in accordance with state law and when enrolled with the national program, the FBI;
- Any arrest record identified will be reported to the department; and
- All fingerprints received shall be entered into the Care Provider Background Screening Clearinghouse.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.70, 468.701, 468.703, 468.705, 468.707, 468.709, 468.711, 468.713, 468.715, 468.717, 468.719, 468.723, and 456.0135.

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 23, 2015:
The committee substitute includes two technical amendments to provide clarity relating to care and services. No substantive changes were included.

B. Amendments:

None.

747872

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 75 - 80
and insert:
licensed as specified in s. 468.713. Such service and care must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition involving exercise, sport, recreation, or related physical activity. For the provision of such care and services,

358164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 209
and insert:
service or care in the manner dictated by the

By Senator Legg

17-00629E-15 20151526__

A bill to be entitled

An act relating to athletic trainers; amending s. 468.70, F.S.; revising legislative intent; amending s. 468.701, F.S.; revising definitions; amending s. 468.703, F.S.; deleting the requirement for the Governor to appoint the initial members of the Board of Athletic Training; amending s. 468.705, F.S.; revising the board's authorization to adopt certain rules relating to communication between an athletic trainer and a supervising physician; amending s. 468.707, F.S.; requiring certain applicants for licensure to submit fingerprints; revising requirements for licensure; authorizing the board to require a background screening for an applicant in certain circumstances; amending s. 468.709, F.S.; deleting the requirement for the board to establish an examination fee; amending s. 468.711, F.S.; revising continuing education requirements for license renewal; amending s. 468.713, F.S.; revising responsibilities of athletic trainers to include requirements that a trainer must practice under the direction of a physician; amending s. 468.715, F.S.; prohibiting sexual misconduct by an athletic trainer; amending s. 468.717, F.S.; prohibiting unlicensed persons from practicing athletic training or representing themselves as athletic trainers; prohibiting an unlicensed person from using specified titles; amending s. 468.719, F.S.; revising grounds for disciplinary action; amending s. 468.723, F.S.;

providing exemptions; amending s. 456.0135, F.S.; revising general background screening provisions to include athletic trainers; providing an effective date.

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

Section 1. Section 468.70, Florida Statutes, is amended to read:

468.70 Legislative intent.—It is the intent of the Legislature that athletic trainers practicing in this state meet minimum requirements for safe practice and that an athletic trainer who falls below minimum competency or who otherwise presents a danger to the public be prohibited from practicing in this state ~~athletes be assisted by persons adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities~~. ~~Therefore,~~ It is the further intent of the Legislature to protect the public by licensing and fully regulating athletic trainers.

Section 2. Section 468.701, Florida Statutes, is amended to read:

468.701 Definitions.—As used in this part, the term:

~~(1) "Athlete" means a person who participates in an athletic activity.~~

~~(2) "Athletic activity" means the participation in an activity, conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation requiring any of the physical attributes of strength, agility,~~

~~flexibility, range of motion, speed, and stamina.~~

~~(3) "Athletic injury" means an injury sustained which affects the athlete's ability to participate or perform in athletic activity.~~

(1)~~(4)~~ "Athletic trainer" means a person licensed under this part who has met the requirements under this part, including education requirements as set forth by the Commission on Accreditation of Athletic Training Education or its successor and necessary credentials from the Board of Certification. An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

(2)~~(5)~~ "Athletic training" means service and care provided by an athletic trainer under the direction of a physician licensed as specified in s. 468.713. Such service and care includes the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition while involved in exercise, sport, recreation, or another physical activity. For the provision of such care and services, an athletic trainer may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, and mechanical devices ~~the recognition, prevention, and treatment of athletic injuries~~.

(3)~~(6)~~ "Board" means the Board of Athletic Training.

(4)~~(7)~~ "Board of Certification" means the nationally accredited certifying body for athletic trainers or its

successor agency.

(5) ~~(8)~~ "Department" means the Department of Health.

~~(9) "Direct supervision" means the physical presence of the supervisor on the premises so that the supervisor is immediately available to the trainee when needed.~~

~~(10) "Supervision" means the easy availability of the supervisor to the athletic trainer, which includes the ability to communicate by telecommunications.~~

Section 3. Section 468.703, Florida Statutes, is amended to read:

468.703 Board of Athletic Training.—

(1) The Board of Athletic Training is created within the department and shall consist of nine members appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed athletic trainers, certified by the Board of Certification. One member of the board must be a physician licensed under chapter 458 or chapter 459. One member of the board must be a physician licensed under chapter 460. Two members of the board shall be consumer members, each of whom must be a resident of this state who has never worked as an athletic trainer, who has no financial interest in the practice of athletic training, and who has never been a licensed health care practitioner as defined in s. 456.001(4).

~~(3) For the purpose of staggering terms, the Governor shall appoint the initial members of the board as follows:~~

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

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

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

(3)~~(4)~~ As the terms of the members expire, the Governor shall appoint successors for terms of 4 years and such members shall serve until their successors are appointed.

(4)~~(5)~~ All provisions of chapter 456 relating to activities of the board shall apply.

(5)~~(6)~~ The board shall maintain its official headquarters in Tallahassee.

Section 4. Section 468.705, Florida Statutes, is amended to read:

468.705 Rulemaking authority.— The board is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this part conferring duties upon it. The provisions of s. 456.011(5) shall apply to the board's activity. Such rules shall include, but not be limited to, the allowable scope of practice regarding the use of equipment, procedures, and medication; mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;~~, requirements for a written protocol between the athletic trainer and a supervising physician,~~ licensure requirements;~~,~~ licensure examination;~~,~~ continuing education requirements;~~,~~ fees;~~,~~ records~~,~~ and reports to be filed by licensees;~~,~~ protocols;~~,~~ and any other requirements necessary to regulate the practice of athletic training.

Section 5. Section 468.707, Florida Statutes, is amended to read:

468.707 Licensure ~~by examination;~~ requirements.—Any person desiring to be licensed as an athletic trainer shall apply to the department on a form approved by the department. An

applicant shall also provide records or other evidence, as determined by the board, to prove he or she has met the requirements of this section. The department shall license each applicant who:

(1) Has completed the application form and remitted the required fees.

(2) For a person who applies on or after July 1, 2016, has submitted to background screening pursuant to s. 456.0135. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action ~~Is at least 21 years of age~~.

(3) Has obtained a baccalaureate degree or higher from a college or university professional athletic training degree program accredited by the Commission on Accreditation of Athletic Training Education or its successor ~~an accrediting agency~~ recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, approved by the board, or recognized by the Board of Certification, and has passed the national examination to be certified by the Board of Certification.

(4) If graduated before ~~after~~ 2004, has a current certification from ~~has completed an approved athletic training curriculum from a college or university accredited by a program recognized by~~ the Board of Certification.

(5) Has current certification in both cardiopulmonary ~~cardiovascular pulmonary~~ resuscitation and the use of an automated external defibrillator set forth in the continuing education requirements ~~with an automated external defibrillator from the American Red Cross or the American Heart Association,~~

~~or an equivalent certification~~ as determined by the board pursuant to s. 468.711.

(6) Has completed any other requirements as determined by the department and approved by the board ~~passed the examination and is certified by the Board of Certification~~.

Section 6. Paragraph (b) of subsection (1) of section 468.709, Florida Statutes, is amended to read:

468.709 Fees.—

(1) The board shall, by rule, establish fees for the following purposes:

~~(b) An examination fee, not to exceed $200.~~

Section 7. Subsection (2) of section 468.711, Florida Statutes, is amended to read:

468.711 Renewal of license; continuing education.—

(2) The board may, by rule, prescribe continuing education requirements, not to exceed 24 hours biennially. The criteria for continuing education shall be approved by the board and must include a current certification ~~certificate~~ in both cardiopulmonary ~~cardiovascular pulmonary~~ resuscitation and the use of ~~with~~ an automated external defibrillator as set forth in the continuing education requirements ~~from the American Red Cross or the American Heart Association or an equivalent training~~ as determined by the board.

Section 8. Section 468.713, Florida Statutes, is amended to read:

468.713 Responsibilities of athletic trainers.—An athletic trainer shall practice under the direction of ~~within a written protocol established between the athletic trainer and~~ a ~~supervising~~ physician licensed under chapter 458, chapter 459,

chapter 460, or otherwise authorized by Florida law to practice medicine. The physician shall communicate his or her direction through oral or written prescription or protocols as deemed appropriate by the physician for the provision of services and care by the athletic trainer. An athletic trainer shall provide service or care in the manner dictated by the communicating physician ~~or, at an athletic event, pursuant to direction from a physician licensed under chapter 458, chapter 459, chapter 460, or otherwise authorized by Florida law to practice medicine. A written protocol shall require that the athletic trainer notify the supervising physician of new injuries as soon as practicable~~.

Section 9. Section 468.715, Florida Statutes, is amended to read:

468.715 Sexual misconduct.—The athletic trainer-patient ~~trainer-athlete~~ relationship is founded on mutual trust. ~~Sexual misconduct in the practice of athletic training means violation of the athletic trainer-athlete relationship through which the athletic trainer uses such relationship to induce or attempt to induce the athlete to engage, or to engage or attempt to engage the athlete, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the athlete.~~ Sexual misconduct in the practice of athletic training is prohibited under s. 456.063.

Section 10. Subsections (1) and (5) of section 468.717, Florida Statutes, are amended to read:

468.717 Violations and penalties.—Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(1) Practicing athletic training, representing oneself as an athletic trainer, or providing athletic trainer services to a patient without being licensed under this part ~~Practicing athletic training for compensation without holding an active license under this part~~.

(5) Using the title "athletic trainer" or "licensed athletic trainer," the abbreviation "AT" or "LAT," or a similar title or abbreviation that suggests licensure as an athletic trainer without being licensed under this part.

Section 11. Subsection (1) of section 468.719, Florida Statutes, is amended to read:

468.719 Disciplinary actions.—

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

~~(a) Failing to include the athletic trainer's name and license number in any advertising, including, but not limited to, business cards and letterhead, related to the practice of athletic training. Advertising shall not include clothing or other novelty items.~~

(a) ~~(b)~~ Committing incompetency or misconduct in the practice of athletic training.

(b) ~~(c)~~ Committing fraud or deceit in the practice of athletic training.

(c) ~~(d)~~ Committing negligence, gross negligence, or repeated negligence in the practice of athletic training.

(d) ~~(e)~~ ~~While practicing athletic training,~~ Being unable to practice athletic training with reasonable skill and safety because of a mental or physical condition or ~~to athletes by reason of~~ illness, or the use of alcohol, controlled substances,

or any other substance that impairs one's ability to practice ~~or drugs or as a result of any mental or physical condition~~.

(e)~~(f)~~ Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

Section 12. Section 468.723, Florida Statutes, is amended to read:

468.723 Exemptions.—This part does not prevent or restrict:

(1) A person licensed in this state under another chapter from engaging in the practice for which he or she is licensed and ~~The professional practice of a licensee of the department who is~~ acting within the scope of such practice.

(2) An athletic training student acting under the direct supervision of a licensed athletic trainer. For purposes of this subsection, "direct supervision" means the physical presence of an athletic trainer so that the athletic trainer is immediately available to the athletic training student and able to intervene on behalf of the athletic training student in accordance with the standards set forth by the Commission on Accreditation of Athletic Training Education or its successor.

(3) A person from administering standard first aid treatment to another person ~~an athlete~~.

(4) A person authorized to practice athletic training in another state when such person is employed by or a volunteer for an out-of-state secondary or postsecondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state ~~A person licensed under chapter 548, provided such person is acting within the scope of such license~~.

(5) A person providing personal training instruction for

exercise, aerobics, or weightlifting, if the person does not represent himself or herself as an athletic trainer or as able to provide "athletic trainer" services and if any recognition or treatment of injuries is limited to the provision of first aid.

(6) Third-party payors from reimbursing employers of athletic trainers for covered services rendered by a licensed athletic trainer.

Section 13. Subsection (1) of section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, s. 465.022, part XIII of chapter 468, or chapter 480 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the fingerprints are enrolled in the national retained print arrest notification program.

Section 14. This act shall take effect January 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Aaron Bean
Committee on Health Policy Chair
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1526 - Athletic Trainers

Dear Chair Bean:

SB 1526 - Athletic Trainers has been referred to your committee. I respectfully request that it be placed on the Committee on Health Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Sandra Stovall, Staff Director

JL/jb

REPLY TO:
❒ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	1526

Topic ATHLETIC TRAINERS

Amendment Barcode (if applicable)

Name NICK PAPPAS

Job Title ATHLETIC TRAINERS ASSN.

Address _____ Phone _____
Street

TALLAHASSEE FL _____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ATHLETIC TRAINERS ASSN. 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

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 926
INTRODUCER:	Senator Sobel
SUBJECT:	Underwater Pool Lighting Safety
DATE:	March 19, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Pre-meeting**
2.			CA	
3.			FP	

I. Summary:

SB 926 directs the Department of Health to conduct underwater electrical lighting inspections on all public pools. County health departments must inspect each public pool every 5 years to ensure the safety of the underwater electrical wiring, including voltage, grounding, and wiring.

Prospective residential real estate buyers of homes with a pool must be provided an underwater pool lighting summary disclosure prior to the execution of a sale contract.

The Florida Building Code must be revised to contain the updated installation standards which must prohibit the installation of any underwater electrical lights of greater than 15 volts in new or existing residential or public swimming pools.

The Department of Health estimates a fiscal impact of $2,122,230 in the first year and $398,940 on a recurring basis.

The act is effective July 1, 2015.

II. Present Situation:

The Department of Health (department) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under Chapter 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Chapter 64E-9, F.A.C.

Current construction rules for public pools require that written approval must be received from the department before construction can begin.[1] Plans are required that show the pool layout, tile

[1] Rule 64E-9.005, F.A.C.

markings, size of the pool ladder, gutter heights and if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3, F.A.C, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.[2]

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule as those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. Finally, as part of the plan approval, the electrical contractor or electrical inspector must certify as to a pool's compliance, on the form designated by the department.[3]

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.[4]

The Safety Alert noted that pools older 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

Several news stories in South Florida in the past year have also highlighted the issue. Three children were shocked in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.[5] During the same month in North Miami, a 7 year old boy, Calder Sloan, was electrocuted in his family's North Miami swimming from faulty wiring.[6]

In October 2014, the Miami-Dade Board of County Commissioner passed the Swimming Pool Light Ordinance 14-95. The Ordinance modifies two sections of the Florida Building Code, which applies to commercial pools for underwater lighting and makes those requirements applicable to residential pools.[7] Existing pools will be required to comply with the new low voltage requirements at the time of repair or alteration or the homeowner may decide not to have an underwater pool light. The county permit to change an existing pool light to low voltage light or to remove a light without a replacement in unincorporated Miami-Dade County is $65.

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[2] Rule 64E-9.006(2)(c)3, F.AC.
[3] Rule 64E-9.006(2)(d), F.A.C.
[4] U.S. Product Safety Commission, *Safety Alert, CPSC Document #5059* (August 14, 2012), *http://www.cpsc.gov//PageFiles/118868/5039.pdf* (last visited: March 19, 2015).
[5] Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Policy Say, LOCAL 10.COM, May 8, 2014, http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796.* (last visited Mar. 19, 2015).
[6] Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming, LOCAL10.COM,* (April 17, 2014), http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944 (last visited Mar. 19, 2015).
[7] Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?* http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf (last visited Mar. 19, 2015).

III. Effect of Proposed Changes:

Private pools and water therapy facilities, pools connected to condominiums or cooperative associations, or pools serving residential child care agencies that have been exempt from most supervision or regulatory review by the department, will be subject to underwater electrical lighting inspections for the first time.

Safety inspections of each public pool will be done by the county health department every 5 years and will include inspections of the pool's voltage, grounding, and wiring.

Sections 515.51 - 515.53, F.S. are created as the "Calder Sloan Swim in Safety Act." The Act recognizes the high number of residential swimming pools in Florida and the number of electrical pool incidences that occur. As a result, the Legislature intends that an owner of residential swimming pools be adequately informed of the potential dangers of underwater lights in swimming pools.

If a residential property for sale has a pool, before a prospective purchaser executes a contract for sale, the seller must present the purchaser with an Underwater Pool Lighting disclosure summary. The disclosure summary under s. 515.53, F.S., states:

UNDERWATER POOL LIGHTING

Faulty underwater lighting has caused and can cause grave bodily injury or death. In particular, pools may have 120 volts of electricity going to their lights, may not be properly grounded, or may have faulty wiring. Newer pools may need to be inspected to ensure proper voltage, wiring, and grounding. Additional information regarding underwater pool lighting may be obtained from your county health department or licensed electrician.

A separate disclosure may also be attached to the contract if not included in the contract.

The Florida Building Code, s. 553.73, F.S., is also amended to add a requirement for the Building Code to include standards for underwater electrical lighting in residential and public swimming pools, as they are defined under s. 515.25. F.S. Those standards must prohibit the installation of or replacement with lights greater than 15 volts in new or existing residential public swimming pools.

Other sections are updated with new cross references.

The act is effective July 1, 2015.

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:

Private pools, pools associated with condominium associations, or residential child care agencies that had previously been exempt from department supervision, except for water quality, will be subject to new underwater electrical lighting inspections by the department every 5 years.

Sellers of residential real estate must also provide a purchaser with a disclosure summary if the property has a pool before a contract for sale is executed.

Finally, the Florida Building Code is required to update its installation standards for underwater electrical lighting standards to prohibit the installation of underwater electrical lights of greater than 15 volts in new or existing residential or public swimming pools. To the extent that an existing pool has lights greater than 15 volts, there may be financial impact to the resident or owner of a public pool to comply with this new standard.

C. Government Sector Impact:

The department staff is not trained or licensed to perform electrical inspections as required under SB 926. The bill requires the department to perform electrical inspections every 5 years at the 34,499 public swimming pools it currently inspects. An additional 3,092 public swimming pools currently exempt from department supervision under Chapter 489, F.S., may be subject to inspection by the department.

The department estimates that an electrical inspection would add an hour to the current inspection time per pool. Staff would also need additional training prior to the inspection start date. One-time modifications would be required to the Environmental Health database at a cost of $82,180.

Florida Department of Health - Estimated Expenditures		
Estimated Expenditures	**1st Year**	**2nd Year Annualized\Recurring**
Cost of Additional Inspections/services	$1,974,950	$394,990

39,499 @ $50 each		
Equipment for 300 staff @ $217	$65,100	$0
Modification to EHDatabase	$82,180	$3,950
Total Estimated Expenditures:	**$2,122,230**	**$398,940**

The department suggested it may be more cost effective to require the inspections be conducted by licensed electricians and submitted to the department. Modifications to the database would still be required, but it would reduce staff and equipment costs to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

At least one local government has an ordinance addressing swimming pool safety, specifically underwater lighting standards and mandatory inspections of private pools. Permits are issued to contractors to perform the replacement or removal work. It is not clear if SB 926 will conflict with the provisions of the local ordinance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.0115, 514.025, 515.21, 515.33, 515.35, and 553.73.

This bill creates the following sections of the Florida Statutes: 515.51, 515.52, 515.53, and 553.881.

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 Sobel

33-00576A-15 2015926__

A bill to be entitled

An act relating to underwater pool lighting safety; amending s. 514.0115, F.S.; providing that underwater lighting inspections are not exempt from supervision or regulation; amending s. 514.025, F.S.; requiring county health departments to inspect underwater lighting in public pools; amending ss. 515.21, 515.33, and 515.35, F.S.; conforming provisions to changes made by the act; creating s. 515.51, F.S.; providing a short title; creating s. 515.52, F.S.; providing legislative findings and intent; creating s. 515.53, F.S.; requiring the seller to provide a disclosure summary to a prospective purchaser upon sale of certain residential property of the dangers associated with underwater lighting in swimming pools; amending s. 553.73, F.S.; requiring the Florida Building Code to contain underwater lighting standards for residential and public swimming pools; creating s. 553.881, F.S.; requiring the Florida Building Code to prohibit the installation of or replacement with underwater lights of greater than a specified voltage in new or existing residential or public swimming pools; providing an effective date.

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

Section 1. Subsections (1), (2), and (4) of section 514.0115, Florida Statutes, are amended to read:

514.0115 Exemptions from supervision or regulation;

variances.—

(1) Private pools and water therapy facilities connected with facilities connected with hospitals, medical doctors' offices, and licensed physical therapy establishments are ~~shall be~~ exempt from supervision under this chapter, except for underwater electrical lighting inspections.

(2)(a) Pools serving no more than 32 condominium or cooperative units which are not operated as a public lodging establishment are ~~shall be~~ exempt from supervision under this chapter, except for water quality and underwater electrical lighting inspections.

(b) Pools serving condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days are exempt from supervision under this chapter, except that the condominium or cooperative owner or association must file applications with the department and obtain construction plans approval and receive an initial operating permit. The department shall inspect the swimming pools at such places annually, at the fee set forth in s. 514.033(3), or upon request by a unit owner, to determine compliance with department rules relating to water quality and lifesaving equipment. However, such pools are subject to underwater electrical lighting inspections. The department may not require compliance with rules relating to swimming pool lifeguard standards.

(4) Any pool serving a residential child care agency registered and exempt from licensure pursuant to s. 409.176 is ~~shall be~~ exempt from supervision or regulation under this chapter related to construction standards if the pool is used

exclusively by the facility's residents and if admission may not be gained by the public. However, such pool is subject to underwater electrical lighting inspections.

Section 2. Present subsection (3) of section 514.025, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

514.025 Assignment of authority to county health departments.—

(3) County health departments shall inspect each public pool every 5 years to ensure the safety of electrical underwater lighting, including voltage, grounding, and wiring.

Section 3. Section 515.21, Florida Statutes, is amended to read:

515.21 Short title.—Sections 515.21-515.37 ~~This chapter~~ may be cited as the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act."

Section 4. Section 515.33, Florida Statutes, is amended to read:

515.33 Information required to be furnished to buyers.—A licensed pool contractor, on entering into an agreement with a buyer to build a residential swimming pool, or a licensed home builder or developer, on entering into an agreement with a buyer to build a house that includes a residential swimming pool, must give the buyer a document containing the requirements of ss. 515.27-515.31 ~~this chapter~~ and a copy of the publication produced by the department under s. 515.31 that provides information on drowning prevention and the responsibilities of pool ownership.

Section 5. Section 515.35, Florida Statutes, is amended to

read:

515.35 Rulemaking authority.—The department shall adopt rules pursuant to the Administrative Procedure Act establishing the fees required to attend drowning prevention education programs and setting forth the information required under ss. 515.27-515.33 ~~this chapter~~ to be provided by licensed pool contractors and licensed home builders or developers.

Section 6. Section 515.51, Florida Statutes, is created to read:

515.51 Short title.—Sections 515.51-515.53 may be cited as the "Calder Sloan Swim in Safety Act."

Section 7. Section 515.52, Florida Statutes, is created to read:

515.52 Legislative findings and intent.—The Legislature recognizes that this state has the second highest number of residential swimming pools per capita in the United States. The Legislature further recognizes that, according to the United States Consumer Product Safety Commission, electrical incidents involving underwater pool lighting are more numerous than those involving any other consumer product used in or around pools. The Legislature finds that serious bodily injury and death by electrocution can occur when underwater lighting in residential pools is faulty. Therefore, it is the intent of the Legislature that owners of residential swimming pools be adequately informed about the potential dangers associated with underwater lighting.

Section 8. Section 515.53, Florida Statutes, is created to read:

515.53 Notification on real estate documents.— Before a prospective purchaser executes the contract for sale and

purchase of a residential property having a pool, the seller must present him or her with a disclosure summary in substantially the following form:

UNDERWATER POOL LIGHTING

Faulty underwater pool lighting has caused and can cause grave bodily injury or death. In particular, pools may have 120 volts of electricity going to their lights, may not be sufficiently grounded, or may have faulty wiring. Newer pools may need to be inspected to ensure proper voltage, wiring, and grounding. Additional information regarding underwater pool lighting may be obtained from your county health department or licensed electrician.

If the disclosure summary is not included in the contract for sale and purchase, the seller must attach a separate disclosure summary to the contract.

Section 9. Subsection (2) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(2) The Florida Building Code must ~~shall~~ contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities,

swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. The Florida Building Code must contain installation standards for underwater electrical lighting in residential and public swimming pools as defined in s. 515.25. Further, the Florida Building Code must provide for uniform implementation of ss. 515.25, 515.27, and 515.29 by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. 515.23. Technical provisions to be contained within the Florida Building Code are restricted to requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

Section 10. Section 553.881, Florida Statutes, is created to read:

553.881 Underwater swimming pool lighting.—The Florida Building Code must prohibit the installation of or replacement with underwater electrical lights of greater than 15 volts in new or existing residential or public swimming pools.

Section 11. This act shall take effect July 1, 2015.

GEORGIADES.CELIA

From: GRAHAM.NICOLE
Sent: Wednesday, March 04, 2015 5:17 PM
To: BEAN.AARON
Cc: STOVALL.SANDRA; GEORGIADES.CELIA
Subject: Health Policy Agenda Request SB 926 Underwater Pool Lighting Safety

March 4, 2015

Senator Aaron Bean, Chair
Health Policy
302 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Bean:

This letter is to request that **SB 926 "Underwater Pool Lighting Safety"** be placed on the agenda of the next scheduled meeting of the committee.

SB 926 is in memory of seven-year-old Calder Sloan, who was violently electrocuted while swimming in his family's pool. SB 926 aims to increase pool safety and awareness of the electrical dangers by requiring inspections, sale disclosures and setting the maximum underwater pool light voltage at 15 volts.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel
State Senator, 33rd District

Cc: Sandra Stovall, Staff Director, Celia Georgiades, Committee Administrative Assistant

Nicole Graham, Esq.
Legislative Aide
Senator Eleanor Sobel
District Office- 954-924-3693
Capital Office- 850-487-5033
Graham.Nicole@flsenate.gov

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 926
Bill Number (if applicable)

Topic Pool Lighting Safety

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 231 West ~~Ave~~ Bay Ave.
Street

Phone 407-830-1882

Longwood FL 32750
City *State* *Zip*

Email RBKershner@att.net

Speaking: ☐ For ☐ Against ☑ Information

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

Representing United Pool & Spa Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

926
Bill Number (if applicable)

Topic Underwater Pool Lighting

Amendment Barcode (if applicable)

Name Jennifer Hatfield

Job Title

Address 729 Ocean Inlet Dr.
Street

Phone 941-345-3263

Boynton Beach FL 33435
City *State* *Zip*

Email jen@jhatfieldandassociates.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FL Swimming Pool 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)

3/23/15
Meeting Date

SB 926
Bill Number (if applicable)

Topic Pool Safety

Amendment Barcode (if applicable)

Name Chris Sloan

Job Title

Address 1912 NE 118 RD
Street

North Miami FL 33181
City *State* *Zip*

Phone 305-608-629

Email chris.sloan@2ctv

Speaking: ☒ For ☐ Against ☐ Information

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

I wish to speak

Representing Calder Sloan & Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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 738
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Clinical Laboratories
DATE:	March 23, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 738 amends ss. 483.041 and 483.181, F.S., to require a clinical laboratory to offer its services to licensed allopathic and osteopathic physicians, chiropractors, podiatrists, naturopaths, optometrists, advanced registered nurse practitioners (ARNP), dentists, dental hygienists, consultant pharmacists, and doctors of pharmacy without charging different prices for services based on the license of the practitioner and adds consultant pharmacists and doctors of pharmacy to the definition of "licensed practitioner." The bill also strikes the limitation on the conditions under which a clinical laboratory may refuse a specimen. Under current law, the only reason for which a clinical laboratory may deny testing a specimen is based on a history of nonpayment for services by the practitioner submitting the specimen. This bill allows a clinical laboratory to decline testing for other reasons as well.

The bill takes effect upon becoming law.

II. Present Situation:

Clinical Laboratory Licensure

A clinical laboratory is a location in which body fluids or tissues are analyzed for purposes of the diagnosis, assessment, or prevention of a medical condition.[1] Clinical laboratories are licensed and regulated by the Agency for Health Care Administration (AHCA), pursuant to part I of

[1] Section 483.041(2), F.S.

ch. 483, F.S., and Rule 59A-7 of the Florida Administrative Code. A clinical laboratory license may only be issued to a laboratory to perform procedures and tests that are within the specialties or subspecialties in which the laboratory personnel are qualified to perform.[2] There are 3,760 actively licensed clinical laboratories in Florida.[3] Certain clinical laboratories are exempt from licensure, including clinical laboratories:

- Operated by the federal government;
- Operated and maintained exclusively for research and teaching purposes that do not involve patient or public health services; and
- Performing only "waived tests."[4]

Acceptance, Collection, Identification, and Examination of Specimens

A clinical laboratory may only examine human specimens at the request of a licensed practitioner or other person licensed to use the findings of clinical laboratory examinations.[5] Section 483.181(5), F.S., requires clinical laboratories to accept and examine human specimens submitted by certain practitioners if the specimen and test are typically performed by the laboratory. Specifically, clinical laboratories must accept and examine specimens submitted by a:

- Physician;
- Chiropractor;
- Podiatrist;
- Naturopath;
- Optometrist;
- Dentist; or an
- Advanced registered nurse practitioner (ARNP)[6].

A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by a practitioner. Clinical laboratories are prohibited from charging different prices for tests based upon the chapter under which a practitioner is licensed.

Current law authorizes physicians, chiropractors, podiatrists, naturopaths, optometrists, and dentists to operate their own clinical laboratories, called "exclusive use" laboratories, to exclusively diagnose and treat their own patients.[7] This, however, does not preclude them from also being required to accept and examine all specimens submitted by certain practitioners pursuant to s. 483.181(5), F.S.

[2] Section 483.111, F.S.
[3] AHCA, Florida Health Finder.gov, *Facility/Provider Locator*, available at http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (search conducted March 10, 2015).
[4] Section 483.031, F.S. Examples of waived tests include dip stick urinalysis or tablet reagent urinalysis, fecal occult blood, urine pregnancy tests, erythrocyte sedimentation rate, and blood glucose tests.
[5] Section 483.181(1), F.S.
[6] Section 483.181(5), F.S.
[7] Section 483.035(1), F.S.

Administrative Fines and Criminal Penalties

A clinical laboratory is subject to a fine, not to exceed $1,000, to be imposed by the AHCA, for each violation of any provision of part I of ch. 483, F.S.[8] The AHCA must consider certain factors in determining the penalty for a violation, including:

- The severity of the violation, including the probability that death or serious harm to the health or safety of any person could occur as a result of the violation;
- Actions taken by the licensee to correct the violation or to remedy complaints; and
- The financial benefit to the licensee of committing or continuing the violation.[9]

In addition to the imposition of fines, an individual may be subject to criminal penalties for a violation of any provision of part I of ch. 483, F.S.[10] The AHCA must refer an individual who commits a violation to the local law enforcement agency and the individual may be subject to a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083, F.S.[11] Additionally, AHCA may issue and deliver a notice to cease and desist from such act and may impose, by citation, an administrative penalty not to exceed $5,000 per act.[12] Each day that unlicensed activity continues after issuance of a notice to cease and desist constitutes a separate act.[13]

An application for licensure or re-licensure as a clinical laboratory may be denied or revoked by AHCA for any violation of part I of ch. 483, F.S.[14]

III. Effect of Proposed Changes:

CS/SB 738 amends s. 483.041, F.S., to add consultant pharmacists and doctors of pharmacy to the definition of "licensed practitioner" for Part I of ch. 483, F.S., related to clinical laboratories and amends s. 483.181, F.S., to require a clinical laboratory to offer its services to licensed allopathic and osteopathic physicians, chiropractors, podiatrists, naturopaths, optometrists, ARNPs, dentists, dental hygienists, consultant pharmacists, and doctors of pharmacy without charging different prices for services based on the license of the practitioner. The bill also strikes language stating that a clinical laboratory may only refuse a specimen based on a history of nonpayment for services by the practitioner submitting the specimen. As a consequence of this change, a clinical laboratory may refuse a specimen for other reasons such as having inadequate equipment or resources for a particular test or because a particular test is not reimbursable under the applicable insurance policy and the practitioner has not made other arrangements for payment.

This bill is effective upon becoming law.

[8] Section 483.221(1), F.S.
[9] Id.
[10] Section 483.23(1)(a) and (b), F.S.
[11] Id.
[12] Id.
[13] Id.
[14] Section 408.815(1)(c), F.S.

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:

CS/SB 738 may have a positive fiscal impact on clinical laboratories if such laboratories are able to refuse service which would not be paid for under the provisions of the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 483.041 and 483.181.

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 23, 2015.
The CS amends SB 768 to add consultant pharmacists and doctors of pharmacy to the definition of "licensed practitioner" under s. 483.041, F.S., to add consultant pharmacists

and doctors of pharmacy to the list of practitioners to whom a clinical laboratory must make its services available, and to remove language specifying when a clinical laboratory may refuse to provide its services

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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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 (7) of section 483.041, Florida Statutes, is amended to read:

483.041 Definitions.—As used in this part, the term:

(7) "Licensed practitioner" means a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461; a certified optometrist licensed under chapter 463; a dentist

833646

licensed under chapter 466; a person licensed under chapter 462; a consultant pharmacist or doctor of pharmacy licensed under chapter 465; or an advanced registered nurse practitioner licensed under part I of chapter 464; or a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for nonresidents of the State of Florida, but who reside in the same state as the requesting licensed practitioner.

Section 2. Subsection (5) of section 483.181, Florida Statutes, is amended to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(5) A clinical laboratory licensed under this part must make its services available to ~~accept a human specimen submitted for examination by~~ a practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, s. 464.012, ~~or~~ chapter 466, or a consultant pharmacist or doctor of pharmacy licensed under chapter 465 ~~if the specimen and test are the type performed by the clinical laboratory. A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by the practitioner~~. A clinical laboratory shall not charge different prices for its services ~~tests~~ based upon the chapter under which a practitioner ~~submitting a specimen for testing~~ is licensed.

Section 3. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause

833646

and insert:

A bill to be entitled

An act relating to clinical laboratories; amending s. 483.041, F.S.; adding a consultant pharmacist or doctor of pharmacy licensed under chapter 465, F.S., to the definition of licensed practitioner; amending s. 483.181, F.S.; requiring clinical laboratories to make their services available to specified licensed practitioners; prohibiting such a clinical laboratory from charging different prices for its services based upon the chapter under which a practitioner is licensed; providing an effective date.

By Senator Grimsley

21-00589-15 2015738__

A bill to be entitled

An act relating to clinical laboratories; amending s. 483.181, F.S.; requiring certain licensed clinical laboratories to make their services available to specified licensed practitioners; prohibiting such clinical laboratories from charging different prices for its services based on the type of license a practitioner has; authorizing such clinical laboratories to refuse to perform a service if the service is not reimbursable by the applicable insurer or other payor or if there is a history of nonpayment for services by the requester of the service; providing an effective date.

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

Section 1. Subsection (5) of section 483.181, Florida Statutes, is amended to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(5) A clinical laboratory licensed under this part, except for a clinical laboratory described in s. 483.035(1), must make its services available to ~~accept a human specimen submitted for examination by~~ a practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, s. 464.012, or chapter 466, and may ~~if the specimen and test are the type performed by the clinical laboratory. A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by the practitioner. A clinical~~

~~laboratory shall~~ not charge different prices for its services ~~tests~~ based upon the type of license held by the practitioner ~~chapter under which a practitioner submitting a specimen for testing is licensed~~. A clinical laboratory may refuse to perform a service if the service is not reimbursable by the applicable insurer or other payor or if there is a history of nonpayment for services by the requester of the service.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 2, 2015

I respectfully request that **Senate Bill #738**, relating to Clinical Laboratories, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

2nd

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 18, 2015

I respectfully request that **Senate Bill #738**, relating to Clinical Laboratories, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

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)

3/23
Meeting Date

SB 738
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Clinical Labs

Name Larry Gonzalez

Job Title General Counsel

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Street

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Phone 570-6307

Email lawgonz@earthlink.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

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)

3/23/2015
Meeting Date

SB 738
Bill Number (if applicable)

833646
Amendment Barcode (if applicable)

Topic CLINICAL LABS

Name MIKE HUEY

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City *State* *Zip*

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Email MHUEY@GRAY-ROBINSON.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing LABORATORY CORPORATION OF AMERICA

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)

3/23/15
Meeting Date

738
Bill Number (if applicable)

Topic CLINICAL LABS

Amendment Barcode (if applicable)

Name DOUG RUSSELL

Job Title

Address 9604 DEER VALLEY DR.
Street

TALL. FL 32312
City *State* *Zip*

Phone 850-445-0206

Email DRUSSELL@NETALLY.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing QUEST DIAGNOSTICS

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

WAIVE TIME IN SUPPORT

APPEARANCE RECORD

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

3-23-2015
Meeting Date

Topic CLINICAL LABORATORIES

Bill Number SB 738 *(if applicable)*

Name STEPHEN R. WINN

Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY *Street*

Phone 878-7364

TALLAHASSEE *City* FL *State* 32301 *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC 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 (10/20/11)

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 476
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Florida Mental Health Act
DATE:	March 24, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	**Fav/CS**
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 476 increases the qualifications for a psychiatric nurse acting pursuant to the Baker Act. The bill requires a psychiatric nurse to be an advanced registered nurse practitioner certified under s. 464.012, F.S., and to hold a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

The bill authorizes expanded practice for a psychiatric nurse performing within the framework of a protocol with a psychiatrist. Such psychiatric nurse may examine at a receiving facility a patient for whom involuntary examination has been initiated.

The bill authorizes psychiatric nurses to release Baker Act patients from involuntary examination in a receiving facility only if the receiving facility is owned or operated by a hospital or health system and the psychiatric nurse is performing within the framework of an established protocol with a psychiatrist. A psychiatric nurse may only release a patient whose involuntary examination was initiated by a psychiatrist upon approval of that psychiatrist.

These modifications to the Baker Act are expected to ease staffing constraints at receiving facilities so that patients who are appropriate for release are timely released, thereby expanding capacity for others needing involuntary examination.

The bill provides and effective date of July 1, 2015.

II. Present Situation:

The Florida Mental Health Act

In 1971, the Florida Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.[1] Part I of ch. 394, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:[2]

- The person has refused a voluntary examination after explanation of the purpose of the exam, or is unable to determine for themselves that an examination is needed; and
- The person is likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.[3] A circuit court may enter an ex parte order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., 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. In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:[4]

- 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.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities which provide for the examination of persons with evidence of a mental illness.

[1] Section 1, ch. 71-131, L.O.F.
[2] Section 394.463(1), F.S.
[3] Section 394.463(2)(a), F.S.
[4] *Id*. and s. 394.455, F.S.

Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet criteria under the Baker Act.[5]

A patient taken to a receiving facility must be examined by a physician or clinical psychologist. Upon the order of a physician, the patient may be given emergency treatment if it is determined that such treatment is necessary.[6] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[7]

To be released by the receiving facility, the patient must have documented approval from a psychiatrist, clinical psychologist, or, if the receiving facility is a hospital, by an attending emergency department physician.[8] The statute does not allow the release of a patient by a psychiatric nurse. However, receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.[9]

Psychiatric Nurses

In Florida, a psychiatric nurse is a registered nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.[10] Currently, there are 590 psychiatric nurses in Florida.[11]

Psychiatric–Mental Health Nurse Practitioner Certification

In Florida, psychiatric nurses are not required to hold a national advanced practice certification. However, if a nurse chooses to become certified as a Psychiatric–Mental Health Nurse Practitioner, he or she must meet certain eligibility requirements as determined by the America Nurses Credentialing Center (ANCC). To be eligible for national certification an individual must:[12]

- Hold a current, active RN license;
- Hold a master's, postgraduate, or doctoral degree from an accredited family psychiatric-mental health nurse practitioner program;
- Have a minimum of 500 faculty-supervised clinical hours in the nursing program;
- Complete specified graduate-level courses; and
- Complete clinical training in at least two psychotherapeutic treatment modalities.

[5] Section 394.455(26), F.S
[6] Section 394.463(2)(f), F.S.
[7] Section 394.455(32), F.S.
[8] Section 394.463(2)(f), F.S.
[9] *Id*.
[10] Section 394.455(23), F.S.
[11] Florida House of Representatives, Health & Human Services Committee, *CS/CS/HB 335 Staff Analysis*, (Mar. 16, 2015), *available at* http://www.flsenate.gov/Session/Bill/2015/0335/?Tab=Analyses (last visited Mar. 18, 2015).
[12] American Nurses Credentialing Center; Psychiatric-Mental Health Nurse Practitioner Certification Eligibility Criteria, (2014), *available at* http://www.nursecredentialing.org/FamilyPsychNP-Eligibility.aspx (last visited Mar. 18, 2015).

Eligible candidates may take a national certification examination developed by the ANCC. If certified, the individual must provide 1,000 clinical hours of patient care and log 75 hours of continuing education every 5 years. Certified psychiatric nurses must be recertified every 5 years.[13]

Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (board). Licensure requirements to practice advanced and specialized nursing include completion of education requirements,[14] demonstration of passage of a DOH approved examination, a clean criminal background screening, and payment of applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements. For an applicant to be eligible to be certified as an ARNP, the applicant must:[15]

- Hold a current, active registered nurse (RN) license;
- Hold a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills; and
- Submit proof to the board that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[16] 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 a dentist.[17]

ARNPs may carry out treatments as specified in statute, including:[18]

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.[19] Further, if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[20]

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[13] American Nurses Credentialing Center, *FAQs about Advanced Practice Psychiatric Nurses*, (2009) *available at* http://www.apna.org/i4a/pages/index.cfm?pageid=3866 (last visited Mar. 18, 2015).
[14] Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least 1 year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.
[15] Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.
[16] Section 464.012(2), F.S.
[17] Section 464.012(3), F.S.
[18] *Id*.
[19] Section 464.012(4), F.S.
[20] Section 464.012(4)(c)5, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 394.455, F.S., by redefining "psychiatric nurse" to mean:

> An advanced registered nurse practitioner certified under s. 464.012, F.S., who has a master's degree or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

A psychiatric nurse is currently authorized in part I of ch. 394, F.S., to perform:

- Assessment of a mental health resident and determination of appropriateness for the mental health resident to reside in an assisted living facility that holds a limited mental health license.[21]
- Initiation of an involuntary examination by executing 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.[22]
- Providing a second opinion in support of a recommendation for involuntary outpatient placement of a patient if the receiving facility is in a county having a population of fewer than 50,000 and a facility administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion.[23]
- Deeming services in an involuntary outpatient treatment plan to be clinically appropriate.[24]
- Providing a second opinion in support of a recommendation for involuntary inpatient placement of a patient if the receiving facility is in a county having a population of fewer than 50,000 and a facility administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion.[25]

These functions will now be performed by an ARNP who holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

Section 2 amends s. 394.463, F.S., to authorize psychiatric nurses to examine patients at a receiving facility and to approve the release of patients from a receiving facility within the framework of a protocol with a psychiatrist. This provision adds psychiatric nurses to the limited group of health care providers who may release a patient from a receiving facility.

A psychiatric nurse may approve the release of a patient from a receiving facility only if the receiving facility is owned or operated by a hospital or health system and the psychiatric nurse is performing within the framework of an established protocol with a psychiatrist. A psychiatric nurse may not approve the release of a patient when the involuntary examination has been initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

[21] Section 394.4574, F.S.
[22] Section 394.463, F.S.
[23] Section 394.4655(2)(a)1, F.S.
[24] Section 394.4655(2)(a)3, F.S.
[25] Section 394.467(2), F.S.

Section 3 provides an effective date of July 1, 2015.

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:

Current psychiatric nurses who are not ARNPs and/or not certified as psychiatric-mental health advanced practice nurses will incur costs in order to attain the required certification(s).

C. Government Sector Impact:

None reported by the Department of Children and Families.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455 and 394.463.

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 23, 2015:
The CS reinstates the term "psychiatric nurse" and revises the definition of "psychiatric nurse." The CS authorizes a psychiatric nurse performing within the framework of an established protocol with a psychiatrist to examine a patient in a receiving facility and approve release of a patient from a receiving facility if the receiving facility is owned and operated by a hospital or a health system. The CS provides that a psychiatric nurse may not approve the release of a patient when the involuntary examination has been initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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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 (23) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(23) "Psychiatric nurse" means an advanced ~~a~~ registered nurse practitioner certified under s. 464.012 who has a master's

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or doctoral degree in psychiatric nursing and holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse ~~licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing~~ and 2 years of post-master's clinical experience under the supervision of a physician.

Section 2. Paragraph (f) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(f) A patient shall be examined by a physician, a ~~or~~ clinical psychologist, or a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist or an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient when the involuntary examination has been initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. However, a

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patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

Section 3. This act shall take effect July 1, 2015.

========== 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 mental health; amending s. 394.455, F.S.; redefining the term "psychiatric nurse"; amending s. 394.463, F.S.; adding a psychiatric nurse as a person at a receiving facility authorized to perform a required examination of certain patients; prohibiting the release of a patient from a receiving facility that is owned or operated by a hospital or health system without specified approvals; authorizing the release of a patient by a psychiatric nurse under certain circumstances; prohibiting a psychiatric nurse from releasing a patient if the involuntary examination was initiated by a psychiatrist without the psychiatrist's approval; providing an effective date.

By Senator Grimsley

21-00420B-15 2015476__

A bill to be entitled

An act relating to the Florida Mental Health Act; amending s. 394.455, F.S.; redefining terms; requiring that a psychiatric-mental health advanced registered nurse practitioner hold a specified national certification; conforming terminology to changes made by the act; amending s. 394.463, F.S.; authorizing a psychiatric-mental health advanced registered nurse practitioner to approve the involuntary examination or release of a patient from a receiving facility; amending ss. 394.4574, 394.4655, and 394.467, F.S.; conforming terminology to changes made by the act; reenacting ss. 394.495(3) and 394.496(6), F.S., relating to child and adolescent mental health programs and services, to incorporate the amendment made to s. 394.455, F.S., in references thereto; reenacting ss. 39.407(4)(b), 394.455(34), 394.462(1)(e), 394.4625(1)(b) and (1)(c), 395.1041(6), and 984.19(3), F.S., relating to medical, psychiatric, and psychological examination and treatment of a child, involuntary examination, transportation to a receiving facility, voluntary admissions, the rights of a person being treated, and certain criteria and procedures used in evaluating a child, respectively, to incorporate amendments made to s. 394.463, F.S., in references thereto; reenacting s. 394.4598(1), F.S., relating to guardian advocates, to incorporate amendments made to ss. 394.4655 and 394.467, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (23) and (33) of section 394.455, Florida Statutes, are amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(23) "Psychiatric-mental health advanced registered ~~Psychiatric~~ nurse practitioner" means a registered nurse certified ~~licensed~~ under s. 464.012 ~~part I of chapter 464~~ who has a master's degree or a doctorate in psychiatric nursing and holds a national advanced practice certification as a psychiatric-mental health nurse practitioner ~~2 years of post-master's clinical experience under the supervision of a physician~~.

(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner ~~as defined in subsection (23)~~, or a community mental health center or clinic as defined in this part.

Section 2. Paragraphs (a) and (f) of subsection (2) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. 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 the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. 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 the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker 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 are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility 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 receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

(f) A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or a psychiatric-mental health advanced registered nurse practitioner or, if the receiving facility is a hospital, the release may also be approved by an attending emergency

department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

Section 3. Paragraph (a) of subsection (2) of section 394.4574, Florida Statutes, is amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident if it was completed within 90 days before ~~prior to~~ admission to the facility.

Section 4. Subsection (2) of section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient placement.—

(2) INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)1. A patient who is being recommended for involuntary

outpatient placement by the administrator of the receiving facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate that authorizes the receiving facility to retain the patient pending completion of a hearing. The certificate shall be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement. Before filing a petition for involuntary outpatient treatment, the administrator of a receiving facility or a designated department representative must identify the service

provider that will have primary responsibility for service provision under an order for involuntary outpatient placement, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient placement order. The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the treatment plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed treatment plan whether sufficient

services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient placement, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the patient, recommend involuntary outpatient placement. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate, and the certificate must be made a part of the patient's clinical record.

(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient placement

certificate and a copy of the state mental health discharge form to a department representative in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient placement must be filed in the county where the patient will be residing.

2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before ~~prior to~~ the order for involuntary outpatient placement and must, before ~~prior to~~ filing a petition for involuntary outpatient placement, certify to the court whether the services recommended in the patient's discharge plan are available in the local community and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.

3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition.

Section 5. Subsection (2) of section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be retained by a receiving facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the receiving facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric-mental health advanced registered ~~psychiatric~~ nurse practitioner. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation shall be entered on an involuntary inpatient placement certificate that authorizes the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

Section 6. For the purpose of incorporating the amendment made by this act to section 394.455, Florida Statutes, in a reference thereto, subsection (3) of section 394.495, Florida Statutes, is reenacted 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(2), (4), (21), (23), or (24);

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(2), (4), (21), (23), or (24) or a professional licensed under chapter 491.

The department shall adopt by rule statewide standards for mental health assessments, which must be based on current relevant professional and accreditation standards.

Section 7. For the purpose of incorporating the amendment made by this act to section 394.455, Florida Statutes, in a reference thereto, subsection (6) of section 394.496, Florida Statutes, is reenacted to read:

394.496 Service planning.—

(6) A professional as defined in s. 394.455(2), (4), (21), (23), or (24) or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 8. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 39.407, Florida Statutes, is reenacted 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.—

(4)

(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist or, if a developmental

disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

Section 9. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, subsection (34) of section 394.455, Florida Statutes, is reenacted to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).

Section 10. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 394.462, Florida Statutes, is reenacted to read:

394.462 Transportation.—

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or

may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

Section 11. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, paragraphs (b) and (c) of subsection (1) of section 394.4625, Florida Statutes, are reenacted to read:

394.4625 Voluntary admissions.—

(1) AUTHORITY TO RECEIVE PATIENTS.—

(b) A mental health overlay program or a mobile crisis response service or a licensed professional who is authorized to initiate an involuntary examination pursuant to s. 394.463 and is employed by a community mental health center or clinic must, pursuant to district procedure approved by the respective district administrator, conduct an initial assessment of the ability of the following persons to give express and informed consent to treatment before such persons may be admitted voluntarily:

1. A person 60 years of age or older for whom transfer is being sought from a nursing home, assisted living facility, adult day care center, or adult family-care home, when such person has been diagnosed as suffering from dementia.

2. A person 60 years of age or older for whom transfer is being sought from a nursing home pursuant to s. 400.0255(12).

3. A person for whom all decisions concerning medical treatment are currently being lawfully made by the health care surrogate or proxy designated under chapter 765.

(c) When an initial assessment of the ability of a person to give express and informed consent to treatment is required under this section, and a mobile crisis response service does

not respond to the request for an assessment within 2 hours after the request is made or informs the requesting facility that it will not be able to respond within 2 hours after the request is made, the requesting facility may arrange for assessment by any licensed professional authorized to initiate an involuntary examination pursuant to s. 394.463 who is not employed by or under contract with, and does not have a financial interest in, either the facility initiating the transfer or the receiving facility to which the transfer may be made.

Section 12. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, subsection (6) of section 395.1041, Florida Statutes, is reenacted to read:

395.1041 Access to emergency services and care.—

(6) RIGHTS OF PERSONS BEING TREATED.—A hospital providing emergency services and care to a person who is being involuntarily examined under the provisions of s. 394.463 shall adhere to the rights of patients specified in part I of chapter 394 and the involuntary examination procedures provided in s. 394.463, regardless of whether the hospital, or any part thereof, is designated as a receiving or treatment facility under part I of chapter 394 and regardless of whether the person is admitted to the hospital.

Section 13. For the purpose of incorporating the amendment made by this act to section 394.463, Florida Statutes, in a reference thereto, subsection (3) of section 984.19, Florida Statutes, is reenacted to read:

984.19 Medical screening and treatment of child;

examination of parent, guardian, or person requesting custody.—

(3) A judge may order that a child alleged to be or adjudicated a child in need of services be examined by a licensed health care professional. The judge may also order such child to be evaluated by a psychiatrist or a psychologist, by a district school board educational needs assessment team, or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the Department of Children and Families. The judge may order a family assessment if that assessment was not completed at an earlier time. If it is necessary to place a child in a residential facility for such evaluation, then the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education pursuant to s. 1003.53.

Section 14. For the purpose of incorporating the amendments made by this act to sections 394.4655 and 394.467, Florida Statutes, in a reference thereto, subsection (1) of section 394.4598, Florida Statutes, is reenacted to read:

394.4598 Guardian advocate.—

(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated

and a guardian with the authority to consent to mental health treatment appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded either electronically or stenographically, and testimony shall be provided under oath. One of the professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 394.4655 or s. 394.467, must testify. A guardian advocate must meet the qualifications of a guardian contained in part IV of chapter 744, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, a facility administrator, or member of the Florida local advocacy council shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment.

Section 15. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 4, 2015

I respectfully request that **Senate Bill #476**, relating to Florida Mental Health Act, and **Senate Bill #532**, relating to Ordering of Medication be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

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)

3/23/15
Meeting Date

476
Bill Number (if applicable)

Topic Florida Mental Health Act

Amendment Barcode (if applicable)

Name Barbara Jumpkind

Job Title Consultant

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City *State* *Zip*

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Email barbara_jumpkind@bellsouth.net

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

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)

3/23/2015
Meeting Date

SB 476
Bill Number (if applicable)

Topic The Florida Mental Heath Act

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

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Street

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Tallahassee FL 32301
City *State* *Zip*

Email zsmith@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

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)

3/23/15
Meeting Date

SB 476
Bill Number (if applicable)

Topic Wave in Support of SB 476

Amendment Barcode (if applicable)

Name Meghan Cottrell

Job Title Policy apprentice

Address _____
Street

Phone _____

_____
City *State* *Zip*

Email mcottrell@iamforkids.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

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)

3-23-15
Meeting Date

476
Bill Number (if applicable)

Topic FL Mental Health Act

Amendment Barcode (if applicable)

Name Martha De Castro

Job Title VP for Nursing

Address 3016 E. College Ave
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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)

March 23, 2015
Meeting Date

476
Bill Number (if applicable)

Topic Florida Mental Health Act

Amendment Barcode (if applicable)

Name Robert Trammell

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City *State* *Zip*

Email roberttrammell45@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

SB 476
Bill Number (if applicable)

Topic Florida Mental Health Act

Amendment Barcode (if applicable)

Name Allison Carvajal

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City *State* *Zip*

Email allison@rambaconsulting.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurse Practitioner Network (Waive in Support)

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)

3/23/15
Meeting Date

SB 476
Bill Number (if applicable)

Topic Florida Mental Health Act

Amendment Barcode (if applicable)

Name Jill Gran

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Tallahassee FL
City *State* *Zip*

Email JillG@FADAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol and Drug Abuse 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)

3/23/15
Meeting Date

SB 476
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Florida Mental Health

Name Skylar Zander

Job Title Deputy State Director

Address 200 W. College Ave
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Tallahassee FL 32301
City *State* *Zip*

Phone 850-728-4522

Email SZander@afphq.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1040
INTRODUCER:	Senator Braynon
SUBJECT:	Infectious Disease Elimination Pilot Program
DATE:	March 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	**Favorable**
2.			AHS	
3.			FP	

I. Summary:

SB 1040 creates the Miami-Dade Infectious Disease Elimination Act (IDEA), which authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County as a means to prevent the transmission of blood-borne diseases. The bill provides duties and requirements for the operation of the pilot program.

The bill specifies that state funds may not be used to operate the pilot program. Instead, the pilot program must be funded through grants and donations from private resources and funds.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report with specified data and a recommendation regarding continuance of the pilot program 6 months before expiration. The pilot program expires on July 1, 2020.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Intravenous Drug Use in Florida

The majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an intravenous drug user (IDU)-associated risk through 2014 are in the southeast or central part of the state.[1] The DOH reports that 50 to 90 percent of HIV-infected IDUs are also co-

[1] Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2014* (power point slide) (revised Jan. 29, 2015), *available at* http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/hiv-aids-slide-sets/2014/idu-2014.pdf (last visited Mar. 19, 2015).

infected with Hepatitis C Virus.[2] The chart below contains data from 2014 of the 11 Florida counties with the highest incidence of PLWHA with an IDU-associated risk.[3]

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	26,445	3,240	12%
Broward	17,214	2,132	12%
Palm Beach	7,964	1,481	19%
Orange	7,508	1,304	17%
Hillsborough	6,262	1,198	19%
Duval	5,584	999	18%
Pinellas	3,675	728	20%
Lee	1,777	310	18%
St. Lucie	1,550	309	20%
Volusia	1,408	340	24%
Brevard	1,300	273	21%
STATE TOTAL	101,977	17,368	17%

Intravenous Drug Use in Miami-Dade County

In a 2011 study, researchers from the University of Miami estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are Hepatitis C Virus positive.[4] The researchers also found that IDUs in Miami—a city without a needle and syringe exchange program—had over 34 times the adjusted odds of disposal of a used syringe in a public location relative to IDUs in San Francisco—a city with multiple exchange programs.[5]

Needle and Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of HIV/AIDS, particularly among IDUs, their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including needle and syringe exchange programs (NSEPs). In general, these strategies are referred to as harm reduction. [6]

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[2] Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2013* (Revised Sept. 3, 2014) (on file with the Senate Committee on Health Policy).
[3] *Supra* note 1. Percent IDU adjusted to conform with previous data charts.
[4] Hansel E. Tookes, et al. "A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs." Drug and Alcohol Dependence, June 2012, Vol. 123, Issue 1, pp. 255-259, *available at* http://www.ncbi.nlm.nih.gov/pubmed/22209091 (last visited Mar. 19, 2015).
[5] *Id*.
[6] National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), *available at* http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf (last visited Mar. 19, 2015).

Needle and syringe exchange programs provide free sterile needles and syringe units and collect used needles and syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.[7]

The first sanctioned NSEP in the world began in Amsterdam, the Netherlands in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington in 1988. Programs have since developed throughout the United States.[8] As of June 2014, there are 194 NSEPs in 33 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Indian Nations.[9]

Federal Ban on Funding Needle and Syringe Exchange Programs

In 1988, Congress enacted an initial ban on the use of federal funds for NSEPs which remained in place until 2009. In 2009, Congress passed the FY 2010 Consolidated Appropriations Act, which contained language that removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.[10]

However, on December 23, 2011, President Obama signed the FY 2012 omnibus spending bill that reinstated the ban on the use of federal funds for NSEPs; this step reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.[11] The ban on federal funding for NSEPs remains in effect.

Florida Comprehensive Drug Abuse Prevention and Control Act

In Florida, the term "drug paraphernalia" is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing,

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[7] *Id*, at 18. *See also* World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) 28 – 29, *available at* http://www.who.int/hiv/pub/idu/pubidu/en/ (last visited Mar. 19, 2015).

[8] Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums, available at* http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf (last visited Mar. 19, 2015).

[9] North American Syringe Exchange Network, *Syringe Services Program Coverage in the United States* (June 2014), *available at* http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/2014-SSP-Map-7-17-14.pdf (last visited Mar. 19, 2015).

[10] Matt Fisher, Center for Strategic and International Studies, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, SmartGlobalHealth.org (Feb. 6, 2012), *available at* http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/ (last visited Mar. 19, 2015).

[11] *Id*.

processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.[12]

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision commits a first degree misdemeanor.[13]

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.[14]

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.[15]

Federal Law Exemption

Any person authorized by local, state, or federal law to manufacture, possess, or distribute drug paraphernalia is exempt from the federal drug paraphernalia statute.[16]

[12] Section 893.145, F.S.
[13] A first degree misdemeanor is punishable by up to 1-year imprisonment in a county jail, a fine of up to $1,000, or both. *See* ss. 775.082 and 775.083, F.S.
[14] A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed $5,000, or both. *See* ss. 775.082 and 775.083, F.S.
[15] Section 893.146, F.S.
[16] 21 U.S.C. § 863(f)(1).

III. Effect of Proposed Changes:

Section 1 titles the bill as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2 amends s. 381.0038, F.S., by adding subsections to create a sterile needle and syringe exchange pilot program.

The bill authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program shall offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases.

The bill provides that the pilot program must provide for maximum security of exchange sites and equipment, including:
- An accounting of the number of needles and syringes in use;
- The number of needles and syringes in storage;
- Safe disposal of returned needles; and
- Any other measure required to control the use and dispersal of needles and syringes.

The bill provides that the pilot program must operate a one-to-one exchange, whereby participants receive one sterile needle and syringe unit in exchange for each used one. In addition to the needle and syringe exchange, the pilot program must make available:
- Educational materials;
- HIV and viral hepatitis counseling and testing;
- Referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and
- Drug-abuse prevention and treatment counseling and referral services.

The bill specifies that the possession, distribution, or exchange of needles or syringes as part of the pilot program is not a violation of any law. However, a pilot program staff member, volunteer, or participant is not immune for criminal prosecution for:
- Possession of needles or syringes that are not a part of the pilot program; or
- Redistribution of needles or syringes in any form, if acting outside the pilot program.

The bill provides that the pilot program collect data for annual and final reporting purposes, which shall include information on:
- The number of participants served;
- The number of needles and syringes exchanged and distributed;
- The demographic profiles of the participants served;
- The number of participants entering drug counseling and treatment;
- The number of participants receiving HIV, AIDS, or viral hepatitis testing; and
- Other data deemed necessary.

The bill specifies that personal identifying information may not be collected from a participant for any purpose.

The bill provides that state funds may not be used to operate the pilot program, instead the pilot program must be funded through grants and donations from private resources and funds.

The pilot program will expire July 1, 2020. The bill directs the OPPAGA to submit a report to the President of the Senate and the Speaker of the House of Representatives 6 months before the pilot program expires. The OPPAGA report must include:

- The data collection requirements established in the bill;
- The rates of HIV, AIDS, viral hepatitis, and other blood-borne diseases before the pilot program began and every subsequent year thereafter; and
- A recommendation on whether to continue the pilot program.

The bill also revises language to clarify that the DOH education program about the threat of AIDS must use all forms of media with emphasis on materials that can be used in the regular course of business for businesses, schools and health care providers.

Section 3 is a severability clause, which provides that if any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the IDEA that can be given effect without the invalid provision or application, and to this end the provisions of the IDEA are severable.

Section 4 provides an effective date of July 1, 2015.

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 University of Miami will be responsible for securing funding through grants and donations from private sources.

C. Government Sector Impact:

OPPAGA will incur costs to submit a report to the President of the Senate and Speaker of the House of Representatives 6 months before expiration of the pilot program.

The pilot program may reduce state and local government expenditures for the treatment of blood-borne diseases associated with intravenous drug use.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 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 Braynon

36-00220B-15 20151040__

A bill to be entitled

An act relating to an infectious disease elimination pilot program; creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; amending s. 381.0038, F.S.; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information; providing for the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing for severability; providing an effective date.

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

Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange pilot program.—The Department of Health shall establish a program to educate the public about the threat of acquired immune deficiency syndrome.

(1) The acquired immune deficiency syndrome education program shall:

(a) Be designed to reach all segments of Florida's population;

(b) Contain special components designed to reach non-English-speaking and other minority groups within the state;

(c) Impart knowledge to the public about methods of transmission of acquired immune deficiency syndrome and methods of prevention;

(d) Educate the public about transmission risks in social, employment, and educational situations;

(e) Educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environments;

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high risk for acquiring acquired immune deficiency syndrome;

(g) Provide information and consultation to state agencies to educate all state employees; ~~and~~

(h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates; ~~.~~

(i) Provide information and consultation to local governments to educate local government employees; ~~.~~

(j) Make information available to private employers and

encourage them to distribute this information to their employees;~~.~~

(k) Contain special components which emphasize appropriate behavior and attitude change; and~~.~~

(l) Contain components that include information about domestic violence and the risk factors associated with domestic violence and AIDS.

(2) The education program designed by the Department of Health shall use ~~utilize~~ all forms of the media and shall place emphasis on the design of educational materials that can be used by businesses, schools, and health care providers in the regular course of their business.

(3) The department may contract with other persons in the design, development, and distribution of the components of the education program.

(4) The University of Miami and its affiliates may establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program shall offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

(a) The pilot program shall:

1. Provide for maximum security of exchange sites and equipment, including an accounting of the number of needles and syringes in use, the number of needles and syringes in storage, safe disposal of returned needles, and any other measure that

may be required to control the use and dispersal of sterile needles and syringes.

2. Operate a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

3. Make available educational materials; HIV and viral hepatitis counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-abuse prevention and treatment counseling and referral services.

(b) The possession, distribution, or exchange of needles or syringes as part of the pilot program established under this subsection is not a violation of any part of chapter 893 or any other law.

(c) A pilot program staff member, volunteer, or participant is not immune from criminal prosecution for:

1. The possession of needles or syringes that are not a part of the pilot program; or

2. Redistribution of needles or syringes in any form, if acting outside the pilot program.

(d) The pilot program shall collect data for annual and final reporting purposes, which shall include information on the number of participants served, the number of needles and syringes exchanged and distributed, the demographic profiles of the participants served, the number of participants entering drug counseling and treatment, the number of participants receiving HIV, AIDS, or viral hepatitis testing, and other data deemed necessary for the pilot program. However, personal identifying information may not be collected from a participant

for any purpose.

(e) State funds may not be used to operate the pilot program. The pilot program shall be funded through grants and donations from private resources and funds.

(f) The pilot program shall expire July 1, 2020. Six months before the pilot program expires, the Office of Program Policy Analysis and Government Accountability shall submit a report to the President of the Senate and the Speaker of the House of Representatives that includes the data collection requirements established in this subsection; the rates of HIV, AIDS, viral hepatitis, or other blood-borne diseases before the pilot program began and every subsequent year thereafter; and a recommendation on whether to continue the pilot program.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Vice Chair*
Ethics and Elections
Health Policy
Higher Education
Regulated Industries
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR OSCAR BRAYNON II
Democratic Leader Pro Tempore
36th District

March 10, 2015

Senator Aaron Bean, Chair
Health Policy
302 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bean:

This letter is to request that **Senate Bill #1040**, relating to ***Infectious Disease Elimination Pilot Program*** be placed on the agenda of the next scheduled meeting of the committee.

SB 1040 Infectious Disease Elimination Pilot Program; Creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing for severability,

Thank you for consideration of this request.

Sincerely,

Senator Braynon
District 36

cc. *Sandra Stovall, Staff Director,*
Celia Georgiades, Committee Administrative Assistant, ***Room 530K***

REPLY TO:
☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: *www.flsenate.gov*

WAIVE TIME IN SUPPORT

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-2015
Meeting Date

Topic INFECTIOUS DISEASE ELIMINATION PILOT PROGRAM Bill Number SB 1040
(if applicable)

Name STEPHEN R. WINN Amendment Barcode
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY Phone 878-7364
Street

TALLAHASSEE FL 32301 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC 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.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1040
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #115
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 Public Health 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

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

3/23/2015
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Program

Amendment Barcode (if applicable)

Name Jesse Fry

Job Title State Policy Analyst

Address 641 E College Ave Unit 2
Street

Tallahassee FL 32301
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Phone (850) 339-6395

Email jfry@theaidsinstitute.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing The AIDS Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3-23-15
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Program

Amendment Barcode (if applicable)

Name Martha DeCastro

Job Title VP for Nursing

Address 306 E. College Ave
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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

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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)

3/23/15
Meeting Date

SB 1040
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 224-6496

Tall FL 32309
City *State* *Zip*

Email jscott@flmedics.org

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

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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)

3/23/15
Meeting Date

SB 1040
Bill Number (if applicable)

Topic RE An Infectious Disease Elimination Pilot Program

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Director of Gov. Affairs

Address 204 S. Monroe St.
Street

Phone 321-223-4232

Tallahassee FL 32304
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Smart Justice Alliance

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)

3/23/15
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Education

Amendment Barcode (if applicable)

Name Barbara Lumpkin

Job Title Consultant

Address 468 Green Spring Cir
Street

Phone 407-327-0465

Water Springs FL 32708
City *State* *Zip*

Email barbara-lumpkin@bhsouth.net

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] 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: [X] 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)

3/23/15
Meeting Date

SB 1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Act

Amendment Barcode (if applicable)

Name Holly Miller

Job Title Govt Affairs Counsel

Address 1430 Piedmont Dr E
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 8502246496

Email hmiller@fmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FMA

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)

3/23/15
Meeting Date

SB1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Project

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Lobbyist

Address 2868 Mahan Dr. *Street*

Phone (850)-878-2196

Tallahassee *City* FL *State* 32308 *Zip*

Email Jill@FADAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol and Drug Abuse 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)

3/23/15
Meeting Date

SB 1040
Bill Number (if applicable)

Topic SB1040 Infectious Disease Elimination Program — *Amendment Barcode (if applicable)*

Name Raena Wright

Job Title AVP Government Relations

Address 6200 San Amaro Drive — Phone 305-284-2618
Street

Miami — FL — 33146 — Email RaenaWright@miami.edu
City — *State* — *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing University of Miami

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)

3-23-15
Meeting Date

1040
Bill Number (if applicable)

Topic Infections Disease Elimination Pilot

Amendment Barcode (if applicable)

Name Avi Assidon

Job Title Medical Student (FSU)

Address 240 Echo Court
Street

Phone 954 6550494

Tallahassee FL 32304
City *State* *Zip*

Email aa08c@med.fsu.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Medical Assoc. - Medical Student Section

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)

3-23-15
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot

Amendment Barcode (if applicable)

Name Hansel Tookes, MD, MPH

Job Title resident physician

Address Jackson Memorial Hospital
Street

Phone

Miami FL 33136
City *State* *Zip*

Email

Speaking: [X] 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:	CS/SB 632
INTRODUCER:	Health Policy Committee and Senator Garcia
SUBJECT:	Newborn Adrenoleukodystrophy Screening
DATE:	March 23, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 632 directs the Department of Health (department) to adopt rules to require newborns to be tested for adrenoleukodystrophy (ALD) as soon as ALD is adopted on the federal Recommended Uniform Screening Panel.

Once ADL screening is added by rule, the Agency for Health Care Administration (agency) reports a negative first year fiscal impact of $2,146,344 and the department an additional negative impact of $2,683,100 to implement the screening.

II. Present Situation:

What is Adrenoleukodystrophy?

Adrenoleukodystrophy (ALD) is a genetic disorder that damages myelin, the sheath that surrounds the brain's neurons. The disorder affects approximately 1 in 18,000 people with the most devastating form appearing in childhood.[1] Women have two X chromosomes and are the carriers of the disease, but since men only have one X chromosome, they are more severely affected by the disorder.[2] While nearly all patients with the disorder suffer from adrenal

[1] The Stop ALD Foundation, *What is ALD?* http://www.stopald.org/what-is-ald/ (last visited: Mar. 19, 2015).
[2] The Cleveland Clinic, *Diseases and Conditions - Adrenoleukodystrophy (ALD),* http://my.clevelandclinic.org/health/diseases_conditions/hic_What_is_Adrenoleukodystrophy (last visited Mar. 19, 2015).

insufficiency, also known as Addison's disease,[3] the neurological symptoms can begin in either childhood or in adulthood.[4] The most common symptoms for children include behavioral changes such as abnormal withdrawal or aggression, memory loss, and drops in school performance.[5] Later symptoms might include: visual loss, learning disabilities, seizures, speech problems, swallowing difficulties, deafness, coordination issues, fatigue, and progressive dementia. Women may develop symptoms, but they usually experience milder forms of the disorder than those seen in boys and men.[6]

Federal Recommendations for Newborn Screening

The United States Department of Health and Human Services Advisory Committee on Heritable Disorders in Newborns and Children (DACHDNC) develops recommendations on the most appropriate policies, guidelines and standards for universal newborn screening tests. The Secretary of the Department of Health and Human Services (HHS) established the Secretary's Advisory Committee (committee) to reduce morbidity and mortality in newborns who have, or are at risk, for heritable diseases.[7]

The committee has established a Uniform Screening Panel that screens for 31 core disorders and 26 secondary disorders and recommends every state incorporate this panel into their screening program.[8] Additional conditions may be nominated for inclusion on the Recommended Uniform Screening Panel (RUSP). A Nomination and Prioritization Workgroup reviews the nomination and decides if there is sufficient information for the condition to move on to the Condition Review Workgroup which is responsible for the final report to the DACHDNC.

ALD was nominated in 2012 for inclusion on the RUSP, but was not forwarded to the Condition Review Workgroup based on lack of sufficient data.[9] At the January 2014 meeting, ALD was again nominated and a preliminary report from the Condition Review Workgroup was presented on February 12, 2015.[10] A decision from that meeting is not yet available.

The HHS Secretary makes the final decision as to whether or not a condition is added to the RUSP.[11]

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[3] Addison's disease is a disorder of the adrenal glands. In Addisons's, the glands produce an insufficient level of the hormone which controls the body's levels of sugar, sodium, and potassium. *see Supra* note 1.
[4] *Supra*, note 2.
[5] Id.
[6] Id.
[7] U.S. Department of Health and Human Services, *Advisory Committee on Heritable Disorders in Newborns and Children*, http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/ (last visited Mar. 19, 2015).
[8] Id.
[9] U.S. Department of Health and Human Services, *Letter to Charles Peters, M.D. and Amber Salzman, Ph.D.*, (October 1, 2012), http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/nominatecondition/reviews/alddecisionletter.pdf (last visited Mar. 19, 2015).
[10] Alex R. Kemper, M.D., M.P.H., M.S., Duke Clinical Research Institute, *Newborn Screening for X-Linked Adrenoleukodystrophy (X-ALD): Preliminary Report from the Condition Review Workgroup*, (February 12, 2015) http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/meetings/2015/sixth/crupdatealdkemper2.pdf (last visited Mar. 19, 2015).
[11] U.S. Department of Health and Human Services, *Advisory Committee on Heritable Disorders in Newborns and Children*, *Nominate a Condition*,

Florida Newborn Screening Program

Section 383.14, F.S., directs the department to conduct newborn screenings for metabolic, hereditary, and congenital disorders that result in the significant impairment of health or intellect, as programs that are accepted by current medical practice become available. Today, the Florida Newborn Screening Program screens for 31 core conditions and 22 secondary conditions, including all disorders recommended by committee and that have been added to the RUSP.[12] For the month of January 2015 only, more than 21,000 newborns were screened under the current program, with the majority of those occurring in a hospital setting.[13] For non-newborn intensive care patients, the age requirement for the screening collection is at least 24 hours of age.[14] Any parent's refusal to screening must be in writing and noted in the record. The screenings are funded through the billing of Medicaid and private insurance and a $15 fee paid by birthing facilities for each live birth. Uninsured families are not billed.

The Florida Genetics and Newborn Screening Advisory Council (advisory council) is established under s. 383.14, F.S., and its responsibilities include advising the department about:

- Conditions for which testing should be included under the screening program and the genetics program;
- Procedures for collection and transmission of specimens and recording of results; and
- Methods whereby screening programs and genetics services for children now provided or proposed to be offered in this state may be more efficiently evaluated, coordinated, and consolidated.[15]

According to the department, the advisory council reviews each DACHDNC recommendation using its own criteria before adding a new screening to Florida's program. Those considerations include:

- The disorder is known to result in significant impairment in health, intellect, or functional ability if not treated before clinical signs appear;
- The disorder can be detected using screening methods which are accepted by current medical practice;
- The disorder can be detected prior to the infants' becoming 2 weeks of age, or at the appropriate age as accepted medical practice indicates; or
- After screening for the disorder, reasonable cost benefits can be anticipated through a comparison of tangible program costs with those medical, institutional, and special educational costs likely to be incurred by an undetected population.[16]

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http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/nominatecondition/index.html (last visited Mar. 19, 2015).

[12] Department of Health, *Disorder List*, http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/nbs-disorder.html (last visited Mar. 19, 2015).

[13] Department of Health, *Newborn Screening Program Profile Data*, http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/_documents/jan15infprof.pdf (last visited Mar. 19, 2015).

[14] Department of Health, *Hospitals*, http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/nbs-hosp.html (last viewed Mar. 19, 2015).

[15] Section 318.14(5), F.S.

[16] Department of Health, *Senate Bill 632 Analysis* (January 28, 2015) pg. 3, (on file with Senate Committee on Health Policy).

As of January 2015, ALD has not been added to the Florida Newborn Screening panel of disorders.

III. Effect of Proposed Changes:

CS/SB 632 amends s. 383.14, F.S., to direct the department to adopt rules to require newborns to be screened before one week of age for adrenoleukodystrophy (ALD), a genetic disorder, as soon as ALD is adopted for inclusion on the federal Recommended Uniform Screening Panel. This disorder is not currently screened.

It is uncertain when ALD will be included on the federal Recommended Uniform Screening Panel. When the department does add ALD screening to the list of disorders or diseases for which newborns must be screened, budget authority to cover the costs of conducting additional tests would be required. If the Legislature does not provide this budget authority, it is unlikely that the act can be implemented.

The bill provides an effective date of July 1, 2015.

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 cost to the private sector is indeterminate. Those that are insured and have coverage for the current newborn screenings may or may not see an increase related to the additional screening once implemented. As initially filed, the agency estimated the cost of the screening to be $16.50 per newborn at the current Medicaid rate and the

department estimated the cost at $18.91 at the current Medicare rate.[17,18] Over 21,000 births were recorded in Florida in January 2015 and of those approximately 50 percent were likely covered under Medicaid and the remainder through either the private sector or uninsured.[19]

Depending on when the ALD is added to the RUSP, the fiscal impact could be higher or lower to the private sector.

C. Government Sector Impact:

The Legislature must decide whether to fund the fiscal impact related to the implementation of CS/SB 632 once the ALD screening is added to the RUSP. The following estimates assume an appropriation has been provided.

Agency for Health Care Administration[20]

The agency will incur on-going costs to add the ALD screening for Medicaid newborns once it is added to the RUSP.

Annual screening costs were based on the current unit cost of $16.50 and the estimated number of Medicaid newborns. The estimated number of Medicaid newborns was increased each year by 1.22 percent which is the most recent increase rate from the Florida Vital Statistics Annual Report.

Agency for Health Care Administration - Fiscal Impact		
SFY 2015-2016	**FED/STATE**	**COSTS**
Federal	60.51%	$1,298,753
State	39.49%	$847,591
TOTAL:	Medicaid Newborns 131,081	**$2,146,344**
SFY 2016-17	**FED/STATE**	**COSTS**
Federal	61.18%	$1,329,154
State	38.82%	$843,376
TOTAL:	Medicaid Newborns 131,669	**$2,172,531**
SFY 2017-18	**FED/STATE**	**COSTS**
Federal	61.41%	$1,350,424
State	848,605%	$848,6605
TOTAL:	Medicaid Newborns	**$2,199,029**

[17] Agency for Health Care Administration, *House Bill 403 Analysis* (January 22, 2015) p.5, (on file with the Senate Committee on Health Policy).
[18] Department of Health, *Senate Bill 632 Analysis* (January 28, 2015) pg. 5, (on file with the Senate Committee on Health Policy).
[19] Department of Health, Division of Public Health Statistics and Performance Management, *Births Covered by Medicaid - 2013*, http://www.floridacharts.com/charts/DataViewer/BirthViewer/BirthViewer.aspx?cid=595 (last viewed Mar. 19, 2015).
[20] Agency for Health Care Administration, *House Bill 403 Analysis,* (January 22, 2015) pg.5, (on file with the Senate Committee on Health Policy).

Agency for Health Care Administration - Fiscal Impact		
SFY 2015-2016	**FED/STATE**	**COSTS**
	133,275	

Department of Health[21]

Revenues

The Department of Health projects revenues of $567,300 to $850,950 based on collections paid for the additional screening at the current Medicare rate of $18.91for CPT code 82016.

Expenditures	Costs
Newborn Screening Laboratory 300,000 specimens ($8.50/specimen) each year *The price is based on the analysis being performed using the laboratory set up inside the Bureau of Public Health Laboratories facility. When the test for ALD becomes commercially available (12 to 18 months), it will be added to existing test kits and the ALD marker can be tested with the other disorders.*	$2,550,000
Newborn Screening Follow-Up Program *Non-recurring funds needed to incorporate the ALD screening and follow-up actions for handling modifications to the existing data system*	$50,000
Newborn Screening Genetic Centers 3 Genetic Centers ($27,000/centers/year) *The centers are located at the University of Miami, the University of South Florida, and the University of Florida and would handle the presumptively positive results and provide diagnostic evaluation.*	$83,100

The fiscal impact amount could increase or decrease based on the actual date that ALD is added to the RUSP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the original bill, the department reported that the July 1, 2015 effective date would be difficult to meet. It is unclear how the department would prepare for an unknown implementation date for which the department has indicated requires significant preparation prior to implementation. The department must also make database changes.

The committee substitute requires an appropriation for increased Medicaid services, implementation and ongoing operations. The bill requires expansion of the screening as soon as the screening is adopted for inclusion on the federal panel. If the adoption occurs during a fiscal

[21] Department of Health, *Senate Bill 632 Analysis* (January 28, 2015), pgs. 5-6, (on file with the Senate Committee on Health Policy).

year where no funding has been provided for this contingency, it is unclear how the department and the agency would comply with the statutory requirements.

VIII. Statutes Affected:

This bill substantially amends section 383.14 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 23, 2015:
The committee substitute:

- Removed requirement for the department to adopt rules requiring newborns receive ALD testing effective July 1, 2015;
- Removed mandated insurance coverage and Medicaid coverage requirements for ALD newborn screening; and
- Expands statewide screening for ALD as soon as ALD screening is adopted for inclusion on the federal Recommended Uniform Screening Panel.

B. Amendments:

None.

541912

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(2) RULES.—After consultation with the Genetics and Newborn Screening Advisory Council, the department shall adopt and

541912

enforce rules requiring that every newborn in this state shall, before ~~prior to~~ becoming 1 week of age, be subjected to a test for phenylketonuria and, at the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time. The department shall expand statewide screening of newborns to include screening for adrenoleukodystrophy as soon as adrenoleukodystrophy is adopted for inclusion on the federal Recommended Uniform Screening Panel. After consultation with the Office of Early Learning, the department shall also adopt and enforce rules requiring every newborn in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes. The department shall adopt such additional rules as are found necessary for the administration of this section and s. 383.145, including rules providing definitions of terms, rules relating to the methods used and time or times for testing as accepted medical practice indicates, rules relating to charging and collecting fees for the administration of the newborn screening program authorized by this section, rules for processing requests and releasing test and screening results, and rules requiring mandatory reporting of the results of tests and screenings for these conditions to the department.

Section 2. This act shall take effect July 1, 2015.

================ 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

541912

and insert:

A bill to be entitled

An act relating to newborn adrenoleukodystrophy screening; amending s. 383.14, F.S.; directing the Department of Health to expand statewide screening of newborns to include screening for adrenoleukodystrophy when adopted for inclusion on the federal Recommended Uniform Screening Panel; providing an effective date.

By Senator Garcia

38-00603-15 2015632__

A bill to be entitled

An act relating to newborn adrenoleukodystrophy screening; creating s. 383.147, F.S.; providing definitions; directing the Department of Health to establish requirements for newborn adrenoleukodystrophy screening; providing certain insurance and managed care coverage; providing adrenoleukodystrophy screening as a covered benefit; providing an exemption; providing for documentation of objections to screening by the parent or legal guardian; providing an effective date.

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

Section 1. Section 383.147, Florida Statutes, is created to read:

383.147 Newborn adrenoleukodystrophy screening.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Adrenoleukodystrophy screening" means a test administered to newborns which identifies the presence of adrenoleukodystrophy, a disease of the central nervous system that is inherited as an X-linked recessive trait and is characterized by blindness, deafness, tonic spasms, and mental deterioration.

(b) "Agency" means the Agency for Health Care Administration.

(c) "Department" means the Department of Health.

(d) "Newborn" means an infant ranging in age from birth through 29 days.

(2) SCREENING REQUIREMENTS.—The department shall adopt rules requiring a newborn to be screened for adrenoleukodystrophy. Notwithstanding any provision of law, a licensed hospital, birth center, or attending health care provider may release, directly or through the Children's Medical Services program, the results of an adrenoleukodystrophy screening to the newborn's primary care physician.

(a) A licensed hospital that provides maternity and newborn care services shall provide an adrenoleukodystrophy screening for each newborn within 24 hours after birth or admittance to the hospital and before he or she is discharged.

(b) A licensed birth center that provides maternity and newborn care services shall refer each newborn to a physician licensed under chapter 458 or chapter 459 or to a hospital for adrenoleukodystrophy screening within 24 hours after birth or admittance to the birth center and before he or she is discharged. Written documentation of the referral must be placed in the newborn's medical chart.

(c) For a home birth, the health care provider in attendance must refer the newborn to a physician licensed under chapter 458 or chapter 459 or to a hospital for an adrenoleukodystrophy screening within 24 hours after the birth of the newborn.

(d) Each hospital shall designate a lead physician who is responsible for programmatic oversight of newborn adrenoleukodystrophy screenings. Each birth center shall designate a licensed health care provider who is responsible for programmatic oversight of referrals for and completion of newborn adrenoleukodystrophy screenings.

(3) INSURANCE COVERAGE.—The initial procedure for newborn adrenoleukodystrophy screening is a covered benefit, reimbursable under Medicaid as an expense compensated supplemental to the per diem rate for Medicaid patients enrolled in MediPass or Medicaid patients covered by a fee-for-service program. For Medicaid patients enrolled in health maintenance organizations, providers shall be reimbursed directly by the Medicaid Program Office at the Medicaid rate. Adrenoleukodystrophy screening may not be considered a covered service for the purposes of establishing the payment rate for Medicaid health maintenance organizations. All health insurance policies and health maintenance organizations as provided under ss. 627.6416, 627.6579, and 641.31(30), except for supplemental policies that provide coverage only for specific diseases or hospital indemnity, or as a Medicare supplement, or to the supplemental polices, shall compensate providers for the covered benefit at the contracted rate. Nonhospital-based providers may bill Medicaid for the professional and technical component of each procedure code.

(4) OBJECTIONS OF PARENT OR GUARDIAN.—If the parent or legal guardian of a newborn objects to the adrenoleukodystrophy screening, the screening may not be completed. In such case, the licensed hospital, licensed birth center, or, in the case of a home birth, the physician, midwife, or other person attending the newborn, shall maintain a record that the screening has not been performed and attach a written objection that is signed by the parent or legal guardian.

Section 2. This act shall take effect July 1, 2015.

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 486
INTRODUCER:	Senators Sobel and Gaetz
SUBJECT:	Health Care Clinic Act
DATE:	March 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	**Favorable**
2.			AHS	
3.			FP	

I. Summary:

SB 486 redefines "clinic" to include any entity that provides health care services to individuals and "that receives remuneration" for the services, rather than entities that "tender charges for reimbursement." Unless otherwise exempt, clinics that currently accept "cash-only" will be required to apply for a health care clinic license.

The bill revises the term "applicant" to include an individual who owns or controls, directly or indirectly, any interest in a clinic, rather than 5 percent or more interest. A level 2 background screening is required for applicants and an applicant who has an arrest awaiting final disposition for, or has been convicted of, a felony or crime punishable by imprisonment of one year or more is ineligible for licensure.

The Agency for Health Care Administration (AHCA) must deny the application for a clinic license, or the renewal of a clinic license, by an applicant who has been previously found to have committed an act that resulted in the suspension or revocation of a clinic license.

The bill subjects licensed clinics to an administrative fine of $5,000 per day if the medical director or clinical director fails to ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

The bill adds an exception from the licensing requirement for rehabilitation entities certified under 42 C.F.R. part 485, subpart H.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Health Care Clinic Act

Part X of ch. 400, F.S., is known as the Health Care Clinic Act (the Act). The purpose of the Act is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the AHCA.[1]

"Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services.[2] Health care clinics in the state must be licensed by the AHCA;[3] however, there are numerous exclusions from the definition of "clinic" in s. 400.9905, F.S.,[4] and from the requirement to obtain a license as a clinic. The definition of "clinic" includes only entities that "tender charges for reimbursement." The AHCA interprets this phrase to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services and accept "cash only" for services are excluded from the definition of "clinic" and are not subject to licensure by the AHCA.[5]

Clinic License Application

In order to obtain a license, an applicant must file an application with the AHCA and pay a fee not to exceed $2,000.[6] The Act defines "applicant" to mean an individual owner, corporation, partnership, firm, business, association, or other entity that owns or controls, directly or indirectly, 5 percent or more of an interest in the clinic and that applies for a clinic license.[7] The application requires a variety of information, including, but not limited to, the name, residence and business address, phone number, social security number, and license number of the medical or clinic director. The applicant must also provide proof of compliance with the Act, including a listing of services to be provided, the number and discipline of each professional staff member to be employed and proof of financial ability to operate.[8] The AHCA requires a level 2 background screening for applicants and personnel as required in s. 408.809(1)(e), F.S., pursuant to ch. 435 and s. 408.809, F.S.[9]

Clinic Director Responsibilities

The Act requires that each clinic must appoint a medical director or clinic director who must agree in writing to accept legal responsibility for the following activities on behalf of the clinic:[10]

- Have signs identifying the medical director or clinic director posted in a conspicuous location within the clinic readily visible to all patients.

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[1] Section 400.990, F.S.
[2] Section 400.9905(4)
[3] Section 400.991, F.S.
[4] Section 400.9905(4)(a)-(n), F.S.
[5] *See* the AHCA's bill analysis for SB 486 (2015) on file with the Senate Committee on Health Policy.
[6] *Supra* note 3 and s. 400.9925(3), F.S.
[7] Section 400.9905(2), F.S.
[8] *Supra* note 3.
[9] Section 400.991(5)(b), F.S.
[10] Section 400.9935, F.S.

- Ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.
- Review any patient referral contracts or agreements executed by the clinic.
- Ensure that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided.
- Serve as the clinic records owner.
- Ensure compliance with the recordkeeping, office surgery, and adverse incident reporting requirements.
- Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.
- Not refer a patient to the clinic if the clinic performs magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography.
- Ensure that the clinic publishes a schedule of charges for the medical services offered to patients.

Unlicensed Clinics and Administrative Penalties

The Act provides that operating a clinic without a license is a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S., with each day of continued operation being a separate offense.[11] Any person found guilty of unlicensed activity a second or subsequent time commits a felony of the second degree, with each day of continued operation being a separate offense.[12] Additionally, any health care provider who is aware of the operation of an unlicensed clinic shall report that facility to the AHCA. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.[13]

The AHCA also has the authority to deny the application for a license renewal, revoke and suspend the license, and impose administrative fines of up to $5,000 per violation for violations of the requirements of this part or rules of the AHCA. In determining if a penalty is to be imposed and in fixing the amount of the fine, the AHCA will consider the following factors:[14]

- The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.
- Actions taken by the owner, medical director, or clinic director to correct violations.
- Any previous violations.
- The financial benefit to the clinic of committing or continuing the violation.

Each day of continuing violation after the date fixed for termination of the violation constitutes an additional, separate, and distinct violation. Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the clinic and verified through follow up visits by AHCA personnel.[15]

[11] Section 400.993(1), F.S.
[12] Section 400.993(2), F.S.
[13] Section 400.993(3), F.S.
[14] Section 400.995, F.S.
[15] *Id*.

Any licensed clinic whose owner, medical director, or clinic director concurrently operates an unlicensed clinic shall be subject to an administrative fine of $5,000 per day. Any clinic whose owner fails to apply for a change-of-ownership license and operates the clinic under the new ownership is subject to a fine of $5,000. During an inspection, the agency shall make a reasonable attempt to discuss each violation with the owner, medical director, or clinic director of the clinic, prior to written notification.[16]

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., by redefining "clinic" to include any entity that provides health care services to individuals and "that receives remuneration" for the services, rather than entities that "tender charges for reimbursement." A clinic that receives remuneration for services would include services paid by cash or a third-party payer. Clinics that currently accept "cash only" will be required to apply for a health care clinic license.

The bill also makes technical changes.

Section 2 amends s. 400.991, F.S., by revising the term "applicant" to include an individual who owns or controls, directly or indirectly, *any* interest in a clinic. This revision changes the amount of ownership interest from 5 percent or more to any percent. The bill provides that the AHCA will require a level 2 background screening for applicants.

The bill defines "convicted" to mean a finding of guilt, regardless of adjudication, the acceptance of a plea of nolo contendere or guilty by a court, or an adjudication of delinquency if the record has not been sealed or expunged.

The bill provides that in addition to disqualifying offenses listed in ss. 435.04 and 408.809, F.S., an applicant may not have an arrest awaiting final disposition for, or have been convicted of, a felony or a crime punishable by imprisonment of 1 year or more. This expands the list of disqualifying offenses to any felony.

The bill adds a new subsection providing that AHCA will deny the application for a clinic license, or the renewal of a clinic license, by an applicant who has been previously found to have committed an act that resulted in the suspension or revocation of a clinic license.

Section 3 amends s. 400.995, F.S., by revising language for administrative penalties. A licensed clinic will be subject to an administrative fine of $5,000 per day if its medical director or clinical director violates s. 400.9935(1)(b), F.S., which requires that the medical director or clinical director ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

Section 4 amends s. 627.236, F.S., by adding an entity that is certified under 42 C.F.R. part 485, subpart H as an exempt entity from the licensing requirement under the Health Care Clinic Act. Entities certified under 42 C.F.R. part 485, subpart H include providers of outpatient physical therapy and occupational therapy, and speech language pathology services.

[16] *Id*.

Section 5 reenacts ss. 400.991(2), 400.9935(6), 480.0475(1)(a), and 817.234(8)(c), F.S.

Section 6 provides an effective date of July 1, 2015.

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:

Entities that meet the definition of health care "clinic" will require licensure and a fee of $2,000, if not currently licensed. The AHCA estimates that an additional 250 clinics will require licensure over a 2-year period.

C. Government Sector Impact:

The AHCA reports that the licensure workload is expected to increase by 10 percent, requiring four full-time equivalent positions to license, inspect, and handle legal actions. The total non-recurring expenditure for the AHCA is estimated to be $17,052. Total recurring expenditures are estimated to be $217,447, with recurring revenues ranging from $175,800 to $177,900 annually. The AHCA indicated that the licensure fees will substantially cover the cost of the additional staff, and existing resources can absorb the difference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the definition of a clinic requires that it tenders charges for reimbursement, usually to insurers, but does not require that the insurer actually pay the clinic the charges. Section 817.234,

F.S., makes it a crime to present or cause to be presented a false and fraudulent insurance claim without the requirement of payment. Section 812.014, F.S., makes it a crime to obtain or endeavor to obtain property or monies to which one is not entitled without the requirement that such monies actually be paid or received.

The Florida Department of Financial Services reports that changing the definition of "clinic" to require that monies must not only be billed but actually "received," would eliminate the act of presenting a false insurance claim and/or endeavoring to obtain money (as it relates to health care clinics) from being a prosecutable crime, unless the victim actually paid the illicit charges and the victim sustains an actual financial loss.

In order to avoid this result, line 37 could be amended to read: remuneration or ~~which~~ tenders charges for reimbursement for the

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905, 400.991, 400.995, and 627.736.

This bill reenacts the following sections of the Florida Statutes: 400.991(2), 400.9935(6), 480.0475(1)(a), and 817.234(8)(c).

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 Sobel

33-00363B-15 2015486__

A bill to be entitled

An act relating to the Health Care Clinic Act; amending s. 400.9905, F.S.; redefining the term "clinic"; amending s. 400.991, F.S.; redefining the term "applicant"; defining the term "convicted"; prohibiting applicants for clinic licensure from having an arrest awaiting final disposition for, or having been convicted of, a felony or crime punishable by a specified minimum term of imprisonment; requiring the Agency for Health Care Administration to deny an application for a clinic license or license renewal from an applicant who has been found by a state or federal regulatory agency or court to have committed an act that resulted in the suspension or revocation of a clinic license; amending s. 400.995, F.S.; providing that a licensed clinic is subject to a specified administrative penalty if its medical director or clinic director fails to ensure that practitioners providing health care services or supplies to patients have a valid license; amending s. 627.736, F.S.; exempting certain federally certified clinics from the requirement of being licensed under the act in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law; reenacting ss. 400.991(2), 400.9935(6), 480.0475(1)(a), and 817.234(8)(c), F.S., to incorporate the amendment made to s. 400.9905, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity that provides ~~where~~ health care services ~~are provided~~ to individuals and that receives remuneration ~~which tenders charges for reimbursement~~ for the ~~such~~ services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services

within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or

registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, a ~~any~~ community college or university clinic, and an ~~any~~ entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

(f) A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458,

chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

(h) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(i) Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

(j) Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

(k) Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure under this paragraph must provide documentation demonstrating compliance.

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

(m) Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

(n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must ~~shall~~ contain information that includes: the

name, residence, and business address and phone number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under personal injury protection insurance coverage for the preceding year. If the agency determines that an entity which is exempt under this subsection has received payments for medical services under personal injury protection insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 2. Paragraphs (a) and (b) of subsection (5) of section 400.991, Florida Statutes, are amended, present subsection (6) of that section is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

400.991 License requirements; background screenings;

prohibitions.—

(5)(a) As used in this subsection and subsection (6), the term:

1. "Applicant" means an individual who owns or controls ~~individuals owning or controlling~~, directly or indirectly, any ~~5 percent or more of an~~ interest in a clinic; the medical or clinic director~~,~~ or a similarly titled individual ~~person~~ who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and a licensed health care practitioner ~~practitioners~~ at the clinic.

2. "Convicted" means a finding of guilt, regardless of adjudication, the acceptance of a plea of nolo contendere or guilty by a court, or an adjudication of delinquency if the record has not been sealed or expunged.

(b) The agency shall require level 2 background screening for applicants and personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809. In addition to the disqualifying offenses listed in ss. 435.04 and 408.809, an applicant may not have an arrest awaiting final disposition for, or have been convicted of, a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or the law of any other country.

(6) The agency shall deny the application for a clinic license or clinic license renewal by an applicant who has been previously found by a state or federal regulatory agency or court to have committed an act that resulted in the suspension or revocation of a clinic license or its equivalent.

Section 3. Subsection (4) of section 400.995, Florida

Statutes, is amended to read:

400.995 Agency administrative penalties.—

(4) A ~~Any~~ licensed clinic shall be subject to an administrative fine of $5,000 per day if its:

(a) ~~whose~~ Owner, medical director, or clinic director concurrently operates an unlicensed clinic ~~shall be subject to an administrative fine of $5,000 per day~~.

(b) Medical director or clinic director violates s. 400.9935(1)(b).

Section 4. Paragraph (h) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(h) As provided in s. 400.9905, an entity excluded from the definition of a clinic shall be deemed a clinic and must be licensed under part X of chapter 400 in order to receive reimbursement under ss. 627.730-627.7405. However, this licensing requirement does not apply to:

1. An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

2. An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;

3. An entity wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;

4. A hospital or ambulatory surgical center licensed under chapter 395;

5. An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; ~~or~~

6. An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows; or~~.~~

7. An entity that is certified under 42 C.F.R. part 485, subpart H.

Section 5. Subsection (2) of s. 400.991, subsection (6) of s. 400.9935, paragraph (a) of subsection (1) of 480.0475, and paragraph (c) of subsection (8) of s. 817.234, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 400.9905, Florida Statutes, in references thereto.

Section 6. This act shall take effect July 1, 2015.

From: SHIR.JEREMY
Sent: Monday, February 09, 2015 2:14 PM
To: BEAN.AARON
Cc: ALEXANDER.DEE; ENDICOTT.JOSEPH; TARSITANO.MEGHAN
Subject: Senator Sobel Request to Agenda SB486 Health Care Clinic Act at next Health Policy Committee meeting

Dear Chair Bean:

This letter is to request that SB486 relating to Health Care Clinics be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would change the language of F.S. 400.9905, so that facilities that accept cash only would also be included in the definition of health care clinics. The current language leaves these facilities out, creating a perverse situation whereby employees of such facilities can prescribe illegal amounts of anabolic steroids and HGH with impunity. This bill would mean that such facilities would be subject to the same regulations, inspections, and penalties as other health care clinics in the state.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel
State Senator, 33rd District

Cc: Sandra Stovall, Staff Director; Celia Georgiades, Committee Administrative Assistant

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

~~466~~ 486
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Mland

Job Title _____

Address 1000 Riverside Ave #115
Street
Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email mlandlaw@ad.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
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)

3/23/15
Meeting Date

SB 486
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 224-6496

TLH FL 32308
City *State* *Zip*

Email jscott@flmedical.org

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)

WAIVE TIME IN SUPPORT

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-2015
Meeting Date

Topic HEALTH CARE CLINIC ACT

Bill Number SB 486 *(if applicable)*

Name STEPHEN R. WINN

Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY *Street*

Phone 878-7364

TALLAHASSEE FL 32301
City *State* *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 486
Bill Number (if applicable)

Topic Health Care Clinic Act

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Lobbyist

Address 2868 Mahan Dr.
Street

Phone (850)-878-2196

Tallahassee FL 32308
City *State* *Zip*

Email Jill@FADAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol & Drug Abuse 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:	CS/SB 784
INTRODUCER:	Banking and Insurance Committee and Senator Gaetz and others
SUBJECT:	Health Care
DATE:	March 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Stovall	HP	**Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 784 creates the "Right Medicine, Right Time Act." The bill establishes the Clinical Practices Review Commission within the Department of Health. The commission will review prior authorization, step therapy, or other protocols, submitted by health maintenance organizations, insurers, or Medicaid managed care plans, that limit access to covered services at the point of service to determine if the limitation is supported by sufficient clinical evidence which proves that the limitation does not inhibit timely diagnosis or effective treatment of the specific illness or condition of the covered patient.

Any coverage limitation imposed by a health maintenance organization (HMO), an insurer, or a Medicaid managed care plan must comply with the procedures for approval of coverage limitations by the commission. If the commission finds that sufficient, clinical evidence exists to support a coverage limitation, the Office of Insurance Regulation (insurers and HMOs) or the Agency for Health Care Administration (Medicaid managed care plans) will approve the coverage limitation. If an insurer, without the approval of the Office of Insurance Regulation, imposes a coverage limitation, the insurer and its chief medical officer are liable for any injuries or damages, as defined in s. 766.202, F.S., and economic damages, as defined in s. 768.81(1)(b), F.S., resulting from the patient's restricted access to services determined medically necessary by the treating physician.

The bill requires a Medicaid managed care plan that establishes a prescribed drug formulary or preferred drug list to provide a broad range of therapeutic options for the treatment of diseases. If

feasible, the formulary or preferred drug list must include at least two products in each therapeutic class.

The bill provides greater transparency for consumers regarding participating providers and coverage limitations. Each insurer is required to post a link to the list of preferred providers on the insurer's website and update the list within 10 days after any change in the list. Individual and group health insurance policies and HMO contracts must provide a summary statement identifying any diagnostic or therapeutic procedure that is subject to prior authorization or other coverage limitation as well as prescription drugs that are subject to prior authorization, step therapy or any coverage limitation. The insurer or HMO is required to post the summary statement on the Internet, which will assist consumers in comparing benefits and limitations of each plan.

The bill also revises provisions relating to the prompt payment of claims by HMOs by prohibiting an HMO from retroactively denying a claim because of subscriber ineligibility if the HMO had verified the eligibility of a subscriber at the time of treatment.

II. Present Situation:

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[1] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.[2] As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[3]

The Florida Insurance Code requires health insurers and HMOs to provide an outline of coverage or other information describing the benefits, coverages, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.[4] Section 641.31(4), F.S., requires each contract, certificate, or member handbook of an HMO to delineate the services for which a subscriber is entitled and any limitations under the contract.

Statewide Medicaid Managed Care

Medicaid is a joint federal and state funded program that provides healthcare for low income Floridians. The Agency for Healthcare Administration (Agency) administers the program. In fiscal year 2013-2014, the agency implemented the legislatively-mandated Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components: the

[1] Section 20.121(3)(a)1., F.S.
[2] Section 641.21(1), F.S.
[3] Section 641.495, F.S.
[4] Section 627.642, F.S.

Managed Medicaid Assistance (MMA) program and the Long-term Care program. Most Medicaid recipients who are eligible for the full range of Medicaid benefits are enrolled in an MMA plan. Currently, Medicaid managed care plans must provide all prescription drugs listed on the agency's Medicaid preferred drug list (PDL) for at least the first year of operation.

Managed care plans have the ability to implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Medicaid managed care plans are required to ensure that service authorization decisions are based on objective evidenced-based criteria; utilization management procedures are applied consistently; and all decisions to deny or limit a requested service are made by health care professionals who have the appropriate clinical expertise in treating the enrollee's condition or disease.[5] The managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field; consider the needs of the enrollees; are adopted in consultation with providers; and are reviewed and updated periodically, as appropriate. These guidelines are consistent with requirements found in federal regulations.[6]

The agency maintains coverage and limitations policies for most Medicaid services, which are incorporated by reference into the Florida Administrative Code. Medicaid managed care plans cannot be more restrictive than these policies or the Medicaid state plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees. Managed care plans must notify enrollees and providers of the services they provide and inform them of any prior authorization requirements or coverage limitations in their respective handbooks.

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics (P&T) committee within the agency for developing a Medicaid preferred drug list. The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the agency's Medicaid PDL, such that the PDL provides for medically appropriate drug therapies for Medicaid recipients and an array of choices for prescribers within each therapeutic class. The agency also manages the federally-required Medicaid Drug Utilization Board, which meets quarterly and develops and reviews clinical prior authorization criteria, including step-therapy protocols for certain drugs that are not on the agency's Medicaid PDL.

Managed care plans serving Managed Medical Assistance enrollees are required to provide all prescription drugs listed on the agency's Medicaid PDL for at least the first year of operation. As such, the managed care plans have not implemented their own plan-specific formulary or PDL. The managed care plan's prior authorization criteria/protocols related to prescribed drugs cannot be more restrictive than the criteria established by the agency. Section 409.967, F.S., currently requires managed care plans to publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that

[5] Agency for Health Care Administration, *Senate Bill 784 Analysis* (February 13, 2015) (on file with the Senate Committee on Banking and Insurance).
[6] 42 CFR 438.236(b).

the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.

State Group Insurance

The Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with section 125 of the Internal Revenue Code.[7] As part of the State Group Insurance Program, the DMS contracts with third party administrators for the self-insured State Employees' PPO Plan and four self-insured HMO plans; contracts directly with two fully-insured HMOs; and contracts with a pharmacy benefits manager (PBM) for the State Employees' Prescription Drug Plan.[8] The State Employees' Prescription Drug Plan covers all PPO and HMO plan members (excluding Medicare Advantage Plans offered exclusively to eligible retirees). Summary information about the plans is available on the Internet.[9]

The Division of State Group Insurance indicates that health plan administrators, HMOs and the PBM each have their respective clinical coverage guidelines and utilization management practices to ensure appropriateness of care and to manage plan costs.[10] These coverage guidelines are based on clinical evidence and recommendations from clinical and pharmacy and therapeutics committees comprised of practicing physicians and pharmacists. The National Committee for Quality Assurance and other national accreditation organizations define the structure and function of these committees.

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to first try a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period of time.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under the plan. A PDL is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required.

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[7] Section 110.123, F.S.
[8] Section 110.12315, F.S.
[9] Summary plan descriptions and certificates of coverage for the state group health insurance program are available at http://mybenefits.myflorida.com/health/forms_and_resources/forms_and_publications/health_insurance_forms_and_publications and on the respective vendor websites.
[10] Department of Management Services, *Senate Bill 784 Analysis* (February 26, 2015) (on file with the Senate Committee on Banking and Insurance).

Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

In some cases, plans require an insured to try one drug first to treat his or her medical condition before they will cover another drug for that condition. For example, if Drug A and Drug B both treat a medical condition, a plan may require doctors to prescribe Drug A first. If Drug A does not work for a beneficiary, then the plan will cover Drug B. Advocates of step therapy state that a step therapy approach requires the use of clinically recognized first-line drug before approval of a more complex and often more expensive medication where the safety, effectiveness, and values has been well established before a second-line drug is authorized.

According to a published report by researchers affiliated with the National Institutes of Health, there is mixed evidence on the impact of step therapy policies.[11] A review of the literature by Brenda Motheral found that there is little good empirical evidence,[12] but other studies[13] suggest that step therapy policies have been effective at reducing drug costs without increasing the use of other medical services. However, some studies have found that the policies can increase total utilization costs over the long run because of increased inpatient admissions and emergency department visits.[14] One-step therapy policy for a typical antipsychotic medication in a Medicaid program was associated with a higher rate of discontinuity in medication use, an outcome that was linked to increased risk for hospitalization.[15]

Federal regulations for Medicaid and the Children's Health Insurance Program (or CHIP, which, in Florida is known as Kidcare) require that managed care plans have written policies and procedures for initial and continuing authorization decisions that ensure timely access to care for enrollees with serious and chronic conditions.[16] Under these federal regulations, prior authorization decisions may not exceed 14 calendar days following receipt of the request, with a possible extension up to 14 additional calendar days if requested by the enrollee or provider or there is a need for additional information. For Medicaid, an expedited authorization process is also provided that does not exceed 3 working days with the ability to extend up to 14 calendar days upon enrollee request, or if the managed care plan justifies a need for additional information and the extension is in the enrollee's benefit.[17] Regulations governing the CHIP provide a deferral to any existing state law on the authorization of health services, if applicable.[18]

Recently, the Banking and Insurance Committee staff surveyed insurers and HMOs regarding their use of prior authorization, step therapy, and P&T Committees. The four companies surveyed have Pharmacy and Therapeutic Committees. Respondents indicated that prior authorization and step therapy could be used for multiple purposes, such as patient safety, expectation of long-term health outcomes, overutilization of a service related to evidence based

[11] The Ethics Of 'Fail First': Guidelines and Practical Scenarios for Step Therapy Coverage Policies, Rahul K. Nayak and Steven D. Pearson *Health Affairs* 33, No.10 (2014):1779-1785.
[12] Pharmaceutical Step Therapy Interventions: A Critical Review of the Literature, Brenda R. Motheral, *Journal of Managed Care Pharmacy* 17, no. 2 (2011) 143-55.
[13] See fn. 11 at pg. 1780.
[14] See *id*.
[15] See *id*.
[16] See 42 CFR 438.210 (Medicaid) and 42 CFR 495 (Children's Health Insurance Program).
[17] 42 CFR 438.210.
[18] 42 CFR 457.495(d)(2).

criteria, and potentially available lower cost solutions with equal health outcomes comparable to higher cost solutions.

Patient Protection and Affordable Care Act (PPACA)

The federal PPACA was signed into law on March 23, 2010.[19] The PPACA imposes many insurance requirements including required benefits, coverage for all individuals and employers, rating and underwriting standards, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.[20]

Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard. Florida did not establish its own state exchange under PPACA. Premium credits and other cost sharing subsidies are available to U.S. citizens and legal immigrants within certain income limits for qualified coverage purchased through the exchange. Premium credits are set on a sliding scale based on a percentage of the federal poverty level and reduce the out-of-pocket costs incurred by individuals and families.

Prior to an insurer offering a plan through an exchange, an exchange must certify that the plan meets certain requirements to be deemed a qualified health plan (QHP). If a QHP is not certified, the product may be offered outside the exchange, but individuals purchasing that product would not be eligible for a premium subsidy, which are limited to coverage purchased through the exchange. Insurers seeking initial certification or recertification of qualified health plans (QHPs) for the 2016 enrollment must submit applications to Centers for Medicare and Medicaid Services (CMS) by May 15, 2015. The final deadline for state approval and for QHPs to send final data to CMS is August 25, 2015.

Final HHS Notice of Benefit and Payment Parameters for 2016

On March 20, 2014, the final HHS regulations relating to notice of benefit and payment parameters was released, which establishes key standards for issuers and marketplaces for 2016. These regulations include provisions relating to prescription drug coverage, formulary drug list, and the drug exception process.[21]

Prescription Drug Coverage.[22] The current drug coverage policy of HHS is based on insurers and HMOs including in their formulary drug lists the greater of one drug for each U.S. Pharmacopeia (USP) category and class or the same number of drugs in each USP category and class as the state's essential health benefit (EHB) benchmark plan. Under the final rule, insurers

[19] P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.
[20] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).
[21] HHS, *Final HHS Notice of Benefit and Payment Parameters for 2016*, Factsheet, at: http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2016-PN-Fact-Sheet-final.pdf (last visited Mar. 19, 2015).
[22] 42 U.S.C. 18022 provides for the establishment of an essential health benefits (EHB) package that includes coverage of EHB. The law directs that EHBs be equal in scope to the benefits covered by a typical employer plan and that they cover at least 10 general categories including prescription drugs.

and HMOs must also use a P&T committee system, which will design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. Insurers and HMOs will use the P&T committee process, starting in 2017, and must also satisfy the current USP drug count standard.

Formulary Drug List. The regulations clarify that a health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the state, the marketplace, HHS, and the general public. Additionally, insurer and HMOs must also make this information available in a standard machine-readable format to provide the opportunity for third parties to create resources that aggregate information on different plans.

Drug Exceptions Process. The HHS current regulations require that insurers and HMOs have processes through which an enrollee can request and gain access to a drug not on the formulary. In the final rule, HHS established more detailed procedures for the standard review process, and a requirement that insurers and HMOs have a process in place under which an enrollee can request an independent external review if the health plan denies an initial request made on a standard or expedited basis. HHS also clarified that cost sharing for drugs obtained through the exceptions process must count toward the annual limitation on cost sharing for health plans subject to the EHB requirement.

Termination of Coverage; Grace Periods

PPACA requires an insurer or HMO that offers QHPs to establish a standard policy for the termination of coverage of enrollees due to non-payment of premium.[23] This policy must include a grace period for enrollees receiving subsidies[24] on the exchange and must be applied uniformly to enrollees similarly situated.

Pursuant to PPACA, insurers and HMOs must provide a grace period of 3 consecutive months if an enrollee is receiving a subsidy and has previously paid at least one full month's premium during the benefit year. During this grace period for enrollees receiving a subsidy, the insurer or HMO must pay all appropriate claims for services rendered to the enrollee during the first month of the grace period and may "pend" claims for services rendered to the enrollee in the second and third months of the grace period. The insurer or HMO must notify HHS of such nonpayment and notify providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period. If an enrollee exhausts the 3-month grace period without paying all premiums, the insurer or HMO must terminate coverage effective after the last day of the first month of the 3-month grace period provided the insurer or HMO meets the notice requirements.

The last day of coverage for non-payment of premiums for exchange enrollees not receiving subsidies must comply with state law regarding grace periods for nonpayment.[25] Section

[23] 45 CFR s. 156.270.
[24] Advance payments of the premium tax credit, see http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/The-Premium-Tax-Credit (last visited March 19, 2015).
[25] 45 CFR 155.430(d)(5).

627.608, F.S., requires insurers to provide a 31-day grace period for the payment of premiums. During the grace period, the policy stays in force. If the premium is not paid during this grace period, the claim may be denied retroactively and the policy may be terminated retroactively[26] to the beginning of the grace period. Section 641.31(15), F.S., requires all health maintenance contracts to have a grace period of not less than 10 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 HMO will retroactively deny the claim. Currently, s. 641.3155, F.S., limits the ability or an insurer or a HMO to deny a claim retroactively to one year after the date of payment of the claim.

Summary of Benefits and Coverage

PPACA directs HHS and the Department of Treasury to develop standards for insurer and HMOs to use in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage."[27] On December 30, 2014, HHS issued proposed rules relating to the summary of benefits and coverage that would require insurers and HMOs to provide:[28]

- A description of the coverage, including cost sharing, for each category of benefits.
- The exceptions, reductions, and limitations of the coverage.
- For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage.

III. Effect of Proposed Changes:

Section 1 creates the "Right Medicine, Right Time Act."

Section 2 creates s. 402.90, F.S., and establishes the Clinical Practices Review Commission (commission), which would be housed for administrative purposes within the Division of Medical Quality Assurance of the Department of Health. The commission would consist of the following seven appointed members, subject to confirmation by the Senate:

- Five physicians who are currently practicing medicine in Florida and have clinical expertise as specified in the bill.
- One individual, appointed by the Governor, with a doctorate in pharmacology or pharmacy and meeting specified experience and credentials.
- One member, appointed by the Governor, with expertise in the analysis of clinical research and meeting other requirements.

The powers and duties of the commission include:

- Development and implementation of policies and procedures for the review of prior authorization, step therapy, or other protocols that limit, at the point of service, access to

[26] Section 627.6131, F.S.
[27] 42 U.S.C. 300gg-15.
[28] *See* Summary of Benefits and Coverage and Uniform Glossary, 79 Fed. Reg. 78,607-78611, (December 30, 2014).

covered services, including diagnostic procedures, pharmaceutical services, and other therapeutic interventions.
- Development of any operational policies and procedures that would facilitate the work of the commission, including the establishment of bylaws, the election of a chair, and other administrative procedures.
- Determination as to the sufficiency of clinical evidence submitted in support of any proposed coverage limitation.
- Preparation of reports and recommendations that document the proceedings of the commission and identify necessary resources or legislative action.

The bill provides that commission members and specified commission staff are subject to part III, of ch. 112, F.S., including the Code of Ethics for Public Officers and reporting of financial interests pursuant to s. 112.3145, F.S. For purposes of part III of ch. 112, F.S., the executive director, senior managers, commission members are considered public officers or employees and the commission is considered their agency. Each commission member is prohibited from voting on any measure that would inure to his or her special private gain or loss. Similar prohibitions apply to voting on any measure that would benefit any principal, parent organization or subsidiary of a corporate principal by which he or she is retained or to a relative or business associate of the public officer. Senior managers and commission members are required to file the disclosure requirements with the Commission on Ethics. An employee or commission is prohibited from accepting any gift or expenditure from a person which has a contractual relationship with the commission or which is under consideration for a contract. An employee or commission member that fails to comply with these requirements is subject to the penalties provided under ss. 112.317 and 112.3173, F.S.

Subject to an appropriation, a commission member may receive compensation, per diem, and travel expenses as provided in s. 112.061, F.S.

Section 3 amends s. 409.967, F.S., and establishes requirements for prescribed drug formularies or preferred drug lists of Medicaid managed care plans. If a Medicaid managed care plan establishes a prescribed drug formulary or preferred drug list, the plan must provide a broad range of therapeutic options for the treatment of disease states, which are consistent with the general needs of the outpatient population. If feasible, the formulary or preferred drug list must include at least two products in each therapeutic class. The section also provides that such plans may only establish coverage limitation that are supported by clinical evidence as defined in s. 627.6051, F.S. The agency may not approve coverage limitations without an assessment of the supporting evidence by the commission established pursuant to s. 402.90, F.S.

Section 4 creates s. 627.6051, F.S., and requires that any coverage limitation imposed by an insurer at the point of services must be supported by sufficient clinical evidence providing that the limitation does not inhibit timely diagnosis or effective treatment of the specific illness or condition for the covered patient. For purposes of this section, the term, "a coverage limitation imposed at the point of service" means a limitations that is not universally applicable to all covered lives, but instead depends on an insurer's consideration of specific patient characteristics and conditions that have been reported by a physician in the process of providing medical care.

The bill defines the term, "sufficient clinical evidence," to mean:

- A body of research consisting of well-controlled studies conducted by independent researchers and published in peer reviewed journals or comparable publications, which consistently support the treatment protocol or other coverage limitation as a best practice for the specific diagnosis or combination of presenting complaints.
- Results of a multivariate predictive model, which indicate that the probability of achieving desired outcomes is not negatively altered or delayed by adherence to the proposed protocol.

The commission is required to determine whether sufficient clinical evidence exists for a proposed coverage limitation imposed by an insurer at the point of service. If the commission determines that sufficient clinical evidence exists to support a coverage limitation, the OFR must approve the coverage limitation.

If an insurer, without the approval of the OIR, imposes a coverage limitation, the insurer and its chief medical officer are liable for any injuries or damages, as defined in s. 766.202, F.S., and economic damages, as defined in s. 768.81(1)(b), F.S., resulting from the patient's restricted access to services determined medically necessary by the treating physician.

Section 768.81(1)(b), F.S., defines the term, "economic damages" to mean past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss that would not have occurred but for the injury giving rise to the cause of action.

Section 766.202, F.S., defines the term, "economic damages" to mean financial losses that would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act. "Noneconomic damages" is defined to mean nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

Sections 5, 8, and 9 amend ss. 627.642, 627.662, and 627.6699, F.S., to require individual and group health insurance policies to provide a summary statement identifying any diagnostic or therapeutic procedure that is subject to prior authorization or other coverage limitation as well as prescription drugs that are subject to prior authorization, step therapy or any coverage limitation. The insurer is required to post the summary statement on the Internet, which will assist consumers in comparing benefits and limitations of each plan.

Section 6 amends s. 627.6471, F.S., to require each insurer to post a link to the list of preferred providers on the insurer's website and update the list within 10 days after any change in the list.

Section 7 amends s. 627.651, F.S., to provide a technical, conforming cross reference.

Section 10 amends s. 641.31(44), F.S., to require HMO contracts to provide a summary statement identifying any diagnostic or therapeutic procedure that is subject to prior authorization or other coverage limitation as well as prescription drugs that are subject to prior authorization, step therapy or any coverage limitation. The HMO is required to post the summary statement on the Internet, which will assist consumers in comparing benefits and limitations of each plan.

The section also provides that HMOs are prohibited from establishing prior authorization procedures, step therapy requirements, treatment protocols, or other utilization management procedures that restrict access to covered services unless expressly authorized under this section. Any coverage limitation imposed by a HMO at the point of service must be supported, as determined by the commission by sufficient clinical evidence as defined in s. 627.6051, F.S., which demonstrates that the limitation does not inhibit timely diagnosis or optimal treatment of the specific illness or condition of the covered patient. For purposes of this section, the term, "a coverage limitation imposed by a HMO at the point of service" means a limitation that is not universally applicable to all covered lives, but instead depends on a HMOs's consideration of specific patient characteristics and conditions that have been reported by a physician in the process of providing medical care.

Section 11 amends s. 641.3155, F.S., relating to prompt payment of claims by HMOs, to prohibit an HMO from retroactively denying a claim because of subscriber ineligibility at any time if the HMO verified the eligibility of a subscriber at the time of treatment and provided authorization number. Section 641.31(15), F.S. requires all health maintenance contracts to have a grace period of not less than 10 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 HMO will retroactively deny the claim. Currently 641.3155, F.S., limits the ability of a HMO to deny a claim retroactively to one year after the date of payment of the claim. The bill would require HMOs to pay for such claims authorized during the grace period even if the subscriber did not pay the premium.

Section 12 provides that the act will take effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, Section 10 of the Florida Constitution prohibits passage of any law that impairs the obligation of contracts. Through a series of cases, the Florida Supreme Court has established a balancing process to determine how much impairment would be permissible based on the degree to which a party's contract rights were statutorily impaired against the problem for which the remedy was being sought.[29]

Under *Pomponio v. Claridge Condominium, Inc.*, the court named the balancing factors to consider for whether the state law has created a substantial impairment of contract.[30] The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual alterations, the review may end at the first stage. Severe impairment pushes the review to a careful examination of the nature and purpose of the legislation. In other words, is the contract impairment constitutionally tolerable compared to the state's overall objective and is the state's solution to the problem the least intrusive available.[31]

The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationship is temporary or whether it is severe, permanent, immediate, and retroactive.[32]

In *United States Fidelity & Guaranty Co.*,[33]the U.S. Supreme Court adopted the method used in *Pomponio*. The court stated that the method required the balancing of a person's interest not to have his contract's impaired with the state's interest in exercising its legitimate police power. The court's balancing test factors were:

- The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[34] The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further regulation on the same topic.[35]

[29] *Yamaha Parts Distributors, Inc., v. Ehrman*, 316, So.2d557 (Fla. 1975).
[30] *Pomponio v. Claridge Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).
[31] *Supra,* note 31.
[32] *Pomponio*, 378 So. 2d at 779.
[33] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).
[34] *United States Fidelity & Fidelity Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).
[35] *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the legislation.[36]
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.[37]

Insurers are required to file their qualified plan application by May 15, 2015, and finalize those applications by August 15, 2015 in order to meet deadlines for participation in the federal marketplace. The effective date of this bill is October 1, 2015. The changes contemplated under SB 784 would then be effective after qualified health plan applications have filed and the contracts have been finalized.

For Medicaid, the agency would also be required to amend existing contracts with the managed care plans to meet these new requirements. These provisions were not included as part of the original procurement and negotiation process for the statewide Medicaid Managed Care Assistance program.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill may provide health care providers with a greater number of drugs and treatments to meet the unique medical needs of their patients in a timelier manner.

Health care providers may experience less administrative costs associated with prior authorization protocols and formularies. One study estimated that prior authorization requests consumed about 20 hours a week per medical practice: 1 hour of the doctor's time, nearly 6 hours of clerical time, plus 13 hours of nurses' time.[38]

Insurers, managed care organizations, and health maintenance organizations may experience an indeterminate increase in costs to cover prescription drugs and other coverage limitations if the commission does not find sufficient clinical evidence to support coverage limitations imposed by the respective entity. Typically, step-therapy is applied to a certain drug class with the goal of encouraging generic drug use and decreasing costs. Those cost increases are likely to pass through to the purchasers of health insurance coverage, such as individuals and employers.

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[36] *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).
[37] Id.
[38] Theodore Karrison and Wendy Levinson, What Does It Cost Physician Practices To Interact With Health Insurance Plans? published online May 14, 2009, Health Affairs, 28, no.4 (2009):w533-w543 accessed at http://content.healthaffairs.org/content/28/4/w533.full (last visited March 19, 2015).

To the extent that step therapy policies and other coverage limitations contribute to increased costs from increased inpatient admissions and hospital emergency visits, the bill may serve to reduce those costs.

The posting of summary statements regarding coverage limitation by insurers and health maintenance organizations will provide greater transparency of information for consumers and health care providers.

CS/SB 784 provides an October 1, 2015 effective date. According to the OIR, insurers are required to file their qualified health plan applications for new and old plans to be offered on the exchange by May 15, 2015, and such applications must be finalized by August 25, 2015.

The provisions of the bill would not apply to self-insured health plans since these plans are preempted from state regulation under the Employee Retirement Income Security Act of 1974. In Florida, approximately 60 percent of private-sector enrollees are enrolled in self-insured plans.

C. Government Sector Impact:

The cost to establish and operate the Clinical Practices Review Commission is indeterminate at this time.

Impact on Medicaid

The fiscal impact to Medicaid is indeterminate. The bill requires the Clinical Practices Review Commission to determine whether sufficient clinical evidence exists for a proposed coverage limitation imposed by the insurer at the point of service. This provision of the bill will have an operational and fiscal impact on the Medicaid program. The bill does not limit the types of services or coverage limitations that would be subject to this requirement. Therefore, managed care plans would have to obtain approval from the commission for any limitation placed on a covered service – this could become administratively burdensome and duplicate processes that the plan has already established to monitor their utilization management program for clinical appropriateness. The Agency for Health Care Administration (agency) would also have to amend its contracts with the managed care plans to include this requirement.

To the extent that the commission disagrees with a coverage limitation, the managed care plan may incur additional expenses for providing services that are not medically necessary or for which an equally effective and less costly alternative treatment exists that can meet the needs of the enrollee.

CS/SB 784 requires managed care plans serving MMA enrollees to provide a broad range of therapeutic options on their prescribed drug formulary or preferred drug list. Since managed care plans have not established their own plan-specific formulary or preferred

drug list, this change would not result in a fiscal or operational impact to the Medicaid program, at this time.

According to the agency, the contracts with the Medicaid managed care plans have several quality and utilization management provisions to ensure enrollees receive medically necessary services in a timely manner. Requiring the commission to review all coverage limitations proposed by Medicaid managed care plans may also duplicate processes that the plans have already established to monitor their utilization management programs for clinical appropriateness.

Office of Insurance Regulation

The Office of Insurance Regulation would be required to approve new policy forms and coverages and for the first time, Medicaid managed care plans would be required to file forms with the Office. No fiscal impact was provided for these increased activities.

Division of State Group Insurance

This bill would have a negative indeterminate fiscal impact to the State Employees' Health Insurance Trust Fund. Changes to current medical management procedures that cause an HMO's medical costs to increase could result in higher negotiated premiums for the state-contracted HMOs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.642, 627.651, 627.662, 627.6699, 641.31, 627.6471, and 641.3155.

This bill creates the following sections of the Florida Statutes: 402.90, 409.967, and 627.6051.

IX. Additional Information:

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

CS by Banking and Insurance on March 4, 2015:
The CS provides the following changes:

- Clarifies that managed care plans may only establish coverage limitations that are supported by clinical evidence and the agency may not approve such coverage limitations without an assessment of the supporting evidence by the Clinical Services Review Commission.

- Defines the terms, "a coverage limitation imposed at the point of service" and "coverage limitation imposed by a health maintenance organization at the point of service."
- Prohibits an HMO from retroactively denying a claim because of subscriber ineligibility if the health maintenance organization verified the eligibility of a subscriber at the time of treatment and has provided an authorization number.
- Requires each insurer to post a link to the list of preferred providers on the insurer's home page on the insurer's website and update the list within 10 days after any change in the list.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Gaetz

597-01931A-15 2015784c1

A bill to be entitled

An act relating to health care; providing that this act shall be known as the "Right Medicine, Right Time Act"; creating s. 402.90, F.S.; creating the Clinical Practices Review Commission; housing the commission, for administrative purposes, within the Division of Medical Quality Assurance of the Department of Health; specifying the composition of, qualifications for appointment to, and standards imposed on commission members; designating the members as public officers; requiring the executive director to submit to the Commission on Ethics a list of certain people subject to public disclosure requirements; providing penalties for failure to comply with such standards; specifying the duties and responsibilities of the commission; amending s. 409.967, F.S.; requiring a managed care plan that establishes a prescribed drug formulary or preferred drug list to provide a broad range of therapeutic options to the patient; requiring coverage limitations to be supported by clinical evidence; setting coverage limitation approval standards; creating s. 627.6051, F.S.; requiring sufficient clinical evidence to support a proposed coverage limitation at the point of service; defining the terms "a coverage limitation imposed at the point of service" and "sufficient clinical evidence"; requiring the commission to determine whether sufficient clinical evidence exists and the Office of Insurance Regulation to approve coverage limitations if the

commission determines that such evidence exists; providing for the liability of a health insurer and its chief medical officer for injuries and damages resulting from restricted access to services if the insurer has imposed coverage limitations without the approval of the office; requiring insurers to establish reserves to pay for such damages; amending ss. 627.642 and 627.6699, F.S.; requiring an outline of coverage and certain plans offered by a small employer carrier to include summary statements identifying specific prescription drugs and procedures that are subject to specified restrictions and limitations; requiring insurers and small employer carriers to post the summaries on the Internet; amending s. 627.6471, F.S.; requiring an insurer to post a link to the list of preferred providers on its website and to update the list within 10 business days after a change; amending s. 627.651, F.S.; conforming a cross-reference; amending s. 627.662, F.S.; specifying that specified provisions relating to coverage limitations on prescription drugs and diagnostic or therapeutic procedures apply to group health insurance, blanket health insurance, and franchise health insurance; amending s. 641.31, F.S.; requiring a health maintenance contract summary statement to include a statement of any limitations on benefits, the identification of specific prescription drugs, and certain procedures that are subject to specified restrictions and limitations; requiring a

health maintenance organization to post the summaries on the Internet; prohibiting a health maintenance organization from establishing certain procedures and requirements that restrict access to covered services; requiring a coverage limitation to be supported, as determined by the commission, by clinical evidence demonstrating that the limitation does not inhibit the diagnosis or treatment of the patient; defining the term "a coverage limitation imposed by a health maintenance organization at the point of service"; amending s. 641.3155, F.S.; prohibiting the retroactive denial of a claim because of subscriber ineligibility at any time if the health maintenance organization verified the eligibility of such subscriber at the time of treatment and provided an authorization number; providing an effective date.

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

Section 1. This act shall be known as the "Right Medicine, Right Time Act."

Section 2. Section 402.90, Florida Statutes, is created to read:

402.90 Clinical Practices Review Commission.—There is created the Clinical Practices Review Commission, which is a commission as defined in s. 20.03.

(1) The commission shall be housed for administrative purposes in the Division of Medical Quality Assurance of the Department of Health.

(2) The commission shall consist of seven members appointed, subject to confirmation by the Senate, as follows:

(a) Five physicians, one appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives, who are currently practicing medicine in this state and have clinical expertise, as evidenced by the following:

1. A doctoral degree in medicine or osteopathic medicine from an accredited school;

2. An active and clear license issued by this state or another state;

3. Board certification in one or more medical specialties; and

4. At least 15 years of clinical experience.

(b) One individual, appointed by the Governor, with a doctorate in either pharmacology or pharmacy and at least 10 years of experience in research or clinical practice with applicable postlicensure credentials.

(c) One member, appointed by the Governor, with expertise in the analysis of clinical research, evidenced by a doctoral degree in biostatistics or a related field and at least 10 years of experience in clinical research.

(3) A commission member may not currently be an officer, director, owner, operator, employee, or consultant of any entity subject to regulation by the commission. The executive director, senior managers, and members of the commission are subject to part III of chapter 112, including, but not limited to, the Code of Ethics for Public Officers and Employees and the public disclosure and reporting of financial interests pursuant to s.

112.3145. For purposes of applying part III of chapter 112 to the activities of the executive director, senior managers, and members of the commission, such persons shall be considered public officers or employees and the commission shall be considered their agency.

(a) Notwithstanding s. 112.3143(2), a commission member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained, or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. A commission member who is prohibited from voting for such reasons shall publicly state to the assembly, before such a vote is taken, the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) Senior managers and commission members shall also file the disclosures required under paragraph (a) with the Commission on Ethics. The executive director of the commission or his or her designee shall notify each standing and newly appointed commission member and senior manager of his or her duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her

designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the commission who are subject to the public disclosure requirements under s. 112.3145.

(c) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or member of the commission may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the commission or which is under consideration for a contract.

(d) An employee or member of the commission who fails to comply with this subsection is subject to the penalties provided under ss. 112.317 and 112.3173.

(4) The duties and responsibilities of the commission include:

(a) Development and implementation of policies and procedures for the review of prior authorization, step therapy, or other protocols that limit, at the point of service, access to covered services, including diagnostic procedures, pharmaceutical services, and other therapeutic interventions.

(b) Development of any operational policies and procedures that would facilitate the work of the commission, including the establishment of bylaws, the election of a chair, and other administrative procedures.

(c) Determination as to the sufficiency of clinical evidence submitted in support of any proposed coverage limitation.

(d) Preparation of reports and recommendations that document the proceedings of the commission and identify

necessary resources or legislative action.

(5) Subject to appropriations, a commission member may receive compensation and per diem and travel expenses as provided in s. 112.061.

Section 3. Paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or

registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

2. A managed care plan that establishes a prescribed drug formulary or preferred drug list shall:

a. Provide a broad range of therapeutic options for the treatment of disease states which are consistent with the general needs of an outpatient population. If feasible, the formulary or preferred drug list must include at least two products in each therapeutic class.

b.~~2.~~ ~~Each managed care plan must~~ Publish the ~~any~~ prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.

3. For enrollees ~~Medicaid recipients~~ diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's

hemophilia disease management program.

4.~~3.~~ Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

5.~~4.~~ Managed care plans serving children in the care and custody of the Department of Children and Families shall ~~must~~ maintain complete medical, dental, and behavioral health encounter information and participate in making such information available to the department or the applicable contracted community-based care lead agency for use in providing comprehensive and coordinated case management. The agency and the department shall establish an interagency agreement to provide guidance for the format, confidentiality, recipient, scope, and method of information to be made available and the deadlines for submission of the data. The scope of information available to the department is ~~shall be~~ the data that managed care plans are required to submit to the agency. The agency shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

6. Managed care plans shall only establish coverage limitations that are supported by sufficient clinical evidence as defined by 627.6051(1). The agency may not approve coverage limitations without an assessment of the supporting evidence by the Clinical Services Review Commission established pursuant to s. 402.90.

Section 4. Section 627.6051, Florida Statutes, is created

to read:

627.6051 Required approval for certain coverage limitations.—

(1) A coverage limitation imposed by the insurer at the point of service must be supported by sufficient clinical evidence proving that the limitation does not inhibit timely diagnosis or effective treatment of the specific illness or condition for the covered patient.

(a) For purposes of this section, the term, "a coverage limitation imposed at the point of service" means a limitation that is not universally applicable to all covered lives, but instead depends on an insurer's consideration of specific patient characteristics and conditions that have been reported by a physician in the process of providing medical care.

(b) The term "sufficient clinical evidence" means:

1. A body of research consisting of well-controlled studies conducted by independent researchers and published in peer reviewed journals or comparable publications which consistently support the treatment protocol or other coverage limitation as a best practice for the specific diagnosis or combination of presenting complaints.

2. Results of a multivariate predictive model which indicate that the probability of achieving desired outcomes is not negatively altered or delayed by adherence to the proposed protocol.

(2) The Clinical Practices Review Commission established under s. 402.90 shall determine whether sufficient clinical evidence exists for a proposed coverage limitation imposed by the insurer at the point of service. In each instance in which

the commission finds that sufficient clinical evidence exists to support a coverage limitation, the office shall approve the coverage limitation.

(3) If an insurer, without the approval of the office, imposes a coverage limitation at the point of service, including, but not limited to, a prior authorization procedure, step therapy requirement, treatment protocol, or other utilization management procedure that restricts access to covered services, the insurer and its chief medical officer shall be liable for any injuries or damages, as defined in s. 766.202, and economic damages, as defined in s. 768.81(1)(b), that result from the restricted access to services determined medically necessary by the physician treating the patient. An insurer that imposes such a coverage limitation at the point of service shall establish reserves sufficient to pay for such damages.

Section 5. Subsection (2) of section 627.642, Florida Statutes, is amended to read:

627.642 Outline of coverage.—

(2) The outline of coverage must ~~shall~~ contain:

(a) A statement identifying the applicable category of coverage afforded by the policy, based on the minimum basic standards set forth in the rules issued to effect compliance with s. 627.643.

(b) A brief description of the principal benefits and coverage provided in the policy.

(c) A summary statement of the principal exclusions and limitations or reductions contained in the policy, including, but not limited to, preexisting conditions, probationary

periods, elimination periods, deductibles, coinsurance, and any age limitations or reductions.

(d) A summary statement identifying specific prescription drugs that are subject to prior authorization, step therapy, or any other coverage limitation and the applicable coverage limitation policy or protocol. The insurer shall post the summary statement at a prominent and readily accessible location on the Internet.

(e) A summary statement identifying any specific diagnostic or therapeutic procedures that are subject to prior authorization or other coverage limitations and the applicable coverage limitation policy or protocol. The insurer shall post the summary statement at a prominent and readily accessible location on the Internet.

(f) ~~(d)~~ A summary statement of the renewal and cancellation provisions, including any reservation of the insurer of a right to change premiums.

(g) ~~(e)~~ A statement that the outline contains a summary only of the details of the policy as issued or of the policy as applied for and that the issued policy should be referred to for the actual contractual governing provisions.

(h) ~~(f)~~ When home health care coverage is provided, a statement that such benefits are provided in the policy.

Section 6. Subsection (2) of section 627.6471, Florida Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(2) An ~~Any~~ insurer issuing a policy of health insurance in this state that~~, which insurance~~ includes coverage for the

services of a preferred provider~~,~~ must provide each policyholder and certificateholder with a current list of preferred providers, ~~and~~ must make the list available for public inspection during regular business hours at the principal office of the insurer within the state, and must post a link to the list of preferred providers on the home page of the insurer's website. Such insurer must post on its website a change to the list of preferred providers within 10 business days after such change.

Section 7. Subsection (4) of section 627.651, Florida Statutes, is amended to read:

627.651 Group contracts and plans of self-insurance must meet group requirements.—

(4) This section does not apply to any plan that ~~which~~ is established or maintained by an individual employer in accordance with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, or to a multiple-employer welfare arrangement as defined in s. 624.437(1), except that a multiple-employer welfare arrangement shall comply with ss. 627.419, 627.657, 627.6575, 627.6578, 627.6579, 627.6612, 627.66121, 627.66122, 627.6615, 627.6616, and 627.662(8) ~~627.662(7)~~. This subsection does not allow an authorized insurer to issue a group health insurance policy or certificate which does not comply with this part.

Section 8. Present subsections (7) through (14) of section 627.662, Florida Statutes, are redesignated as subsections (8) through (15), respectively, and a new subsection (7) is added to that section, to read:

627.662 Other provisions applicable.—The following

provisions apply to group health insurance, blanket health insurance, and franchise health insurance:

(7) Section 627.642(2)(d) and (e), relating to coverage limitations on prescription drugs and diagnostic or therapeutic procedures.

Section 9. Paragraph (b) of subsection (12) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH BENEFIT PLANS.—

(b)1. Each small employer carrier issuing new health benefit plans shall offer to any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of a health savings account plan as defined by federal law or a health reimbursement arrangement as authorized by the Internal Revenue Service, which ~~that~~ meet the criteria set forth in this section.

2. For purposes of this subsection, the terms "standard health benefit plan," "basic health benefit plan," and "high deductible plan" mean policies or contracts that a small employer carrier offers to eligible small employers which ~~that~~ contain:

a. An exclusion for services that are not medically necessary or that are not covered preventive health services; ~~and~~

b. A procedure for preauthorization or prior authorization by the small employer carrier, or its designees;

c. A summary statement identifying specific prescription drugs that are subject to prior authorization, step therapy, or

any other coverage limitation and the applicable coverage limitation policy or protocol. The carrier shall post the summary statement in a prominent and readily accessible location on the Internet; and

d. A summary statement identifying any specific diagnostic or therapeutic procedures subject to prior authorization or other coverage limitations and the applicable coverage limitation policy or protocol. The carrier shall post the summary statement in a prominent and readily accessible location on the Internet.

3. A small employer carrier may include the following managed care provisions in the policy or contract to control costs:

a. A preferred provider arrangement or exclusive provider organization or any combination thereof, in which a small employer carrier enters into a written agreement with the provider to provide services at specified levels of reimbursement or to provide reimbursement to specified providers. Any such written agreement between a provider and a small employer carrier must contain a provision under which the parties agree that the insured individual or covered member has no obligation to make payment for any medical service rendered by the provider which is determined not to be medically necessary. A carrier may use preferred provider arrangements or exclusive provider arrangements to the same extent as allowed in group products that are not issued to small employers.

b. A procedure for utilization review by the small employer carrier or its designees.

This subparagraph does not prohibit a small employer carrier from including in its policy or contract additional managed care and cost containment provisions, subject to the approval of the office, which have potential for controlling costs in a manner that does not result in inequitable treatment of insureds or subscribers. The carrier may use such provisions to the same extent as authorized for group products that are not issued to small employers.

4. The standard health benefit plan shall include:

a. Coverage for inpatient hospitalization;

b. Coverage for outpatient services;

c. Coverage for newborn children pursuant to s. 627.6575;

d. Coverage for child care supervision services pursuant to s. 627.6579;

e. Coverage for adopted children upon placement in the residence pursuant to s. 627.6578;

f. Coverage for mammograms pursuant to s. 627.6613;

g. Coverage for children with disabilities ~~handicapped children~~ pursuant to s. 627.6615;

h. Emergency or urgent care out of the geographic service area; and

i. Coverage for services provided by a hospice licensed under s. 400.602 in cases where such coverage would be the most appropriate and the most cost-effective method for treating a covered illness.

5. The standard health benefit plan and the basic health benefit plan may include a schedule of benefit limitations for specified services and procedures. If the committee develops such a schedule of benefits limitation for the standard health

benefit plan or the basic health benefit plan, a small employer carrier offering the plan must offer the employer an option for increasing the benefit schedule amounts by 4 percent annually.

6. The basic health benefit plan must ~~shall~~ include all of the benefits specified in subparagraph 4.; however, the basic health benefit plan must ~~shall~~ place additional restrictions on the benefits and utilization and may also impose additional cost containment measures.

7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612, 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911 apply to the standard health benefit plan and to the basic health benefit plan. However, notwithstanding such ~~said~~ provisions, the plans may specify limits on the number of authorized treatments, if such limits are reasonable and do not discriminate against any type of provider.

8. The high-deductible ~~high deductible~~ plan associated with a health savings account or a health reimbursement arrangement must ~~shall~~ include all the benefits specified in subparagraph 4.

9. Each small employer carrier that provides for inpatient and outpatient services by allopathic hospitals may provide as an option of the insured similar inpatient and outpatient services by hospitals accredited by the American Osteopathic Association if ~~when~~ such services are available and the osteopathic hospital agrees to provide the service.

Section 10. Subsection (4) of section 641.31, Florida Statutes, is amended and subsection (44) is added to that section, to read:

641.31 Health maintenance contracts.—

(4) Each ~~Every~~ health maintenance contract, certificate, or

member handbook must ~~shall~~ clearly state all of the services to which a subscriber is entitled under the contract and must include a clear and understandable statement of any limitations on the benefits, services, or kinds of services to be provided, including any copayment feature or schedule of benefits required by the contract or by any insurer or entity that ~~which~~ is underwriting any of the services offered by the health maintenance organization. The contract, certificate, or member handbook must ~~shall~~ also state where and in what manner the comprehensive health care services may be obtained. The health maintenance organization shall prominently post the statement regarding limitations on benefits, services, or kinds of services provided on its website in a readily accessible location on the Internet. The statement must include, but need not be limited to:

(a) The identification of specific prescription drugs that are subject to prior authorization, step therapy, or any other coverage limitation and the applicable coverage limitation policy or protocol.

(b) The identification of any specific diagnostic or therapeutic procedures that are subject to prior authorization or other coverage limitations and the applicable coverage limitation policy or protocol.

(44) Health maintenance organizations are prohibited from establishing prior authorization procedures, step therapy requirements, treatment protocols, or other utilization management procedures that restrict access to covered services unless expressly authorized to do so under this subsection. A coverage limitation imposed by a health maintenance organization

at the point of service must be supported, as determined by the Clinical Practices Review Commission established pursuant to s. 402.90, by sufficient clinical evidence, as defined in s. 627.6051(1), which demonstrates that the limitation does not inhibit the timely diagnosis or optimal treatment of the specific illness or condition for the covered patient. For purposes of this subsection, the term, "a coverage limitation imposed by a health maintenance organization at the point of service" means a limitation that is not universally applicable to all covered lives, but instead depends on a health maintenance organization's consideration of specific patient characteristics and conditions that have been reported by a physician in the process of providing medical care.

Section 11. 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 more than 1 year after the date of payment of the claim and may not retroactively deny a claim because of subscriber ineligibility at any time if the health maintenance organization verified the eligibility of a subscriber at the time of treatment and has provided an authorization number.

Section 12. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-205
Meeting Date

SB 784
Bill Number (if applicable)

Topic HEALTH CARE

Amendment Barcode (if applicable)

Name GREG WILLIAMS, DO

Job Title OSTEOPATHIC PHYSICIAN

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Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 878-7364

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 784

Meeting Date *Bill Number (if applicable)*

Topic Health Care *Amendment Barcode (if applicable)*

Name David Root

Job Title GA

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Street

Waverly VA 23890 Email droot@primetherapeutics.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Prime Therapeutics

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)

3/23/15
Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine Right Time

Amendment Barcode (if applicable)

Name Chris Moya

Job Title

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Street

Phone 850·321·6692

TLH FL 32312
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing National Multiple Sclerosis Society

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)

3-23-15
Meeting Date

SB 784
Bill Number (if applicable)

Topic Health Care

Amendment Barcode (if applicable)

Name Chris Moya

Job Title Governmental Affairs Director

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Phone 850-681-6492

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City *State* *Zip*

Email CMoya@joneswalker.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National MS Society

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)

3/23/15
Meeting Date

Topic Right Medicine, Right Time Act. Bill Number 784 *(if applicable)*

Name Ellen Piekalkiewicz Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 2477 Tim Gamble Place, Suite 200 Phone
Street

Tallahassee, FL 32308 E-mail
City *State* *Zip*

Waive Speaking: [X] For [ ] Against [ ] Information

Representing United Partners for Human Services

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

Topic Right Medicine, Right Time Act. Bill Number 784 *(if applicable)*

Name Anne Swerlick Amendment Barcode *(if applicable)*

Job Title Deputy Director of Advocacy

Address 2425 Torreya Dr. *Street* Phone 850-385-7900

Tallahassee, FL *City* *State* *Zip* E-mail

Waive Speaking: [X] For [ ] Against [ ] Information

Representing Florida Legal Services

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 784
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Health Care/Step Therapy

Name David A. Hart

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 521-1288

Email dhart@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

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)

3/23/15
Meeting Date

Topic Right Medicine, Right Time Act — Bill Number 784 *(if applicable)*

Name Pam Langford — Amendment Barcode _____ *(if applicable)*

Job Title President

Address PO Box 180813 — Phone _____
Street

Tallahassee, FL 32318 — E-mail _____
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Representing HEALS of the South

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

Topic Right Medicine, Right Time Act — Bill Number 784 *(if applicable)*

Name Charlean Lanier — Amendment Barcode _____ *(if applicable)*

Job Title Member

Address 74 Green Lea Circle *Street* — Phone _____

Crawfordville, FL 32327 *City State Zip* — E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Member of NAMI Florida

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

784
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Step Therapy

Name Tammy Perdue

Job Title General Counsel

Address 516 N. Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-7173

Email tperdue@aif.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

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S-001 (10/14/14)

WAIVE TIME IN SUPPORT

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-2015
Meeting Date

Topic HEALTH CARE

Bill Number SB 784 *(if applicable)*

Name STEPHEN R. COINN

Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY *Street*

Phone 878-7364

TALLAHASSEE *City* FL *State* 32301 *Zip*

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

784
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave
Street

Jacksonville FL 32204
City *State* *Zip*

Phone 904-355-1555

Email nlandlaw@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)

3/23/2015
Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine, Right Time Act

Amendment Barcode (if applicable)

Name Jesse Fry

Job Title State Policy Analyst

Address 641 E College Ave Unit 2
Street

Phone (850) 339-6395

Tallahassee FL 32301
City *State* *Zip*

Email jfry@theaidsinstitute.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing The AIDS Institute

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)

3/23/15
Meeting Date

SB 784
Bill Number (if applicable)

Topic Right Medicine Right Time

Amendment Barcode (if applicable)

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 CHAIN + the patients of 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)

3-23-15
Meeting Date

SB 784
Bill Number (if applicable)

Topic HEALTH CARE

Amendment Barcode (if applicable)

Name LAYNE SMITH

Job Title DIRECTOR - STATE GOVT. RELATIONS

Address 4500 SAN PABLO ROAD
Street

Phone 904-953-7334

Jacksonville FL 32224
City *State* *Zip*

Email smith.layne@mayo.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MAYO CLINIC

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)

Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine

Amendment Barcode (if applicable)

Name Beth Labasky

Job Title Consultant

Address 1400 Village Sq Blvd.
Street

Tallahassee Fla 32312
City *State* *Zip*

Phone 8503227335

Email bethlabasky@aol.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing COPD FOUNDATION, ALPHA 1 FOUNDATION

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] 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)

3/23/15
Meeting Date

SB 784
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 224-6496

_____
City *State* *Zip*

Email jscott@flmedical.org

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

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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)

3/23
Meeting Date

1784
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Death Care

Name Agatha Henderson

Job Title

Address 108 E Jefferson St
Street
Tall FL 32301
City *State* *Zip*

Phone 850 559 0855

Email aghenderson@me.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Children's Magic

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] 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)

3/23/2015
Meeting Date

SB 784
Bill Number (if applicable)

Topic Relating to Health Care

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address 215 S. Monroe Street | Suite 505
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email greg.black@metzlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BioFlorida

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)

3/23/15
Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine, Right Time Act

Amendment Barcode (if applicable)

Name Fern Serra

Job Title HN

Address 5461 Lake Worth Rd.
Street

Phone

Lake Worth FL 33467
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 State Hispanic Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/23/15
Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine, Right Time Act.

Amendment Barcode (if applicable)

Name Angela Brown

Job Title

Address 1336 Vickers Rd.
Street

Phone

Tallahassee, FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Sickle Cell Foundation

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)

3.23.15
Meeting Date

784
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Albert Balido

Job Title _____

Address 201 W. Park Dr
Street

Phone 8502513420

Tall. FL 32301
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Cancer Society

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)

3/23/15
Meeting Date

SB784
Bill Number (if applicable)

Topic Banking & Insurance

Amendment Barcode (if applicable)

Name Jill Gruan

Job Title Lobbyist

Address 2868 Mahan Dr.
Street

Phone (850)-878-2196

Tallahassee FL 32308
City *State* *Zip*

Email Jill@FADAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol and Drug Abuse 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

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

3/23/15
Meeting Date

784
Bill Number (if applicable)

Topic Right Medicine Right Time Act

Amendment Barcode (if applicable)

Name Lena Juarez

Job Title

Address P.O. Box 10390
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 8502128330

Email lena@jejassoc.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Molina Healthcare

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)

3/23
Meeting Date

SB 784
Bill Number (if applicable)

Topic Right Medicare / Right Time

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Gadsden St.
Street

Phone 570-6307

Tallahassee FL 32301
City *State* *Zip*

Email lawgonz@earthlink.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

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

3/23/15
Meeting Date

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

784
Bill Number (if applicable)

Topic Right Medicine, Right Time

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344
Street

Phone 850-443-1319

Tallahassee FL 32302
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

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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)

3-23-15
Meeting Date

484
Bill Number (if applicable)

Topic Right Medicine Right Time

Amendment Barcode (if applicable)

Name Marnie George

Job Title

Address 101 N. Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 510-8866

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 AND The Leukemia & Lymphoma Society

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)

3/23/15
Meeting Date

Topic Relating to Health Care

Bill Number SB 784 *(if applicable)*

Name Audrey Brown

Amendment Barcode _____ *(if applicable)*

Job Title President + C.E.O

Address 200 W. College Ave
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-386-2904

E-mail Audrey@FAHP.net

Speaking: ☐ For ☒ Against ☐ Information

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 (10/20/11)

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 816
INTRODUCER:	Senator Grimsley
SUBJECT:	Home Health Agencies
DATE:	March 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.			AHS	
3.			FP	

I. Summary:

SB 816 eliminates the requirement for an home health agency (HHA) to provide a quarterly report to the Agency for Health Care Administration (AHCA) which details:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

The bill also eliminates the requirement that the AHCA fine HHAs who fail to submit the report $200 per day up to a total of $5,000 per quarter.

The bill requires HHAs when renewing their license biennially to submit to the AHCA the number of patients who received home health services from the HHA on the day that that the licensure renewal application is filed.

II. Present Situation:

An HHA is an organization that provides home health services and staffing services.[1] Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.[2] Home health agencies are regulated by the AHCA pursuant to ch. 400, part III, F.S.

[1] Section 400.462(12), F.S.
[2] Section 400.462(14)(a)-(c), F.S.

In 2008, the Legislature passed chapter 2008-246, Laws of Fla., with anti-fraud measures including the requirement for an HHA quarterly report to be submitted to the AHCA within 15 days following the end of each quarter. The Legislature passed chapter 2008-246, Laws of Fla., to combat an increase in Medicaid fraud in HHAs during the early to mid-2000s. In Fiscal Year 2004-2005, the AHCA's Bureau of Medicaid Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in Fiscal Year 2005-2006, and 144 in Fiscal Year 2006-2007.[3] Between 2004 and 2007, 19 HHAs were terminated from the Medicaid program in Miami-Dade County alone. [4] In 2013, the Legislature passed chapter 2013-133, Laws of Fla., which amended these requirements to reduce the fine assessed against HHAs which violate the reporting requirements to $200 per day up to a maximum of $5,000 per quarter and to exempt HHAs that are not, or do not share a controlling interest with a licensee that is, a Medicaid or Medicare provider.

Section 400.474(7), F.S., enacted in chapter 2008-246, Laws of Fla., and amended by chapter 2013-133, Laws of Fla., requires HHAs to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. These items include:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

The AHCA is required to impose a fine of $200 per day up to a maximum of $5,000 per quarter if the report is not submitted within the first 15 days following the close of the quarter. From July 1, 2008, to date, $8,317,650 in fines have been assessed and $5,635,108 in fines have been collected.[5] Also, the number of HHAs that fail to submit the reports each quarter has decreased since the passage of chapter 2008-286, Laws of Fla. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.[6]

The AHCA uses the data on the number of patients on the last day of the quarter as an indicator of the number of patients when a home health agency is closing. In addition, the data on numbers of patients is used as an indicator that the home health agency may not be operational, along with other information. Failing to provide at least one service directly for a period of 60 days is grounds to deny or revoke a license under s. 400.474(1)(2)(e), F.S. The AHCA already collects the number of patients admitted over a 12-month period, from each home health agency on the biennial license renewal application as required by s. 400.471(2)(c), F.S.[7]

[3] Information contained in this portion of this bill analysis is from the analysis for CS/SB 1374 by the Senate Committee on Health Regulation (Mar. 7, 2008) (on file with the Senate Committee on Health Policy).
[4] Id.
[5] AHCA, *Senate Bill 816 Analysis* (Jan. 23, 2015) (on file with the Senate Committee on Health Policy).
[6] AHCA, *House Bill 4031 Analysis* (SB 1094) (Mar. 14, 2013) (on file with the Senate Committee on Health Policy).
[7] Id.

III. Effect of Proposed Changes:

SB 816 eliminates the requirement for an HHA to provide a quarterly report to the AHCA which details:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

The bill also eliminates the requirement that the AHCA fine HHAs who fail to submit the report $200 per day up to a total of $5,000 per quarter.

The bill requires HHAs when renewing their license to submit to the AHCA the number of patients who received home health services from the HHA on the day that that the licensure renewal application is filed.

The bill provides an effective date of July 1, 2015.

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:

HHAs may see an indeterminate positive fiscal impact by not having to prepare and file the quarterly report. Additionally, HHAs who would have failed to provide the quarterly report to the AHCA will see an indeterminate positive fiscal impact due to the elimination of the fine currently assessed.

C. Government Sector Impact:

The AHCA will see an indeterminate negative fiscal impact due to the loss of revenue from the elimination of the fine assessed on HHAs who fail to submit their quarterly report.[8]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 400.474 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.

[8] Supra note 5.

By Senator Grimsley

21-00820-15 2015816__

A bill to be entitled

An act relating to home health agencies; amending s. 400.474, F.S.; revising the information that a home health agency is required to submit to the Agency for Health Care Administration for license renewal; removing the requirement that a home health agency submit quarterly reports; providing an effective date.

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

Section 1. Subsection (7) of section 400.474, Florida Statutes, is amended to read:

400.474 Administrative penalties.—

(7) A home health agency shall submit to the agency, with each license renewal application, the number of patients who receive home health services from the home health agency on the day that the license renewal application is filed~~, within 15 days after the end of each calendar quarter, a written report that includes the following data as they existed on the last day of the quarter:~~

~~(a) The number of insulin-dependent diabetic patients who receive insulin-injection services from the home health agency~~.

~~(b) The number of patients who receive both home health services from the home health agency and hospice services.~~

~~(c) The number of patients who receive home health services from the home health agency.~~

~~(d) The name and license number of each nurse whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health~~

~~agency in excess of $25,000 during the calendar quarter.~~

~~If the home health agency fails to submit the written quarterly report within 15 days after the end of each calendar quarter, the Agency for Health Care Administration shall impose a fine against the home health agency in the amount of $200 per day until the Agency for Health Care Administration receives the report, except that the total fine imposed pursuant to this subsection may not exceed $5,000 per quarter. A home health agency is exempt from submission of the report and the imposition of the fine if it is not a Medicaid or Medicare provider or if it does not share a controlling interest with a licensee, as defined in s. 408.803, which bills the Florida Medicaid program or the Medicare program.~~

Section 2. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 5, 2015

I respectfully request that **Senate Bill #816**, relating to Home Health Agencies, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 816

Meeting Date *Bill Number (if applicable)*

Topic Home Care Quarterly Report *Amendment Barcode (if applicable)*

Name Kathleen Burcham

Job Title Administrator - Tallahassee Memorial Home Health Care

Address 1619 Physicians Drive Phone 850-431-6800

Street

Tallahassee FL 32308 Email Kathleen.Burcham@tmh.org

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Home Care Association 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)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Policy Committee **Judge:**

Started: 3/23/2015 1:32:38 PM
Ends: 3/23/2015 3:29:56 PM Length: 01:57:19

1:32:42 PM Chair, Sen. Bean
1:33:00 PM Roll Call
1:33:36 PM Quorum Present
1:34:20 PM TAB 8: SB 738 by Grimsley; Clincial Laboratories
1:34:23 PM Sen. Grimsley
1:34:27 PM Strike All AM 833646
1:35:06 PM AM 833646 is adopted
1:35:23 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support
1:35:31 PM Doug Russell, Quest Diagnostics, waives in support
1:35:38 PM Mike Huey, Laboratory Corporation of America, waives in support
1:35:57 PM Roll Call on CS for SB 738
1:36:15 PM CS for SB 738 reported favorably
1:36:26 PM TAB 14: SB 816 by Grimsley; Home Health Agencies
1:37:14 PM Sen. Joyner
1:37:23 PM Sen. Grimsley responds
1:38:00 PM Chair
1:38:02 PM Sen. Joyner
1:38:07 PM Sen. Grimsley
1:38:12 PM Chair
1:38:15 PM Kathleen Birchman, Administrator-Tallahassee Memorial Home Health Care, Home Care Association of Florida, waives in support
1:38:39 PM Roll Call on SB 816
1:38:45 PM SB 816 reported favorably
1:39:08 PM TAB 2: SB 1180 by Latvala (CO-INTRODUCERS) Soto, Diaz de la Portilla; Practice of Pharmacy
1:39:26 PM AM 606818
1:39:57 PM Patrick Gallagher, Attorney, Coalition of Veterinary Compounding Pharmacies, waives in support
1:40:04 PM Phillip Hinkle, Executive Director, Florida Veterinary Medical Association, waives in support
1:40:12 PM Pat Mixon, Governmental Consultant, FL Veterinary Medical Association, waives in support
1:40:32 PM AM 606818 is adopted
1:40:41 PM Roll Call on CS for SB 1180
1:40:59 PM CS for SB 1180 reported favorably
1:41:16 PM TAB 4: SB 760 by Bradley (CO-INTRODUCERS) Sobel; Child Protection Teams
1:41:31 PM Sen. Bradley
1:41:41 PM Chair
1:41:43 PM AM 503466
1:42:17 PM AM 503466 adopted
1:42:23 PM Doug Bell, Florida Chapter American Academy of Pediatrics, waives in support
1:42:38 PM Sen. Joyner
1:42:41 PM Sen. Bradley Responds
1:43:25 PM Chair
1:43:31 PM Roll Call on CS for SB 760
1:43:43 PM CS for SB 760 reported favorably
1:44:15 PM Sen. Braynon requests to be shown in the affirmative on SB 738, SB 816, SB 1180, and SB 760
1:44:39 PM TAB 1: SB 1400 by Lee; Contact Lens Pricing Practices
1:46:53 PM Chair
1:47:10 PM David Ramba, FL Optometric Association, speaks in opposition of the bill
1:48:34 PM Chair
1:48:38 PM Zayne Smith, ASD, AARP, waives in support
1:48:50 PM Melissa Ramba, Director of Govt. Affairs, FL Retail Federation, waives in support
1:49:07 PM Garth T. Vincent, Attorney at Munger, Towes, and Olson LCP, Representing 1-800-Contacts, speaks on bill
1:54:38 PM Chair

1:54:39 PM Sen. Sobel, Vice Chair
1:54:49 PM Garth Vincent Responds
1:55:04 PM Vice Chair
1:55:25 PM Garth Vincent Responds
1:55:42 PM Vice Chair
1:55:47 PM Chair
1:56:00 PM Ken Glazer, Attorney/Partner, Representing Johnson and Johnson, speaks on bill
2:00:19 PM Chair
2:00:22 PM Sen. Joyner
2:00:27 PM Ken Glazer responds
2:01:43 PM Chair
2:01:47 PM Sen. Joyner
2:01:53 PM Ken Glazer responds
2:03:03 PM Sen. Joyner
2:03:06 PM Ken Glazer responds
2:04:06 PM Sen. Joyner
2:04:17 PM Chair
2:04:23 PM Sally West, Regional Director, Representing Walgreens, waives in support
2:04:30 PM Jay J. Magure, Vice President of Government Relations, 1-800-Contacts, speaks in favor of bill
2:08:21 PM Chair
2:08:33 PM Vice Chair
2:08:43 PM Jay Magure responds
2:08:57 PM Vice Chair
2:09:14 PM Chair
2:09:21 PM Cary Samourkachian, Founder and CEO, LENS.com, Inc., speaks in favor of the bill
2:12:55 PM Chair
2:13:01 PM Eric Helms, Pricing Manager, Johnson and Johnson, speaks in opposition of bill
2:17:30 PM Chair
2:17:39 PM Denise Mogil, Director of Professional Services, Costco Wholesale, speaks in favor of bill
2:19:28 PM Chair
2:19:35 PM Debate on SB 1400
2:19:43 PM Sen. Gaetz
2:20:04 PM Sen. Galvano
2:22:39 PM Chair
2:22:41 PM Sen. Joyner
2:25:58 PM Chair
2:26:02 PM Vice Chair
2:27:07 PM Chair
2:27:11 PM Sen. Lee recognized to close
2:33:31 PM Chair
2:33:38 PM Roll Call on SB 1400
2:33:43 PM SB 1400 reported favorably
2:34:09 PM TAB 10: SB 1040 by Braynon; Infectious Disease Elimination Pilot Program
2:34:56 PM Chair
2:35:03 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support
2:35:09 PM Chris Ruland, Florida Public Health Association, waives in support
2:35:15 PM Jesse Fry, State Policy Analyst, AIDS Institute, waives in support
2:35:21 PM Martha Decastro, VP for Nursing, FL Hospital Association, waives in support
2:35:27 PM Jeff Scott, FL Medical Association, waives in support
2:35:32 PM Christian Minor, Director of Govt. Affairs, The FL Smart Justice Alliance, waives in support
2:35:37 PM Barbara Lumpkin, Consultant, Baptist Health South Florida, waives in support
2:35:44 PM Holly Miller, Govt. Affairs Counsel, FMA, waives in support
2:35:50 PM Jill Gran, Lobbyist, Florida Alcohol and Drug Abuse Association, waives in support
2:35:59 PM Ruena Wright, AVP Government Relations, University of Miami, waives in support
2:36:04 PM Avi Assidon, Medical Student (FSU), FL Medical Association, waives in support
2:36:22 PM Hansel Tookes, MD, MPH, Representing Florida Medical Association, waives in support
2:36:37 PM Sen. Braynon
2:36:51 PM Roll Call on SB 1040
2:37:05 PM SB 1040 reported favorably
2:37:23 PM TAB 3:SB 728 by Benacquisto; Health Insurance Coverage for Opiods
2:37:59 PM Jill Gran, Lobbyist, Florida Alcohol and Drug Abuse Association, waives in support
2:38:03 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support

2:38:09 PM Chris Ruland, FL Public Health Association, waives in support
2:38:14 PM Beth Labasky, Consultant, Informed Families of FL, waives in support
2:38:23 PM Christian Minor, Director of Legislative Affairs, The FL Smart Justice Alliance, waives in support
2:38:30 PM Albert Balido, American Cancer Society, waives in support
2:38:40 PM Roll Call on SB 728
2:38:50 PM SB 728 reported favorably
2:39:13 PM TAB 5: SB 1232 by Simpson; Building Codes
2:40:01 PM AM 589274
2:40:08 PM AM to AM 555036
2:40:29 PM Vice Chair
2:42:23 PM Chair
2:42:50 PM Public Testimony on AM 555036
2:42:51 PM Chris Sloan, Representing Culder Sloan, speaks in favor
2:49:36 PM Chair
2:50:24 PM Jennifer Hatfield, FL Swimming Pool Association, speaks on amendment
2:51:41 PM Chair
2:51:46 PM Bruce Kershner, United Pool and Spa Association, speaks in favor
2:53:03 PM Chair
2:53:24 PM AM to AM 555036 is adopted
2:53:36 PM Public testimony on AM 589274
2:53:40 PM Cam Fentriss, Lobbyist, Florida Association Plumbing, Heating and Colling Contractors, waives in opposition
2:54:01 PM Jonathan Kanzigg, FL Fire Chiefs Association, waives in opposition
2:54:15 PM John Pasqualone, Executive Director, FL Fire Marshals and Inspection Association, waives in opposition
2:54:51 PM Sen. Joyner
2:56:34 PM Chair
2:56:40 PM AM 589274 is adopted
2:56:50 PM On bill as amended
2:57:01 PM Jennifer Hatfield, FL Swimming Pool Association, waives in support
2:57:07 PM Dale Calhoun, FL Propane Gas Association, waives in support
2:57:13 PM Richard Watson, Legislative Counsel, Associated Builders and Contractors of FL, waives in support
2:57:19 PM Robert Fine, FL Home Builders, speaks in favor of bill
2:58:40 PM Sen. Joyner
2:58:42 PM Robert Fine responds
2:58:50 PM Sen. Joyner
2:58:59 PM Chair
2:59:04 PM Kari Hebrank, FL Home Builders, waives in support
2:59:23 PM Debate on bill as amended
2:59:27 PM Sen. Joyner
3:00:09 PM Chair
3:00:42 PM Kari Hebrank, Florida Home Builders, speaking
3:01:49 PM Sen. Joyner
3:01:54 PM Kari Hebrank responds
3:02:15 PM Sen. Joyner
3:02:19 PM Kari Hebrank responds
3:03:10 PM Chair
3:03:16 PM Vice Chair
3:04:33 PM Chair
3:04:51 PM Roll Call on CS for SB 1232
3:04:58 PM CS for SB 1232 reported favorably
3:05:20 PM TAB 6: SB 1526 by Legg; Athletic Trainers
3:05:48 PM AM 747872
3:06:04 PM AM 747872 is adopted
3:06:09 PM AM 358164
3:06:20 PM AM 358164 is adopted
3:06:32 PM On Bill as Amended
3:06:37 PM Nick Pappas, Atheltic Trainers Association of Florida, waives in support
3:07:06 PM Roll Call on CS for SB 1526
3:07:14 PM CS for SB 1526 reported favorably
3:07:32 PM TAB 9: SB 476 by Grimsley; FL Mental Health Act
3:07:41 PM AM 535926
3:08:34 PM Chair

3:08:36 PM AM 535926 is adopted
3:08:59 PM Barbara Lumpkin, Consultant, Baptist Health South Florida, waives in support
3:09:03 PM Zayne Smith, ASD, AARP, waives in support
3:09:07 PM Meghan Cottrell, The Children's Campaign, waives in support
3:09:11 PM Martha DeCastro, VP for Nursing, FL Hospital Association, waives in support
3:09:16 PM Robert Trammell, General Counsel, FL Public Defender Association, Inc., waives in support
3:09:22 PM Allison Carvajal, Consultant, Florida Nurse Practitioner Network, waives in support
3:09:29 PM Jill Gran, Lobbyist, FL Alcohol and Drug Abuse Association, waives in support
3:09:34 PM Skylar Zander, Deputy State Director, Americans for Prosperity, waives in support
3:09:57 PM Roll Call on CS for SB 476
3:10:02 PM CS for SB 476 reported favorably
3:11:07 PM TAB 12: SB 486 by Sobel (CO-INTRODUCERS) Gaetz; Health Care Clinic Act
3:11:36 PM Chair
3:11:37 PM Chris Ruland, Representing FL Chapter, American College of Physicians, and FL Society of Plastic Surgeons, waives in support
3:11:47 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support
3:11:50 PM Jeff Scott, FL Medical Association, waives in support
3:11:55 PM Jill Gran, Lobbyist, Florida Alcohol and Drug Abuse Association, waives in support
3:12:24 PM Bill is TP
3:12:36 PM TAB 13: CS/SB 784 by BI, Gaetz (CO-INTRODUCERS) Sobel, Stargel; Health Care
3:13:59 PM Chair
3:14:41 PM Greg Williams, Osteopathic Physician, Florida Osteopathic Medical Association, waives in support
3:14:52 PM David Root, GA, Prime Therapeutics, waives in opposition
3:15:12 PM Chris Moya, National Multiple Sclerosis Society, waives in support
3:15:16 PM Tammy Perdue, General Counsel, Associated Industries of Florida, speaks in opposition of bill
3:16:49 PM Chair
3:16:51 PM Tammy Perdue Responds
3:16:56 PM Chair
3:17:02 PM Ellen Piekalkiewicz, Executive Director, United Partners for Human Services, waives in support
3:17:14 PM Anne Swenick, Deputy Director of Advocacy, Florida Legal Services, waives in support
3:17:24 PM David Hart , Executive VP, Florida Chamber of Commerce, waives in opposition
3:17:42 PM Pam Langford, President, HEALS of the South, waives in support
3:17:52 PM Charlean Lanier, Member of NAMI Florida, waives in support
3:18:03 PM Audrey Brown, President and CEO, FL Association of Health Plans, speaks in opposition
3:21:35 PM Chair
3:21:48 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support
3:21:53 PM Chris Ruland, Florida Chapter American College of Physicians, waives in support
3:21:57 PM Jesse Fry, State Policy Analyst, The AIDS Institute, waives in support
3:22:01 PM Ron Watson, Lobbyist, FL CHAIN and the Patriots of Florida, waives in support
3:22:05 PM Layne Smith, Director-State Govt. Relations, Representing Mayo Clinic, waives in support
3:22:08 PM Beth Labasky, Consultant, Representing COPO Foundation/ALPHA 1 Foundation, waives in suppport
3:22:12 PM Jeff Scott, Florida Medical Association, waives in support
3:22:16 PM Cynthia Henderson, Children's Magic, waives in support
3:22:19 PM Greg Black, Lobbyist, BioFlorida, waives in support
3:22:22 PM Fern Senra, FL State Hispanic Chamber of Commerce, waives in support
3:22:23 PM Angela Brown, Sickle Cell Foundation, waives in support
3:22:27 PM Albert Balido, American Cancer Society, waives in support
3:22:33 PM Jill Gran, Lobbyist, Florida Alcohol and Drug Abuse Association, waives in support
3:22:35 PM Lena Juarez, Molina Healthcare, waives in oppositon
3:22:37 PM Larry Gonzalez, General Counsel, FL Society of Health-System Pharmacists, waives in support
3:22:40 PM Alisa LaPolt, Lobbyist, FL Nurses Association, waives in support
3:22:44 PM Marnie George, FL Chapter American College of Cardiology and The Leukemia and Lymphoma Society, waives in support
3:23:08 PM Chair
3:23:19 PM Sen. Gaetz responds
3:26:58 PM Chair
3:27:04 PM Roll Call on CS for SB 784
3:27:10 PM CS for SB 784 reported favorably
3:27:33 PM TAB 12: SB 486 by Sobel (CO-INTRODUCERS) Gaetz; Health Care Clinic Act (Previously TP)
3:27:55 PM Roll Call on SB 486
3:27:59 PM SB 486 reported favorably
3:28:14 PM TAB 11: SB 632 by Garcia; Newborn Adrenoleukodystrophy Screening

3:28:25 PM AM 541912
3:28:47 PM AM 541912 is adopted
3:28:56 PM Cynthia Henderson, Children's Magic, waives in support
3:29:03 PM Roll Call on SB 632
3:29:11 PM SB 632 reported favorably
3:29:27 PM Sen. Flores requests to be shown in affirmative on SB 1232
3:29:39 PM Chair
3:29:44 PM Sen. Joyner moves to rise
3:29:48 PM Meeting Adjourned