

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, March 17, 2015
TIME: 9:00 —10:30 a.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 634 Stargel (Similar H 161)	Responsibilities of Health Care Facilities; Repealing provisions relating to practice parameters for physicians performing Caesarean section deliveries in provider hospitals; requiring a hospital to notify certain obstetrical physicians within a specified timeframe before the hospital closes its obstetrical department or ceases to provide obstetrical services, etc. HP 03/17/2015 Favorable AHS FP	Favorable Yeas 7 Nays 0
2	SB 1390 Hays (Identical H 1219)	Public Food Service Establishments; Revising the definition of the term "public food service establishment" to exclude certain events for the purposes of exemption from licensure and inspection, etc. HP 03/17/2015 Fav/CS RI FP	Fav/CS Yeas 7 Nays 0
3	SB 512 Thompson (Similar CS/CS/H 321)	HIV Testing; Differentiating between the notification and consent procedures for performing an HIV test in a health care setting and a non-health care setting; reenacting provisions relating to the collection and transmittal of specimens, to incorporate the amendment made to s. 381.004, F.S., in a reference thereto, etc. HP 03/17/2015 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Tuesday, March 17, 2015, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1052 Brandes (Compare CS/H 269)	Florida Right to Try Act; Citing this act as the "Florida Right to Try Act"; authorizing a manufacturer of an investigational drug, biological product, or device to make such drug, product, or device available to certain eligible patients with a terminal illness without charge or for a specified cost; prohibiting a state regulatory board or agency from taking action against the licenses of certain health care providers or against the licenses or Medicare certifications of certain health care institutions for specified actions with respect to an eligible patient's access to, treatment with, or use of investigational drugs, biological products, or devices, etc. HP 03/17/2015 Fav/CS AHS FP	Fav/CS Yeas 6 Nays 1
5	SB 628 Bean (Similar H 449)	Behavior Analysts; Establishing the Board of Applied Behavior Analysis within the Division of Medical Quality Assurance; including licensed behavior analysts and licensed assistant behavior analysts in the definition of "health care practitioner"; providing requirements for initial licensure as a behavior analyst or assistant behavior analyst; providing penalties for practicing applied behavior analysis or for identifying oneself as a licensed behavior analyst or licensed assistant behavior analyst without a license, etc. HP 03/17/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
6	SB 904 Bean (Identical H 1039)	Nurse Registries; Providing for the licensure of more than one nurse registry operational site within the same geographic service area; authorizing a licensed nurse registry to operate a satellite office; requiring a nurse registry operational site to keep all original records; requiring a nurse registry to provide notice and certain evidence before it relocates an operational site or opens a satellite office, etc. HP 03/17/2015 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0
7	SB 1208 Bean (Identical H 951)	Dietetics and Nutrition; Revising the purpose and intent of the Dietetics and Nutrition Practice Act; prohibiting the unlicensed practice of medical nutrition therapy; renaming the Dietetics and Nutrition Practice Council as the Dietetics and Nutrition Practice Board, etc. HP 03/17/2015 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Tuesday, March 17, 2015, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 614 Grimsley (Compare H 547)	Drug Prescription by Advanced Registered Nurse Practitioners and Physician Assistants; Expanding the categories of persons who may prescribe brand drugs under the prescription drug program when medically necessary; requiring advanced registered nurse practitioners and physician assistants who prescribe controlled substances for certain pain to make a certain designation, comply with registration requirements, and follow specified standards of practice; providing applicability, etc.	Fav/CS Yeas 4 Nays 3
		HP 03/17/2015 Fav/CS RI RC	

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 634

INTRODUCER: Senator Stargel

SUBJECT: Responsibilities of Health Care Facilities

DATE: March 12, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.			AHS	
3.			FP	

I. Summary:

SB 634 requires a hospital to notify obstetrical physicians at least 120 days before closing its obstetrical department or ceasing to provide obstetrical services.

The bill also repeals s. 383.336, F.S., which designates certain hospitals as “provider hospitals” and requires physicians in those hospitals to follow additional practice parameters when providing cesarean sections paid for by the state. Provider hospitals must also establish a peer review board to review all cesarean sections performed by the hospital and paid for by the state.

II. Present Situation:

Obstetrical Departments in Hospitals

Hospitals are required to report the services which will be provided by the hospital as a requirement of licensure and these services are listed on the hospital’s license. Hospitals must notify the Agency for Health Care Administration (AHCA) of any change of service that affects information on that hospital’s license by submitting a revised licensure application between 60 and 120 days in advance of the change.¹ The list of services is also used for the AHCA’s inventory of hospital emergency services. According to the AHCA’s website, there are currently 141 hospitals in Florida that offer emergency obstetrical services.²

Provider Hospitals

Presently s. 383.336, F.S., defines the term “provider hospital” and creates certain requirements for such hospitals. A provider hospital is a hospital in which 30 or more births occur annually

¹ AHCA, *Senate Bill 380 Analysis* (December 20, 2013) (on file with Senate Committee on Health Policy). See also ss. 408.806(2)(c) and 395.1041(2), F.S.

² Report generated by floridahealthfinder.gov on March 12, 2015 (on file with the Senate Committee on Health Policy).

that are paid for partly or fully by state funds or federal funds administered by the state.³ Physicians in such hospitals are required to comply with additional practice parameters⁴ designed to reduce the number of unnecessary cesarean sections performed within the hospital. These parameters must be followed by physicians when performing cesarean sections partially or fully paid for by the state. The section also requires provider hospitals to establish a peer review board consisting of obstetric physicians and other persons with credentials to perform cesarean sections within the hospital. The board is required to review, on a monthly basis, all cesarean sections performed within the hospital that were partially or fully funded by the state.

These provisions are not currently implemented and Department of Health rules regarding provider hospitals were repealed by ch. 2012-31, ss. 9 and 10, Laws of Fla.

Closure of an Obstetrical Department in Bartow, Florida

In June of 2007, Bartow Regional Medical Center in Polk County announced to patients and physicians that it would close its obstetrics department at the end of July of the same year.⁵ Although many obstetrical physicians could continue to see patients in their offices, they would no longer be able to deliver babies at the hospital.⁶ Physicians and the local community protested the short timeframe for ceasing to offer obstetrical services. According to the Florida Medical Association and several physicians who worked at the hospital, the short notice “endangered pregnant women who [were] too close to delivery for obstetricians at other hospitals to want them as patients.”⁷

III. Effect of Proposed Changes:

Section 1 of the bill repeals s. 383.336, F.S., relating to provider hospitals.

Section 2 of the bill amends s. 395.1051, F.S., to require hospitals to give at least a 120 day advanced notice to each obstetrical physician with clinical privileges at that hospital if the hospital intends to close its obstetrical department or cease providing obstetrical services.

Although specific penalties are not listed for violating the notification provisions, the AHCA has the authority to fine a health care facility up to \$500 for a non-designated violation.⁸ Such non-designated violations include violating any provision of that health care facility’s authorizing statute.⁹

³ Section 383.336 (1), F.S.

⁴ These parameters are established by the Office of the State Surgeon General in consultation with the Board of Medicine and the Florida Obstetric and Gynecologic Society and are required to address, at a minimum, the feasibility of attempting a vaginal delivery, dystocia, fetal distress, and fetal malposition.

⁵ Jennifer Starling, *Community Unites Against OB Closure*, THE POLK DEMOCRAT, July 12, 2007, available at <http://ufdc.ufl.edu/UF00028292/00258/1x?vo=12>, (last visited Mar. 12, 2015).

⁶ Robin W. Adams, *Bartow Hospital Plan Criticized*, THE LEDGER, July 11, 2007, available at <http://www.theledger.com/article/20070711/NEWS/707110433?p=1&tc=pg&tc=ar>. (last visited Mar. 12, 2015).

⁷ Id.

⁸ A non-designated violation is any violation that is not designated as class I-IV. See s. 408.813(3), F.S.

⁹ Section 408.813(3)(b), F.S.

Section 3 of 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:

SB 634 may have a positive fiscal impact for obstetrical physicians who receive this notice to allow them adequate time to ensure that they obtain privileges at another hospital. Advance notice will also allow the patient to adequately plan for delivery at another location. The bill may have a negative fiscal impact on hospitals that fail to comply due to potential administrative fines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 395.1051 of the Florida Statutes.
This bill repeals section 383.336 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Stargel

15-00530-15

2015634__

1 A bill to be entitled
2 An act relating to responsibilities of health care
3 facilities; repealing s. 383.336, F.S., relating to
4 practice parameters for physicians performing
5 Caesarean section deliveries in provider hospitals;
6 amending s. 395.1051, F.S.; requiring a hospital to
7 notify certain obstetrical physicians within a
8 specified timeframe before the hospital closes its
9 obstetrical department or ceases to provide
10 obstetrical services; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 383.336, Florida Statutes, is repealed.

15 Section 2. Section 395.1051, Florida Statutes, is amended
16 to read:

17 395.1051 Duty to notify patients and physicians.-

18 (1) An appropriately trained person designated by each
19 licensed facility shall inform each patient, or an individual
20 identified pursuant to s. 765.401(1), in person about adverse
21 incidents that result in serious harm to the patient.
22 Notification of outcomes of care that result in harm to the
23 patient under this section does ~~shall~~ not constitute an
24 acknowledgment or admission of liability and may not, ~~nor can it~~
25 be introduced as evidence.

26 (2) A hospital shall notify each obstetrical physician who
27 has privileges at the hospital at least 120 days before the
28 hospital closes its obstetrical department or ceases to provide
29 obstetrical services.

15-00530-15

2015634__

30

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

February 17, 2015

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

Dear Chair Bean:

I am respectfully requesting that SB 634, related to *Responsibilities of Health Care Facilities*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Sandra Stovall/ Staff Director
Celia Georgiades/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

March 9, 2015

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

Dear Chair Bean:

I am respectfully requesting that SB 634, related to *Responsibilities of Health Care Facilities*, be placed on the next committee agenda.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Sandra Stovall/ Staff Director
Celia Georgiades/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

412-K
9:00 AM

3-17-2015

Meeting Date

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

513 634

Bill Number (if applicable)

Topic RESPONSIBILITIES OF HEALTH CARE FACILITIES

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHOE PARKWAY

Phone 878-7364

Street

TALLAHASSEE

FL

32301

Email

City

State

Zip

Speaking: 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 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)

3/17/15

Meeting Date

SB 634

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.

Phone 850 224-6496

Street

14H

City

FL

State

32309

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)

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 1390

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Public Food Service Establishments

DATE: March 17, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1390 excludes from the definition of “public food service establishment” any place maintained and operated by a public or private school, college, or university temporarily to serve food contests.

The bill excludes from the definition of “public food service establishment” any eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization:

- For the use of members and associates;
- Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests; or
- By an individual or entity at a temporary event hosted by the church or organization, provided that the individual or entity guarantees a percentage of the profit to the host and does not generate more than \$2,000 in revenue from the single event or \$4,000 annually from all temporary food service events.

II. Present Situation:

Public Food Service Establishments¹

Section 509.013(5)(a), F.S., defines the term “public food service establishment” to mean:

¹ Information contained in this portion of this bill analysis is from the analysis for SB 558 by the Senate Committee on Regulated Industries (Mar. 4, 2015), available at <http://www.flsenate.gov/Session/Bill/2015/0558/Analyses/2015s0558.ri.PDF> (last visited Mar. 10, 2015).

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

At the end of the 2013-2014 fiscal year, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.²

The Division of Hotels and Restaurants within the Department of Business and Professional Regulation is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

Exclusions from the definition of Public Food Service Establishments

Section 509.013(5)(b), F.S., excludes the following from the definition of the term “public food service establishment”:

- Any place maintained and operated by a public or private school, college, or university:
 - For the use of students and faculty; or
 - Temporarily to serve such events as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - For the use of members and associates; or
 - Temporarily to serve such events as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072, F.S.
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.
- Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
- Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072, F.S.
- Any research and development test kitchen limited to the use of employees and which is not open to the general public.

² Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Reports*, Fiscal Year 2013-2014, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html (last visited Mar. 12, 2015).

Temporary Food Service Event(s)

In Florida, “temporary food service event” means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.³ During the 2013-2014 fiscal year, the Division of Hotels and Restaurants issued 7,718 temporary food service event licenses.⁴ The division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization. If the temporary food service is operated by a church, school, or nonprofit fraternal or civic organization at an event located elsewhere, no temporary food service event license is required by the division because these types of organizations are excluded from the division’s regulation.⁵

Food Contests

“Food contests” has not been defined in Florida law.

III. Effect of Proposed Changes:

The bill excludes from the definition of “public food service establishment” any place maintained and operated by a public or private school, college, or university temporarily to serve food contests.

The bill excludes from the definition of “public food service establishment” any eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates.

The bill excludes from the definition of “public food service establishment” any eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve such events as fairs, carnivals, food contests, or athletic contests.

The bill excludes from the definition of “public food service establishment” any eating place maintained and operated for the benefit of a church or a religious, nonprofit fraternal, or nonprofit civic organization by an individual or entity at a temporary event hosted by the church or organization, provided that the individual or entity guarantees a percentage of the profit to the host and does not generate more than \$2,000 in revenue from the single event or \$4,000 annually from all temporary food service events.

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

³ Section 509.13(8), F.S.

⁴ *Supra* note 3.

⁵ Florida Department of Business and Professional Regulation, *Do churches, schools, or nonprofit organizations need a temporary food service event license?* (updated June 1, 2012), available at http://myfloridalicense.custhelp.com/app/answers/detail/a_id/104 (last visited on Mar. 12, 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:

The Department of Business and Professional Regulation indicates that the additional exclusions to the definition of “public food services establishment” will result in a reduction in license fees for temporary food service vendors who operate for the benefit of a church, religious organization, or nonprofit fraternal or civic organization.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Hotels and Restaurants estimates a loss of up to 100 percent of temporary event license fees revenue, however, the bill would not impact the number of inspections completed by the division, as the division would focus resources on other required inspections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term “food contests” is not defined and may be interpreted ambiguously in determining what type of event may be excluded from the definition of public food service establishments.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 509.013

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 17, 2015:

The Committee Substitute excludes from the definition of “public food service establishments” certain eating places maintained or operated for the benefit of a church, a religious organization, a nonprofit fraternal organization, or a nonprofit civic organization by an individual or an entity at a temporary event hosted by the church or organization.

- B. **Amendments:**

None.



186938

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 31 - 33

and insert:

a. For the use of members and associates; ~~or~~

b. Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests; or

c. By an individual or entity, at a temporary event hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization, which guarantees a percentage of the profit



186938

11 generated at the event to the nonprofit host, and which does not
12 generate more than \$2,000 in revenue from a single event or
13 \$4,000 annually from all temporary food service events.

By Senator Hays

11-01239A-15

20151390__

1 A bill to be entitled
2 An act relating to public food service establishments;
3 amending s. 509.013, F.S.; revising the definition of
4 the term "public food service establishment" to
5 exclude certain events for the purposes of exemption
6 from licensure and inspection; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (5) of section 509.013, Florida
12 Statutes, is amended to read:

13 509.013 Definitions.—As used in this chapter, the term:

14 (5) (a) "Public food service establishment" means any
15 building, vehicle, place, or structure, or any room or division
16 in a building, vehicle, place, or structure where food is
17 prepared, served, or sold for immediate consumption on or in the
18 vicinity of the premises; called for or taken out by customers;
19 or prepared prior to being delivered to another location for
20 consumption.

21 (b) The following are excluded from the definition in
22 paragraph (a):

23 1. Any place maintained and operated by a public or private
24 school, college, or university:

25 a. For the use of students and faculty; or

26 b. Temporarily to serve such events as fairs, carnivals,
27 food contests, and athletic contests.

28 2. Any eating place maintained and operated by, or for the
29 benefit of, a church or a religious, nonprofit fraternal, or

11-01239A-15

20151390__

30 nonprofit civic organization:

31 a. For the use of members and associates; or

32 b. Temporarily to serve such events as fairs, carnivals,
33 food contests, or athletic contests.

34 3. Any eating place located on an airplane, train, bus, or
35 watercraft which is a common carrier.

36 4. Any eating place maintained by a facility certified or
37 licensed and regulated by the Agency for Health Care
38 Administration or the Department of Children and Families or
39 other similar place that is regulated under s. 381.0072.

40 5. Any place of business issued a permit or inspected by
41 the Department of Agriculture and Consumer Services under s.
42 500.12.

43 6. Any place of business where the food available for
44 consumption is limited to ice, beverages with or without
45 garnishment, popcorn, or prepackaged items sold without
46 additions or preparation.

47 7. Any theater, if the primary use is as a theater and if
48 patron service is limited to food items customarily served to
49 the admittees of theaters.

50 8. Any vending machine that dispenses any food or beverages
51 other than potentially hazardous foods, as defined by division
52 rule.

53 9. Any vending machine that dispenses potentially hazardous
54 food and which is located in a facility regulated under s.
55 381.0072.

56 10. Any research and development test kitchen limited to
57 the use of employees and which is not open to the general
58 public.

11-01239A-15

20151390__

59

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator Aaron Bean, Chair
Health Policy Committee
CC: Sandra Stovall, Staff Director
Celia Georgiades, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 1390 – Public Food Establishments

Date: March 4, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
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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)

3-17-15

Meeting Date

1390

Bill Number (if applicable)

Topic Public Food Service

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Legislative Director

Address Pl 10 The Capitol

Phone 850 617 7700

Street

Tall.

City

FL

State

32399

Zip

Email _____

Speaking: For Against Information

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

Representing Ag Commissioner Adam Putnam

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

3/17/2015

Meeting Date

Topic Food Service Establishments

Bill Number SB1390
(if applicable)

Name RICHARD TURNER

Amendment Barcode 156938
(if applicable)

Job Title General Counsel

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Phone 850 224-2250

Tallahassee, FL 32309
City State Zip

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Speaking: For Against Information

Representing Florida Restaurant & Lodging 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.

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 512

INTRODUCER: Health Policy Committee and Senators Thompson and Soto

SUBJECT: HIV Testing

DATE: March 17, 2015 **REVISED:** _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 defines “health care setting” and “nonhealth care setting” for the purposes of human immunodeficiency virus (HIV) testing, and differentiates between the notification and informed consent procedures for performing an HIV test in such settings. In a health care setting, the person to be tested must be notified of the planned HIV test and of the right to decline the test. In a nonhealth care setting, a provider must obtain the patient’s informed consent to perform the HIV test after an explanation of the confidentiality protections of the test results.

Regardless of the setting, the test subject must be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject. The test subject shall also be informed of the availability and location of sites that perform anonymous testing.

The bill authorizes hospitals to release HIV test results contained in hospital medical records, in accordance with standard patient record protections. The bill removes the need for hospitals to obtain informed consent before releasing these records.

The bill revises and clarifies provisions to address the occurrence of a significant exposure to medical personnel and nonmedical personnel.

The bill updates the definition of “preliminary HIV test” to reflect current advances in HIV testing.

II. Present Situation:

Human Immunodeficiency Virus

Human immunodeficiency virus (HIV) is an immune system virus that can lead to the fatal acquired immunodeficiency syndrome (AIDS). HIV affects specific cells of the immune system and, over time, the virus can destroy so many of these cells that the body cannot fight off infections and disease. However, with proper medical care, HIV can be controlled for most patients.¹

In the United States, HIV is spread mainly by having unprotected sex with someone who has HIV or by sharing needles, syringes, or other equipment used to prepare injection drugs with someone who has HIV.² The U.S. Centers for Disease Control and Prevention (CDC) estimates that more than 1.2 million persons 13 years of age and older in the United States were living with HIV infection, including 168,300 (14 percent) who are unaware of their infection.³ Approximately 50,000 people get infected with HIV each year.⁴

HIV in Florida

The Florida Department of Health (DOH) estimates that approximately 130,000 individuals are living with HIV in Florida.⁵ In 2013, Florida ranked first nationally in the number of new HIV infection cases diagnosed, with over 5,300 new cases.⁶ Additionally, in 2013 all six of Florida's large metropolitan statistical areas reported more cases individually than many states as a whole.⁷ In 2014, there were more than 6,000 people newly reported with HIV infections in Florida.⁸

HIV Testing

In 2006, the CDC revised its recommendations for HIV testing after a comprehensive review of literature, a consensus of medical opinions, input of community organizations, and the opinion of persons living with HIV.⁹ The CDC's updated recommendations include the following:¹⁰

¹ U.S. Centers for Disease Control and Prevention, *About HIV/AIDS* (updated January 16, 2015), available at <http://www.cdc.gov/hiv/basics/whatishiv.html#panel0>, (last visited Mar. 11, 2015).

² U.S. Centers for Disease Control and Prevention, *HIV Transmission* (updated January 16, 2015), available at <http://www.cdc.gov/hiv/basics/transmission.html>, (last visited Mar. 11, 2015).

³ U.S. Centers for Disease Control and Prevention, *HIV in the United States: At a Glance* (updated November 25, 2014), available at <http://www.cdc.gov/hiv/statistics/basics/ataglance.html>, (last visited Mar. 11, 2015).

⁴ *Id.*

⁵ Florida Department of Health, *HIV AIDS*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/>, (last visited Mar. 11, 2015).

⁶ Florida Department of Health, *HIV Disease: United States vs. Florida*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/fact-sheet/2014/2014-us-vs-fl-fact-sheet.pdf>, (last visited Mar. 11, 2015).

⁷ *Id.* For example, Miami reported more cases than all but four other states in the U.S. Miami-Ft. Lauderdale-West Palm Beach, Tampa-St. Petersburg-Clearwater, Orlando-Kissimmee-Sanford, and Jacksonville ranked among the top 30 states for new HIV cases in 2013.

⁸ *Id.*

⁹ See *Revised CDC Recommendations: HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings* (September 12, 2006), accessible at: U.S. Centers for Disease Control and Prevention, *HIV Screening & Testing* (updated December 16, 2014), <http://www.cdc.gov/hiv/guidelines/testing.html> (last visited Mar. 11, 2015).

¹⁰ U.S. Centers for Disease Control and Prevention, *Revised CDC Recommendations: HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, Annotated Guide* (September 2006), available at

- Opt-out HIV screening¹¹ in all health-care settings;¹²
- Tests for all high risk patients at least annually;
- No requirement for separate written consent for testing;
- No prevention counseling required in conjunction with HIV screening; and
- Inclusion in all routine prenatal screening, with repeat screening in the third trimester for high risk women.

The most common type of HIV test is the antibody screening test (immunoassay), which tests for the antibodies the human body makes against HIV. A “rapid test” is an immunoassay used for screening that produces quick results (in 30 minutes or less). Rapid tests use blood or oral fluid to look for antibodies to HIV. Antibody tests are considered “preliminary”; if the result is positive, follow-up diagnostic testing is required to confirm the presence of HIV. Other HIV tests being used can detect both antibodies and antigen (part of the virus itself). These antibody-antigen tests can find recent HIV infection earlier than tests that detect only antibodies, but antibody-antigen combination tests are only available for testing blood, not oral fluid.¹³

HIV Testing in Florida

Section 381.004, F.S., governs HIV testing in Florida and was enacted to create an environment in Florida in which people will agree to or seek out HIV testing because they are sufficiently informed about HIV infection and assured about the privacy of a decision to be tested.¹⁴ Under s. 381.004, F.S., “HIV test” means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.¹⁵ “Test subject” means the person upon whom an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.¹⁶

In Florida, county health departments (CHDs) are the primary sources for state-sponsored HIV programs. In 2013, CHD programs administered more than 428,000 HIV tests which resulted in 4,200 positive test results.¹⁷ No other person in Florida shall conduct HIV testing services without first registering with the DOH and complying with the statutory requirements listed in s. 381.004(4), F.S., such as providing opportunities for pre-test and post-test counseling by

http://www.cdc.gov/hiv/testing/HIVStandardCare/resources/brochures/MMWR-Annotated%20508C_Full.pdf (last visited Mar. 11, 2015).

¹¹ Opt-out screening means the patient must be notified that the screening will be done; the patient may decline the test.

¹² U.S. Centers for Disease Control and Prevention, *Assessment of 2010 CDC-funded Health Department HIV Testing Spending and Outcomes* (February 2013), available at

http://www.cdc.gov/hiv/pdf/evaluation_HIVTesting_BudgetAllocation.pdf (last visited Mar. 11, 2015). The CDC refers to “health care settings” as a place where both medical diagnostic and treatment services are provided. A nonhealth care setting does not provide these services. Examples of nonhealth care settings include community-based organization and outreach venues.

¹³ U.S. Center for Disease Control and Prevention, *Testing*, available at <http://www.cdc.gov/hiv/basics/testing.html> (last visited Mar. 12, 2015).

¹⁴ Jack P. Hartog, Esq., *Florida’s Omnibus AIDS Act: A Brief Legal Guide for Health Care Professionals* (August 2013), Florida Department of Health, available at http://www.floridahealth.gov/diseases-and-conditions/aids/operations_managment/documents/Omnibus-booklet-update-2013.pdf (last visited Mar. 12, 2015).

¹⁵ Section 381.004(1)(a), F.S.

¹⁶ Section 381.004(1)(e), F.S.

¹⁷ *Supra* note 6.

counselors specifically trained to address the needs of persons who may receive positive test results.

Informed Consent

Currently, in Florida, every person who is tested for HIV must first give his or her informed consent before a test is administered, except as specified in s. 381.004(2)(h), F.S. Informed consent for HIV testing is defined under department rule and requires:¹⁸

- An explanation that the information identifying the test subject and the results of the test are confidential and protected against further disclosure to the extent permitted by law;
- Notice that persons who test positive will be reported to the local CHD;
- Notice that anonymous testing is available and the locations of the anonymous sites;
- Written informed consent only for the following:
 - From the potential donor or donor's legal representative prior to first donation of blood, blood components, organs, skin, semen, or other human tissue or body part;
 - For insurance purposes; and
 - For contracts purposes in a health maintenance organization, pursuant to s. 641.3007, F.S.

Exceptions to informed consent include:¹⁹

- When testing for sexually transmitted diseases is required by state or federal law or rule;
- Transfer of human tissue pursuant to s. 381.0041, F.S.;
- Performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies if the patient is unable to consent or for the medical diagnosis of acute illness if the attending physician believes obtaining informed consent would be detrimental to the patient;
- When the HIV testing is performed as part of an autopsy for which consent was obtained;
- The testing of a defendant for any type of sexual battery crime, pursuant to the victim's request, if the blood sample is taken from the defendant voluntarily;
- When mandated by court order;
- For research purposes, if the identity of the test subject is not known and may not be retrieved by the researcher;
- When human tissue is collected lawfully without consent of the donor for corneal removal or enucleation of the eyes;
- Performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred to the medical personnel during the course of employment or within the scope of practice and where a blood sample is available that was taken from the individual voluntarily by medical personnel for other purposes;
- Performance of an HIV test upon an individual who comes into contact with medical personnel or nonmedical personnel in such a way that a significant exposure has occurred to the individual during emergency medical treatment or assistance during a medical emergency;

¹⁸ Rule 64D-2.004, F.A.C.

¹⁹ Section 381.004(2)(h), F.S.

- Performance of an HIV test by a medical examiner or attending physician upon an individual who died while receiving emergency medical assistance or care and who was the source of significant exposure to medical or nonmedical personnel providing assistance or care;
- Performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant when, after a reasonable attempt, a parent cannot be contacted to provide consent;
- Testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive; and
- Performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

Another exception to informed consent for HIV testing in Florida relates to pregnancy. Prior to testing, a health care practitioner must inform a pregnant woman that the HIV test will be conducted and of her right to refuse the test. If declined, the refusal will be noted in the medical record.²⁰

Minors meeting certain requirements, such as being married, pregnant, or able to demonstrate maturity to make an informed judgment, can be tested for HIV without parental consent if the minor provides informed consent.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 381.004, F.S., by adding definitions of “health care setting” and “nonhealth care setting,” differentiating between notification and informed consent requirements for the two settings, and making technical and conforming changes.

“Health care setting” is defined by the bill to mean, for the purposes of HIV testing, a setting devoted to the diagnosis and care of persons or the provision of medical services to persons, such as:

- County health department clinics;
- Hospitals;
- Urgent care clinics;
- Substance abuse treatment clinics;
- Primary care settings;
- Community clinics;
- Blood banks;
- Mobile medical clinics; and
- Correctional health care facilities.

“Nonhealth care setting” is defined by the bill to mean, for the purposes of HIV testing, a site that conducts HIV testing for the sole purpose of identifying HIV infection. A nonhealth care setting does not provide medical treatment. A nonhealth care setting may include:

- Community-based organizations;
- Outreach settings;

²⁰ Sections 381.004(2)(h) and 384.31, F.S.

²¹ Section 384.30, F.S. and Rule 64D-2.004(4), F.A.C.

- County health department HIV testing programs; and
- Mobile vans.

The bill updates the definition of “preliminary HIV tests” to reflect advances in HIV testing and deletes obsolete language.

The bill specifies that before performing an HIV test in a health care setting, the person to be tested must be notified orally or in writing that the HIV test is planned and that he or she has the right to decline the HIV test. If the person to be tested declines the HIV test in a health care setting, the decision will be documented in the person’s medical record. A person who has signed a general consent form for medical care is not required to sign or otherwise provide a separate consent for an HIV test during the period in which the general consent form is in effect.

The bill specifies that before performing an HIV test in a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is being performed. Informed consent shall be preceded by an explanation of the right to confidential treatment of information that identifies the test subject and the test result as provided by law.

The bill provides that, regardless of setting, the test subject of an HIV test must also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject. The test subject must also be provided with the availability and location of sites that perform anonymous testing.

The bill authorizes hospitals licensed under ch. 395, F.S., to release HIV test results contained in hospital medical records in accordance with standard patient record provisions. The bill removes the requirement that a hospital obtain written informed consent for the HIV test before releasing these records.

The bill provides that notification in a health care setting or informed consent in a nonhealth care setting is not required before performing an HIV test for the following reasons:

- When testing for sexually transmitted diseases is required by state or federal law or by rule, including HIV testing of inmates before their release from prison;
- Transfer of human tissue pursuant to s. 381.0041, F.S.;
- Performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies if the patient is unable to consent or for the medical diagnosis of acute illness if the attending physician believes obtaining notification would be detrimental to the patient;
- If HIV testing is performed as part of an autopsy for which consent was obtained;
- The testing of a defendant for any type of sexual battery crime, pursuant to the victim’s request, if the blood sample is taken from the defendant voluntarily;
- If an HIV test is mandated by court order;
- For research purposes, if the identity of the test subject is not known and may not be retrieved by the researcher;
- If human tissue is collected lawfully without consent of the donor for corneal removal or enucleation of the eyes;
- Performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred to the medical personnel

during the course of employment, within the scope of practice, or during the course of providing emergency medical assistance to the individual;

- Performance of an HIV test upon an individual who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred to the nonmedical personnel while the nonmedical personnel provides emergency medical assistance during a medical emergency;
- Performance of an HIV test by a medical examiner or attending physician upon an individual who died while receiving emergency medical assistance or care and who was the source of significant exposure to medical or nonmedical personnel providing assistance or care;
- Performance an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant when, after a reasonable attempt, a parent cannot be contacted to provide consent;
- Testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive; and
- Performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

The bill clarifies procedures for testing when a significant exposure to medical personnel occurs. Specifically, the bill requires that the occurrence of a significant exposure to medical personnel must be documented by medical personnel under the supervision of a licensed physician and recorded only in the personal record of the medical personnel. Costs of an HIV test shall be covered by the medical personnel or the employer of the medical personnel. To fall under this provision of the bill, the medical personnel must be tested for HIV or provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative. The results of the HIV test shall be released to the source of the exposure and to the person who experienced the exposure.

The bill directs that, if the source of the exposure is not available and will not voluntarily present to a health facility for testing, the medical personnel or the employer of the medical personnel may seek a court order directing the source of the exposure to submit to HIV testing. The bill provides that a sworn statement by a physician licensed under chs. 458 or 459, F.S., that a significant exposure has occurred and that testing is medically necessary constitutes probable cause for the issuance of an order by the court.

The bill provides substantially similar procedures for nonmedical personnel when a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency.

The bill provides that a county health department and any other person in Florida offering HIV tests in a nonhealth care setting may not conduct or hold themselves out to the public as conducting a testing program for HIV or AIDS without first registering with the DOH. The bill provides that a program in a nonhealth care setting shall meet the informed consent criteria as contained in the bill.

Section 2 amends subsection (2) of s. 456.032, F.S., to conform a cross-reference.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 1 of the bill contains a stand-alone flush-left paragraph that contains language inconsistent with the preceding paragraph. The proposed paragraph of s. 381.004(2)(a), F.S., states “*Before* performing an HIV test” (emphasis added); however, the stand-alone paragraph after s. 381.004(2)(a)2, F.S., refers to “the test subject.” Test subject, as currently defined in s. 381.004(e), F.S., means the person upon whom an HIV test is performed. Technically, a person would not be considered a test subject until during or *after* the HIV test is performed. Therefore, the proposed bill language under this section is inconsistent as to when and to whom information should be given regarding reporting a positive HIV test result to a county health department. The bill language in the stand-alone paragraph may be revised to refer to *the person to be tested*, or *after performing an HIV test* may need to be added if referring to the test subject.

VII. Related Issues:

The proposed stand-alone paragraph in section 1 of the bill makes vague reference to “the county health department.” The bill does not provide specificity as to which county health department a positive HIV test result will be reported. For example, the language used in Florida Administrative Code Rule 64D-2.004, more specifically refers to the “local county health department.” A revision may be needed for this bill to further clarify that a positive HIV test

result will be reported to the *local* county health department or to the county health department *in the county in which the HIV test was performed*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.004 and 456.032.

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 17, 2015:

The CS revises the definitions of “health care setting” and “nonhealth care setting” for the purposes of HIV testing, and further clarifies the notification and informed consent procedures for performing an HIV test in such settings. The CS revises and clarifies provisions to address the occurrence of a significant exposure to medical personnel and nonmedical personnel. The CS provides that a county health department and any other person in Florida offering HIV tests in a nonhealth care setting may not conduct testing without first registering with DOH.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 381.004, Florida Statutes, is reordered and amended, and paragraphs (a), (b), (g), and (h) of subsection (2) and paragraph (d) of subsection (4) of that section are amended, to read:

381.004 HIV testing.—



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11 (1) DEFINITIONS.—As used in this section, the term:
12 (a) “Health care setting” means a setting devoted to the
13 diagnosis and care of persons or the provision of medical
14 services to persons, such as county health department clinics,
15 hospitals, urgent care clinics, substance abuse treatment
16 clinics, primary care settings, community clinics, blood banks,
17 mobile medical clinics, and correctional health care facilities.
18 (b) ~~(a)~~ “HIV test” means a test ordered after July 6, 1988,
19 to determine the presence of the antibody or antigen to human
20 immunodeficiency virus or the presence of human immunodeficiency
21 virus infection.
22 (c) ~~(b)~~ “HIV test result” means a laboratory report of a
23 human immunodeficiency virus test result entered into a medical
24 record on or after July 6, 1988, or any report or notation in a
25 medical record of a laboratory report of a human
26 immunodeficiency virus test. ~~As used in this section,~~ The term
27 ~~“HIV test result”~~ does not include test results reported to a
28 health care provider by a patient.
29 (d) “Nonhealth care setting” means a site that conducts HIV
30 testing for the sole purpose of identifying HIV infection but
31 does not provide medical treatment. The term includes community-
32 based organizations, outreach settings, county health department
33 HIV testing programs, and mobile vans.
34 (f) ~~(e)~~ “Significant exposure” means:
35 1. Exposure to blood or body fluids through needlestick,
36 instruments, or sharps;
37 2. Exposure of mucous membranes to visible blood or body
38 fluids, to which universal precautions apply according to the
39 National Centers for Disease Control and Prevention, including,



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40 without limitations, the following body fluids:

41 a. Blood.

42 b. Semen.

43 c. Vaginal secretions.

44 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

45 e. Synovial fluid.

46 f. Pleural fluid.

47 g. Peritoneal fluid.

48 h. Pericardial fluid.

49 i. Amniotic fluid.

50 j. Laboratory specimens that contain HIV (e.g., suspensions
51 of concentrated virus); or

52 3. Exposure of skin to visible blood or body fluids,
53 especially when the exposed skin is chapped, abraded, or
54 afflicted with dermatitis or the contact is prolonged or
55 involving an extensive area.

56 (e) ~~(d)~~ "Preliminary HIV test" means an antibody or
57 antibody-antigen screening test, such as the ~~enzyme-linked~~
58 immunosorbent assays (IA), or a rapid test approved by the
59 United States Food and Drug Administration ~~(ELISAs) or the~~
60 Single-Use Diagnostic System (SUDS).

61 (g) ~~(e)~~ "Test subject" or "subject of the test" means the
62 person upon whom an HIV test is performed, or the person who has
63 legal authority to make health care decisions for the test
64 subject.

65 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
66 RESULTS; COUNSELING; CONFIDENTIALITY.—

67 (a) Before performing an HIV test:

68 1. In a health care setting, the person to be tested must



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69 be notified orally or in writing that the HIV test is planned
70 and that he or she has the right to decline the test. If the
71 person to be tested declines the test, such decision shall be
72 documented in the person's medical record. A person who has
73 signed a general consent form for medical care is not required
74 to sign or otherwise provide a separate consent for an HIV test
75 during the period in which the general consent form is in effect

76 ~~No person in this state shall order a test designed to identify~~
77 ~~the human immunodeficiency virus, or its antigen or antibody,~~
78 ~~without first obtaining the informed consent of the person upon~~
79 ~~whom the test is being performed, except as specified in~~
80 ~~paragraph (h). Informed consent shall be preceded by an~~
81 ~~explanation of the right to confidential treatment of~~
82 ~~information identifying the subject of the test and the results~~
83 ~~of the test to the extent provided by law. Information shall~~
84 ~~also be provided on the fact that a positive HIV test result~~
85 ~~will be reported to the county health department with sufficient~~
86 ~~information to identify the test subject and on the availability~~
87 ~~and location of sites at which anonymous testing is performed.~~
88 ~~As required in paragraph (3)(c), each county health department~~
89 ~~shall maintain a list of sites at which anonymous testing is~~
90 ~~performed, including the locations, phone numbers, and hours of~~
91 ~~operation of the sites. Consent need not be in writing provided~~
92 ~~there is documentation in the medical record that the test has~~
93 ~~been explained and the consent has been obtained.~~

94 2. In a nonhealth care setting, a provider must obtain the
95 informed consent of the person upon whom the HIV test is being
96 performed. Informed consent must be preceded by an explanation
97 of the right to confidential treatment of information



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98 identifying the subject of the test and the HIV test results as
99 provided by law.

100
101 The test subject must also be informed that a positive HIV test
102 result will be reported to the county health department with
103 sufficient information to identify the test subject and must be
104 provided with the availability and location of sites at which
105 anonymous testing is performed. As required in paragraph (3)(c),
106 each county health department shall maintain a list of sites at
107 which anonymous HIV testing is performed, including the
108 locations, telephone numbers, and hours of operation of the
109 sites.

110 (b) Except as provided in paragraph (h), informed consent
111 must be obtained from a legal guardian or other person
112 authorized by law if ~~when~~ the person:

- 113 1. Is not competent, is incapacitated, or is otherwise
114 unable to make an informed judgment; or
115 2. Has not reached the age of majority, except as provided
116 in s. 384.30.

117 (g) Human immunodeficiency virus test results contained in
118 the medical records of a hospital licensed under chapter 395 may
119 be released in accordance with s. 395.3025 without being subject
120 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
121 or paragraph (f) ~~;~~ ~~provided the hospital has obtained written~~
122 ~~informed consent for the HIV test in accordance with provisions~~
123 ~~of this section.~~

124 (h) Paragraph (a) does not apply ~~Notwithstanding the~~
125 ~~provisions of paragraph (a), informed consent is not required:~~

- 126 1. When testing for sexually transmissible diseases is



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127 required by state or federal law, or by rule including the
128 following situations:

129 a. HIV testing pursuant to s. 796.08 of persons convicted
130 of prostitution or of procuring another to commit prostitution.

131 b. HIV testing of inmates pursuant to s. 945.355 before
132 ~~prior to~~ their release from prison by reason of parole,
133 accumulation of gain-time credits, or expiration of sentence.

134 c. Testing for HIV by a medical examiner in accordance with
135 s. 406.11.

136 d. HIV testing of pregnant women pursuant to s. 384.31.

137 2. Those exceptions provided for blood, plasma, organs,
138 skin, semen, or other human tissue pursuant to s. 381.0041.

139 3. For the performance of an HIV-related test by licensed
140 medical personnel in bona fide medical emergencies if ~~when~~ the
141 test results are necessary for medical diagnostic purposes to
142 provide appropriate emergency care or treatment to the person
143 being tested and the patient is unable to consent, as supported
144 by documentation in the medical record. Notification of test
145 results in accordance with paragraph (c) is required.

146 4. For the performance of an HIV-related test by licensed
147 medical personnel for medical diagnosis of acute illness if
148 ~~where~~, in the opinion of the attending physician, providing
149 notification ~~obtaining informed consent~~ would be detrimental to
150 the patient, as supported by documentation in the medical
151 record, and the test results are necessary for medical
152 diagnostic purposes to provide appropriate care or treatment to
153 the person being tested. Notification of test results in
154 accordance with paragraph (c) is required if it would not be
155 detrimental to the patient. This subparagraph does not authorize



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156 the routine testing of patients for HIV infection without
157 notification ~~informed consent~~.

158 5. If ~~When~~ HIV testing is performed as part of an autopsy
159 for which consent was obtained pursuant to s. 872.04.

160 6. For the performance of an HIV test upon a defendant
161 pursuant to the victim's request in a prosecution for any type
162 of sexual battery where a blood sample is taken from the
163 defendant voluntarily, pursuant to court order for any purpose,
164 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
165 960.003; however, the results of an ~~any~~ HIV test performed shall
166 be disclosed solely to the victim and the defendant, except as
167 provided in ss. 775.0877, 951.27, and 960.003.

168 7. If ~~When~~ an HIV test is mandated by court order.

169 8. For epidemiological research pursuant to s. 381.0031,
170 for research consistent with institutional review boards created
171 by 45 C.F.R. part 46, or for the performance of an HIV-related
172 test for the purpose of research, if the testing is performed in
173 a manner by which the identity of the test subject is not known
174 and may not be retrieved by the researcher.

175 9. If ~~When~~ human tissue is collected lawfully without the
176 consent of the donor for corneal removal as authorized by s.
177 765.5185 or enucleation of the eyes as authorized by s. 765.519.

178 10. For the performance of an HIV test upon an individual
179 who comes into contact with medical personnel in such a way that
180 a significant exposure has occurred during the course of
181 employment, ~~or~~ within the scope of practice, or during the
182 course of providing emergency medical assistance to the
183 individual ~~and where a blood sample is available that was taken~~
184 ~~from that individual voluntarily by medical personnel for other~~



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185 ~~purposes.~~ The term "medical personnel" includes a licensed or
186 certified health care professional; an employee of a health care
187 professional or health care facility; employees of a laboratory
188 licensed under chapter 483; personnel of a blood bank or plasma
189 center; a medical student or other student who is receiving
190 training as a health care professional at a health care
191 facility; and a paramedic or emergency medical technician
192 certified by the department to perform life-support procedures
193 under s. 401.23.

194 a. The occurrence of a significant exposure must be
195 documented by medical personnel under the supervision of a
196 licensed physician and recorded only in the personal record of
197 the medical personnel ~~Prior to performance of an HIV test on a~~
198 ~~voluntarily obtained blood sample, the individual from whom the~~
199 ~~blood was obtained shall be requested to consent to the~~
200 ~~performance of the test and to the release of the results. If~~
201 ~~consent cannot be obtained within the time necessary to perform~~
202 ~~the HIV test and begin prophylactic treatment of the exposed~~
203 ~~medical personnel, all information concerning the performance of~~
204 ~~an HIV test and any HIV test result shall be documented only in~~
205 ~~the medical personnel's record unless the individual gives~~
206 ~~written consent to entering this information on the individual's~~
207 ~~medical record.~~

208 b. ~~Reasonable attempts to locate the individual and to~~
209 ~~obtain consent shall be made, and all attempts must be~~
210 ~~documented. If the individual cannot be found or is incapable of~~
211 ~~providing consent, an HIV test may be conducted on the available~~
212 ~~blood sample. If the individual does not voluntarily consent to~~
213 ~~the performance of an HIV test, the individual shall be informed~~



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214 ~~that an HIV test will be performed, and counseling shall be~~
215 ~~furnished as provided in this section. However, HIV testing~~
216 ~~shall be conducted only after appropriate medical personnel~~
217 ~~under the supervision of a licensed physician documents, in the~~
218 ~~medical record of the medical personnel, that there has been a~~
219 ~~significant exposure and that, in accordance with the written~~
220 ~~protocols based on the National Centers for Disease Control and~~
221 ~~Prevention guidelines on HIV postexposure prophylaxis and in the~~
222 ~~physician's medical judgment, the information is medically~~
223 ~~necessary to determine the course of treatment for the medical~~
224 ~~personnel.~~

225 ~~b.e.~~ Costs of an any HIV test ~~of a blood sample performed~~
226 ~~with or without the consent of the individual, as provided in~~
227 ~~this subparagraph,~~ shall be borne by the medical personnel or
228 the employer of the medical personnel. However, costs of testing
229 or treatment not directly related to the initial HIV tests or
230 costs of subsequent testing or treatment may not be borne by the
231 medical personnel or the employer of the medical personnel.

232 ~~c.d.~~ In order to use ~~utilize~~ the provisions of this
233 subparagraph, the medical personnel must ~~either~~ be tested for
234 HIV pursuant to this section or provide the results of an HIV
235 test taken within 6 months before ~~prior to~~ the significant
236 exposure if such test results are negative.

237 d. If the source of the exposure is not available and will
238 not voluntarily present to a health facility to be tested for
239 HIV, the medical personnel or the employer of such person acting
240 on behalf of the employee may seek a court order directing the
241 source of the exposure to submit to HIV testing. A sworn
242 statement by a physician licensed under chapter 458 or chapter



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243 459 that a significant exposure has occurred and that, in the
244 physician's medical judgment, testing is medically necessary to
245 determine the course of treatment constitutes probable cause for
246 the issuance of an order by the court. The results of the test
247 shall be released to the source of the exposure and to the
248 person who experienced the exposure.

249 e. A person who receives the results of an HIV test
250 pursuant to this subparagraph shall maintain the confidentiality
251 of the information received and of the persons tested. Such
252 confidential information is exempt from s. 119.07(1).

253 ~~f. If the source of the exposure will not voluntarily~~
254 ~~submit to HIV testing and a blood sample is not available, the~~
255 ~~medical personnel or the employer of such person acting on~~
256 ~~behalf of the employee may seek a court order directing the~~
257 ~~source of the exposure to submit to HIV testing. A sworn~~
258 ~~statement by a physician licensed under chapter 458 or chapter~~
259 ~~459 that a significant exposure has occurred and that, in the~~
260 ~~physician's medical judgment, testing is medically necessary to~~
261 ~~determine the course of treatment constitutes probable cause for~~
262 ~~the issuance of an order by the court. The results of the test~~
263 ~~shall be released to the source of the exposure and to the~~
264 ~~person who experienced the exposure.~~

265 11. For the performance of an HIV test upon an individual
266 who comes into contact with nonmedical ~~medical~~ personnel in such
267 a way that a significant exposure has occurred ~~during the course~~
268 ~~of employment or within the scope of practice of the medical~~
269 ~~personnel~~ while the nonmedical ~~medical~~ personnel provides
270 emergency medical assistance during a medical emergency
271 ~~treatment to the individual; or notwithstanding s. 384.287, an~~



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272 ~~individual who comes into contact with nonmedical personnel in~~
273 ~~such a way that a significant exposure has occurred while the~~
274 ~~nonmedical personnel provides emergency medical assistance~~
275 ~~during a medical emergency.~~ For the purposes of this
276 subparagraph, a medical emergency means an emergency medical
277 condition outside of a hospital or health care facility that
278 provides physician care. The test may be performed only during
279 the course of treatment for the medical emergency.

280 a. The occurrence of a significant exposure shall be
281 documented by medical personnel under the supervision of a
282 licensed physician and recorded only in the personal record of
283 the nonmedical personnel ~~An individual who is capable of~~
284 ~~providing consent shall be requested to consent to an HIV test~~
285 ~~prior to the testing. If consent cannot be obtained within the~~
286 ~~time necessary to perform the HIV test and begin prophylactic~~
287 ~~treatment of the exposed medical personnel and nonmedical~~
288 ~~personnel, all information concerning the performance of an HIV~~
289 ~~test and its result, shall be documented only in the medical~~
290 ~~personnel's or nonmedical personnel's record unless the~~
291 ~~individual gives written consent to entering this information on~~
292 ~~the individual's medical record.~~

293 b. ~~HIV testing shall be conducted only after appropriate~~
294 ~~medical personnel under the supervision of a licensed physician~~
295 ~~documents, in the medical record of the medical personnel or~~
296 ~~nonmedical personnel, that there has been a significant exposure~~
297 ~~and that, in accordance with the written protocols based on the~~
298 ~~National Centers for Disease Control and Prevention guidelines~~
299 ~~on HIV postexposure prophylaxis and in the physician's medical~~
300 ~~judgment, the information is medically necessary to determine~~



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301 ~~the course of treatment for the medical personnel or nonmedical~~
302 ~~personnel.~~

303 ~~b.e.~~ Costs of any HIV test ~~performed with or without the~~
304 ~~consent of the individual, as provided in this subparagraph,~~
305 shall be borne by the nonmedical ~~medical~~ personnel or the
306 employer of the ~~medical personnel or~~ nonmedical personnel.
307 However, costs of testing or treatment not directly related to
308 the initial HIV tests or costs of subsequent testing or
309 treatment may not be borne by the nonmedical ~~medical~~ personnel
310 or the employer of the ~~medical personnel or~~ nonmedical
311 personnel.

312 ~~c.d.~~ For In order to utilize the provisions of this
313 subparagraph to be applicable, the medical personnel or
314 nonmedical personnel must shall be tested for HIV under pursuant
315 ~~to~~ this section or must shall provide the results of an HIV test
316 taken within 6 months before prior to the significant exposure
317 if such test results are negative.

318 d. If the source of the exposure is not available and will
319 not voluntarily present to a health facility to be tested for
320 HIV, the nonmedical personnel or the employer of the nonmedical
321 personnel acting on behalf of the employee may seek a court
322 order directing the source of the exposure to submit to HIV
323 testing. A sworn statement by a physician licensed under chapter
324 458 or chapter 459 that a significant exposure has occurred and
325 that, in the physician's medical judgment, HIV testing is
326 medically necessary to determine the course of treatment
327 constitutes probable cause for the issuance of an order by the
328 court. The results of the HIV test shall be released to the
329 source of the exposure and to the person who experienced the



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330 exposure.

331 e. A person who receives the results of an HIV test
332 pursuant to this subparagraph shall maintain the confidentiality
333 of the information received and of the persons tested. Such
334 confidential information is exempt from s. 119.07(1).

335 ~~f. If the source of the exposure will not voluntarily~~
336 ~~submit to HIV testing and a blood sample was not obtained during~~
337 ~~treatment for the medical emergency, the medical personnel, the~~
338 ~~employer of the medical personnel acting on behalf of the~~
339 ~~employee, or the nonmedical personnel may seek a court order~~
340 ~~directing the source of the exposure to submit to HIV testing. A~~
341 ~~sworn statement by a physician licensed under chapter 458 or~~
342 ~~chapter 459 that a significant exposure has occurred and that,~~
343 ~~in the physician's medical judgment, testing is medically~~
344 ~~necessary to determine the course of treatment constitutes~~
345 ~~probable cause for the issuance of an order by the court. The~~
346 ~~results of the test shall be released to the source of the~~
347 ~~exposure and to the person who experienced the exposure.~~

348 12. For the performance of an HIV test by the medical
349 examiner or attending physician upon an individual who expired
350 or could not be resuscitated while receiving emergency medical
351 assistance or care and who was the source of a significant
352 exposure to medical or nonmedical personnel providing such
353 assistance or care.

354 a. HIV testing may be conducted only after appropriate
355 medical personnel under the supervision of a licensed physician
356 documents in the medical record of the medical personnel or
357 nonmedical personnel that there has been a significant exposure
358 and that, in accordance with the written protocols based on the



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359 National Centers for Disease Control and Prevention guidelines
360 on HIV postexposure prophylaxis and in the physician's medical
361 judgment, the information is medically necessary to determine
362 the course of treatment for the medical personnel or nonmedical
363 personnel.

364 b. Costs of an ~~any~~ HIV test performed under this
365 subparagraph may not be charged to the deceased or to the family
366 of the deceased person.

367 c. For ~~the provisions of~~ this subparagraph to be
368 applicable, the medical personnel or nonmedical personnel must
369 be tested for HIV under this section or must provide the results
370 of an HIV test taken within 6 months before the significant
371 exposure if such test results are negative.

372 d. A person who receives the results of an HIV test
373 pursuant to this subparagraph shall comply with paragraph (e).

374 13. For the performance of an HIV-related test medically
375 indicated by licensed medical personnel for medical diagnosis of
376 a hospitalized infant as necessary to provide appropriate care
377 and treatment of the infant if ~~when~~, after a reasonable attempt,
378 a parent cannot be contacted to provide consent. The medical
379 records of the infant must ~~shall~~ reflect the reason consent of
380 the parent was not initially obtained. Test results shall be
381 provided to the parent when the parent is located.

382 14. For the performance of HIV testing conducted to monitor
383 the clinical progress of a patient previously diagnosed to be
384 HIV positive.

385 15. For the performance of repeated HIV testing conducted
386 to monitor possible conversion from a significant exposure.

387 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;



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388 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
389 REGISTRATION.—A ~~No~~ county health department and any ~~no~~ other
390 person in this state offering HIV tests in a nonhealth care
391 setting may not ~~shall~~ conduct or hold themselves out to the
392 public as conducting a testing program for acquired immune
393 deficiency syndrome or human immunodeficiency virus status
394 without first registering with the Department of Health,
395 reregistering each year, complying with all other applicable
396 provisions of state law, and meeting the following requirements:

397 (d) A program in a nonhealth care setting must meet all
398 informed consent criteria provided in subparagraph (2)(a)2 ~~The~~
399 ~~program must meet all the informed consent criteria contained in~~
400 ~~subsection (2).~~

401 Section 2. Subsection (2) of section 456.032, Florida
402 Statutes, is amended to read:

403 456.032 Hepatitis B or HIV carriers.—

404 (2) Any person licensed by the department and any other
405 person employed by a health care facility who contracts a blood-
406 borne infection shall have a rebuttable presumption that the
407 illness was contracted in the course and scope of his or her
408 employment, provided that the person, as soon as practicable,
409 reports to the person's supervisor or the facility's risk
410 manager any significant exposure, as that term is defined in s.
411 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
412 employer may test the blood or body fluid to determine if it is
413 infected with the same disease contracted by the employee. The
414 employer may rebut the presumption by the preponderance of the
415 evidence. Except as expressly provided in this subsection, there
416 shall be no presumption that a blood-borne infection is a job-



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417 related injury or illness.

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

419

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

421 And the title is amended as follows:

422 Delete everything before the enacting clause

423 and insert:

424 A bill to be entitled

425 An act relating to HIV testing; amending s. 381.004,
426 F.S.; revising and providing definitions; specifying
427 the notification and consent procedures for performing
428 an HIV test in a health care setting and a nonhealth
429 care setting; amending s. 456.032, F.S.; conforming a
430 cross-reference; providing an effective date.

By Senator Thompson

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1 A bill to be entitled
2 An act relating to HIV testing; amending s. 381.004,
3 F.S.; defining and redefining terms; differentiating
4 between the notification and consent procedures for
5 performing an HIV test in a health care setting and a
6 non-health care setting; amending s. 456.032, F.S.;
7 conforming a cross-reference; reenacting s.
8 483.314(4), F.S., relating to the collection and
9 transmittal of specimens, to incorporate the amendment
10 made to s. 381.004, F.S., in a reference thereto;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (1) of section 381.004, Florida
16 Statutes, is reordered and amended, and paragraphs (a), (b),
17 (g), and (h) of subsection (2) and paragraph (d) of subsection
18 (4) of that section are amended, to read:

19 381.004 HIV testing.—

20 (1) DEFINITIONS.—As used in this section:

21 (a) "Health care setting" means a setting devoted to both
22 the diagnosis and care of persons, such as a county health
23 department clinic, a hospital emergency department, an urgent
24 care clinic, a substance abuse treatment clinic, a primary care
25 setting, a community clinic, a mobile medical clinic, and a
26 correctional health care facility.

27 (b)~~(a)~~ "HIV test" means a test ordered after July 6, 1988,
28 to determine the presence of the antibody or antigen to human
29 immunodeficiency virus or the presence of human immunodeficiency

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30 virus infection.

31 (c)~~(b)~~ "HIV test result" means a laboratory report of a
32 human immunodeficiency virus test result entered into a medical
33 record on or after July 6, 1988, or any report or notation in a
34 medical record of a laboratory report of a human
35 immunodeficiency virus test. ~~As used in this section,~~ The term
36 ~~"HIV test result"~~ does not include test results reported to a
37 health care provider by a patient.

38 (d) "Non-health care setting" means a site that conducts
39 HIV testing for the sole purpose of identifying HIV infection.
40 Such setting does not provide medical treatment but may include
41 community-based organizations, outreach settings, county health
42 department HIV testing programs, and mobile vans.

43 (f)~~(e)~~ "Significant exposure" means:

44 1. Exposure to blood or body fluids through needlestick,
45 instruments, or sharps;

46 2. Exposure of mucous membranes to visible blood or body
47 fluids, to which universal precautions apply according to the
48 National Centers for Disease Control and Prevention, including,
49 without limitations, the following body fluids:

50 a. Blood.

51 b. Semen.

52 c. Vaginal secretions.

53 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

54 e. Synovial fluid.

55 f. Pleural fluid.

56 g. Peritoneal fluid.

57 h. Pericardial fluid.

58 i. Amniotic fluid.

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59 j. Laboratory specimens that contain HIV (e.g., suspensions
60 of concentrated virus); or

61 3. Exposure of skin to visible blood or body fluids,
62 especially when the exposed skin is chapped, abraded, or
63 afflicted with dermatitis or the contact is prolonged or
64 involving an extensive area.

65 (e)~~(d)~~ "Preliminary HIV test" means an antibody or
66 antibody-antigen screening test, such as the ~~enzyme-linked~~
67 immunosorbent assays (IA), or a rapid test approved by the
68 United States Food and Drug Administration ~~(ELISAs) or the~~
69 ~~Single Use Diagnostic System (SUDS).~~

70 (g)~~(e)~~ "Test subject" or "subject of the test" means the
71 person upon whom an HIV test is performed, or the person who has
72 legal authority to make health care decisions for the test
73 subject.

74 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
75 RESULTS; COUNSELING; CONFIDENTIALITY.—

76 (a) Before performing an HIV test:

77 1. In a health care setting, the health care provider shall
78 notify the person to be tested that the HIV test is planned,
79 provide information about the HIV test, and advise the person
80 that he or she has the right to decline the HIV test. The health
81 care provider shall also explain the right to confidential
82 treatment of information that identifies the test subject and
83 the test result as provided by law. If a person declines the HIV
84 test, the health care provider shall note such fact in the
85 person's medical record ~~No person in this state shall order a~~
86 ~~test designed to identify the human immunodeficiency virus, or~~
87 ~~its antigen or antibody, without first obtaining the informed~~

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88 ~~consent of the person upon whom the test is being performed,~~
89 ~~except as specified in paragraph (h). Informed consent shall be~~
90 ~~preceded by an explanation of the right to confidential~~
91 ~~treatment of information identifying the subject of the test and~~
92 ~~the results of the test to the extent provided by law.~~

93 ~~Information shall also be provided on the fact that a positive~~
94 ~~HIV test result will be reported to the county health department~~
95 ~~with sufficient information to identify the test subject and on~~
96 ~~the availability and location of sites at which anonymous~~
97 ~~testing is performed. As required in paragraph (3) (c), each~~
98 ~~county health department shall maintain a list of sites at which~~
99 ~~anonymous testing is performed, including the locations, phone~~
100 ~~numbers, and hours of operation of the sites. Consent need not~~
101 ~~be in writing provided there is documentation in the medical~~
102 ~~record that the test has been explained and the consent has been~~
103 ~~obtained.~~

104 2. In a non-health care setting, a provider shall obtain
105 the informed consent of the person upon whom the test is being
106 performed. Informed consent shall be preceded by an explanation
107 of the right to confidential treatment of information that
108 identifies the test subject and the test result as provided by
109 law.

110
111 The test subject shall also be informed that a positive HIV test
112 result will be reported to the county health department with
113 sufficient information to identify the test subject and of the
114 availability and location of sites that perform anonymous
115 testing. As required in paragraph (3) (c), each county health
116 department shall maintain a list of anonymous testing sites. The

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117 list must include the locations, telephone numbers, and hours of
118 operation of the sites.

119 (b) Except as provided in paragraph (h), informed consent
120 must be obtained from a legal guardian or other person
121 authorized by law if ~~when~~ the person:

122 1. Is not competent, is incapacitated, or is otherwise
123 unable to make an informed judgment; or

124 2. Has not reached the age of majority, except as provided
125 in s. 384.30.

126 (g) HIV ~~Human immunodeficiency virus~~ test results contained
127 in the medical records of a hospital licensed under chapter 395
128 may be released in accordance with s. 395.3025 without being
129 subject to ~~the requirements of~~ subparagraph (e)2., subparagraph
130 (e)9., or paragraph (f) if; ~~provided~~ the hospital has notified
131 the patient of the limited confidentiality protections afforded
132 HIV test results that are contained in hospital medical records
133 ~~obtained written informed consent for the HIV test in accordance~~
134 ~~with provisions of this section.~~

135 (h) Notwithstanding ~~the provisions of~~ paragraph (a),
136 informed consent is not required:

137 1. When testing for sexually transmissible diseases is
138 required by state or federal law, or by rule including the
139 following situations:

140 a. HIV testing pursuant to s. 796.08 of persons convicted
141 of prostitution or of procuring another to commit prostitution.

142 b. HIV testing of inmates pursuant to s. 945.355 before
143 ~~prior to their~~ release from prison by reason of parole,
144 accumulation of gain-time credits, or expiration of sentence.

145 c. Testing for HIV by a medical examiner in accordance with

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146 s. 406.11.

147 d. HIV testing of pregnant women pursuant to s. 384.31.

148 2. Those exceptions provided for blood, plasma, organs,
149 skin, semen, or other human tissue pursuant to s. 381.0041.

150 3. For the performance of an HIV-related test by licensed
151 medical personnel in bona fide medical emergencies if ~~when~~ the
152 test results are necessary for medical diagnostic purposes to
153 provide appropriate emergency care or treatment to the person
154 being tested and the patient is unable to consent, as supported
155 by documentation in the medical record. Notification of test
156 results in accordance with paragraph (c) is required.

157 4. For the performance of an HIV-related test by licensed
158 medical personnel for medical diagnosis of acute illness if
159 ~~where~~, in the opinion of the attending physician, providing
160 notification ~~obtaining informed consent~~ would be detrimental to
161 the patient, as supported by documentation in the medical
162 record, and the test results are necessary for medical
163 diagnostic purposes to provide appropriate care or treatment to
164 the person being tested. Notification of test results in
165 accordance with paragraph (c) is required if it would not be
166 detrimental to the patient. This subparagraph does not authorize
167 the routine testing of patients for HIV infection without
168 notification ~~informed consent~~.

169 5. If ~~When~~ HIV testing is performed as part of an autopsy
170 for which consent was obtained pursuant to s. 872.04.

171 6. For the performance of an HIV test upon a defendant
172 pursuant to the victim's request in a prosecution for any type
173 of sexual battery if ~~where~~ a blood sample is taken from the
174 defendant voluntarily, pursuant to court order for any purpose,

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175 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
176 960.003; however, the results of an ~~any~~ HIV test performed shall
177 be disclosed solely to the victim and the defendant, except as
178 provided in ss. 775.0877, 951.27, and 960.003.

179 7. If ~~When~~ an HIV test is mandated by court order.

180 8. For epidemiological research pursuant to s. 381.0031,
181 for research consistent with institutional review boards created
182 by 45 C.F.R. part 46, or for the performance of an HIV-related
183 test for the purpose of research, if the testing is performed in
184 a manner by which the identity of the test subject is not known
185 and may not be retrieved by the researcher.

186 9. If ~~When~~ human tissue is collected lawfully without the
187 consent of the donor for corneal removal as authorized by s.
188 765.5185 or enucleation of the eyes as authorized by s. 765.519.

189 10. For the performance of an HIV test upon an individual
190 who comes into contact with medical personnel in such a way that
191 a significant exposure has occurred during the course of
192 employment or within the scope of practice and where a blood
193 sample is available which ~~that~~ was taken from that individual
194 voluntarily by medical personnel for other purposes. The term
195 "medical personnel" includes a licensed or certified health care
196 professional; an employee of a health care professional or
197 health care facility; employees of a laboratory licensed under
198 chapter 483; personnel of a blood bank or plasma center; a
199 medical student or other student who is receiving training as a
200 health care professional at a health care facility; and a
201 paramedic or emergency medical technician certified by the
202 department to perform life-support procedures under s. 401.23.

203 a. Before performing ~~Prior to performance of~~ an HIV test on

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204 a voluntarily obtained blood sample, the individual from whom
205 the blood was obtained shall be requested to consent to the
206 performance of the test and to the release of the results. If
207 consent cannot be obtained within the time necessary to perform
208 the HIV test and begin prophylactic treatment of the exposed
209 medical personnel, all information concerning the performance of
210 an HIV test and any HIV test result shall be documented only in
211 the medical personnel's record unless the individual gives
212 written consent to entering this information on the individual's
213 medical record.

214 b. Reasonable attempts to locate the individual and to
215 obtain consent shall be made, and all attempts must be
216 documented. If the individual cannot be found or is incapable of
217 providing consent, an HIV test may be conducted on the available
218 blood sample. If the individual does not voluntarily consent to
219 the performance of an HIV test, the individual shall be informed
220 that an HIV test will be performed, and counseling shall be
221 furnished as provided in this section. However, HIV testing
222 shall be conducted only after appropriate medical personnel
223 under the supervision of a licensed physician documents, in the
224 medical record of the medical personnel, that there has been a
225 significant exposure and that, in accordance with the written
226 protocols based on the National Centers for Disease Control and
227 Prevention guidelines on HIV postexposure prophylaxis and in the
228 physician's medical judgment, the information is medically
229 necessary to determine the course of treatment for the medical
230 personnel.

231 c. Costs of an ~~any~~ HIV test of a blood sample performed
232 with or without the consent of the individual, as provided in

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233 this subparagraph, shall be borne by the medical personnel or
234 the employer of the medical personnel. However, costs of testing
235 or treatment not directly related to the initial HIV tests or
236 costs of subsequent testing or treatment may not be borne by the
237 medical personnel or the employer of the medical personnel.

238 d. In order to use ~~utilize~~ the provisions of this
239 subparagraph, the medical personnel must ~~either~~ be tested for
240 HIV pursuant to this section or provide the results of an HIV
241 test taken within 6 months before ~~prior to~~ the significant
242 exposure if such test results are negative.

243 e. A person who receives the results of an HIV test
244 pursuant to this subparagraph shall maintain the confidentiality
245 of the information received and of the persons tested. Such
246 confidential information is exempt from s. 119.07(1).

247 f. If the source of the exposure will not voluntarily
248 submit to HIV testing and a blood sample is not available, the
249 medical personnel or the employer of such person acting on
250 behalf of the employee may seek a court order directing the
251 source of the exposure to submit to HIV testing. A sworn
252 statement by a physician licensed under chapter 458 or chapter
253 459 that a significant exposure has occurred and that, in the
254 physician's medical judgment, testing is medically necessary to
255 determine the course of treatment constitutes probable cause for
256 the issuance of an order by the court. The results of the test
257 shall be released to the source of the exposure and to the
258 person who experienced the exposure.

259 11. For the performance of an HIV test upon an individual
260 who comes into contact with medical personnel in such a way that
261 a significant exposure has occurred during the course of

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262 employment or within the scope of practice of the medical
263 personnel while the medical personnel provides emergency medical
264 treatment to the individual; or notwithstanding s. 384.287, an
265 individual who comes into contact with nonmedical personnel in
266 such a way that a significant exposure has occurred while the
267 nonmedical personnel provides emergency medical assistance
268 during a medical emergency. For the purposes of this
269 subparagraph, a medical emergency means an emergency medical
270 condition outside of a hospital or health care facility that
271 provides physician care. The test may be performed only during
272 the course of treatment for the medical emergency.

273 a. An individual who is capable of providing consent shall
274 be requested to consent to an HIV test before ~~prior to the~~
275 testing. If consent cannot be obtained within the time necessary
276 to perform the HIV test and begin prophylactic treatment of the
277 exposed medical personnel and nonmedical personnel, all
278 information concerning the performance of an HIV test and its
279 result~~7~~ shall be documented only in the medical personnel's or
280 nonmedical personnel's record unless the individual gives
281 written consent to entering this information in ~~on~~ the
282 individual's medical record.

283 b. HIV testing shall be conducted only after appropriate
284 medical personnel under the supervision of a licensed physician
285 documents, in the medical record of the medical personnel or
286 nonmedical personnel, that there has been a significant exposure
287 and that, in accordance with the written protocols based on the
288 National Centers for Disease Control and Prevention guidelines
289 on HIV postexposure prophylaxis and in the physician's medical
290 judgment, the information is medically necessary to determine

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291 the course of treatment for the medical personnel or nonmedical
292 personnel.

293 c. Costs of any HIV test performed with or without the
294 consent of the individual, as provided in this subparagraph,
295 shall be borne by the medical personnel or the employer of the
296 medical personnel or nonmedical personnel. However, costs of
297 testing or treatment not directly related to the initial HIV
298 tests or costs of subsequent testing or treatment may not be
299 borne by the medical personnel or the employer of the medical
300 personnel or nonmedical personnel.

301 d. In order to use ~~utilize~~ the provisions of this
302 subparagraph, the medical personnel or nonmedical personnel
303 shall be tested for HIV pursuant to this section or shall
304 provide the results of an HIV test taken within 6 months before
305 ~~prior to~~ the significant exposure if such test results are
306 negative.

307 e. A person who receives the results of an HIV test
308 pursuant to this subparagraph shall maintain the confidentiality
309 of the information received and of the persons tested. Such
310 confidential information is exempt from s. 119.07(1).

311 f. If the source of the exposure will not voluntarily
312 submit to HIV testing and a blood sample was not obtained during
313 treatment for the medical emergency, the medical personnel, the
314 employer of the medical personnel acting on behalf of the
315 employee, or the nonmedical personnel may seek a court order
316 directing the source of the exposure to submit to HIV testing. A
317 sworn statement by a physician licensed under chapter 458 or
318 chapter 459 that a significant exposure has occurred and that,
319 in the physician's medical judgment, testing is medically

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320 necessary to determine the course of treatment constitutes
321 probable cause for the issuance of an order by the court. The
322 results of the test shall be released to the source of the
323 exposure and to the person who experienced the exposure.

324 12. For the performance of an HIV test by the medical
325 examiner or attending physician upon an individual who expired
326 or could not be resuscitated while receiving emergency medical
327 assistance or care and who was the source of a significant
328 exposure to medical or nonmedical personnel providing such
329 assistance or care.

330 a. HIV testing may be conducted only after appropriate
331 medical personnel under the supervision of a licensed physician
332 documents in the medical record of the medical personnel or
333 nonmedical personnel that there has been a significant exposure
334 and that, in accordance with the written protocols based on the
335 National Centers for Disease Control and Prevention guidelines
336 on HIV postexposure prophylaxis and in the physician's medical
337 judgment, the information is medically necessary to determine
338 the course of treatment for the medical personnel or nonmedical
339 personnel.

340 b. Costs of an ~~any~~ HIV test performed under this
341 subparagraph may not be charged to the deceased or to the family
342 of the deceased person.

343 c. For ~~the provisions of~~ this subparagraph to be
344 applicable, the medical personnel or nonmedical personnel must
345 be tested for HIV under this section or must provide the results
346 of an HIV test taken within 6 months before the significant
347 exposure if such test results are negative.

348 d. A person who receives the results of an HIV test

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349 pursuant to this subparagraph shall comply with paragraph (e).

350 13. For the performance of an HIV-related test medically
351 indicated by licensed medical personnel for medical diagnosis of
352 a hospitalized infant as necessary to provide appropriate care
353 and treatment of the infant if ~~when~~, after a reasonable attempt,
354 a parent cannot be contacted to provide consent. The medical
355 records of the infant must ~~shall~~ reflect the reason consent of
356 the parent was not initially obtained. Test results shall be
357 provided to the parent when the parent is located.

358 14. For the performance of HIV testing conducted to monitor
359 the clinical progress of a patient previously diagnosed to be
360 HIV positive.

361 15. For the performance of repeated HIV testing conducted
362 to monitor possible conversion from a significant exposure.

363 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
364 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
365 REGISTRATION.—No county health department and no other person in
366 this state shall conduct or hold themselves out to the public as
367 conducting a testing program for acquired immune deficiency
368 syndrome or human immunodeficiency virus status without first
369 registering with the Department of Health, reregistering each
370 year, complying with all other applicable provisions of state
371 law, and meeting the following requirements:

372 (d) A program in a health care setting shall meet the
373 notification criteria contained in subparagraph (2) (a)1. A
374 program in a non-health care setting shall meet all informed
375 consent criteria contained in subparagraph (2) (a)2. ~~The program~~
376 ~~must meet all the informed consent criteria contained in~~
377 ~~subsection (2).~~

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378 Section 2. Subsection (2) of section 456.032, Florida
379 Statutes, is amended to read:

380 456.032 Hepatitis B or HIV carriers.—

381 (2) Any person licensed by the department and any other
382 person employed by a health care facility who contracts a blood-
383 borne infection shall have a rebuttable presumption that the
384 illness was contracted in the course and scope of his or her
385 employment, provided that the person, as soon as practicable,
386 reports to the person's supervisor or the facility's risk
387 manager any significant exposure, as that term is defined in s.
388 381.004(1)(~~e~~), to blood or body fluids. The employer may test
389 the blood or body fluid to determine if it is infected with the
390 same disease contracted by the employee. The employer may rebut
391 the presumption by the preponderance of the evidence. Except as
392 expressly provided in this subsection, there shall be no
393 presumption that a blood-borne infection is a job-related injury
394 or illness.

395 Section 3. For the purpose of incorporating the amendment
396 made by this act to section 381.004, Florida Statutes, in a
397 reference thereto, subsection (4) of section 483.314, Florida
398 Statutes, is reenacted to read:

399 483.314 Collection and transmittal of specimens.—

400 (4) A center may not perform or hold itself out to the
401 public as providing for testing for the human immunodeficiency
402 virus (HIV) unless it complies with s. 381.004.

403 Section 4. 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 # 512**, relating to HIV Testing, be placed on the:

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



Senator Geraldine F. Thompson
Florida Senate, District 12

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-17-15

Meeting Date

512

Bill Number (if applicable)

Topic HIV TESTING

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing

Address 306 E College Ave

Phone (850) 222-9800

Street

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.)

WAVE

Representing FLORIDA HOSPITAL 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 17, 2015

Meeting Date

512

Bill Number (if applicable)

Topic HIV Testing by Senator Thompson

Amendment Barcode (if applicable)

Name Jesse Fry

Job Title State Policy Analyst

Address 641 E College Ave Unit 2

Phone (850) 339-6395

Street

Tallahassee

FL

32301

Email jfry@theaidsinstitute.org

City

State

Zip

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

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

412-K
9:00 AM

3-17-2015

Meeting Date

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

SB 512

Bill Number (if applicable)

Topic HIV TESTING

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHE PARKWAY

Phone 878-7364

Street

TALLAHASSEE

FL

32301

Email

City

State

Zip

Speaking: 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 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)

3/17/15

Meeting Date

512

Bill Number (if applicable)

Topic HIV Testing

Amendment Barcode (if applicable)

Name Avery Coleman

Job Title lobbyist

Address 2340 Hansen Ln

Phone 321.228.7339

Street

Tall

City

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Association of Community Health Centers

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)

3/17/15

Meeting Date

512

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Noland

Job Title _____

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville, FL

City

32204

State

Zip

Email nolandlawe ad.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
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 1052

INTRODUCER: Health Policy Committee and Senator Brandes

SUBJECT: Florida Right to Try Act

DATE: March 17, 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 - Substantial Changes

I. Summary:

CS/SB 1052 creates the “Florida Right to Try Act” (Act), which provides a framework in which an eligible patient with a terminal illness may access investigational drugs, biological products, and devices from the manufacturer after phase one clinical trials.

The bill prohibits actions against a physician’s license based solely on his or her recommendation regarding access to or treatment with an investigational drug, product, or device under this Act. Action also may not be taken against a health care institution’s state license or its Medicare certification based on its participation in the treatment in or with investigational drugs, biological products, or devices under this Act.

The bill establishes a clearinghouse for compassionate and palliative care plans for state residents. The Agency for Health Care Administration (AHCA or agency) is directed to establish and maintain the site, either independently or through a national or private clearinghouse. The AHCA is also directed to disseminate information about the clearinghouse once available.

Lastly, the bill recognizes a Physician Order for Life Sustaining Treatment (POLST) in law and directs the Department of Health (department) to develop the form by rule.

The bill is effective July 1, 2015

II. Present Situation:

The U.S. Food and Drug Administration (FDA) has wide regulatory authority over what drugs are marketed and sold within the United States. Prescription drugs and over-the-counter drugs are regulated by FDA's Center for Drug Evaluation and Research.¹ If a drug company wants approval to sell a new prescription drug in the United States, it must be tested in several steps. The first step is testing in the laboratory and on animals.² Next, the drug is tested for safety and efficacy when used to treat or diagnose a disease in humans.³

Clinical trials are part of clinical research which look at new ways to prevent, detect, or treat disease through new combinations of drugs, new surgical procedures, or devices, or new ways to use existing treatments.⁴ Clinical trials are part of clinical research which is conducted as part of protocol. A protocol describes:

- Who is eligible to participate in the trial;
- Details about tests, procedures, medications, and dosages; and
- The length of the study and what information will be gathered.⁵

Clinical trials typically are run by a principal investigator, usually a medical doctor, and are approved and monitored by an Institutional Review Board (IRB), an independent committee of experts usually consisting of physicians and non-physicians in hospitals and research institutions.⁶ The IRB's role is to ensure the safety and rights of the participants are protected and to periodically review the research.⁷

Informed consent is a critical component of the clinical research and trial process as it provides participants with important information about the trial before they decide to participate. The informed consent form includes information on the expected benefits and risks of participation and that as a volunteer, the participant may withdraw at any time. Withdrawal of too many participants; however, may make the research team ineligible to continue the study.⁸

When testing is complete, the company sends an application to the FDA called a New Drug Application (NDA). If a drug is made out of biologic materials, a company submits a different application, a Biologics License Application (BLA). Regardless of the type of application used, both require similar elements:

- The drug's test results;

¹ U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated August 12, 2013) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm192696.htm> (last visited Mar. 14, 2015).

² U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited Mar. 14, 2015).

³ Id.

⁴ U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You*, (last reviewed February 5, 2015) <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited Mar. 14, 2015).

⁵ Id.

⁶ U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective*, (last updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

⁷ U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You*, (last reviewed February 5, 2014) <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited Mar. 15, 2015).

⁸ Id.

- Manufacturing information to demonstrate the company can properly manufacture the drug; and
- The company's proposed label for the drug which must provide necessary information about the drug, including the uses for which it has shown to be useful.⁹

There are different types of clinical trials and the National Institutes of Health (NIH) classifies them into these categories:

- Natural history studies - provide valuable information about how disease and health progress;
- Prevention trials - look for better ways to prevent disease in people who have never had the disease or prevent the disease from returning;
- Screening trials - test the best way to detect certain diseases or health conditions;
- Diagnostic trials - determine better tests or procedures for diagnosing a particular disease or condition;
- Treatment trials - test new treatments, new combinations of drugs, or new approaches to surgery or radiation therapy;
- Quality of Life trials - explore and measure ways to improve the comfort and quality of life of people with chronic illness.

All clinical trials are conducted in phases. Prior to receiving the FDA's approval for human testing, the organization must show the FDA results of preclinical testing in laboratory animals and their proposal for human testing. The FDA must decide if it is reasonably safe for the organization to begin testing the drug in humans.¹⁰ This approval process is based on an investigational new drug (IND) application. Most drugs that undergo preclinical (animal) testing never make it to human testing and review by the FDA.¹¹

When an IND application is approved, an IRB established, the protocol approved, and the consent received from study participants, the organization can begin the process:

Clinical Trial Phases¹²			
Phase	Activities	Approx. Time¹³	# of Participants
One	Test drug with healthy human volunteers Determine drug's most frequent side effects Determine how the drug is metabolized and excreted Determine the correct dosing Move to Phase Two if drug does not show unacceptable toxicity	1 year	20-80
Two	Test drug with small number of targeted patients	2 years	100-300

⁹ U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited Mar. 14, 2015).

¹⁰ U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective*, (last updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

¹¹ Id.

¹² Id.

¹³ FierceBiotech, *FDA Approval Process* http://www.fiercebiotech.com/topics/fda_approval_process.asp (last visited Mar. 14, 2015).

	<p>Test drug is compared with those receiving a placebo, or a different drug (if a controlled trial)</p> <p>Evaluate safety and short-term side effects</p> <p>Decide scope of Phase Three with FDA; drug must have shown effectiveness to move to Phase Three</p>		
Three	<p>Implement large scale study for effectiveness and safety</p> <p>Study different populations and different dosages and using the drug in combination with other drugs</p> <p>Review logistics of creating a large supply</p> <p>Once complete, can complete New Drug Application (NDA)</p>	3 years	300-3,000
Four	<p>Post-market requirement and commitment studies must be agreed to by the sponsoring organization, and are conducted after a product has been approved for sale</p> <p>Information used to gather additional data about product’s safety, efficacy, or optimal use</p>		

When an NDA is received by the FDA, the FDA has 60 days to decide whether to file so it can be reviewed.¹⁴ The FDA can refuse to file an application if it is incomplete. If the FDA determines that the drug’s benefits outweighs its risks and the drug can be manufactured in a manner that ensures a quality product, the drug can be approved for marketing in the United States.¹⁵ The company receiving approval must continue, under Phase Four, to monitor short and long term results of the drug and submit those findings to the FDA. If the company wants the drug approved for another indication, for another purpose, it must also receive FDA approval.¹⁶

Accelerated approval is granted by the FDA to some new drugs for serious and life-threatening illnesses that lack other treatment options.¹⁷ This option allows drugs to be approved before measures of effectiveness that are usually required are known.

The FDA established regulations allowing expanded access to, or “compassionate use” of experimental drugs, biological products, or devices in 1987, and individual patient “emergency use” expanded access in 1997. These regulations provide access to:

- Individuals on a case by case basis, known as “individual patient access”;¹⁸
- Intermediate size groups of patients with similar treatment needs who otherwise do not qualify to participate in a clinical trial;¹⁹ and

¹⁴ U.S. Food and Drug Administration, *The FDA’s Drug Review Process: Ensuring Drugs are Safe and Effective*, (updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

¹⁵ Id.

¹⁶ FierceBiotech, *FDA Approval Process*, http://www.fiercebiotech.com/topics/fda_approval_process.asp (last visited Mar. 14, 2015).

¹⁷ U.S. Food and Drug Administration, *FDA’s Drug Review Process: Continued, Accelerated Approval*, (updated November 6, 2014) <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm289601.htm#accelerated> (last visited Mar. 15, 2015).

¹⁸ U.S. Food and Drug Administration, *Expanded Access Coverage for Drugs*, (last updated February 18, 2015) <http://www.fda.gov/ForPatients/Other/default.htm> (last visited Mar. 15, 2015)

¹⁹ 21 U.S.C. §312.315

- Large groups of patients who do not have other treatment options available.²⁰

Compassionate Use

“Expanded access” or “compassionate” use refers to the use of an investigational medical product outside of a clinical trial, meaning that the medical product has not yet been approved by the FDA.²¹ The FDA prefers that patients seek out the use of an investigational medical product through clinical trials.²² Clinical trials help generate the necessary data to support approval or disapproval of medical products, investigational drugs, and devices. However, under the federal Food, Drug, and Cosmetic Act, an individual may seek individual patient access to investigational product if the following conditions are met:

- The individual’s physician determines that there is no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat the person’s disease or condition, and the probable risk to the person from the investigational product is not greater than the risk from the disease or condition;
- The FDA determines that there is sufficient evidence of the safety and effectiveness of the investigational product to support its use in the particular circumstance;
- The FDA determines that providing the investigational product will not interfere with the initiation, conduct or completion of clinical investigations to support marketing approval;
- The sponsor or the clinical investigator submits a clinical protocol that is consistent with FDA’s statute and applicable regulations for INDs or investigational device exemption applications, describing the use of the investigational product.²³

Additionally, in order for the expanded access or compassionate use request to move forward:

- Both the patient and his or her licensed physician must be willing to participate;
- The patient must have a serious or immediately life-threatening disease or condition;
- The patient must have no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition; and
- The patient must be unable to obtain the investigational drug under another IND or to participate in a clinical trial.²⁴

To apply for expanded access or compassionate use under a single patient IND, the application is made by the physician.²⁵ The physician must also have his patient’s informed consent. If applicable the physician should also ask the medical product company for a Letter of Authorization (LOA). The LOA allows the physician to satisfy some of the requirements for

²⁰ 21 U.S.C. §312.320

²¹ U.S. Food and Drug Administration, *Expanded Access (Compassionate Use)* (last updated February 18, 2015) <http://www.fda.gov/newsevents/publichealthfocus/expandedaccesscompassionateuse/default.htm> (last visited Mar. 15, 2015).

²² Id.

²³ Id.

²⁴ Id.

²⁵ The form’s questions include whether the request is an emergency, the patient’s clinical history, a proposed treatment plan, the informed consent form. See U.S. Food and Drug Administration, *How to Complete Form FDA 1571 and Form FDA 1572*, (last updated February 3, 2015)

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm432757.htm> (last visited Mar. 15, 2015).

submission by relying on information that the medical product company has already submitted to the FDA.

For non-emergency requests, treatment may begin 30 days after the FDA receives the request if the treating physician fails to hear from the FDA. For emergencies, once authorization is received from the FDA, the physician may begin treatment within 5 working days.²⁶

On February 10, 2015, the FDA released draft guidance for comment that would revise the expanded access process. The federal Office of Management and Budget (OMB) estimates that the current process takes physician approximately 8 hours to request for non-emergency situations and 16 hours for emergency cases. For the new process, OMB estimates the process for both emergent and non-emergent situations will take 45 minutes.²⁷

Once the FDA has approved a patient for expanded access, the drug manufacturer must still agree to provide the product. There may also be only a limited amount of a drug available under a company's expanded access programs.²⁸ Generally, under expanded access the drug is provided free of charge, but not always. However, the other costs associated with care related to the patient's disease and condition would be the responsibility of the patient and any available insurance coverage.

Right to Try

Several states have implemented "Right to Try" laws that allow terminally ill patients access to investigational drugs that have completed basic safety testing. Over 60 percent of investigational drugs in Phase I testing are deemed safe enough to move on to Phase II.²⁹ Over 30 percent then move on from Phase II testing to Phase III.

Federal legislation to change the expanded access policy have not been successful. Since 2008, at least four bills have been introduced in Congress, but none have had a committee or floor vote.³⁰ The Right to Try model legislation allows a patient access to investigational medication that have passed basic safety tests without governmental interference when the following conditions are met:

- The patient has been diagnosed with a terminal disease;
- The patient has considered all available treatment options;
- The patient's doctor has recommended that the investigational drug, device, or biological product represents the patient's best chance at survival;
- The patient or the patient's guardian has provided informed consent; and

²⁶ *Supra* note 21.

²⁷ Individual Patient Expanded Access Applications: Form FDA 3926; Draft Guidance for Industry; Availability, 80 Fed. Reg. 7318 (proposed Feb. 10, 2015) (to be codified at 21 CFR pt. 312).

²⁸ American Cancer Society, *Compassionate Drug Use*, (last medical review July 9, 2013) <http://www.cancer.org/treatment/treatmentsandsideeffects/clinicaltrials/compassionate-drug-use> (last visited Mar. 15, 2015).

²⁹ Michael Hay, et al, *Clinical development success rates for investigational drugs* (January 2014), *Nature Biotechnology* (see Figure 1- Phase success and LOA rates), <http://www.nature.com/nbt/journal/v32/n1/abs/nbt.2786.html> (last visited Mar. 15, 2015).

³⁰ Christina Corieri, *Everyone Deserves the Right to Try: Empowering the Terminally Ill to Take Control of their Treatment*, pg. 20, Goldwater Institute (February 11, 2014).

- The sponsoring company chooses to make the investigational drug available to patients outside the clinical trial.

As of March 15, 2015, seven states have Right to Try laws: Arkansas, Michigan, Colorado, Missouri, Louisiana and Wyoming.³¹

End of Life Decision-Making

There are a number of different advanced decision making documents an individual may use to express his or her end of life health care decisions. In Florida, state law defines advance directives as witnessed, oral statements or written instructions that express a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.³²

Resuscitation may also be withheld from an individual if an order not to resuscitate (DNRO) by the patient's physician is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the department, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court appointed guardian, or attorney in fact under a durable power of attorney.³³ Florida's form is printed on yellow paper.³⁴ It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.³⁵ A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, or proxy, or court appointed guardian or a person acting under a durable power of attorney.³⁶

A Physician Order for Life-Sustaining Treatment (POLST) documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including cardiopulmonary resuscitation (CPR).³⁷ A DNRO is limited to the withholding of CPR. The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.³⁸ It is suggested that the form be completed when an individual has a serious illness, regardless of age, as the POLST serves as a medical order for a current illness.³⁹

³¹ Goldwater Institute, *Arkansas Governor Asa Hutchinson Signs "Right to Try" Bill Into Law* (2014) <http://goldwaterinstitute.org/en/work/topics/healthcare/right-to-try/arkansas-governor-asa-hutchinson-signs-right-to-tr> (last visited Mar. 15, 2015).

³² *see* s. 765.101, F.S.

³³ *see* ss.395.1041, F.S., 400.142, F.S., 400.487, F.S., 400.605, F.S., 400.6095, F.S.; 401.35, F.S.; 401.45, F.S. , 429.255; 429.73; F.S.; 7665.205, F.S.

³⁴ Rule 64J-2.018, F.A.C.

³⁵ *Id.*

³⁶ *Id.*

³⁷ POLST.ORG, *About the National POLST Paradigm*, <http://www.polst.org/about-the-national-polst-paradigm/> (last visited: Mar. 17, 2015).

³⁸ POLST.ORG, *FAQ*, <http://www.polst.org/advance-care-planning/faq/> (last visited: Mar. 17, 2015).

³⁹ POLST.ORG, *POLST v. Advance Directives*, <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited: Mar. 17, 2015).

Some questions asked on other states' POLST forms include what level of care is wanted for CPR (attempt or do not attempt); medical intervention (comfort only, limited additional intervention, or full treatment); and, artificially administered nutrition (none, trial, or long term).

III. Effect of Proposed Changes:

Florida Right to Try Act

CS/SB 1052 creates the "Florida Right to Try Act" (Act) under section 385.213, Florida Statutes and provides definitions applicable to the Act.

An *eligible patient* is defined as an individual who:

- Has a terminal illness determined by the individual's physician and a consulting physician;
- Does not have any comparable or satisfactory FDA-approved options available, as determined by his or her physician, and the probable risk from an investigational drug, biological product, or device is not greater than the disease or condition;
- Has received a prescription or recommendation from the his or her physician for the investigational drug, biological product, or device;
- Has provided written, informed consent for the use of the investigational drug, biological product, or device, or if a minor or lacks the capacity to provide informed consent, a parent's or legal guardian's written, informed consent on the individual's behalf; and
- Has documentation from the individual's physician indicating that the individual has met all of the requirements of this section.

An *investigational drug, biological product, or device* is defined as a drug, biological product or device that has successfully completed Phase one of a clinical trial but has not yet been approved for general use by the FDA.

Physician means a physician under ch. 458, F.S., or ch. 459, F.S., who provides the medical health treatment to the eligible patient for the terminal illness.

Terminal illness means a disease or condition that without life-sustaining procedures will result in the patient's death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

A manufacturer of an investigational drug, biological product, or device has the option to make an investigational drug, biological product or device available to an eligible patient under CS/SB 1052. Relating to the investigation drug, biological product, or device, a manufacturer may also:

- Provide without charge or require the eligible patient to pay the cost of, or the costs associated with its manufacture; and
- Require an eligible patient to participate in data collection relating to the eligible patient's use.

The bill does not require an insurer, health plan, or government health care program to provide coverage for the cost of an investigational drug, biological product, or device or the care or treatment that may be needed as result of an eligible patient's participation, unless it is part of a

clinical trial. However, an insurer, health plan or government health care program may elect to provide such coverage, if not part of a clinical trial.

The Department of Corrections or the Department of Juvenile Justice are not required to provide coverage for an investigational drug, biological product or device for individuals in their custody.

Notwithstanding any other law, a state regulatory board or agency may not take any action against a physician's license based solely on the practitioner's recommendation regarding access to or treatment with an investigational drug, biological product, or device.

For health care institutions licensed in this state, a state regulatory board or agency may not take any action against an institution's license or its Medicare certification based solely on the institution's participation in or any other use or treatment with an investigational drug, biological product, or device.

If a clinical trial of an investigational drug, biological product, or device is not effective for a certain patient or condition and the trial is closed due to lack of efficacy, the manufacturer may continue to offer the investigational drug, biological product, or device for a different condition to the same patient or to new patients under this Act.

If the FDA or the safety committee for a clinical trial provides notice of information for an investigational drug, biological product, or device that is being taken by a patient outside of a clinical trial, the manufacturer or the patient's physician is required to notify the patient about the information. For example, the FDA may advise the public of a previously unknown side effect or hidden ingredient of a particular drug that is on the market for another condition or disease, but the drug is also part of a clinical trial for another purpose. The side effect or hidden ingredient could affect those patients taking the drug for another condition outside of a clinical trial.

Under the bill, a private cause of action is not created against a manufacturer of an investigational drug, biological product, or device or against an entity or individual involved in the care of an eligible patient for any harm to the patient resulting from use of the investigational drug, biological product, or device, if the manufacturer, entity, or individual complied with the requirements of this section in good faith, unless the manufacturer, entity or individual failed to exercise reasonable care.

An official, employee, or agent of the state may not block an eligible patient's access to an investigational drug, biological product, or device that has been recommended by his or her physician unless it has been banned or removed from a clinical trial as unsafe by the FDA. If a person does block access, he or she commits a misdemeanor of the second degree.

Clearinghouse for Compassionate and Palliative Care Plans

CS/SB 1052 creates s. 408.064, F.S., and the Clearinghouse for Compassionate and Palliative Care Plans. The AHCA is responsible for establishing and maintaining a reliable and secure database that will allow Florida residents to electronically submit their individual plans for

compassionate and palliative care. This database is a clearinghouse of plan information that may be accessed by a health care provider who is treating the resident.

The agency is directed to seek input on the clearinghouse from residents, compassionate and palliative care providers, and health care facilities for its development and implementation.

The agency may also subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse.

Once available, the agency is required to publish and disseminate information regarding the availability of the clearinghouse to Floridians. The agency must also provide training to health care providers and health care facilities on how to access plans.

Physician Orders for Life-Sustaining Treatment (POLST)

References in statute requiring health professional staff to honor do not resuscitate orders are revised to include recognition of a POLST document in the same manner. Under s. 404.45, F.S., a valid POLST is described as one completed on the form adopted by the department by rule, signed by the patient’s physician, and based on a consultation with the patient’s guardian or legally authorized proxy or surrogate.

The table below reflects the statutes impacted by these revisions.

Statutory Revisions - Addition of POLTS Language	
Citation	Description
§395.1041	Hospital Licensing and Regulation: Access to emergency services and care
§400.142	Nursing Homes; Emergency medication kits; DNROs
§400.487	Home Health Service Agreements; DNROs
§400.605	Hospices; Administration; forms; fees
§400.6095	Hospice; patient admission; assessment; plan of care; discharge; death
§401.35	Medical Transportation Services: Rules
§401.45	Denial of emergency treatment; civil liability
§429.255	Assisted Living Facilities; Use of personnel; emergency care
§429.73	Rules and standards relating to adult family-care homes

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A separate public records exemption may be needed to keep the Compassionate and Palliative Care plans held by the agency exempt from public records requests under ch. 119, F.S.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Additional Floridians may have access to investigational drugs, biological products, and devices under the Right to Try Act. Insurers are not required to cover these products or the treatment resulting from the insured's participation, unless the patient is part of a clinical trial.

C. Government Sector Impact:

The agency estimates the costs for the Clearinghouse for Compassionate and Palliative Care Plans as \$350,000 for the first year of implementation and \$140,000 per year for maintenance costs to participate in a national or private clearinghouse.⁴⁰

The department will incur non-recurring costs for rulemaking, but reports it has sufficient current budget authority to absorb those expected costs.⁴¹ Additional, unknown costs may also be incurred for an increase in workload related to additional complaints, but believes this, too, can be absorbed within existing resources.⁴²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The agency noted a potential conflict of interest with federal law and regulations. CS/SB 1052 prohibits the agency from taking action against a health care institution's Medicare certification

⁴⁰ Agency for Health Care Administration, *Senate Bill 1052 Analysis* (February 20, 2015), pg. 4, (on file with the Senate Committee on Health Policy).

⁴¹ Department of Health, Florida Board of Medicine, *Senate Bill 1052 Analysis* (February 25, 2015), pg. 5, (on file with the Senate Committee on Health Policy).

⁴² *Id.*

based solely on a health care provider's recommendation to an eligible patient regarding access to an investigational drug, biological product, or device; however, the federal Centers for Medicare and Medicaid Services (CMS) could direct the agency to conduct a complaint investigation regarding such as an issue. The agency would be required to report its finding to federal CMS.⁴³

The department's analysis observed that the bill does not extend protection to a physician's administration of a drug, only the health care provider's recommendation of a drug, in a manner that falls below the prevailing standard of care. Also, because the bill does not mention receiving FDA approval for access or treatment to an investigational drug, biological product, or device, the health care provider's license may be affected for failure to comply with federal law.⁴⁴

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 385.213 and 408.064.

This bill substantially modifies the following section of Florida Statutes: 395.1041, 400.142, 400.487, 400.605, 400,6095, 401.35, 401.45, 429.255, 429.73, 765.205.

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 - March 17, 2015

The committee substitute:

- Recognizes Physician Orders for Life Sustaining Treatment (POLST) as evidence of patient's health care wishes in the same circumstances as Do Not Resuscitate (NDR) orders when presented to a health care professional; and
- Requires a POLST document to be on a form adopted by the department, signed by the patient's physician based on a consultation with the patient's guardian or legally authorized proxy or surrogate to be valid.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴³ *Supra* note 40, at 5.

⁴⁴ *Supra* note 41, at 3.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 205

and insert:

Section 1. Paragraph (1) of subsection (3) of section 395.1041, Florida Statutes, is amended to read:

395.1041 Access to emergency services and care.—

(3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF FACILITY OR HEALTH CARE PERSONNEL.—

(1) Hospital personnel may withhold or withdraw



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11 cardiopulmonary resuscitation if presented with an order not to
12 resuscitate executed pursuant to s. 401.45 or a Physician Order
13 for Life Sustaining Treatment (POLST). Facility staff and
14 facilities shall not be subject to criminal prosecution or civil
15 liability, nor be considered to have engaged in negligent or
16 unprofessional conduct, for withholding or withdrawing
17 cardiopulmonary resuscitation pursuant to either ~~such an~~ order.
18 The absence of an order not to resuscitate executed pursuant to
19 s. 401.45 or a POLST does not preclude a physician from
20 withholding or withdrawing cardiopulmonary resuscitation as
21 otherwise permitted by law.

22 Section 2. Subsection (3) of section 400.142, Florida
23 Statutes, is amended to read

24 400.142 Emergency medication kits; orders not to
25 resuscitate.—

26 (3) Facility staff may withhold or withdraw cardiopulmonary
27 resuscitation if presented with an order not to resuscitate
28 executed pursuant to s. 401.45 or a Physician Order for Life
29 Sustaining Treatment (POLST). Facility staff and facilities are
30 not subject to criminal prosecution or civil liability, or
31 considered to have engaged in negligent or unprofessional
32 conduct, for withholding or withdrawing cardiopulmonary
33 resuscitation pursuant to either ~~such~~ order. The absence of an
34 order not to resuscitate executed pursuant to s. 401.45 or a
35 POLST does not preclude a physician from withholding or
36 withdrawing cardiopulmonary resuscitation as otherwise permitted
37 by law.

38 Section 3. Subsection (7) of section 400.487, Florida
39 Statutes, is amended to read:



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40 400.487 Home health service agreements; physician's,
41 physician assistant's, and advanced registered nurse
42 practitioner's treatment orders; patient assessment;
43 establishment and review of plan of care; provision of services;
44 orders not to resuscitate; physician orders for life sustaining
45 treatment.—

46 (7) Home health agency personnel may withhold or withdraw
47 cardiopulmonary resuscitation if presented with an order not to
48 resuscitate executed pursuant to s. 401.45 or a Physician Order
49 for Life Sustaining Treatment (POLST). The agency shall adopt
50 rules providing for the implementation of such orders. Home
51 health personnel and agencies shall not be subject to criminal
52 prosecution or civil liability, nor be considered to have
53 engaged in negligent or unprofessional conduct, for withholding
54 or withdrawing cardiopulmonary resuscitation pursuant to such
55 orders ~~an order~~ and rules adopted by the agency.

56 Section 4. Paragraph (e) of subsection (1) of section
57 400.605, Florida Statutes, is amended to read:

58 400.605 Administration; forms; fees; rules; inspections;
59 fines.—

60 (1) The agency, in consultation with the department, may
61 adopt rules to administer the requirements of part II of chapter
62 408. The department, in consultation with the agency, shall by
63 rule establish minimum standards and procedures for a hospice
64 pursuant to this part. The rules must include:

65 (e) Procedures relating to the implementation of advanced
66 directives; physician orders for life sustaining treatments; and
67 do-not-resuscitate orders.

68 Section 5. Subsection (8) of section 400.6095, Florida



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69 Statutes, is amended to read:

70 400.6095 Patient admission; assessment; plan of care;
71 discharge; death.—

72 (8) The hospice care team may withhold or withdraw
73 cardiopulmonary resuscitation if presented with an order not to
74 resuscitate executed pursuant to s. 401.45 or a Physician Order
75 for Life Sustaining Treatment (POLST). The department shall
76 adopt rules providing for the implementation of such orders.
77 Hospice staff shall not be subject to criminal prosecution or
78 civil liability, nor be considered to have engaged in negligent
79 or unprofessional conduct, for withholding or withdrawing
80 cardiopulmonary resuscitation pursuant to such an order and
81 applicable rules. The absence of an order to resuscitate
82 executed pursuant to s. 401.45 or a POLST does not preclude a
83 physician from withholding or withdrawing cardiopulmonary
84 resuscitation as otherwise permitted by law.

85 Section 6. Subsection (4) of section 401.35, Florida
86 Statutes, is amended to read:

87 401.35 Rules.—The department shall adopt rules, including
88 definitions of terms, necessary to carry out the purposes of
89 this part.

90 (4) The rules must establish circumstances and procedures
91 under which emergency medical technicians and paramedics may
92 honor orders by the patient's physician not to resuscitate and a
93 Physician's Order for Life Sustaining Treatment (POLST) and the
94 documentation and reporting requirements for handling such
95 requests.

96 Section 7. Paragraphs (a) and (c) of subsection (3) of
97 section 401.45, Florida Statutes, are amended to read:



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98 401.45 Denial of emergency treatment; civil liability.—

99 (3) (a) Resuscitation or other forms of medical intervention

100 may be withheld or withdrawn from a patient by an emergency
101 medical technician, ~~or paramedic,~~ or other health care
102 professional if evidence of a Physician Life Sustaining Order
103 (POLST) or an order not to resuscitate is presented to that
104 professional. A POLST, to be valid , must be on the form adopted
105 by rule of the department, must be signed by the patient's
106 physician, based on consultation with the patient's guardian or
107 legally authorized proxy or surrogate.~~by the patient's physician~~
108 ~~is presented to the emergency medical technician or paramedic.~~

109 An order not to resuscitate, to be valid, must be on the form
110 adopted by rule of the department. The form must be signed by
111 the patient's physician and by the patient or, if the patient is
112 incapacitated, the patient's health care surrogate or proxy as
113 provided in chapter 765, court-appointed guardian as provided in
114 chapter 744, or attorney in fact under a durable power of
115 attorney as provided in chapter 709. The court-appointed
116 guardian or attorney in fact must have been delegated authority
117 to make health care decisions on behalf of the patient.

118 (c) The department, in consultation with the Department of
119 Elderly Affairs and the Agency for Health Care Administration,
120 shall develop a standardized do-not-resuscitate identification
121 system with devices that signify, when carried or worn, that the
122 possessor is a patient for whom a physician has issued an order
123 not to administer cardiopulmonary resuscitation. The department
124 may charge a reasonable fee to cover the cost of producing and
125 distributing such identification devices. Use of such devices
126 shall be voluntary.



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127 Section 8. Subsection (4) of section 429.255, Florida
128 Statutes, is amended to read:

129 429.255 Use of personnel; emergency care.—

130 (4) Facility staff may withhold or withdraw cardiopulmonary
131 resuscitation or the use of an automated external defibrillator
132 if presented with an order not to resuscitate executed pursuant
133 to s. 401.45 or a Physician Life Sustaining Order (POLST). The
134 department shall adopt rules providing for the implementation of
135 such orders. Facility staff and facilities shall not be subject
136 to criminal prosecution or civil liability, nor be considered to
137 have engaged in negligent or unprofessional conduct, for
138 withholding or withdrawing cardiopulmonary resuscitation or use
139 of an automated external defibrillator pursuant to such orders
140 ~~an order~~ and rules adopted by the department. The absence of an
141 order to resuscitate executed pursuant to s. 401.45 or a POLST
142 does not preclude a physician from withholding or withdrawing
143 cardiopulmonary resuscitation or use of an automated external
144 defibrillator as otherwise permitted by law.

145 Section 9. Subsection (3) of section 429.73, Florida
146 Statutes, is amended to read:

147 429.73 Rules and standards relating to adult family-care
148 homes.—

149 (3) The department shall adopt rules providing for the
150 implementation of orders not to resuscitate and Physician Orders
151 for Life Sustaining Treatment (POLST). The provider may withhold
152 or withdraw cardiopulmonary resuscitation if presented with an
153 order not to resuscitate executed pursuant to s. 401.45 or a
154 POLST. The provider shall not be subject to criminal prosecution
155 or civil liability, nor be considered to have engaged in



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156 negligent or unprofessional conduct, for withholding or
157 withdrawing cardiopulmonary resuscitation pursuant to such
158 orders ~~an order~~ and applicable rules.

159 Section 10. Paragraph (c) of subsection (1) of section
160 765.205, Florida Statutes, is amended to read:

161 765.205 Responsibility of the surrogate.—

162 (1) The surrogate, in accordance with the principal's
163 instructions, unless such authority has been expressly limited
164 by the principal, shall:

165 (c) Provide written consent using an appropriate form
166 whenever consent is required, including a physician's order not
167 to resuscitate or Physician Orders for Life Sustaining Treatment
168 (POLST).

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

170 And the title is amended as follows:

171 Delete line 59

172 and insert:

173 training relating to the clearinghouse; amending s.
174 395.1041, F.S.; authorizing hospital personnel to withhold or
175 withdraw cardiopulmonary resuscitation if an individual has a
176 Physician Order for Life Sustaining Treatment; amending s.
177 400.142, F.S., authorizing nursing home facility staff to
178 withhold or withdraw cardiopulmonary resuscitation if an
179 individual has a Physician Order for Life Sustaining Treatment;
180 amending s. 400.487, F.S.; authorizing home health agency
181 personnel to withhold or withdraw cardiopulmonary resuscitation
182 if an individual has a Physician Order for Life Sustaining
183 Treatment; amending s. 400.605, F.S.; requiring implementation
184 procedures for Physician Orders for Life Sustaining Treatment in



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185 hospice care; amending s. 400.6095, F.S.; authorizing a hospice
186 care team to withhold or withdraw cardiopulmonary resuscitation
187 if an individual has a Physician Order for Life Sustaining
188 Treatment; amending s. 401.35, F.S.; requiring the Department of
189 Health to establish circumstances and procedures for honoring
190 Physician Orders for Life Sustaining Treatment; amending s.
191 401.45, F.S.; authorizing emergency medical transportation
192 providers to withhold or withdraw cardiopulmonary resuscitation
193 or other medical interventions if an individual has a Physician
194 Order for Life Sustaining Treatment; provides requirements for
195 the validity of a Physician Order for Life Sustaining Treatment;
196 amending s. 429.255, F.S.; authorizing assisted living facility
197 staff to withhold or withdraw cardiopulmonary resuscitation if
198 an individual has a Physician Order for Life Sustaining
199 Treatment; amending s. 429.73, F.S.; requiring the department to
200 adopt rules for the implementation of Physician Orders for Life
201 Sustaining Treatment in adult family day cares; providing an
202

By Senator Brandes

22-00658A-15

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1 A bill to be entitled
2 An act relating to the Florida Right to Try Act;
3 providing a short title; creating s. 385.213, F.S.;
4 defining terms; authorizing a manufacturer of an
5 investigational drug, biological product, or device to
6 make such drug, product, or device available to
7 certain eligible patients with a terminal illness
8 without charge or for a specified cost; authorizing
9 the manufacturer to require eligible patients to
10 participate in certain data collection; specifying
11 that an insurer, a health plan, or a government health
12 care program is not required to provide coverage for
13 the cost of such drug, product, or device; authorizing
14 such entities to provide coverage under specified
15 circumstances; specifying that such entities are not
16 required to cover care or treatment needed as the
17 result of the use of such drug, product, or device
18 except under certain circumstances; specifying that
19 the Department of Corrections and the Department of
20 Juvenile Justice are not required to provide coverage
21 for such drugs, products, or devices for individuals
22 in the departments' custody; prohibiting a state
23 regulatory board or agency from taking action against
24 the licenses of certain health care providers or
25 against the licenses or Medicare certifications of
26 certain health care institutions for specified actions
27 with respect to an eligible patient's access to,
28 treatment with, or use of investigational drugs,
29 biological products, or devices; specifying when an

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30 investigational drug, biological product, or device
31 may continue to be offered by the manufacturer if the
32 drug, product, or device is found to be ineffective
33 under certain circumstances; requiring certain
34 information relating to clinical trials to be provided
35 to a patient taking an investigational drug,
36 biological product, or device outside of the clinical
37 trial; providing that the section does not create a
38 private cause of action against certain manufacturers,
39 entities, and individuals for any harm to an eligible
40 patient which results from the use of an
41 investigational drug, biological product, or device
42 under certain circumstances; providing a criminal
43 penalty for an official, employee, or agent of the
44 state who blocks or attempts to block the access of an
45 eligible patient to certain investigational drugs,
46 biological products, or devices; creating s. 408.064,
47 F.S.; requiring the Agency for Health Care
48 Administration to establish and maintain a database
49 that allows a state resident to electronically submit
50 a plan that indicates his or her directives for
51 compassionate and palliative care; requiring the
52 database to serve as a clearinghouse of plan
53 information that is accessible by certain health care
54 providers; authorizing the agency to subscribe to or
55 participate in a national or private clearinghouse in
56 lieu of establishing and maintaining an independent
57 clearinghouse; requiring the agency to publish and
58 disseminate certain information and provide certain

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59 training relating to the clearinghouse; providing an
60 effective date.

61

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

63

64 Section 1. This act may be cited as the "Florida Right to
65 Try Act."

66 Section 2. Section 385.213, Florida Statutes, is created to
67 read:

68 385.213 Compassionate treatment; access to experimental
69 treatments.-

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

71 (a) "Eligible patient" means an individual who:

72 1. Has a terminal illness, as determined by the

73 individual's physician and consulting physician;

74 2. As determined by the individual's physician, does not
75 have any comparable or satisfactory United States Food and Drug

76 Administration-approved option available to be diagnosed,

77 monitored, or treated for the individual's disease or condition,

78 and the probable risk to the individual from the investigational

79 drug, biological product, or device is not greater than the risk

80 from the disease or condition;

81 3. Has received a prescription or recommendation from the

82 individual's physician for an investigational drug, biological

83 product, or device;

84 4. Has provided written, informed consent in accordance

85 with s. 766.103 for the use of an investigational drug,

86 biological product, or device or, if the individual is a minor

87 or lacks the mental capacity to provide informed consent, a

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88 parent's or legal guardian's written, informed consent on the
89 individual's behalf; and

90 5. Has documentation from the individual's physician
91 indicating that the individual has met all the requirements of
92 this section.

93 (b) "Investigational drug, biological product, or device"
94 means a drug, biological product, or device that has
95 successfully completed phase one of a clinical trial but has not
96 yet been approved for general use by the United States Food and
97 Drug Administration.

98 (c) "Physician" means the physician licensed under chapter
99 458 or chapter 459 who provides medical care or treatment to the
100 eligible patient for the terminal illness.

101 (d) "Terminal illness" means a disease or condition that
102 without life-sustaining procedures will result in the patient's
103 death in the near future or a state of permanent unconsciousness
104 from which recovery is unlikely.

105 (2) AVAILABILITY OF INVESTIGATIONAL DRUGS, BIOLOGICAL
106 PRODUCTS, OR DEVICES.-

107 (a) A manufacturer of an investigational drug, biological
108 product, or device may make the investigational drug, biological
109 product, or device, available to an eligible patient. A
110 manufacturer may:

111 1. Provide the investigational drug, biological product, or
112 device to an eligible patient without charge or require the
113 eligible patient to pay the cost of, or the cost associated
114 with, the manufacture of the investigational drug, biological
115 product, or device.

116 2. Require an eligible patient to participate in data

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117 collection relating to the eligible patient's use of the
118 investigational drug, biological product, or device.

119 (b) This section does not require:

120 1. An insurer, a health plan, or a government health care
121 program to provide coverage for:

122 a. The cost of an investigational drug, biological product,
123 or device provided to an eligible patient. An insurer, a health
124 plan, or a government health care program may elect to provide
125 coverage for an investigational drug, biological product, or
126 device that is not part of a clinical trial.

127 b. Care or treatment needed as a result of an eligible
128 patient's use of an investigational drug, biological product, or
129 device unless the use is part of an approved clinical trial.

130 2. The Department of Corrections or the Department of
131 Juvenile Justice to provide coverage for an investigational
132 drug, biological product, or device for individuals in the
133 custody of the Department of Corrections or the Department of
134 Juvenile Justice.

135 (3) ACTION AGAINST PROVIDER LICENSURE PROHIBITED.—
136 Notwithstanding any other law, a state regulatory board or
137 agency:

138 (a) May not take any action against a health care
139 provider's license issued under chapter 458 or chapter 459 based
140 solely on the health care provider's recommendation to an
141 eligible patient regarding access to or treatment with an
142 investigational drug, biological product, or device.

143 (b) May not, with respect to a health care institution
144 licensed in this state, take any action against the
145 institution's:

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146 1. License based solely on the institution's participation
147 in the treatment with, or in any other use of, an
148 investigational drug, biological product, or device.

149 2. Medicare certification based solely on a health care
150 provider's recommendation to an eligible patient regarding
151 access to an investigational drug, biological product, or
152 device.

153 (4) CLINICAL TRIALS.—

154 (a) If a clinical trial of an investigational drug,
155 biological product, or device is not effective for a certain
156 patient or condition and the trial is closed due to lack of
157 efficacy, the manufacturer or health care provider may continue
158 to offer the investigational drug, biological product, or device
159 for a different condition to the patient or to new patients.

160 (b) If the United States Food and Drug Administration or
161 the safety committee for a clinical trial provides notice of
162 information for an investigational drug, biological product, or
163 device that is being taken by a patient outside of the clinical
164 trial, the manufacturer of such drug, product, or device or the
165 patient's physician shall notify the patient of the information.

166 (5) NO CAUSE OF ACTION.—This section does not create a
167 private cause of action against a manufacturer of an
168 investigational drug, biological product, or device or against
169 an entity or individual involved in the care of an eligible
170 patient for any harm to the eligible patient which results from
171 the use of the investigational drug, biological product, or
172 device if the manufacturer, entity, or individual is complying
173 in good faith with this section, unless the manufacturer,
174 entity, or individual failed to exercise reasonable care.

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175 (6) PENALTY.—An official, employee, or agent of the state
176 who blocks or attempts to block the access of an eligible
177 patient to an investigational drug, biological product, or
178 device that has been recommended to the eligible patient by his
179 or her physician and that has not been banned or removed from a
180 clinical trial as unsafe by the United States Food and Drug
181 Administration commits a misdemeanor of the second degree,
182 punishable as provided in s. 775.082 or s. 775.083.

183 Section 3. Section 408.064, Florida Statutes, is created to
184 read:

185 408.064 Clearinghouse for compassionate and palliative care
186 plans.—

187 (1) The agency shall establish and maintain a reliable and
188 secure database that allows a resident of this state to
189 electronically submit a plan that indicates his or her
190 directives for compassionate and palliative care. The database
191 shall serve as a clearinghouse of plan information that may be
192 accessed by a health care provider who is treating the resident.
193 The agency shall seek advice from residents, compassionate and
194 palliative care providers, and health care facilities for the
195 development and implementation of the clearinghouse.

196 (2) The agency may subscribe to or otherwise participate in
197 a national or private clearinghouse that will accomplish the
198 requirements under subsection (1) in lieu of establishing and
199 maintaining an independent clearinghouse for this state's
200 residents.

201 (3) The agency shall publish and disseminate information to
202 the residents of this state regarding the availability of the
203 clearinghouse. The agency must also provide training to health

22-00658A-15

20151052__

204 care providers and health care facilities in this state on how
205 to access plans through the clearinghouse.

206 Section 4. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General
Government, *Chair*
Governmental Oversight and Accountability,
Vice Chair
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining,
Alternating Chair

MEMORANDUM

To: Senator Aaron Bean, Chair
Health Policy Committee
CC: Sandra Stovall, Staff Director
Celia Georgiades, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 1390 – Public Food Establishments

Date: March 4, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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)

3/17/15

Meeting Date

SB 1052

Bill Number (if applicable)

492400

Amendment Barcode (if applicable)

Topic POLST AMENDMENT

Name MARSHALL KAPP

Job Title PROFESSOR

Address FSU

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

SEN. BRANDES

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

1052
Bill Number (if applicable)
482400
Amendment Barcode (if applicable)

Topic FL Right to Try Act

Name Chris Floyd

Job Title Consultant

Address _____
Street

Phone 813-624-5117

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing FL Assoc. of Nurse Practitioners

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3.17.2015

Meeting Date

1052

Bill Number (if applicable)

482400

Amendment Barcode (if applicable)

Topic P.O.L.S.T. Amendment by Garcia

Name Paul Ledford on SB1052

Job Title President + CEO FL Hospice + Palliative Care Assn

Address 2000 Apalachicola Parkway Phone 850-878-2632

Street

Tallahassee

City

FL

State

32301

Zip

Email paul@floridahospice.org

Speaking: [] For [] Against [] Information

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

Representing Florida Hospice + Palliative Care Assn.

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/17/15

Meeting Date

1052

Bill Number (if applicable)

482400

Amendment Barcode (if applicable)

Topic POLST Amendment - REVISED

Name Michael Sheedy

for info - not composition

Job Title Exec. Director

Address 201 W. Park Ave.

Phone 850-205-6824

Street

Tall.

FL

32301

Email

City

State

Zip

Speaking: For Against Information

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

Representing FL Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/17/15

Meeting Date

1052

Bill Number (if applicable)

Topic FL Right to Try Act

Amendment Barcode (if applicable)

Name Stan Whitaker

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: For Against Information

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

Representing FL Assoc of Nurse Practitioners

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

1052
Bill Number (if applicable)

Topic FL Right to Try Act

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address _____
Street

Phone 813-624-5117

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Assoc. of Nurse Practitioners

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)

3/17/15

Meeting Date

1052

Bill Number (if applicable)

Topic FL Right to Try Act

Amendment Barcode (if applicable)

Name Susan Lynch

Job Title CEO & President

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Assoc of Nurse Practitioners

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)

3/17/15
Meeting Date

S1052
Bill Number (if applicable)

Topic Right to Try

Amendment Barcode (if applicable)

Name - CRAIG HANUZLIK

Job Title STATE POLICY COORDINATOR

Address 500 E. CORONADO RD

Phone 602-633-8994

Street

Phoenix
City

AZ
State

85004
Zip

Email CHANDZLIK@

Speaking: For Against Information

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

Representing Goldwater Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



EMSA #111 B
(Effective 4/1/2011)

Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact physician.
This is a Physician Order Sheet based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. A copy of the signed POLST form is legal and valid. POLST complements an Advance Directive and is not intended to replace that document. Everyone shall be treated with dignity and respect.

Patient Last Name:	Date Form Prepared:
Patient First Name:	Patient Date of Birth:
Patient Middle Name:	Medical Record #: (optional)

A CARDIOPULMONARY RESUSCITATION (CPR): *If person has no pulse and is not breathing. When NOT in cardiopulmonary arrest, follow orders in Sections B and C.*

- Check One
- Attempt Resuscitation/CPR** (Selecting CPR in Section A requires selecting Full Treatment in Section B)
 - Do Not Attempt Resuscitation/DNR** (Allow Natural Death)

B MEDICAL INTERVENTIONS: *If person has pulse and/or is breathing.*

- Check One
- Comfort Measures Only** Relieve pain and suffering through the use of medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Transfer to hospital only** if comfort needs cannot be met in current location.
 - Limited Additional Interventions** In addition to care described in Comfort Measures Only, use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.
 - Transfer to hospital only** if comfort needs cannot be met in current location.
 - Full Treatment** In addition to care described in Comfort Measures Only and Limited Additional Interventions, use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/ cardioversion as indicated. **Transfer to hospital** if indicated. Includes intensive care.

Additional Orders: _____

C ARTIFICIALLY ADMINISTERED NUTRITION: *Offer food by mouth if feasible and desired.*

- Check One
- No artificial means of nutrition, including feeding tubes. Additional Orders: _____
 - Trial period of artificial nutrition, including feeding tubes. _____
 - Long-term artificial nutrition, including feeding tubes. _____

D INFORMATION AND SIGNATURES:

Discussed with: Patient (Patient Has Capacity) Legally Recognized Decisionmaker

Advance Directive dated _____ available and reviewed → Health Care Agent if named in Advance Directive:
 Advance Directive not available Name: _____
 No Advance Directive Phone: _____

Signature of Physician

My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.

Print Physician Name:	Physician Phone Number:	Physician License Number:
Physician Signature: (required)		Date:

Signature of Patient or Legally Recognized Decisionmaker

By signing this form, the legally recognized decisionmaker acknowledges that this request regarding resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form.

Print Name:	Relationship: (write self if patient)
Signature: (required)	Date:
Address:	Daytime Phone Number: Evening Phone Number:

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY**Patient Information**

Name (last, first, middle):	Date of Birth:	Gender: M F
-----------------------------	----------------	------------------------------

Health Care Provider Assisting with Form Preparation

Name:	Title:	Phone Number:
-------	--------	---------------

Additional Contact

Name:	Relationship to Patient:	Phone Number:
-------	--------------------------	---------------

Directions for Health Care Provider**Completing POLST**

- Completing a POLST form is voluntary. California law requires that a POLST form be followed by health care providers, and provides immunity to those who comply in good faith. In the hospital setting, a patient will be assessed by a physician who will issue appropriate orders.
- POLST does not replace the Advance Directive. When available, review the Advance Directive and POLST form to ensure consistency, and update forms appropriately to resolve any conflicts.
- POLST must be completed by a health care provider based on patient preferences and medical indications.
- A legally recognized decisionmaker may include a court-appointed conservator or guardian, agent designated in an Advance Directive, orally designated surrogate, spouse, registered domestic partner, parent of a minor, closest available relative, or person whom the patient's physician believes best knows what is in the patient's best interest and will make decisions in accordance with the patient's expressed wishes and values to the extent known.
- POLST must be signed by a physician and the patient or decisionmaker to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.
- Certain medical conditions or treatments may prohibit a person from residing in a residential care facility for the elderly.
- If a translated form is used with patient or decisionmaker, attach it to the signed English POLST form.
- Use of original form is strongly encouraged. Photocopies and FAXes of signed POLST forms are legal and valid. A copy should be retained in patient's medical record, on Ultra Pink paper when possible.

Using POLST

- Any incomplete section of POLST implies full treatment for that section.

Section A:

- If found pulseless and not breathing, no defibrillator (including automated external defibrillators) or chest compressions should be used on a person who has chosen "Do Not Attempt Resuscitation."

Section B:

- When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only," should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).
- Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP), bi-level positive airway pressure (BiPAP), and bag valve mask (BVM) assisted respirations.
- IV antibiotics and hydration generally are not "Comfort Measures."
- Treatment of dehydration prolongs life. If person desires IV fluids, indicate "Limited Interventions" or "Full Treatment."
- Depending on local EMS protocol, "Additional Orders" written in Section B may not be implemented by EMS personnel.

Reviewing POLST

It is recommended that POLST be reviewed periodically. Review is recommended when:

- The person is transferred from one care setting or care level to another, or
- There is a substantial change in the person's health status, or
- The person's treatment preferences change.

Modifying and Voiding POLST

- A patient with capacity can, at any time, request alternative treatment.
- A patient with capacity can, at any time, revoke a POLST by any means that indicates intent to revoke. It is recommended that revocation be documented by drawing a line through Sections A through D, writing "VOID" in large letters, and signing and dating this line.
- A legally recognized decisionmaker may request to modify the orders, in collaboration with the physician, based on the known desires of the individual or, if unknown, the individual's best interests.

This form is approved by the California Emergency Medical Services Authority in cooperation with the statewide POLST Task Force.
For more information or a copy of the form, visit www.caPOLST.org.

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

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 628

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Behavior Analysts

DATE: March 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 creates ch. 470, F.S., entitled “Behavior Analysts,” for the purpose of regulating the practice of applied behavior analysis. The bill provides definitions of terms used in the chapter and creates a seven-member Board of Applied Behavior Analysis (board), whose members are appointed by the governor and confirmed by the Senate.

The bill establishes eligibility criteria for initial or renewal licensure as a behavior analyst or assistant behavior analyst, both of which require board-certification and background screening. The bill contains a lengthy series of exemptions from licensure.

The bill creates specific actions that are grounds for denial of a license application or for disciplinary action. The board is authorized to adopt rules to implement the act which define standards of practice and establish supervision requirements for assistant behavior analysts. The board is required to adopt rules related to fees and continuing education. The Department of Health (DOH) is required to adopt rules related to renewal licensure and is authorized to adopt rules as necessary to implement the provisions in ch. 470, F.S.

The bill establishes an effective date of July 1, 2015, and the licensure requirements in the bill take effect on January 1, 2016.

II. Present Situation:

Behavior Analysis

Behavior analysis grew out of the scientific study of principles of learning and behavior. It has two main branches: experimental and applied behavior analysis. The experimental analysis of behavior is the basic science which provides the scientific foundation for applied behavior analysis.¹ Florida law defines applied behavior analysis as “the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.”² Examples of applied behavior analysis practice include: building the skills and achievements of children in school settings and enhancing the development, abilities, and choices of children and adults with different kinds of emotional and behavioral disabilities.³

Certification of Behavior Analysts

The Behavior Analyst Certification Board (BACB) is the exclusive entity that certifies behavior analysts. The BACB is a nonprofit 501(c)(3) corporation located in Littleton, Colorado, that was established in 1998 based on the behavior analysis certification program developed in Florida.⁴

As part of its credentialing program, the BACB has developed:⁵

- Eligibility standards;
- Renewal and recertification standards to maintain certification;
- Guidelines for responsible conduct;
- Professional disciplinary standards with appeal procedures;
- A certificant registry;
- A process to approve university course sequences and practica;
- Procedures to approve continuing education providers; and
- Certification examinations.

Currently, the BACB offers two certifications: Board Certified Behavior Analyst and Board Certified Assistant Behavior Analyst. The Board Certified Behavior Analyst conducts descriptive and systematic behavioral assessments, including functional analyses, and provides behavior analytic interpretations of the results.⁶ The Board Certified Behavior Analyst also designs and supervises behavior analytic interventions.⁷ To be eligible for certification as a

¹ Behavior Analyst Certification Board, *About Behavior Analysis* <http://www.bacb.com/index.php?page=2> (Last visited Mar. 12, 2015).

² Sections 627.6686(2)(a) and 641.31098(2)(a), F.S. The definitions are part of a mandate for health care coverage for individuals with autism spectrum disorder. Applied behavior analysis is one of the required services.

³ *Supra* note 1.

⁴ Behavior Analyst Certification Board, *About the BACB* <http://www.bacb.com/index.php?page=1> (Last visited Mar. 12, 2015).

⁵ *Id.*

⁶ Behavior Analyst Certification Board, *About BACB Credentials*, available at <http://www.bacb.com/index.php?page=4> (Last visited Mar. 12, 2015).

⁷ *Id.*

behavior analyst, an applicant must have a master's degree in behavior analysis or other natural science, education, human services, engineering, medicine or a field related to behavior analysis approved by the BACB. In addition, the applicant must have 225 hours of graduate level instruction; must have completed a 1-year, full-time faculty appointment at a college or university with the responsibility of teaching behavior analysis; or must have completed a doctoral degree conferred 10 years prior to applying for certification and meet certain experience requirements.⁸

The Board Certified Assistant Behavior Analyst conducts descriptive behavioral assessments, interprets their results, and designs behavior analytic interventions under the supervision of a Board Certified Behavior Analyst.⁹ To be eligible for certification as a Board Certified Assistant Behavior Analyst, an applicant must have a bachelor's degree and 135 hours of instruction and meet certain experience requirements.¹⁰

Currently, there are 2,111 behavior analysts or assistant behavior analysts in Florida who are board-certified by the BACB.¹¹

Florida-Certified Behavior Analysts

Florida began training and certifying behavior analysts in 1983 through the Department of Health and Rehabilitative Services. In 2001, the Florida program was discontinued and all credentialing responsibilities were transferred to the BACB.¹² Behavior analysts certified through the Florida program are authorized to use only the designation Florida-Certified Behavior Analyst. Recertification as a Florida-Certified Behavior Analyst occurs every 3 years and requires 36 hours of continuing education.¹³

Recognition of Behavior Analysis in Florida Law

Although Florida does not license behavior analysts, its laws do recognize them in ways that may provide for some oversight. Specific references are as follows:

- Section 381.75, F.S., requires that transitional living facilities that provide services to patients in the brain and spinal cord injury program must offer behavior analysis services. The law does not specify credentials, but the services must be provided under contract and by a facility that is subject to state licensure.
- Section 393.17, F.S., authorizes the Agency for Persons with Disabilities (APD) to establish a certification process for behavior analysts who serve its clients and requires the APD to recognize the certification “awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet

⁸ Behavior Analyst Certification Board, *Standards for Board Certified Behavior Analysts (BCBA)*, available at <http://www.bacb.com/index.php?page=158> (Last visited Mar. 12, 2015).

⁹ *Supra* note 6.

¹⁰ Behavior Analyst Certification Board, *Standards for Board Certified Assistant Behavior Analysts (BCABA)*, <http://www.bacb.com/index.php?page=52> (Last visited Mar. 12, 2015).

¹¹ Behavior Analyst Certification Board, *Certificant Registry* <http://www.bacb.com/index.php?page=100155&by=state> (Last visited Mar. 12, 2015).

¹² *See Infra* note 23, at 2.

¹³ Behavior Analyst Certification Board, *Florida Behavior Analyst Certification Committee*, available at <http://www.bacb.com/index.php?page=100202> (Last visited Mar. 12, 2015).

professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services.” This language describes the BACB.¹⁴ The APD has opted not to create a separate certification process.¹⁵

- Section 393.18, F.S., requires a behavior analyst who provides services as part of a comprehensive transitional education program for persons with developmental disabilities to be certified as provided under s. 393.17, F.S.
- Section 409.906(26), F.S., authorizes the Agency for Health Care Administration to obtain federal approval to provide behavior analysis services to children 5 years of age and younger who have a developmental disability, autism spectrum disorder, or Down syndrome through the Medicaid program.
- Sections 627.6686 and 641.31098, F.S., mandate coverage for autism spectrum disorder which includes applied behavior analysis services. The services must be provided by a person who is licensed under ch. 490 or 491, F.S., or certified pursuant to s. 393.17, F.S.
- Section 1002.66, F.S., includes applied behavioral analysis among the specialized instructional services a parent may select for a child with disabilities who is eligible for prekindergarten. As part of the exceptional student education legislation, the 2013 Legislature created a definition of private instructional personnel which includes persons certified under s. 393.17, F.S., or licensed under ch. 490 or 491, F.S., to provide behavior analysis.

Regulation of Health Care Professions

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.¹⁶ General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the policy framework for regulation. Specifically, regulation is to occur when:¹⁷

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation;
- The public is not adequately protected by other means, including other statutes, federal law, or local ordinances; or
- Less restrictive means of regulation are not available.

The DOH has responsibility for licensing health care practitioners and certain facilities and businesses; enforcing health care practitioner standards; and providing licensure and disciplinary information to enable health care consumers to make more informed health care decisions.¹⁸

Regulation of some professions occurs under the purview of a board or council. A board is a statutorily-created entity that is authorized to exercise regulatory or rulemaking functions within the Medical Quality Assurance.¹⁹ In general, boards are responsible for approving or denying

¹⁴ *Supra* note 4.

¹⁵ Rule 65G-4.0011, F.A.C.

¹⁶ Section 20.43(1)(g), F.S.

¹⁷ Section 456.003(2), F.S.

¹⁸ Florida Department of Health, <http://www.floridahealth.gov/licensing-and-regulation/index.html>, (last visited on Mar. 12, 2015).

¹⁹ Section 456.001(1), F.S.

applications for licensure, establishing continuing education requirements, and disciplining practitioners for violations of their applicable practice act.²⁰

The Sunrise Act

Section 11.62, F.S., “The Sunrise Act,” sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

The act directs the Legislature to consider the following factors:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide detailed information regarding the need and potential impact of the regulation. The Sunrise Questionnaire is used for that purpose.²¹ The act also requires the agency that will be responsible for its implementation to assess the cost of implementation, the technical sufficiency of the proposal, and whether alternatives to regulation exist.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;

²⁰ See, e.g. s. 491.004, F.S., creating the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and authorizing it to adopt rules necessary to implement and enforce provisions of ch. 491, F.S.

²¹ The Sunrise Questionnaire is a questionnaire developed by legislative staff to solicit the responses required by the proponent of new regulation pursuant to s. 11.62(4), F.S. SB 628 has been proposed by the Florida Association for Behavioral Analysis, and a copy of the proponent’s completed questionnaire is on file with the Senate Committee on Health Policy.

- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Statutory Creation of Advisory Bodies, Commissions, or Boards

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

A board of trustees is defined as “a board created by specific statutory enactment and appointed to function adjunctively to a department, the governor, or the Executive Office of the Governor to administer public property or a public program.”²² Private citizen members of a board of trustees may only be appointed by the governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of Article II, section 5(a) of the State Constitution.

Members of a board of trustees serve for 4-year staggered terms, unless expressly provided otherwise in the State Constitution, and are ineligible for any compensation other than travel expenses. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

III. Effect of Proposed Changes:

CS/SB 628 creates ch. 470, F.S., which establishes new license types for behavior analysts and assistant behavior analysts and requires that all behavior analysts and assistant behavior analysts be licensed in order to practice or assist in applied behavior analysis. The bill also amends ss. 20.43, 456.001, and 456.0135, F.S., to make conforming changes.

Legislative Intent

The bill states that the Legislature finds that the practice of applied behavior analysis by unskilled and incompetent practitioners presents a danger to the health and safety of the public. Additionally, the Legislature finds that it is difficult for the public to make an informed choice about behavior analysts and a wrong choice could endanger public health. The bill states that the intent of the act is to protect the public from the harmful conduct of unqualified, unprofessional, and unethical behavior analysts.

Definitions

The bill defines the terms:

- “Applied behavior analysis” to mean the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, that are used to

²² Section 20.03(12), F.S.

produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior. The term does not include psychological testing, the diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling.

- “Board” to mean the Board of Applied Behavior Analysis, except when used in the context of board certification.
- “Board-certified assistant behavior analyst” to mean a practitioner who is certified as an assistant behavior analyst or is recognized as a Florida-certified behavior analyst by the national Behavior Analyst Certification Board.
- “Board-certified behavior analyst” to mean a practitioner who is certified as a behavior analyst or is a recognized as a Florida-certified behavior analyst by the national Behavior Analyst Certification Board.
- “Department” to mean the Department of Health.
- “Licensed assistant behavior analyst” to mean a practitioner who is licensed by the board as an assistant behavior analyst and otherwise meets the requirements of this chapter.
- “Licensed behavior analyst” to mean a practitioner who is licensed by the board as a behavior analyst and otherwise meets the requirements of this chapter.

Behavior Analyst and Assistant Behavior Analyst Licenses

The bill requires the DOH to grant a license to a behavior analyst or an assistant behavior analyst who:

- Submits an application to the DOH;
- Pays all appropriate fees;
- Has passed a criminal background check and paid the necessary fee pursuant to s. 456.0135, F.S.;²³
- Submits proof that he or she is a board-certified behavior analyst or assistant behavior analyst; and
- For assistant behavior analysts, identifies a supervising licensed behavior analyst who is qualified to supervise the applicant.

The DOH must renew a license for a behavior analyst or assistant behavior analyst who submits a renewal application, renewal fee, and proof that he or she has maintained certification from the Behavior Analyst Certification Board. The DOH is required to adopt rules establishing a 2-year license renewal process and is permitted to adopt rules as necessary to implement its responsibilities under ch. 470, F.S.

Effective January 1, 2016, the bill makes the unlicensed practice of applied behavior analysis, the unlicensed assistance of the practice of applied behavior analysis, and the unlicensed representation of oneself as a practitioner of applied behavior analysis a third degree felony. Additionally, using the title of behavior analyst or assistant behavior analyst without having the

²³ Section 456.0135, F.S., requires the submission of fingerprints to the Florida Department of Law Enforcement for a background screening. The board is required to screen the results to ensure that the applicant meets licensure standards. All fingerprints submitted are entered into the Care Provider Background Screening Clearinghouse as provided in s. 435.12, F.S.

applicable license is a second degree misdemeanor. The bill specifies that the provisions of ch. 470, F.S., do not prohibit or restrict the licensed activities of:

- A physician licensed under ch. 458 or 459, F.S.;
- An occupational therapist licensed under part III of ch. 468, F.S.;
- A psychologist licensed under ch. 490, F.S.;
- A clinical social worker, a marriage and family therapist, or a mental health counselor licensed under ch 491, F.S.;
- A certified teacher or teaching assistant supervised by a teacher, other than a teaching assistant engaged in pupil personnel services, when providing applied behavior analysis services within the teacher's scope of practice and within the scope of his or her education, training, or experience;
- A behavior analyst who practices with nonhuman animals;
- An individual who teaches or researches applied behavior analysis if he or she does not practice applied behavior analysis;
- A college student, university student, or postdoctoral fellow who is studying applied behavior analysis and who is supervised by a licensed behavior analyst or an approved instructor;
- An unlicensed person pursuing training to meet eligibility requirements if supervised by a licensee;
- A family member of the recipient using applied behavior analysis techniques on the recipient;
- A behavior analyst who provides general applied behavior analysis services to an organization if such services do not directly involve services to individuals;
- An employee of a private, nonprofit organization providing applied behavior analysis services to children, youth, and families for no cost if the employee does not represent him or herself as a licensed behavior analyst or assistant;
- A certified school psychologist using applied behavior analysis as an employee of a public or private educational institution; and
- A member of the clergy of a religion under the authority of that religion's governing body and using applied behavior analysis within the scope of his or her ministerial duties without a fee or under the auspices or sponsorship of an established and legally cognizable church, denomination, or sect.

The Board of Applied Behavior Analysis

The bill creates the Board of Applied Behavior Analysis within of the DOH. The board consists of seven members who are appointed by the Governor and confirmed by the Senate. Initial board members who are behavior analysts or assistant behavior analysts are not required to be licensed, however, all behavior analyst or assistant behavior analyst members appointed after the expiration of the initial terms must be licensed. Membership of the board consists of:

- Three board-certified (or licensed) behavior analysts two of whom must have a doctoral-level degree.
- One board-certified (or licensed) assistant behavior analyst.
- One member the majority of whose professional practice must be related to the treatment of behavior disorders including autism spectrum disorder and who is a:
 - A psychologist licensed pursuant to ch. 490, F.S.;
 - A clinical social worker or marriage and family therapist; or

- A mental health counselor licensed pursuant to ch. 491, F.S.
- Two members who are laypersons and one of whom may be a parent or guardian of an individual who is a recipient of applied behavior analysis.²⁴

The board may take action against licensees by entering an order denying licensure, refusing to certify an application for licensure or certifying it with restrictions, suspending or revoking a license, imposing restrictions on a licensee's practice or license, imposing administrative fines of up to \$10,000, issuing a reprimand or letter of concern, placing the licensee on probation, requiring corrective action, requiring the refund of all fees billed and collected on the behalf of a patient, and requiring that the licensee undergo remedial education. The bill specifies that, in addition to the grounds listed in s. 456.072(1), F.S.,²⁵ that the following constitute grounds for disciplinary action or denial of licensure:

- Attempting to obtain, obtaining, or renewing a license through fraud, bribery, or an error by the board or the DOH;
- Having a license in a comparable profession, including a certification or license held in another state, territory, or country, revoked, suspended, or otherwise acted against;
- Being found guilty of or entering a plea of nolo contendere for a crime which directly relates to the practice of his or her profession;²⁶
- Making false, deceptive, or misleading representations or accepting a fee on the representation that beneficial results from treatment are guaranteed;
- Advertising, practicing, or attempting to practice under a false name;
- Maintaining a professional association with any person who the applicant or licensee knows, or has reason to believe, has violated the provisions of ch. 470, F.S., or any other rule of the DOH or board;
- Knowingly aiding, assisting, procuring, or advising any unlicensed person to hold him or herself as licensed under ch. 470, F.S.;
- Failing to perform any obligation under ch. 470, F.S.;
- Willfully falsifying, failing to file, willfully impeding or obstructing the filing of, inducing the falsification of a report or record that requires the signature of a person licensed under ch. 470, F.S.;
- Paying or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of health care services, referring a patient or client to oneself on a fee-paid basis when another party when those services are already being paid for by another party, or entering into a reciprocal referral agreement;
- Committing any act upon a patient or client which would constitute sexual battery or sexual misconduct, as defined by the board;
- Making misleading, deceptive, untrue, or fraudulent misrepresentations in the practice of applied behavior analysis;

²⁴ The initial terms for all members are as follows: the three behavior analyst members are appointed to serve for terms of 1 year, 2 years, and 4 years, respectively; the assistant behavior analyst and the member whose professional practice is related to the treatment of behavior disorders serve 3-year terms; and the two laypersons serve 2 and 4-year terms, respectively. After the expiration of the initial terms, all newly appointed members serve for 4-year terms.

²⁵ Section 456.072(1), F.S., lists the grounds for discipline for all professionals licensed by the DOH.

²⁶ A licensee may present evidence in mitigation of the underlying charges and circumstance surrounding a plea of nolo contendere.

- Soliciting clients by fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct;
- Failing to make copies of test results, reports, or documents available to the client upon written request;
- Failing to respond within 30 days to a written communication from the DOH concerning any DOH investigation or failing to make relevant records available for an investigation concerning the licensee's conduct or background;
- Being unable to practice due to mental or physical illness, drunkenness, drugs, narcotics, chemicals, or any other substance being abused. The board or the DOH may require the licensee to submit to a mental or physical exam if probable cause exists that this provision is being violated. A licensee must be afforded the opportunity to demonstrate that he or she can resume his or her competent practice at reasonable intervals as determined by the DOH;
- Performing treatment or prescribing therapy which constitutes experimentation on human subjects without full, informed written consent;
- Failing to meet the minimum standards of performance in professional activities as determined by the board;
- Delegating professional responsibilities to a person whom the licensee knows, or has reason to know, is not qualified to perform them;
- Violating a rule relating to the regulation of the profession or relating to a lawful order of the DOH or the board previously entered at a disciplinary hearing;
- Failing to maintain confidential communications;
- Making public statements that are derived from test data, client contacts, or behavioral research that identifies or otherwise damage research subjects or clients; and
- Violating any provision in chs. 470 or 456, F.S., or any rules adopted under those chapters.

The board is also required to adopt rules to administer the provisions in ch. 470, F.S., including, but not limited to standards of practice and the supervision of behavior analysis students or licensed assistant behavior analysts. The board is also required to establish by ruling an application fee of up to \$100, license and renewal fees of up to \$300,²⁷ and a continuing education requirement of up to 32 hours every two years for licensed behavior analysts and 20 hours every 2 years for licensed assistant behavior analysts. Criteria for continuing education programs must be approved by the board and the board may authorize by rule the use of continuing education credits earned for the Behavior Analyst Certification Board certification to meet such continuing education requirements.

The bill establishes an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ All monies collected by the DOH under ch. 470, F.S., are required to be deposited in the Medical Quality Assurance Trust Fund under s. 456.025, 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:

CS/SB 628 will require certified behavioral analysts and assistants to pay an application fee of \$100 and licensure and licensure renewal fees of \$300 in order to continue to practice as behavior analysts in the state. Behavior analysts and assistants who are not certified will be required to become certified by the BACB prior to becoming licensed.²⁸ Additionally, licensed behavior analysts and assistants will be required to maintain BACB certification and complete continuing education, both of which will require expenditures in excess of the licensure renewal fee.

C. Government Sector Impact:

The DOH estimates that CS/SB 628 will generate revenues of \$745,200 for the first biennium and \$561, 200 for the second biennium.

The DOH estimates the total costs from SB 628 will be \$475,573 for the first biennium with \$113,469 in recurring salary costs, \$2,841 recurring and \$28,331 nonrecurring OPS costs, \$76,867 recurring and \$25,576 recurring expenses, \$15,380 recurring contracted services costs, and \$2,216 recurring and \$120 nonrecurring human resources costs.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ Behavior Analyst Certification Board, *Fee Structure*, available at <http://www.bacb.com/index.php?page=51>, (last visited on Mar. 12, 2015).

²⁹ Department of Health Bill, *Senate Bill 628 Analysis*, (on file with Senate Committee on Health Policy).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.43, 456.001, and 456.0135.

This bill creates the following sections of the Florida Statutes: 470.40, 470.46, 470.41, 470.415, 470.42, 470.43, 470.44, and 470.45.

This bill creates an undesignated section of law.

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 17, 2015:

The CS amends SB 628 with the substance of CS/CS/SB 1212 (2014) as it passed the Senate during the 2014 Session. The CS amends SB 628 by:

- Amending the definition of “applied behavior analysis” to specify that such analysis requires the use of behavioral stimuli and consequences;
- Clarifying the authority of the board and the DOH so that DOH issues licenses to both behavior analysts and assistant behavior analysts and so that the board is no longer required to collect application and licensure fees;
- Amending the listed disciplinary act of attempting to obtain, obtaining, or renewing a license by bribery, fraud, or error of the board to remove the requirement that such error must be caused or furthered by the licensee; and
- Making numerous technical and conforming changes throughout the bill.

The CS also differs from both SB 628 and CS/CS/SB 1212 (2014) in that the CS creates a grace period in which behavior analysts and assistants may continue to practice without a license in order to allow the DOH and the board time to adopt rules and such practitioners time to obtain a license. The grace period is implemented by amending the effective date of the bill to July 1, 2015 while maintaining the effective date of January 1, 2016, for the requirement to be licensed under the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

20.43 Department of Health.—There is created a Department
of Health.

(3) The following divisions of the Department of Health are
established:

(g) Division of Medical Quality Assurance, which is



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12 responsible for the following boards and professions established
13 within the division:

- 14 1. The Board of Acupuncture, created under chapter 457.
- 15 2. The Board of Medicine, created under chapter 458.
- 16 3. The Board of Osteopathic Medicine, created under chapter
17 459.
- 18 4. The Board of Chiropractic Medicine, created under
19 chapter 460.
- 20 5. The Board of Podiatric Medicine, created under chapter
21 461.
- 22 6. Naturopathy, as provided under chapter 462.
- 23 7. The Board of Optometry, created under chapter 463.
- 24 8. The Board of Nursing, created under part I of chapter
25 464.
- 26 9. Nursing assistants, as provided under part II of chapter
27 464.
- 28 10. The Board of Pharmacy, created under chapter 465.
- 29 11. The Board of Dentistry, created under chapter 466.
- 30 12. Midwifery, as provided under chapter 467.
- 31 13. The Board of Speech-Language Pathology and Audiology,
32 created under part I of chapter 468.
- 33 14. The Board of Nursing Home Administrators, created under
34 part II of chapter 468.
- 35 15. The Board of Occupational Therapy, created under part
36 III of chapter 468.
- 37 16. Respiratory therapy, as provided under part V of
38 chapter 468.
- 39 17. Dietetics and nutrition practice, as provided under
40 part X of chapter 468.



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41 18. The Board of Athletic Training, created under part XIII
42 of chapter 468.

43 19. The Board of Orthotists and Prosthetists, created under
44 part XIV of chapter 468.

45 20. The Board of Applied Behavior Analysis, created under
46 chapter 470.

47 ~~21.20.~~ Electrolysis, as provided under chapter 478.

48 ~~22.21.~~ The Board of Massage Therapy, created under chapter
49 480.

50 ~~23.22.~~ The Board of Clinical Laboratory Personnel, created
51 under part III of chapter 483.

52 ~~24.23.~~ Medical physicists, as provided under part IV of
53 chapter 483.

54 ~~25.24.~~ The Board of Opticianry, created under part I of
55 chapter 484.

56 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
57 part II of chapter 484.

58 ~~27.26.~~ The Board of Physical Therapy Practice, created
59 under chapter 486.

60 ~~28.27.~~ The Board of Psychology, created under chapter 490.

61 ~~29.28.~~ School psychologists, as provided under chapter 490.

62 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
63 Family Therapy, and Mental Health Counseling, created under
64 chapter 491.

65 ~~31.30.~~ Emergency medical technicians and paramedics, as
66 provided under part III of chapter 401.

67 Section 2. Subsection (4) of section 456.001, Florida
68 Statutes, is amended to read:

69 456.001 Definitions.—As used in this chapter, the term:



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70 (4) "Health care practitioner" means any person licensed
71 under chapter 457; chapter 458; chapter 459; chapter 460;
72 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
73 chapter 466; chapter 467; part I, part II, part III, part V,
74 part X, part XIII, or part XIV of chapter 468; chapter 470;
75 chapter 478; chapter 480; part III or part IV of chapter 483;
76 chapter 484; chapter 486; chapter 490; or chapter 491.

77 Section 3. Subsection (1) of section 456.0135, Florida
78 Statutes, is amended to read:

79 456.0135 General background screening provisions.—

80 (1) An application for initial licensure received on or
81 after January 1, 2013, under chapter 458, chapter 459, chapter
82 460, chapter 461, chapter 464, s. 465.022, chapter 470, or
83 chapter 480 shall include fingerprints pursuant to procedures
84 established by the department through a vendor approved by the
85 Department of Law Enforcement and fees imposed for the initial
86 screening and retention of fingerprints. Fingerprints must be
87 submitted electronically to the Department of Law Enforcement
88 for state processing, and the Department of Law Enforcement
89 shall forward the fingerprints to the Federal Bureau of
90 Investigation for national processing. Each board, or the
91 department if there is no board, shall screen the results to
92 determine if an applicant meets licensure requirements. For any
93 subsequent renewal of the applicant's license that requires a
94 national criminal history check, the department shall request
95 the Department of Law Enforcement to forward the retained
96 fingerprints of the applicant to the Federal Bureau of
97 Investigation unless the fingerprints are enrolled in the
98 national retained print arrest notification program.



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99 Section 4. The Division of Law Revision and Information is
100 directed to create chapter 470, Florida Statutes, consisting of
101 ss. 470.40-470.46, Florida Statutes, to be entitled "Behavior
102 Analysts."

103 Section 5. Section 470.40, Florida Statutes, is created to
104 read:

105 470.40 Purpose.—The Legislature finds that the practice of
106 applied behavior analysis in this state by unskilled and
107 incompetent practitioners presents a danger to the health and
108 safety of the public. The Legislature further finds that it is
109 difficult for the public to make informed choices about behavior
110 analysts and that the consequences of a wrong choice could
111 endanger public health. This act is intended to protect the
112 public from the harmful conduct of unqualified, unprofessional,
113 or unethical behavior analysts.

114 Section 6. Section 470.41, Florida Statutes, is created to
115 read:

116 470.41 Definitions.—As used in this chapter, the term:

117 (1) "Applied behavior analysis" means the design,
118 implementation, and evaluation of environmental modifications,
119 using behavioral stimuli and consequences, to produce socially
120 significant improvement in human behavior, including, but not
121 limited to, the use of direct observation, measurement, and
122 functional analysis of the relations between environment and
123 behavior. The term does not include psychological testing, the
124 diagnosis of a mental or physical disorder, neuropsychology,
125 psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
126 hypnotherapy, or long-term counseling.

127 (2) "Board" means the Board of Applied Behavior Analysis



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128 established in s. 470.415, except when the term is used in the
129 context of board certification.

130 (3) "Board-certified assistant behavior analyst" means a
131 practitioner who is certified by the national Behavior Analyst
132 Certification Board as an assistant behavior analyst.

133 (4) "Board-certified behavior analyst" means a practitioner
134 who is certified as a behavior analyst, or is recognized as a
135 Florida-certified behavior analyst, by the national Behavior
136 Analyst Certification Board.

137 (5) "Department" means the Department of Health.

138 (6) "Licensed assistant behavior analyst" means an
139 individual who is licensed by the board as an assistant behavior
140 analyst and meets the requirements of this chapter.

141 (7) "Licensed behavior analyst" means an individual who is
142 licensed by the board and meets the requirements of this
143 chapter.

144 Section 7. Section 470.415, Florida Statutes, is created to
145 read:

146 470.415 Board of Applied Behavior Analysis.-

147 (1) The Board of Applied Behavior Analysis is created
148 within the department. The board consists of seven members
149 appointed by the Governor and confirmed by the Senate.

150 (2) The initial board members, who are not required to be
151 licensed as a condition of appointment, shall be appointed as
152 follows:

153 (a) Three board-certified behavior analysts, two of whom
154 must hold a doctoral level degree. One shall be appointed to a
155 4-year term, one shall be appointed to a 2-year term, and one
156 shall be appointed to a 1-year term;



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157 (b) One board-certified assistant behavior analyst, who
158 shall be appointed to a 3-year term;

159 (c) One psychologist licensed pursuant to chapter 490 or
160 one clinical social worker, marriage and family therapist, or
161 mental health counselor licensed pursuant to chapter 491, who
162 shall be appointed to a 3-year term. The majority of the
163 appointee's professional practice must be related to the
164 treatment of behavior disorders, including, but not limited to,
165 autism spectrum disorders; and

166 (d) Two laypersons, who may include a parent or guardian of
167 an individual who is a recipient of applied behavior analysis
168 services, one of whom shall serve a 4-year term, and one of whom
169 shall serve a 2-year term.

170 (3) As the terms of the initial members expire, the
171 Governor shall appoint successors for 4-year terms. Each
172 successor, except for the laypersons, must be licensed. A member
173 may not serve more than two consecutive terms.

174 Section 8. Section 470.42, Florida Statutes, is created to
175 read:

176 470.42 Rulemaking authority.—

177 (1) The board has authority to adopt rules pursuant to ss.
178 120.536(1) and 120.54 to implement the provisions of this
179 chapter conferring duties upon it. Such rules must include, but
180 are not limited to, rules relating to:

181 (a) Standards of practice for licensed behavior analysts
182 and licensed assistant behavior analysts.

183 (b) Supervision of licensed assistant behavior analysts, or
184 students in training to be licensed behavior analysts or
185 licensed assistant behavior analysts, including the number of



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186 persons that a licensed behavior analyst or licensed assistant
187 behavior analyst may supervise at one time.

188 (2) The department may adopt rules to implement the
189 provisions of this chapter conferring duties upon it. Such rules
190 shall include, but are not limited to, rules relating to
191 licensure and license renewal applications, processes, and fees.

192 Section 9. Section 470.43, Florida Statutes, is created to
193 read:

194 470.43 Licensure.—

195 (1) The department shall license an applicant as a behavior
196 analyst if the applicant:

197 (a) Submits a completed application to the department using
198 a form approved by the board;

199 (b) Remits the appropriate fees;

200 (c) Has passed a criminal background check after submitting
201 fingerprints and a fee pursuant to s. 456.0135; and

202 (d) Submits proof that the applicant is a board-certified
203 behavior analyst.

204 (2) The department shall license an applicant as an
205 assistant behavior analyst if the applicant:

206 (a) Submits a completed application to the department using
207 a form approved by the board;

208 (b) Remits the appropriate fees;

209 (c) Has passed a criminal background check after submitting
210 fingerprints and a fee pursuant to s. 456.0135;

211 (d) Submits proof to the department that the applicant is a
212 board-certified assistant behavior analyst; and

213 (e) Identifies a supervising licensed behavior analyst who
214 is qualified to supervise the applicant under Behavior Analyst



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215 Certification Board requirements and this chapter.

216 Section 10. Section 470.44, Florida Statutes, is created to
217 read:

218 470.44 Renewal of license.-

219 (1) The department shall renew a license upon receipt of
220 proof that the applicant is certified by the Behavior Analyst
221 Certification Board and a completed renewal application and
222 remitted the fee.

223 (2) The department shall adopt rules establishing a
224 procedure for the biennial renewal of licenses.

225 (3) The board shall prescribe by rule continuing education
226 not to exceed 32 hours required biennially as a condition for
227 renewal of a license as a behavior analyst, or not to exceed 20
228 hours required biennially as a condition for renewal of a
229 license as an assistant behavior analyst. The criteria for
230 continuing education programs shall be approved by the board.
231 The board may authorize by rule continuing education earned for
232 Behavior Analyst Certification Board certification to be used to
233 meet the continuing education requirements of this subsection.

234 Section 11. Section 470.45, Florida Statutes, is created to
235 read:

236 470.45 Fees.-

237 (1) The board shall establish by rule a fee not to exceed
238 \$100 for an application, \$300 for an initial license, or \$300
239 for license renewal.

240 (2) All moneys collected by the department under this
241 chapter shall be deposited in the Medical Quality Assurance
242 Trust Fund as provided under s. 456.025.

243 Section 12. Section 470.46, Florida Statutes, is created to



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244 read:

245 470.46 Disciplinary actions.—

246 (1) The following acts constitute grounds for denial of a
247 license or disciplinary action, as specified in s. 456.072(2):

248 (a) Attempting to obtain, obtaining, or renewing a license
249 under this chapter by bribery or fraudulent misrepresentation or
250 through an error of the board or the department.

251 (b) Having a license to practice a comparable profession
252 revoked, suspended, or otherwise acted against, including the
253 denial of certification or licensure by another state,
254 territory, or country.

255 (c) Being convicted or found guilty of, regardless of
256 adjudication, or having entered a plea of nolo contendere to, a
257 crime in any jurisdiction which directly relates to the practice
258 of his or her profession or the ability to practice his or her
259 profession. However, in the case of a plea of nolo contendere,
260 the board shall allow the person who is the subject of the
261 disciplinary proceeding to present evidence in mitigation
262 relevant to the underlying charges and circumstances surrounding
263 the plea.

264 (d) Making false, deceptive, or misleading advertising or
265 obtaining a fee or other thing of value on the representation
266 that beneficial results from any treatment will be guaranteed.

267 (e) Advertising, practicing, or attempting to practice
268 under a name other than one's own.

269 (f) Maintaining a professional association with any person
270 who the applicant or licensee knows, or has reason to believe,
271 is in violation of this chapter or of a rule of the department
272 or the board.



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273 (g) Knowingly aiding, assisting, procuring, or advising any
274 nonlicensed person to hold himself or herself out as licensed
275 under this chapter.

276 (h) Failing to perform any statutory or legal obligation
277 placed upon a person licensed under this chapter.

278 (i) Willfully making or filing a false report or record;
279 failing to file a report or record required by state or federal
280 law; willfully impeding or obstructing the filing of a report or
281 record; or inducing another person to make or file a false
282 report or record or to impede or obstruct the filing of a report
283 or record. Such report or record includes only a report or
284 record which requires the signature of a person licensed under
285 this chapter.

286 (j) Paying a kickback, rebate, bonus, or other remuneration
287 for receiving a patient or client, or receiving a kickback,
288 rebate, bonus, or other remuneration for referring a patient or
289 client to another provider of applied behavior analysis services
290 or to a provider of health care services or goods; referring a
291 patient or client to oneself for services on a fee-paid basis
292 when those services are already being paid for by some other
293 public or private entity; or entering into a reciprocal referral
294 agreement.

295 (k) Committing any act upon a patient or client which would
296 constitute sexual battery, as defined in s. 794.011, or which
297 would constitute sexual misconduct. Sexual misconduct shall be
298 defined by rule by the board.

299 (l) Making misleading, deceptive, untrue, or fraudulent
300 representations in the practice of applied behavior analysis.

301 (m) Soliciting patients or clients personally, or through



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302 an agent, through the use of fraud, intimidation, undue
303 influence, or a form of overreaching or vexatious conduct.

304 (n) Failing to make available to a patient or client, upon
305 written request, copies of test results, reports, or documents
306 in the possession or under the control of the licensee which
307 have been prepared for and paid for by the patient or client.

308 (o) Failing to respond within 30 days to a written
309 communication from the department concerning any investigation
310 by the department, or failing to make available any relevant
311 records with respect to any investigation about the licensee's
312 conduct or background.

313 (p) Being unable to practice the profession for which he or
314 she is licensed under this chapter with reasonable skill or
315 competence as a result of any mental or physical condition or by
316 reason of illness; drunkenness; or excessive use of drugs,
317 narcotics, chemicals, or any other substance. In enforcing this
318 paragraph, upon a finding by the State Surgeon General, the
319 State Surgeon General's designee, or the board that probable
320 cause exists to believe that the licensee is unable to practice
321 the profession because of the reasons stated in this paragraph,
322 the department shall have the authority to compel a licensee to
323 submit to a mental or physical examination by a physician
324 designated by the department or board. If the licensee refuses
325 to comply with such order, the department's order directing the
326 examination may be enforced by filing a petition for enforcement
327 in the circuit court in the circuit in which the licensee
328 resides or does business. The licensee against whom the petition
329 is filed may not be named or identified by initials in any
330 public court records or documents, and the proceedings shall be



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331 closed to the public. The department shall be entitled to the
332 summary procedure provided in s. 51.011. A licensee affected
333 under this paragraph shall at reasonable intervals, as
334 determined by the department, be afforded an opportunity to
335 demonstrate that he or she can resume the competent practice for
336 which he or she is licensed with reasonable skill and safety to
337 patients.

338 (q) Performing any treatment or prescribing any therapy
339 which, by the prevailing standards of the behavior analysts in
340 the community, would constitute experimentation on human
341 subjects, without first obtaining full, informed, and written
342 consent.

343 (r) Failing to meet the minimum standards of performance in
344 professional activities when measured against generally
345 prevailing peer performance, including the undertaking of
346 activities for which the licensee is not qualified by training
347 or experience.

348 (s) Delegating professional responsibilities to a person
349 whom the licensee knows or has reason to know is not qualified
350 by training or experience to perform such responsibilities.

351 (t) Violating a rule relating to the regulation of the
352 profession or a lawful order of the department or the board
353 previously entered in a disciplinary hearing.

354 (u) Failure of the licensee to maintain in confidence a
355 communication made by a patient or client in the context of such
356 services.

357 (v) Making public statements which are derived from test
358 data, client contacts, or behavioral research and which identify
359 or damage research subjects or clients.



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360 (w) Violating any provision of this chapter or chapter 456,
361 or any rules adopted pursuant thereto.

362 (2) The board may enter an order denying licensure or
363 imposing any of the penalties in s. 456.072(2) against any
364 applicant for licensure or licensee who is found guilty of
365 violating subsection (1) or who is found guilty of violating s.
366 456.072(1).

367 Section 13. Section 470.47, Florida Statutes, is created to
368 read:

369 470.47 Violations and penalties.-

370 (1) Effective January 1, 2016, a person may not engage in
371 the practice of applied behavior analysis, assist in the
372 practice of applied behavior analysis, render services
373 designated as applied behavior analysis, or represent himself or
374 herself as a practitioner of applied behavior analysis in this
375 state unless he or she holds an active license as a behavior
376 analyst or assistant behavior analyst pursuant to this chapter
377 or meets an exception under s. 470.48. A person who violates
378 this subsection commits a felony of the third degree, punishable
379 as provided under s. 775.082, s. 775.083, or s. 775.084.

380 (2) Effective January 1, 2016, a person may not use the
381 following titles or any combination thereof, unless he or she
382 holds an active license as a behavior analyst or assistant
383 behavior analyst, as applicable, pursuant to this chapter:

384 (a) "Licensed assistant behavior analyst."

385 (b) "Licensed behavior analyst."

386 (3) A person who violates subsection (2) commits a
387 misdemeanor of the second degree, punishable as provided in s.
388 775.082 or s. 775.083.



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389 Section 14. Section 470.48, Florida Statutes, is created to
390 read:

391 470.48 Exceptions to applicability.—This chapter does not
392 prohibit or restrict the practice of the following:

393 (1) An individual licensed pursuant to chapter 458 or
394 chapter 459.

395 (2) An individual licensed pursuant to part III of chapter
396 468 if the occupational therapist does not represent himself or
397 herself as a behavior analyst.

398 (3) An individual licensed under chapter 490 to practice
399 psychology.

400 (4) An individual licensed pursuant to chapter 491 as a
401 clinical social worker, marriage and family therapist, or mental
402 health counselor.

403 (5) A certified teacher authorized to practice in this
404 state; or a teaching assistant, other than a teaching assistant
405 engaged in pupil personnel services, or student support
406 professional who provides applied behavior analysis services
407 under the supervision of a certified teacher. The services
408 provided by or under the supervision of a certified teacher must
409 be within his or her authorized scope of practice and within the
410 scope of his or her education, training, and experience and must
411 be provided in the course of his or her employment in a program
412 approved by the Department of Education.

413 (6) A behavior analyst who practices with nonhuman clients,
414 including, but not limited to, applied animal behaviorists and
415 animal trainers.

416 (7) An individual who teaches applied behavior analysis or
417 who conducts behavior analytic research if such teaching or



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418 research does not involve the delivery of applied behavior
419 analysis.

420 (8) A matriculated college or university student or
421 postdoctoral fellow whose activities are part of a defined
422 behavior analysis program of study, practicum, or intensive
423 practicum if his or her practice under this subsection is
424 directly supervised by a licensed behavior analyst or an
425 instructor of course sequence approved by the Behavior Analyst
426 Certification Board. A student or fellow may not represent
427 himself or herself as a professional behavior analyst but may
428 use a title indicating his or her trainee status, such as
429 "behavior analyst student," "behavior analyst intern," or
430 "behavior analyst trainee."

431 (9) An unlicensed individual pursuing supervised experience
432 or training to meet eligibility requirements for Behavior
433 Analyst Certification Board certification if such experience or
434 training is supervised by a licensed behavior analyst or a
435 licensed assistant behavior analyst who meets Behavior Analyst
436 Certification Board supervisor requirements and if the
437 supervised experience is conducted in accordance with other
438 Behavior Analyst Certification Board standards and requirements.

439 (10) A family member of a recipient of applied behavior
440 analysis services who implements certain procedures with the
441 recipient. Such a family member may not represent himself or
442 herself as a licensed behavior analyst or a licensed assistant
443 behavior analyst.

444 (11) A behavior analyst who provides general applied
445 behavior analysis services to organizations if the services are
446 for the benefit of the organizations and do not involve direct



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447 services to individuals.

448 (12) A salaried employee of a private, nonprofit
449 organization providing applied behavior analysis services to
450 children, youth, and families if the services are provided for
451 no charge, the employee is performing duties for which he or she
452 was trained and hired, and the employee does not represent
453 himself or herself as a licensed behavior analyst or licensed
454 assistant behavior analyst.

455 (13) A school psychologist certified in school psychology
456 by the Department of Education who performs applied behavior
457 analysis services as an employee of a public or private
458 educational institution. Such exemption does not authorize
459 unlicensed practice that is not performed directly as an
460 employee of an educational institution.

461 (14) A rabbi, priest, minister, or member of the clergy of
462 a religious denomination or sect if engaging in activities that
463 are within the scope of the performance of his or her regular or
464 specialized ministerial duties and for which no separate fee is
465 charged, or if such activities are performed, with or without a
466 fee, for or under the auspices or sponsorship, individually or
467 in conjunction with others, of an established and legally
468 cognizable church, denomination, or sect; and if the person
469 rendering service remains accountable to the established
470 authority thereof.

471 Section 15. This act shall take effect July 1, 2016.

472
473 ===== T I T L E A M E N D M E N T =====

474 And the title is amended as follows:

475 Delete everything before the enacting clause



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476 and insert:

477 A bill to be entitled
478 An act relating to behavior analysts; amending s.
479 20.43, F.S.; establishing the Board of Applied
480 Behavior Analysis within the Division of Medical
481 Quality Assurance; amending s. 456.001, F.S.;
482 including licensed behavior analysts and licensed
483 assistant behavior analysts in the definition of the
484 term "health care practitioner"; amending s. 456.0135,
485 F.S.; requiring an application for licensure under ch.
486 470, F.S., to include certain fingerprinting
487 requirements; providing a directive to the Division of
488 Law Revision and Information to create ch. 470, F.S.,
489 entitled "Behavior Analysts"; creating s. 470.40,
490 F.S.; providing a purpose; creating s. 470.41, F.S.;
491 defining terms; creating s. 470.415, F.S.; creating
492 the Board of Applied Behavior Analysis; providing for
493 membership and terms of members; creating s. 470.42,
494 F.S.; creating rulemaking authority for the board and
495 the Department of Health; creating s. 470.43, F.S.;
496 providing requirements for licensure as a behavior
497 analyst or assistant behavior analyst; creating s.
498 470.44, F.S.; providing requirements for renewal of
499 license; creating s. 470.45, F.S.; establishing
500 maximum fees for applications, initial licenses, and
501 license renewals; requiring fees collected by the
502 department to be deposited into a specified trust
503 fund; creating s. 470.46, F.S.; providing grounds for
504 denial of license or disciplinary action; creating s.



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505 470.47, F.S.; providing penalties for practicing
506 applied behavior analysis without a license or
507 wrongfully identifying oneself as a licensed behavior
508 analyst or licensed assistant behavior analyst;
509 creating s. 470.48, F.S.; providing exceptions to
510 applicability of ch. 470, F.S.; providing an effective
511 date.

By Senator Bean

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1 A bill to be entitled
2 An act relating to behavior analysts; amending s.
3 20.43, F.S.; establishing the Board of Applied
4 Behavior Analysis within the Division of Medical
5 Quality Assurance; amending s. 456.001, F.S.;
6 including licensed behavior analysts and licensed
7 assistant behavior analysts in the definition of
8 "health care practitioner"; amending s. 456.0135,
9 F.S.; requiring an applicant for initial licensure as
10 a licensed behavior analyst or licensed assistant
11 behavior analyst to include fingerprints pursuant to
12 certain procedures; providing a directive to the
13 Division of Law Revision and Information; creating s.
14 470.40, F.S.; providing a purpose; creating s. 470.41,
15 F.S.; defining terms; creating s. 470.415, F.S.;
16 creating the Board of Applied Behavior Analysis;
17 providing membership and terms for the board; creating
18 s. 470.42, F.S.; providing requirements for initial
19 licensure as a behavior analyst or assistant behavior
20 analyst; providing requirements for renewal of
21 license; requiring fees collected by the Department of
22 Health to be deposited into a specified trust fund;
23 creating s. 470.43, F.S.; providing grounds for
24 disciplinary action or the denial of a license;
25 authorizing the board to enter an order denying
26 licensure to or imposing penalties against an
27 applicant under certain circumstances; creating s.
28 470.44, F.S.; providing penalties for practicing
29 applied behavior analysis or for identifying oneself

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30 as a licensed behavior analyst or licensed assistant
31 behavior analyst without a license; creating s.
32 470.45, F.S.; providing exceptions to applicability;
33 creating s. 470.46, F.S.; requiring the department to
34 adopt rules; requiring the board to adopt rules;
35 providing an effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Paragraph (g) of subsection (3) of section
40 20.43, Florida Statutes, is amended to read:

41 20.43 Department of Health.—There is created a Department
42 of Health.

43 (3) The following divisions of the Department of Health are
44 established:

45 (g) Division of Medical Quality Assurance, which is
46 responsible for the following boards and professions established
47 within the division:

- 48 1. The Board of Acupuncture, created under chapter 457.
- 49 2. The Board of Medicine, created under chapter 458.
- 50 3. The Board of Osteopathic Medicine, created under chapter
51 459.
- 52 4. The Board of Chiropractic Medicine, created under
53 chapter 460.
- 54 5. The Board of Podiatric Medicine, created under chapter
55 461.
- 56 6. Naturopathy, as provided under chapter 462.
- 57 7. The Board of Optometry, created under chapter 463.
- 58 8. The Board of Nursing, created under part I of chapter

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- 59 464.
- 60 9. Nursing assistants, as provided under part II of chapter
- 61 464.
- 62 10. The Board of Pharmacy, created under chapter 465.
- 63 11. The Board of Dentistry, created under chapter 466.
- 64 12. Midwifery, as provided under chapter 467.
- 65 13. The Board of Speech-Language Pathology and Audiology,
- 66 created under part I of chapter 468.
- 67 14. The Board of Nursing Home Administrators, created under
- 68 part II of chapter 468.
- 69 15. The Board of Occupational Therapy, created under part
- 70 III of chapter 468.
- 71 16. Respiratory therapy, as provided under part V of
- 72 chapter 468.
- 73 17. Dietetics and nutrition practice, as provided under
- 74 part X of chapter 468.
- 75 18. The Board of Athletic Training, created under part XIII
- 76 of chapter 468.
- 77 19. The Board of Orthotists and Prosthetists, created under
- 78 part XIV of chapter 468.
- 79 20. The Board of Applied Behavior Analysis, created under
- 80 chapter 470.
- 81 21.20. Electrolysis, as provided under chapter 478.
- 82 22.21. The Board of Massage Therapy, created under chapter
- 83 480.
- 84 23.22. The Board of Clinical Laboratory Personnel, created
- 85 under part III of chapter 483.
- 86 24.23. Medical physicists, as provided under part IV of
- 87 chapter 483.

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88 ~~25.24.~~ The Board of Opticianry, created under part I of
89 chapter 484.

90 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
91 part II of chapter 484.

92 ~~27.26.~~ The Board of Physical Therapy Practice, created
93 under chapter 486.

94 ~~28.27.~~ The Board of Psychology, created under chapter 490.

95 ~~29.28.~~ School psychologists, as provided under chapter 490.

96 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
97 Family Therapy, and Mental Health Counseling, created under
98 chapter 491.

99 ~~31. 30.~~ Emergency medical technicians and paramedics, as
100 provided under part III of chapter 401.

101 Section 2. Subsection (4) of section 456.001, Florida
102 Statutes, is amended to read:

103 456.001 Definitions.—As used in this chapter, the term:

104 (4) "Health care practitioner" means any person licensed
105 under chapter 457; chapter 458; chapter 459; chapter 460;
106 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
107 chapter 466; chapter 467; part I, part II, part III, part V,
108 part X, part XIII, or part XIV of chapter 468; chapter 470;
109 chapter 478; chapter 480; part III or part IV of chapter 483;
110 chapter 484; chapter 486; chapter 490; or chapter 491.

111 Section 3. Subsection (1) of section 456.0135, Florida
112 Statutes, is amended to read:

113 456.0135 General background screening provisions.—

114 (1) An application for initial licensure received on or
115 after January 1, 2013, under chapter 458, chapter 459, chapter
116 460, chapter 461, chapter 464, s. 465.022, chapter 470, or

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117 chapter 480 shall include fingerprints pursuant to procedures
118 established by the department through a vendor approved by the
119 Department of Law Enforcement and fees imposed for the initial
120 screening and retention of fingerprints. Fingerprints must be
121 submitted electronically to the Department of Law Enforcement
122 for state processing, and the Department of Law Enforcement
123 shall forward the fingerprints to the Federal Bureau of
124 Investigation for national processing. Each board, or the
125 department if there is no board, shall screen the results to
126 determine if an applicant meets licensure requirements. For any
127 subsequent renewal of the applicant's license that requires a
128 national criminal history check, the department shall request
129 the Department of Law Enforcement to forward the retained
130 fingerprints of the applicant to the Federal Bureau of
131 Investigation unless the fingerprints are enrolled in the
132 national retained print arrest notification program.

133 Section 4. The Division of Law Revision and Information is
134 directed to create chapter 470, Florida Statutes, consisting of
135 ss. 470.40-470.46, Florida Statutes, to be entitled "Behavior
136 Analysts."

137 Section 5. Section 470.40, Florida Statutes, is created to
138 read:

139 470.40 Purpose.—The Legislature finds that the practice of
140 applied behavior analysis in this state by unskilled and
141 incompetent practitioners presents a danger to the health and
142 safety of the public. The Legislature finds further that it is
143 difficult for the public to make informed choices about behavior
144 analysts and that the consequences of a wrong choice could
145 endanger public health. This act is intended to protect the

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146 public from the harmful conduct of unqualified, unprofessional,
147 or unethical behavior analysts.

148 Section 6. Section 470.41, Florida Statutes, is created to
149 read:

150 470.41 Definitions.—As used in this chapter, the term:

151 (1) "Applied behavior analysis" means the design,
152 implementation, and evaluation of environmental modifications
153 that are used to produce socially significant improvements in
154 human behavior, including, but not limited to, the use of direct
155 observation, measurement, and functional analysis of the
156 relations between environment and behavior. The term does not
157 include psychological testing, the diagnosis of a mental or
158 physical disorder, neuropsychology, psychotherapy, cognitive
159 therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term
160 counseling.

161 (2) "Board" means the Board of Applied Behavior Analysis
162 established in s. 470.415, except when the term is used in the
163 context of board certification.

164 (3) "Board-certified assistant behavior analyst" means a
165 practitioner who is certified as an assistant behavior analyst
166 or is recognized as a Florida-certified behavior analyst by the
167 national Behavior Analyst Certification Board.

168 (4) "Board-certified behavior analyst" means a practitioner
169 who is certified as a behavior analyst or is recognized as a
170 Florida-certified behavior analyst by the national Behavior
171 Analyst Certification Board.

172 (5) "Department" means the Department of Health.

173 (6) "Licensed assistant behavior analyst" means a
174 practitioner who is licensed by the board as an assistant

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175 behavior analyst and otherwise meets the requirements of this
176 chapter.

177 (7) "Licensed behavior analyst" means a practitioner who is
178 licensed by the board as a behavior analyst and otherwise meets
179 the requirements of this chapter.

180 Section 7. Section 470.415, Florida Statutes, is created to
181 read:

182 470.415 Board of Applied Behavior Analysis.-

183 (1) The Board of Applied Behavior Analysis is created
184 within the department. The board consists of seven members
185 appointed by the Governor and confirmed by the Senate.

186 (2) The initial board members, who are not required to be
187 licensed as a condition of appointment, shall be appointed as
188 follows:

189 (a) Three board-certified behavior analysts, two of whom
190 must hold a doctoral-level degree. One shall be appointed to a
191 4-year term, one shall be appointed to a 2-year term, and one
192 shall be appointed to a 1-year term.

193 (b) One board-certified assistant behavior analyst, who
194 shall be appointed to a 3-year term.

195 (c) One psychologist licensed pursuant to chapter 490, or
196 one clinical social worker, marriage and family therapist, or
197 mental health counselor licensed pursuant to chapter 491, who
198 shall be appointed to a 3-year term. The majority of the
199 appointee's professional practice must be related to the
200 treatment of behavior disorders, including, but not limited to,
201 autism spectrum disorders.

202 (d) Two laypersons, one of whom shall be appointed to a 4-
203 year term, and the other shall be appointed to a 2-year term.

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204 The two laypersons may include a parent or guardian of an
205 individual who is a recipient of applied behavior analysis
206 services.

207 (3) As the terms of the initial members expire, the
208 Governor shall appoint successors for 4-year terms. Each
209 successor, except for the laypersons, must be licensed. A member
210 may not serve more than two consecutive terms.

211 Section 8. Section 470.42, Florida Statutes, is created to
212 read:

213 470.42 Licensure; licensure renewal; fees.-

214 (1) The board shall issue an initial license to an
215 applicant as a behavior analyst if the applicant does all of the
216 following:

217 (a) Submits a completed application to the department using
218 a form approved by the board.

219 (b) Pays the appropriate fees.

220 (c) Has passed a criminal background check after submitting
221 fingerprints and a fee pursuant to s. 456.0135.

222 (d) Submits proof that the applicant is a board-certified
223 behavior analyst.

224 (2) The department shall issue an initial license to an
225 applicant as an assistant behavior analyst if the applicant does
226 all of the following:

227 (a) Submits a completed application to the department using
228 a form approved by the board.

229 (b) Pays the appropriate fees.

230 (c) Has passed a criminal background check after submitting
231 fingerprints and a fee pursuant to s. 456.0135.

232 (d) Submits proof that the applicant is a board-certified

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233 assistant behavior analyst.

234 (e) Identifies a supervising licensed behavior analyst who
235 is qualified to supervise the applicant under the national
236 Behavior Analyst Certification Board requirements and this
237 chapter.

238 (3) The department shall renew a license as a behavior
239 analyst or assistant behavior analyst upon receipt of a
240 completed renewal application, fee, and proof that the applicant
241 is certified by the national Behavior Analyst Certification
242 Board.

243 (4) All licensure fees and other fees collected by the
244 board under this section shall be deposited into the Medical
245 Quality Assurance Trust Fund as provided under s. 456.025.

246 Section 9. Section 470.43, Florida Statutes, is created to
247 read:

248 470.43 Disciplinary actions by the board.—

249 (1) The following acts constitute grounds for disciplinary
250 action as specified in s. 456.072(2) or denial of a license:

251 (a) Attempting to obtain, obtaining, or renewing a license
252 under this chapter by bribery or fraudulent misrepresentation or
253 through an error of the board or the department which is
254 intentionally caused or furthered by the applicant or licensee.

255 (b) Having a license to practice a comparable profession
256 revoked, suspended, or otherwise acted against, including the
257 denial of certification or licensure by another state,
258 territory, or country.

259 (c) Being convicted or found guilty of, regardless of
260 adjudication, or having entered a plea of nolo contendere to, a
261 crime in any jurisdiction which directly relates to the practice

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262 of his or her profession or the ability to practice his or her
263 profession. However, in the case of a plea of nolo contendere,
264 the board shall allow the applicant or licensee to present
265 evidence in mitigation of the underlying charges and
266 circumstances surrounding the plea.

267 (d) Making false, deceptive, or misleading representations
268 or obtaining a fee or other thing of value on the representation
269 that beneficial results from a treatment will be guaranteed.

270 (e) Advertising, practicing, or attempting to practice
271 under a false name.

272 (f) Maintaining a professional association with any person
273 who the applicant or licensee knows, or has reason to believe,
274 violates this chapter or of a rule of the department or the
275 board.

276 (g) Knowingly aiding, assisting, procuring, or advising any
277 nonlicensed person to hold himself or herself out as licensed
278 under this chapter.

279 (h) Failing to perform any statutory or legal obligation
280 placed upon a person licensed under this chapter.

281 (i) Willfully making or filing a false report or record,
282 failing to file a report or record required by state or federal
283 law, willfully impeding or obstructing the filing of a report or
284 record, or inducing another person to make or file a false
285 report or record or to impede or obstruct the filing of a report
286 or record. Such reports or records include only reports or
287 records that require the signature of a person licensed under
288 this chapter.

289 (j) Paying a kickback, rebate, bonus, or other remuneration
290 for receiving a patient or client, or receiving a kickback,

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291 rebate, bonus, or other remuneration for referring a patient or
292 client to another provider of applied behavior analysis services
293 or to a provider of health care services or goods; referring a
294 patient or client to oneself for services on a fee-paid basis
295 when those services are already being paid for by some other
296 public or private entity; or entering into a reciprocal referral
297 agreement.

298 (k) Committing any act upon a patient or client which would
299 constitute sexual battery as defined in s. 794.011 or which
300 would constitute sexual misconduct. Sexual misconduct shall be
301 defined by rule by the board.

302 (l) Making misleading, deceptive, untrue, or fraudulent
303 misrepresentations in the practice of applied behavior analysis.

304 (m) Soliciting patients or clients personally, or through
305 an agent, by fraud, intimidation, undue influence, or a form of
306 overreaching or vexatious conduct.

307 (n) Failing to make available to a patient or client, upon
308 written request, copies of test results, reports, or documents
309 in the possession or under the control of the licensee which
310 have been prepared for and paid for by the patient or client.

311 (o) Failing to respond within 30 days to a written
312 communication from the department concerning any investigation
313 by the department, or failing to make available any relevant
314 records with respect to an investigation about the licensee's
315 conduct or background.

316 (p) Being unable to practice the profession for which he or
317 she is licensed under this chapter with reasonable skill or
318 competence as a result of any mental or physical condition or by
319 reason of illness, drunkenness, excessive use of drugs,

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320 narcotics, chemicals, or any other substance that is being
321 abused. In enforcing this paragraph, upon a finding by the State
322 Surgeon General, the State Surgeon General's designee, or the
323 board that probable cause exists to believe that the licensee is
324 unable to practice the profession because of the reasons stated
325 in this paragraph, the department shall have the authority to
326 compel a licensee to submit to a mental or physical examination
327 by a physician designated by the department or board. If the
328 licensee refuses to comply with such order, the department may
329 file a petition for enforcement in the circuit court in the
330 circuit in which the licensee resides or does business. The
331 licensee against whom the petition is filed may not be named or
332 identified by initials in any public court records or documents,
333 and the proceedings shall be closed to the public. The
334 department shall be entitled to the summary procedure provided
335 in s. 51.011. A licensee affected under this paragraph shall, at
336 reasonable intervals as determined by the department, be
337 afforded an opportunity to demonstrate that he or she can resume
338 the competent practice for which he or she is licensed with
339 reasonable skill and safety to patients.

340 (q) Performing any treatment or prescribing any therapy
341 that, by the prevailing standards of the licensed behavior
342 analysts in the community, would constitute experimentation on
343 human subjects, without first obtaining the subjects' full,
344 informed, and written consent.

345 (r) Failing to meet the minimum standards of performance in
346 professional activities, as determined by the board, when
347 measured against generally prevailing peer performance,
348 including the undertaking of activities for which the licensee

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349 is not qualified by training or experience.

350 (s) Delegating professional responsibilities to a person
351 whom the licensee knows or has reason to know is not qualified
352 by training or experience to perform such responsibilities.

353 (t) Violating a rule relating to the regulation of the
354 profession or relating to a lawful order of the department or
355 the board previously entered in a disciplinary hearing.

356 (u) Failing to maintain in confidence a communication made
357 by a patient or client in the context of applied behavior
358 analysis services.

359 (v) Making public statements that are derived from test
360 data, client contacts, or behavioral research and that identify
361 or otherwise damage research subjects or clients.

362 (w) Violating any provision of this chapter or chapter 456,
363 or any rules adopted pursuant thereto.

364 (2) The board may enter an order denying licensure or
365 imposing any of the penalties in s. 456.072(2) against an
366 applicant for licensure or licensee who is found guilty of
367 violating subsection (1) or who violates s. 456.072(1).

368 Section 10. Section 470.44, Florida Statutes, is created to
369 read:

370 470.44 Violations and penalties.-

371 (1) An individual may not engage in the practice of applied
372 behavior analysis, assist in the practice of applied behavior
373 analysis, render services designated as applied behavior
374 analysis, or represent himself or herself as a practitioner of
375 applied behavior analysis in this state unless he or she holds
376 an active license as a behavior analyst or assistant behavior
377 analyst pursuant to this chapter or is excepted from the

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378 licensing requirements under s. 470.45. An individual who
379 violates this subsection commits a felony of the third degree,
380 punishable as provided under s. 775.082, s. 775.083, or s.
381 775.084.

382 (2) Unless an individual holds an active license as a
383 behavior analyst or assistant behavior analyst pursuant to this
384 chapter, he or she may not use the title of licensed behavior
385 analyst or licensed assistant behavior analyst, respectively, or
386 any combination thereof.

387 (3) A person who violates subsection (2) commits a
388 misdemeanor of the second degree, punishable as provided in s.
389 775.082 or s. 775.083.

390 Section 11. Section 470.45, Florida Statutes, is created to
391 read:

392 470.45 Exceptions to applicability.—This chapter does not
393 prohibit or restrict the practice of the following:

394 (1) An individual licensed pursuant to chapter 458 or
395 chapter 459.

396 (2) An individual licensed pursuant to part III of chapter
397 468 if the individual does not represent himself or herself as a
398 behavior analyst.

399 (3) An individual licensed pursuant to chapter 490 to
400 practice psychology.

401 (4) An individual licensed pursuant to chapter 491 as a
402 clinical social worker, marriage and family therapist, or mental
403 health counselor.

404 (5) A certified teacher authorized to practice in this
405 state; or a teaching assistant, other than a teaching assistant
406 engaged in pupil personnel services, or student support

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407 professional who provides applied behavior analysis services
408 under the supervision of a certified teacher authorized to
409 practice in this state. The services provided by or under the
410 supervision of a certified teacher must be within the certified
411 teacher's authorized scope of practice and within the scope of
412 his or her education, training, and experience and must be
413 provided in the course of his or her employment in a program
414 approved by the Department of Education.

415 (6) A behavior analyst who practices with nonhuman animals,
416 including, but not limited to, applied animal behaviorists and
417 animal trainers.

418 (7) An individual who teaches applied behavior analysis or
419 who conducts research on applied behavior analysis if such
420 teaching or research does not involve the practice of applied
421 behavior analysis.

422 (8) A matriculated college or university student or
423 postdoctoral fellow whose activities are part of a defined
424 applied behavior analysis program that includes study,
425 practicum, or intensive practicum if his or her practice under
426 this subsection is directly supervised by a licensed behavior
427 analyst or an instructor approved by the national Behavior
428 Analyst Certification Board. The student or fellow may not
429 represent himself or herself as a licensed behavior analyst but
430 may use a title indicating his or her trainee status, such as
431 "behavior analyst student," "behavior analyst intern," or
432 "behavior analyst trainee."

433 (9) An unlicensed individual pursuing supervised training
434 to meet eligibility requirements for the national Behavior
435 Analyst Certification Board certification if such training is

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436 supervised by a licensed behavior analyst, or a licensed
437 assistant behavior analyst, who meets the national Behavior
438 Analyst Certification Board supervisor requirements and if the
439 supervised experience is conducted in accordance with other
440 national Behavior Analyst Certification Board standards and
441 requirements.

442 (10) A family member of a recipient of applied behavior
443 analysis services who implements certain procedures with the
444 recipient. Such a family member may not represent himself or
445 herself as a licensed behavior analyst or a licensed assistant
446 behavior analyst.

447 (11) A behavior analyst who provides general applied
448 behavior analysis services to organizations if the services are
449 for the benefit of the organizations and do not involve direct
450 services to individuals.

451 (12) A salaried employee of a private, nonprofit
452 organization providing applied behavior analysis services to
453 children, youth, and families if the services are provided for
454 no charge, if the employee is performing duties for which he or
455 she was trained and hired, and if the employee does not
456 represent himself or herself as a licensed behavior analyst or
457 licensed assistant behavior analyst.

458 (13) A school psychologist certified in school psychology
459 by the Department of Education who performs applied behavior
460 analysis services as an employee of a public or private
461 educational institution. Such exemption does not authorize
462 unlicensed practice that is not performed directly as an
463 employee of an educational institution.

464 (14) A rabbi, priest, minister, or member of the clergy of

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465 a religious denomination or sect if the individual rendering the
466 service remains accountable to the establish authority and:

467 (a) If engaging in activities that are within the scope of
468 his or her ministerial duties and for which no separate fee is
469 charged; or

470 (b) If such activities are performed, with or without a
471 fee, for or under the auspices or sponsorship, individually or
472 in conjunction with others, of an established and legally
473 cognizable church, denomination, or sect.

474 Section 12. Section 470.46, Florida Statutes, is created to
475 read:

476 470.46 Rulemaking authority.—

477 (1) The board shall adopt rules to administer the
478 provisions of this chapter conferring duties upon it. Such rules
479 must include, but are not limited to:

480 (a) Standards of practice for licensed behavior analysts
481 and licensed assistant behavior analysts.

482 (b) Supervision of licensed assistant behavior analysts, or
483 students in training to be licensed behavior analysts or
484 licensed assistant behavior analysts, including the number of
485 individuals that a licensed behavior analyst or licensed
486 assistant behavior analyst may supervise at one time.

487 (2) The department shall adopt rules to administer the
488 provisions of this chapter conferring duties upon it. Such rules
489 must include, but are not limited to, rules relating to
490 licensure and license renewal applications, processes, and fees.

491 (3) The department shall adopt rules establishing a
492 procedure for the renewal of licenses every 2 years.

493 (4) The board shall by rule prescribe a continuing

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494 education requirement not to exceed 32 hours every 2 years as a
495 condition for renewal of a license as a behavior analyst, or not
496 to exceed 20 hours every 2 years as a condition for renewal of a
497 license as an assistant behavior analyst. The criteria for
498 continuing education programs shall be approved by the board.
499 The board may authorize by rule an applicant to use continuing
500 education credits earned for the national Behavior Analyst
501 Certification Board certification to meet the continuing
502 education requirements of this chapter.

503 (5) The board shall establish by rule a fee not to exceed
504 \$100 for an application, \$300 for an initial license, and \$300
505 for a license renewal.

506 Section 13. This act shall take effect January 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

SB 628

Bill Number (if applicable)

Topic Behavior Analysts

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Parent

Address 3738 Murdon Way

Phone 850 567-1202

Street

Tallahassee FL 32309

City

State

Zip

Email Watson.strategies@comcast.net

Speaking: For Against Information

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

Representing Watson Strategies

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3-17-2015

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

628

Meeting Date

Bill Number (if applicable)

Topic Behavior Analyst Bill 628

Amendment Barcode (if applicable)

Name Debbie McDaniel

Job Title parent

Address 507 Date Palm Court

Phone (850) 625-1805

Street Panama City FL 32408

Phone (850) 625-1805

Email skibit@msn.com

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

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

Representing myself

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

628

Bill Number (if applicable)

Topic BEH. ANALYSIS

Amendment Barcode (if applicable)

Name Mary M. RIORDAN

Job Title Behavior Analyst

Address 1010 REDBUD

Phone 850 933-6654

Street

Tallahassee

FL

32303

Email mmriordan@me.com

City

State

Zip

Speaking: For Against Information

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

Representing Association for Professional Behavior Analysts

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-17-15

Meeting Date

628

Bill Number (if applicable)

Topic Licensure of Behavior Analysts

Amendment Barcode (if applicable)

Name Dr. Amy Polick

Job Title Behavior Analysts

Address 1732 Annabellas Drive

Phone 850-222-2332

Street

PCB

FL

32407

Email amypolick@gmail.com

City

State

Zip

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

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

Representing Florida Association for Behavior Analysis

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-17-15

Meeting Date

SB-628

Bill Number (if applicable)

Topic Behavior Analysis

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 101 South Monroe St

Phone 850-681-4270

Street

Tallahassee FL 32303

Email douglas.bell@bipe.com

City

State

Zip

Speaking: For Against Information

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

(Waive in support)

Representing Behavior Analysis Certification Board

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 904

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Home Health Services

DATE: March 17, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 904 amends ss. 400.462 and 400.506, F.S., to allow a nurse registry to operate one or more satellite offices within the same geographic service area as the registry's licensed operational site. The nurse registry may store supplies and records, register and process contractors, and conduct business by telephone at the satellite site as well as advertise the location of the satellite site to the public. However, the nurse registry must use the operational site for all administrative functions and to store all original records.

The bill requires the nurse registry to notify the Agency for Health Care Administration (AHCA) of changes of address of its operational site and when opening a satellite office. Before relocating its operational site or opening a satellite office, the nurse registry must submit evidence of its legal right to use the proposed property and proof that the proposed property is in an area zoned for nurse registry use.

CS/SB 904 also amends s. 400.464, F.S., to allow home health agencies (HHA) to operate a related office in the same geographic service area, rather than in the same county, as the agency's main office without requiring an additional license for the related office.

II. Present Situation:

Nurse Registries

A nurse registry is defined to mean “any person that procures, offers, promises, or attempts to secure health care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under ch. 395, F.S., [ch. 400], or ch. 429, F.S., or other business entities.”¹ Nurse registries operate by referring qualified health care workers to patients, health care facilities, or other business entities who hire such health care workers. Workers referred by the nurse registry are independent contractors and the nurse registry receives a fee or commission for each contractor referred.²

Nurse registries are regulated under the Home Health Services Act in part III of ch. 400, F.S., specifically s. 400.506, F.S., and part II of ch. 408, F.S., the general licensing provisions for health care facilities regulated by the AHCA. A license issued by the AHCA is required to operate a nurse registry.

Some of the responsibilities of a nurse registry as established in statute and rule include:

- Referring independent contractors capable of delivering services as defined in a specific medical plan of treatment for a patient or services requested by a client;³
- Keeping clinical records received from their independent contractors for 5 years following the termination of that contractor’s service;⁴
- Disseminating to its independent contractors the procedures governing the administration of drugs and biologicals to patients required by ch. 464, F.S., and AHCA rules, as well as all the information required by Rule 59A-18.005(1) of the Florida Administrative Code;⁵
- Initially confirming and annually reconfirming the licensure or certification of all its applicable independent contractors;⁶
- Annually requesting performance outcome evaluations from the health care facilities where the independent contractor provided services and maintaining those evaluations in that independent contractor’s file;⁷
- Establishing a system for recording a following-up on complaints involving independent contractors referred by the registry;⁸
- Informing a health care facility or other business entity that a referred independent contractor is on probation with their professional licensing board or certifying agency or has had other

¹ Section 400.462(21), F.S.

² AHCA, *Senate Bill 904 Analysis*, (Feb. 15, 2015) (on file with the Senate Committee on Health Policy).

³ Rule 59A-18.010(2), F.A.C.

⁴ Rule 59A-18.012(7), F.A.C.

⁵ Rule 59A-18.013(1), F.A.S.

⁶ Rule 59A-18.005(3) and (4), F.A.C.

⁷ Rule 59A-18.017, F.A.C.

⁸ *Id.*

restrictions placed on their license or certification when the nurse registry has received such information;⁹

- Preparing and maintaining a written comprehensive emergency management plan;¹⁰ and,
- Complying with the background screening requirements in s. 400.512, F.S., requiring a level II background check for all employees and contractors.¹¹

Operational Sites

Each nurse registry operational site must be licensed unless it is located in a county where the nurse registry has multiple operational sites. If the nurse registry has more than one operational site in a single county, only one license is necessary for all operational sites in that county and each site must be listed on the license.¹² Rule 59A-18.004(4) of the Florida Administrative Code, requires that nurse registries apply for licensure to serve a geographic service area that is equivalent to an AHCA district. There are 11 AHCA districts which range in size from a single county, such as District 10 which includes only Broward County, to numerous counties, such as District 3 which includes 16 counties. All districts except District 10 incorporate at least two counties.¹³ Each nurse registry operational site can service the entire AHCA district for which the license was granted.

As of January 8, 2015, 541 nurse registries are licensed with the AHCA with 367 different owners. A total of 62 nurse registry companies own two or more nurse registry licenses and eight nurse registry companies own two or more nurse registry licenses within the same AHCA district. Nurse registries must pay a biennial license fee of \$2,000 per license and are surveyed by the AHCA also on a biennial basis.¹⁴

Home Health Agencies

An HHA is an organization that provides home health services and staffing services.¹⁵ 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.¹⁶ Home health agencies are regulated by the AHCA pursuant to part III of ch. 400, F.S. An HHA must designate an AHCA district in which the HHA will operate and must reapply for licensure in order to relocate to a different AHCA district.¹⁷ Currently, an HHA may have a main office and related offices; however, all related offices outside of the county where the main office is located must be licensed separately and each such office must be specified on the main office's license.¹⁸

⁹ Id.

¹⁰ Rule 59A-18.018(1), F.A.C.

¹¹ Section 400.506(9), F.S.

¹² Section 400.506(1), F.S.

¹³ Section 408.032(5), F.S.

¹⁴ Supra note 2

¹⁵ Section 400.462(12), F.S.

¹⁶ Section 400.462(14)(a)-(c), F.S.

¹⁷ Section 400.471(9), F.S.

¹⁸ Section 400.464(2), F.S.

III. Effect of Proposed Changes:

CS/SB 904 amends ss. 400.462 and 400.506, F.S., to allow a nurse registry to operate one or more satellite offices within the same geographic service area (AHCA district) as the registry's licensed operational site. This may reduce the number of licenses some nurse registries may need since currently a license is needed in each county in which the nurse registry operates. The bill defines a satellite office.

The nurse registry may store supplies and records, register and process contractors, and conduct business by telephone at the satellite site as well as advertise the location of the satellite site to the public. However, the nurse registry must use the operational site for all administrative functions and to store all original records.

The requires the nurse registry to notify the AHCA of changes of address of its operational site and when opening a satellite office. Before relocating its operational site, the nurse registry must submit evidence of its legal right to use the proposed property and proof that the proposed property is in an area zoned for nurse registry use.

The bill also amends s. 400.464, F.S., to allow an HHA to operate a related office in the same geographic service area, rather than in the same county, as the agency's main office without requiring an additional license for the related office.

The bill republishes several sections of law for the purpose of incorporating amendments made by the act.

The bill 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:

CS/SB 904 may have a positive fiscal impact on nurse registries and HHAs that operate multiple licenses within the same AHCA district. If such HHAs or registries are able to replace one or more licensed sites with unlicensed satellite or related offices, they will no longer be required to hold multiple licenses and pay multiple license fees. Additionally, HHAs and nurse registries located in AHCA districts with multiple counties may see a positive fiscal impact if an additional office allows them to reduce travel and other expenses related to having a single office serving multiple counties.

C. Government Sector Impact:

The AHCA may see a slight decline in revenue due to the loss of some licensure fees and the potential requirement to conduct additional surveys. For nurse registries, the AHCA anticipates that any costs can be covered within existing resources.¹⁹ A fiscal impact related to the HHA licensure exemption is not available at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.462, 400.464, and 400.506.

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 17, 2015:

The CS amends s. 400.464, F.S., to allow HHAs to operate a related office in the same geographic service area, rather than in the same county, as the agency's main office without requiring an additional license for the related office.

The CS also amends the title of bill to “an act related to home health services.”

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ Supra note 2



473518

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 27 and 28
insert:

Section 2. Subsection (2) of section 400.464, Florida
Statutes, is amended to read:

400.464 Home health agencies to be licensed; expiration of
license; exemptions; unlawful acts; penalties.-

(2) If the licensed home health agency operates related
offices, each related office outside the geographic service
area~~county~~ where the main office is located must be separately



473518

12 licensed. The counties where the related offices are operating
13 must be specified on the license in the main office.

14

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

16 And the title is amended as follows:

17 Delete lines 2 - 3

18 and insert:

19 An act relating to home health services; amending. s.
20 400.462, F.S.; defining a term; amending s. 400.464,
21 F.S.; allowing home health agencies to operate related
22 offices inside of the main office's geographic service
23 area without an additional license; amending s.
24 400.506,

By Senator Bean

4-00444A-15

2015904__

1 A bill to be entitled
2 An act relating to nurse registries; amending s.
3 400.462, F.S.; defining a term; amending s. 400.506,
4 F.S.; providing for the licensure of more than one
5 nurse registry operational site within the same
6 geographic service area; authorizing a licensed nurse
7 registry to operate a satellite office; requiring a
8 nurse registry operational site to keep all original
9 records; requiring a nurse registry to provide notice
10 and certain evidence before it relocates an
11 operational site or opens a satellite office;
12 reenacting ss. 400.497, 817.505(3)(h), 400.506(3),
13 F.S., to incorporate the amendment made to s. 400.506,
14 F.S., in references thereto; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Present subsections (28) and (29) of section
20 400.462, Florida Statutes, are redesignated as subsections (29)
21 and (30), respectively, and a new subsection (28) is added to
22 that section, to read:

23 400.462 Definitions.—As used in this part, the term:

24 (28) "Satellite office" means a secondary office of a nurse
25 registry established pursuant to s. 400.506(1) in the same
26 geographic service area as a licensed nurse registry operational
27 site.

28 Section 2. Subsection (1) of section 400.506, Florida
29 Statutes, is amended to read:

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30 400.506 Licensure of nurse registries; requirements;
31 penalties.—

32 (1) (a) A nurse registry is exempt from the licensing
33 requirements of a home health agency but must be licensed as a
34 nurse registry. The requirements of part II of chapter 408 apply
35 to the provision of services that require licensure pursuant to
36 ss. 400.506-400.518 and part II of chapter 408 and to entities
37 licensed by or applying for such license from the Agency for
38 Health Care Administration pursuant to ss. 400.506-400.518. A
39 license issued by the agency is required for the operation of a
40 nurse registry. Each operational site of the nurse registry must
41 be licensed, unless there is more than one site within the
42 geographic service area for which a license is issued. In such
43 case, a county. ~~If there is more than one site within a county,~~
44 ~~only one license per county is required.~~ each operational site
45 within the geographic service area must be listed on the
46 license.

47 (b) A licensed nurse registry may operate a satellite
48 office as defined in s. 400.462. The nurse registry operational
49 site must administer all satellite offices. A satellite office
50 may store supplies and records, register and process
51 contractors, and conduct business by telephone as is done at
52 other operational sites. Nurse registries may use signs and
53 advertisements to notify the public of the location of a
54 satellite office. All original records must be kept at the
55 operational site.

56 (c) A nurse registry must provide notice, in writing, to
57 the agency at the state and area office levels, as required by
58 agency rule, of a proposed change of address for an operational

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2015904__

59 site or the opening of a satellite office. Before relocating an
60 operational site or opening a satellite office, the nurse
61 registry must submit evidence of its legal right to use the
62 proposed property, as well as a certificate of occupancy, a
63 certificate of use, or other evidence that the property is zoned
64 for nurse registry use.

65 Section 3. Section 400.497, paragraph (h) of subsection (3)
66 of s. 817.505, and subsection (3) of s. 400.506, Florida
67 Statutes, are reenacted for the purpose of incorporating the
68 amendment made by this act to s. 400.506, Florida Statutes, in
69 references thereto.

70 Section 4. 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)

3/17

Meeting Date

904

Bill Number (if applicable)

473518

Amendment Barcode (if applicable)

Topic Home Healthcare

Name Drew Smith

Job Title Governmental Consultant

Address 200 W College AV

Phone 850-251-2680

Street

Tall

City

FL

State

32301

Zip

Email Drew@smithsmith.net

Speaking: For Against Information

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

Representing Home Care Association 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

904

Bill Number (if applicable)

Topic SB 904

Amendment Barcode (if applicable)

Name David Beale

Job Title _____

Address 301 West Atlantic

Phone _____

Street

Delray Beach

FL

State

33444

Zip

Email _____

Speaking: For Against Information

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

Representing Private Care 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)

3/17
Meeting Date

SB 904
Bill Number (if applicable)

Topic Home Health Care

Amendment Barcode (if applicable)

Name Drew Smith

Job Title Governmental Consultant

Address 200 W College AV

Phone 850 251 2680

Street

Tall

City

FL

State

32309

Zip

Email Drew@smithsmith.net

Speaking: For Against Information

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

Representing Home Care Association 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
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 1208

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Dietetics and Nutrition

DATE: March 17, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1208 revises the Dietetics and Nutrition Practice Act (Act) to update terminology, provide examination exemptions under certain circumstances, and recognize new professional designations. The bill authorizes a licensed dietician/nutritionist to independently order a therapeutic diet if otherwise authorized to order such a diet in this state.

New or substantially modified definitions are provided for Commission on Dietetic Registration (Commission); dietetics and nutrition practice; and registered dietitian or registered dietitian/nutritionist.

A Certified Nutrition Specialist and certain nutritionists are exempted from the examination requirement as a condition for licensure as a registered dietitian/nutritionist.

The bill is effective July 1, 2015.

II. Present Situation:

Current Nutrition Employment Fields

There is a broad spectrum of nutrition related fields, but very few standardized descriptions of services for those fields. The Standard Occupational Classification of the U.S. Bureau of Labor Statistics (USBLS) classifies Dietitians and Nutritionists, which also includes Pediatric

Dietitians, Clinical Dietitian, and Dietetic Technician. The USBLS description states that dietitians and nutritionists plan and conduct food service or nutritional programs to assist in the promotion of health and control disease. Individuals in this occupation may also supervise activities of a dietetic department providing quality food service, counsel individuals, or conduct nutritional research.¹

The median annual wage in May 2012 for dietitians and nutritionists was \$55,240 and the employment outlook was expected to grow 21 percent from 2012 to 2022, faster than average for all occupations.² Most dietitians and nutritionists were employed in hospitals, nursing homes, cafeterias, and schools.³

Certification Process

The Academy of Nutrition and Dietetics (Academy) is an organization of food and nutrition professionals with over 75,000 members committed to advancing the profession through research, education and advocacy.⁴ The Accreditation Council for Education in Nutrition and Dietetics (ACEND) is the Academy's accrediting agency for education programs and the Commission on Dietetic Registration (Commission) is the Agency's credentialing agency for dietitians and dietetic technicians under seven separate and distinct credentials. The credentials awarded by the Commission are:

- Registered Dietitian Nutritionist (RDN) or Registered Dietitian;
- Nutrition and Dietetics Technician, Registered (NDTR) or Dietetic Technician, Registered;
- Board Certified Specialist in Renal Nutrition (CSR);
- Board Certified Specialist in Pediatric Nutrition (CSP);
- Board Certified Specialist in Sports Dietetics (CSSD);
- Board Certified Specialist in Gerontological Nutrition (CSG); and
- Board Certified Specialist in Oncology Nutrition.⁵

To receive the certification of "Registered Dietitian (RD)" or "Registered Dietitian Nutritionist (RDN)," from the Commission, an individual must:

- Complete the minimum of a bachelor's degree granted by a United States regionally accredited college or university, or foreign equivalent;
- Meet the current minimum academic requirements as approved the ACEND;
- Complete a supervised practice program accredited by the ACEND;
- Pass the registration examination for dietitians;
- Remit the annual registration fee;

¹ United States Department of Labor, Bureau of Labor Statistics, *Occupational Employment and Wages, May 2013 for Dietitians and Nutritionists*, <http://www.bls.gov/oes/current/oes291031.htm> (last visited Mar. 12, 2015).

² United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook - Dietitians and Nutritionists (Summary)*, <http://www.bls.gov/ooh/healthcare/dietitians-and-nutritionists.htm> (last visited Mar. 12, 2015).

³ United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook - Dietitians and Nutritionists (Work Environment)*, <http://www.bls.gov/ooh/healthcare/dietitians-and-nutritionists.htm#tab-3> (last visited Mar. 12, 2015).

⁴ Academy of Nutrition and Dietetics, *About Us*, <http://www.eatrightpro.org/resources/about-us> (last visited Mar. 12, 2015).

⁵ Commission on Dietetic Registration, *About CDR*, <http://www.cdrnet.org/about>, (last visited Mar. 12, 2015).

- Comply with the Professional Development Portfolio recertification requirements.⁶

Florida currently recognizes the titles “Dietitian/Nutritionist,” “Nutrition Counselor,” “Dietetic Technician,” and “Registered Dietitian.”

One USBLS classification not recognized by either the Commission or Florida’s current Act, is the Certified Nutrition Specialist (CNS) credential of the Board for Certification of Nutrition Specialists (BCNS).⁷ A CNS provides individual nutrition assessment, evaluation, intervention, and monitoring to prevent and improve health conditions.⁸ Becoming a CNS, requires an individual to have:

- An advanced degree, masters or doctorate, in the field of nutrition or a doctoral level degree in a clinical health field;
- Minimum coursework of 15 credit hours in nutrition and metabolism (including 6 in biochemistry) and 15 credit hours in clinical or life sciences (including 3 in anatomy/physiology);
- At least 1,000 hours of supervised practice experience;
- Successfully passed the BCNS Certifying Examination in clinical nutrition science; and
- Continuing education requirements of at least 75 credits every 5 years.⁹

The Chiropractic Board of Clinical Nutrition (CBCN) also credentials and certifies chiropractic physicians under the American Chiropractic Association and as a member of the American Board of Chiropractic Specialties. Upon application, completion of the required coursework, at least 2 years of practice in good standing, and examination, the CBCN issues a specialty certification of Diplomate (DCBCN).¹⁰

Medicare Regulations

On January 30, 2015, the Center for Clinical Standards and Quality/Survey and Certification Group released guidance announcing an update to 42 CFR Part 482 §482.28(b)(1) and (2), relating to food and dietetic services. The technical corrections and clarifications permit a qualified dietitian or qualified nutrition professional to order diets, if authorized by the medical staff and in accordance with state law governing dietitians and nutrition professionals. Previously, Medicare regulations restricted the ordering of diets to physicians and non-physician practitioners such as nurse practitioners and physician assistants.¹¹

⁶ Commission on Dietetic Registration, *Who is a Registered Dietitian (RD) or Registered Dietitian Nutritionist (RDN)?*, <http://www.cdrnet.org/about/who-is-a-registered-dietitian-rd> (last visited Mar. 12, 2015).

⁷ Board for Certification of Nutrition Specialists, *Setting the Standard for Advanced Nutrition Professionals*, <http://cbns.org/> (last visited Mar. 12, 2015).

⁸ Id.

⁹ Board for Certification of Nutrition Specialists, *Now is the Time to Transform*, http://cbns.org/wp-content/uploads/2010/08/CNSBrochure_web.pdf (last visited Mar. 12, 2015).

¹⁰ Chiropractic Board of Clinical Nutrition, *Eligibility Requirements for Diplomate Status*, <http://www.cbcn.us/eligibility> (last visited Mar. 12, 2015).

¹¹ U.S. Department of Health and Human Services, Center for Clinical Standards and Quality/Survey & Certification Group, p. 2, *Letter to State Survey Agency Directors* (January 30, 2015), <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-15-22.pdf> (last visited Mar. 12, 2015).

Dietetics and Nutrition Practice Act

The 1988 Legislature enacted part X, of ch. 468, F.S., the “Dietetics and Nutrition Practice Act” (Act), to ensure that every person who practices dietetics and nutrition or nutrition counseling meets the minimum requirements for safe practice.¹² The Act prohibits any person from engaging in dietetics and nutrition practice¹³ or nutrition counseling¹⁴ for remuneration or holding him or herself out as a practitioner of dietetics and nutrition or a nutrition counselor unless the person is licensed or exempt.¹⁵

The Florida Department of Health (department) has responsibility for licensing and regulating health care practitioners to preserve the health, safety, and welfare of the public.¹⁶ General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the framework for regulation. Specifically, regulation is to occur when:¹⁷

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation;
- The public is not adequately protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and
- Less restrictive means of regulation are not available.

The Act provides for the regulation of dietetics and nutrition by the four-member Dietetics and Nutrition Council (council) under the Board of Medicine (BOM) within the department. As a council under the BOM, the BOM has the powers and duties of the statute, including rule-making authority. The council has only those duties and responsibilities conferred upon it specifically by the Act and those delegated by the BOM.

The Act and the rules adopted by the BOM thereunder provide prohibitions and penalties relating to the practice of dietetics and nutrition and nutrition counseling. Licensed practitioners may be disciplined for violations of the Act, as well as provisions in ch. 456, F.S., that are applicable to all health care practitioners. Some of the grounds for disciplinary action include failing to comply with a department subpoena; being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol or drugs, narcotics, chemicals or any other type of materials or as a result of any mental or physical condition; filing false reports; attempting to procure or procuring a license to practice dietetics and nutrition by fraud or material misrepresentation; or advertising good and services in a fraudulent, false or misleading manner.¹⁸

¹² Section 468.502, F.S.

¹³ “Dietetics and nutrition practice” means the assessment of nutritional needs and status using appropriate data; the recommendation of appropriate dietary regimens, nutrition support, and nutrition intake; the improvement of health status through nutrition research, counseling, and education; and implementation and management of nutritional care systems. *See* s. 468.503(4), F.S.

¹⁴ “Nutrition counseling” means advising and assisting individuals or groups on appropriate intake by integrating information from the nutrition assessment. “Nutrition assessment” means the evaluation of the nutrition needs of individuals or groups, using appropriate data to determine nutrient needs or status and make appropriate nutrition recommendations. *See* s. 468.503(4), F.S.

¹⁵ *See* s. 468.504, F.S.

¹⁶ Section 20.43(1)(g), F.S.

¹⁷ Section 456.003(2), F.S.

¹⁸ Section 456.518, F.S. and Rule 64B8-44.002, F.A.C.

Individuals providing regulated services who are neither licensed under, not exempt from, the Act may be prosecuted by the department for unlicensed activity. For the 2013-14 fiscal year, there were no emergency orders affecting these licensed practitioners, one voluntary license surrender, and two legally sufficient complaints with one completed investigation.¹⁹

Any individual who engages in either the practice of dietetics and nutrition or nutrition counseling must be licensed, unless the individual qualifies for one of the statutory exemptions. Exemptions to licensure are those individuals who meet one of these qualifications:

- Licensed in this state under chs. 457, 458, 459, 460, 461, 462, 462, part I of ch. 464, 465, 466, 480, 490, or 491, F.S.,²⁰ when engaging in the profession for which the individual was licensed, or of any person employed by and under the supervision of the licensee when services are rendered;
- Employed as a dietitian in this state by the United States government, if the person is solely under direction or control of the organization by the which the person is employed;
- Employed as a cooperative extension home economist;
- Enrolled in an accredited school leading to a degree in dietetics and nutrition and the activities and services are a part of a supervised course of study;
- Enrolled in activities or services that fulfill the supervised experience component of s. 468.509, F.S., and constitute a part of the experience necessary to meet that requirement;
- Participated in or conducted a post-graduate course or other course of study as a dietitian or nutritionist from another state, provided that the individual holds an appointment on the faculty of a school accredited, pursuant to s. 468.509(2), F.S.;
- Marketed or distributed food, food materials, or dietary supplements, or any person who engaged in the explanation of the use and benefits of these products, if the person did not do so for a fee;
- Marketed or distributed food, food materials, or dietary supplements, or explained the use of those products in the preparation of those foods as an employee of a food establishment;
- Employed as an educator of a non-profit organization approved by the council; a federal, state, county, or municipal agency, or other political subdivision; an elementary or secondary school; or an accredited institution of higher education;
- Provided weight control services or related weight control products, provided the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval by a licensed dietitian/nutritionist, a dietitian or nutritionist licensed in another state that has licensure requirements considered by the council at least as stringent as the requirements for licensure under this part, or a registered dietitian;
- Employed by a hospital licensed under ch. 395, F.S., by a nursing home licensed under part II of ch. 400, F.S., by an assisted living facility licensed under ch. 429, F.S., or by a

¹⁹ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014*, pgs. 22, 25, 28, 31, <http://mqawebteam.com/annualreports/1314/#40>, (last visited Mar. 12, 2015).

²⁰ Chapter 457 regulates acupuncture; chapter 458 regulates the medical practice; chapter 459 regulates the practice of osteopathic medicine; chapter 460 regulates the practice of chiropractic medicine; chapter 461 regulates the practice of podiatric medicine; chapter 462 regulates the practice of naturopathy; part I of chapter 464 regulates nursing; chapter 465 regulates pharmacy; chapter 466 regulates the practice of dentistry, dental hygiene and dental laboratories; chapter 480 regulates the practice of massage; chapter 490 regulates psychological services; and chapter 491 regulates clinical, counseling and psychotherapy services.

continuing care facility certified under ch. 651, F.S., if the person is employed in compliance with the laws and rules adopted regarding the operation of its dietetic department;

- A person employed by a nursing facility exempt from licensing under s. 395.002(12), F.S., or a person exempt from licensing under s. 464.022, F.S.; and
- A person employed as a dietetic technician.²¹

According to the department’s 2013-14 Medical Quality Assurance Annual Report, there were 4,072 active licensees in Florida.²²

Type	In-State Active	Out of State Active	Military Active	Total Actives
Dietitian/Nutritionist	3,628	316	12	3,956
Nutrition Counselors	98	18	0	116
Total	3,726	334	12	4,072

For the same time period, an additional 382 applications for licensure had been received and 362 initial licenses were issued.²³

Individuals are eligible for licensure in Florida as dietitian/nutritionist either by examination or endorsement. The fees are set by the council for application, examination, and licensure:²⁴

Application by Examination Fees	
Application Fee (non-refundable)	\$80.00
Initial License Fee	\$80.00
Unlicensed Activity Fee	\$5.00
Total Fee (without temporary permit)	\$165.00
Temporary Permit Fee	\$50.00
Total Fee (with temporary permit)	\$215.00

Temporary permits allow an applicant to work under the supervision of licensed dietitian/nutritionist while the council reviews an application for up to 1 year. The Executive Director of the council makes a preliminary determination based on the application that the applicant appears to be eligible for licensure based on the documentation and is authorized to issue a temporary permit.²⁵ The permit expires one year from the date of issuance, but may be extended under certain circumstances such as illness, death in the family, military duty, or jury duty.²⁶

The minimum requirements for initial licensure are:

- An application and required fees;

²¹ Section 468.505, F.S.

²² Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014*, p.13, <http://mqawebteam.com/annualreports/1314/> (last visited Mar. 11, 2015).

²³ Id. at p. 18.

²⁴ Florida Department of Health, *Licensing - Application and Licensing Requirements*, <http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/licensing/index.html> (last visited Mar. 12, 2015).

²⁵ See s. 468.511, F.S., and Rule 648B-42-003, F.A.C., for authorization of the Executive Director of the council to issue temporary permits.

²⁶ Id.

- 900 hours of approved and pre-professional experience,²⁷ or equivalent experience or education;
- A passing score on the Commission’s licensure examination;
- A bachelor’s degree with a major in human nutrition, food and nutrition, dietetics, or food management, or equivalent from an accredited program or school; or
- A degree from a foreign country that has been validated by the United States Department of Education as equivalent to the degree conferred in the United States; and
- Completion of a 2-hour course relating to the prevention of medical errors which is required of all licensed health care professionals.²⁸

The examination for licensure is the Registration Examination for Dietitians administered by the Commission. The examination fee is \$200.00.²⁹ The department indicates that scores from the exam are usually received within three weeks and license numbers are issued within 2 weeks.³⁰

An individual may also be licensed by endorsement if he or she meets these minimum requirements:

- Holds registered dietitian credentials issued by the Commission; or,
- Holds certification or licensure to deliver dietetic and nutritional practice in another state, district, or territory of the United States; such certification must have been granted to requirements determined to be equivalent to or more stringent than the requirements of Florida; and
- Remains free from investigation, involvement in disciplinary proceedings in any jurisdiction, or otherwise disqualified by reason of violation for any act which is a violation of ch. 456, part II, ch., 468, part X, or the rules promulgated thereunder.³¹

To receive licensure by endorsement the following fee schedule applies:³²

Application by Endorsement Fees	
Endorsement Fee	\$75.00
Application Fee	\$80.00
Initial License Fee	\$80.00
Unlicensed Activity Fee	\$5.00
Total Fee (without temporary permit)	\$240.00
Temporary Permit Fee	\$50.00
Total Fee (with temporary permit)	\$290.00

²⁷ Rule 64B8-42.002(3), F.A.C., requires a minimum of 200 hours each in the areas of clinical nutrition, community nutrition, and food service systems management.

²⁸ Section 456.013(7), F.S., and Rule 64B8-42.005, F.A.C.

²⁹ Florida Department of Health, *Licensing - Application and Licensing Requirements*, <http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/licensing/index.html> (last visited Mar. 12, 2015).

³⁰ Id.

³¹ Rule 64B8-41.001, F.A.C.

³² Rule 64B8-41.001, F.A.C.

Application fees for licensure by endorsement are also non-refundable should the applicant decide to no longer pursue licensure.

Licenses are no longer being issued for Nutrition Counselors in Florida. Any individual who was previously certified as a Nutrition Counselor from July 1, 1988 through March 30, 1997; however, may continue to renew their license under s. 468.514, F.S., the renewal provisions.

The renewal fee for an active license under any of these categories is \$95 plus \$5 to combat fraud, and the fee is due biennially by May 31.³³

Under the Act's practice requirements, a licensee is not authorized to implement a dietary plan for any condition which the patient is under a physician's active care without the physician's written or oral dietary order.³⁴ If, after a good faith effort, the licensee is unable to receive authorization from the physician, the licensee is permitted to use his or her professional discretion in providing nutrition services until authorization can be received.³⁵

If the licensee identifies a condition that is within the scope of practice of a health care practitioner licensed under ch. 458, ch. 459, or ch. 460, F.S., the licensee is required to refer that patient to a physician licensed under those same chapters, unless that patient is already being treated by a physician.³⁶

A person may not knowingly engage in the practice of dietetics and nutrition for money unless the individual is licensed. The Act protects the use of certain titles, abbreviations, and insignia that indicate that an individual is a dietitian, nutritionist or nutrition counselor. Persons that hold themselves out to be licensed as someone else, give false or forged evidence, use a license that has been revoked or suspended, employ unlicensed individuals, or conceal information commit a misdemeanor of the first degree, which is punishable in s. 775.082, F.S. or s. 775.083, F.S.³⁷

The department shall reissue the license of a disciplined dietitian/nutritionist or nutrition counselor upon certification by the board that the disciplined licensee has complied with all of the terms and conditions in the final order.³⁸

³³ Rule 64B8-41.001, F.A.C.; The Florida Department of Health website shows online renewal fees for an active license to an active license is \$105. <http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/renewal/fees.html> (last visited Mar. 13, 2015).

³⁴ Section 468.516(1)(a), and (2)(a), F.S.

³⁵ Id.

³⁶ Section 458.516(1)(b), F.S.

³⁷ Section 468.517, F.S. 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 fine not to exceed \$1,000, in addition to any punishment under s. 775.082, F.S.

³⁸ Section 468.518(3), F.S.

III. Effect of Proposed Changes:

Updated Terminology

The definitions for the Act are modified and updated to recognize changes in the occupation since the Act was established in 1988 and to update professional guidance under s. 468.502, F.S., which in many cases has not been updated since 1988.

A definition for the *Commission on Dietetic Registration (Commission)*, means the Commission which is the credentialing entity of the Academy of Nutrition and Dietetics (Academy). The Academy actually has two entities, the Registration Commission, which credentials individuals through its licensing exams, and another entity called the Accreditation Council for Education in Nutrition and Dietetics (ACEND) which credentials educational programs.

The current definition for *dietetics and nutrition practice* is modified to include ordering therapeutic diets.

The definition for dietitian/nutritionist is revised to *registered dietitian or registered dietitian/nutritionist* which means an individual licensed with the commission. The recognized occupational term with similar educational and training requirements by the Commission is registered dietitian nutritionist and is used as a singular phrase.³⁹

A registered dietitian is an individual who has a bachelor’s degree with a required internship and specific coursework and then an examination. A registered dietitian must also maintain continuing education credits and renew his or her credentials on a 5-year cycle.⁴⁰

Section 2 revises s. 468.505, F.S., which updates the titles individuals may use who are registered with the commission.

Titles\Designations - CS/SB 1208		Certification\Credentials	Current Florida Law
Title	Designation	Examining Agency	Licensure Required
Registered Dietitian	RDN	Commission (RD)	Yes - Dietitian\Nutritionist
Registered Dietitian\Nutritionist	RDN	Commission (RDN)	Yes - Dietitian\Nutritionist
Certified Nutrition Specialist	CNS	Certification Board for Nutrition Specialists	Not available

Section 3 amends s. 468.509, F.S., relating to qualifications for waiver of the examination requirement by the Board of Medicine.

New exemptions from the examination requirement for licensure are added for a registered dietitian/nutritionist who is registered with the commission and who is in compliance with the all

³⁹ *Supra* note 5.

⁴⁰ NutritionEd.org, *Registered Dietitian Career Overview*, <http://www.nutritioned.org/registered-dietitian.html> (last visited Mar. 13, 2015).

of the requirements in ch. 468, F.S., or ch. 509, F.S.,⁴¹ or for a certified nutrition specialist who is certified by the Certification Board for Nutrition Specialists or who is a Diplomate of the American Clinical Board of Nutrition and is in compliance with the qualifications of this section.

The official terminology from the accrediting and credentialing bodies is to recognize the status as Registered Dietitian Certification (RD) or a Registered Dietitian Nutritionist.⁴² There is also a separate status for Nutrition Dietetics Technician, Registered (NDTR). The qualifications for licensure listed in this statute, which remain unchanged, match those of the credentialing agency's Registered Dietitian Nutritionist.

Section 4 revises s. 468.516, F.S., relating to the practice requirements. The new subsection (3) clarifies that the other provisions of this section would not preclude a licensed dietitian/nutritionist from independently ordering a therapeutic diet, if otherwise authorized to order such a diet in this state.

Section 13 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 re-write of this Act may bring clarity to those in the private sector that practice in dietetics and nutrition in some areas and confusion in others, as the definitions do not currently align with the certifications and designations of the Commission.

⁴¹ Chapter 509 covers lodging and food service establishments and membership campgrounds.

⁴² *Supra* note 5.

The bill provides another pathway for licensure for a registered dietitian, registered dietitian/ nutritionist, and certified nutritional specialist by exempting these applicants from an examination.

C. Government Sector Impact:

The rules governing dietetics and nutrition must also be re-written to conform to the changes in CS/SB 1208, including the professional name changes, inclusion of additional designations, and examination waivers.

The department indicates it will incur expenses in workload to update rules, the website, and the online and paper applications. For all of these activities, the department reports that costs can be absorbed within existing resources.⁴³

VI. Technical Deficiencies:

None

VII. Related Issues:

Under s. 464.015(5), F.S., clinical nurse specialists have the right to use the abbreviation “C.N.S.” and under CS/SB 1208, certified nutrition specialists have the right to use the abbreviation “CNS”; the same initials, but without the periods between each letter.

A person who uses either abbreviation and does not have the appropriate license for that designation is guilty of a misdemeanor of the first degree, as provided under ss. 775.082 or 775.083, F.S.⁴⁴ According to the Florida Board of Nursing, Florida does not have many licensed C.N.S., but they could exist in hospital settings and there could be confusion if the similar credential was being used for certified nutrition specialist.⁴⁵

Section 468.516(1)(a), F.S., requires a licensee to have a written or oral dietary order of a referring physician licensed under ch. 458, F.S., or ch. 459, F.S., before implementing a dietary plan for a condition which a patient is under the active care of physician. Under the CS/SB 1208, subsection (3) was added to permit a licensed dietitian/nutritionist to independently order a therapeutic diet if otherwise authorized to do so in this state. The newly added subsection does not appear to grant any new authority to the licensee.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.503, 468.505, 468.509, and 468.516.

⁴³ Florida Department of Health, *Senate Bill 1208 Analysis* (February 26, 2015), p.5, (on file with the Senate Committee on Health Policy).

⁴⁴ *Supra* note 37.

⁴⁵ Emails from Lucy Gee, Allen Hall, and Joe Baker, Jr., Department of Health (March 16, 2015) (on file with Senate Committee on Health Policy).

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 Senate Health Policy Committee on March 17, 2015

The committee substitute:

- Removes many changes to terminology and practice guidelines for dietetics and nutrition;
- Reinstates recognition of the profession by registered dietitian/nutritionist, rather than inserting an “or” in the title; and
- Reinstates the council rather than creating a board.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.



464308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (3) through (11) of section
468.503, Florida Statutes, are redesignated as subsections (4)
through (12), respectively, present subsections (4) and (11) are
amended, and a new subsection (3) is added to that section, to
read:

468.503 Definitions.—As used in this part:

(3) "Commission" means the Commission on Dietetic



464308

12 Registration, the credentialing agency for the Academy of
13 Nutrition and Dietetics.

14 (5)~~(4)~~ "Dietetics and nutrition practice" shall include
15 assessing nutrition needs and status using appropriate data;
16 recommending appropriate dietary regimens, nutrition support,
17 and nutrient intake; ordering therapeutic diets; improving
18 health status through nutrition research, counseling, and
19 education; and developing, implementing, and managing nutrition
20 care systems, which includes, but is not limited to, evaluating,
21 modifying, and maintaining appropriate standards of high quality
22 in food and nutrition care services.

23 (12)~~(11)~~ "Registered dietitian" or "registered
24 dietitian/nutritionist" means an individual registered with the
25 commission ~~on Dietetic Registration, the accrediting body of the~~
26 ~~American Dietetic Association.~~

27 Section 2. Subsection (4) of section 468.505, Florida
28 Statutes, is amended to read:

29 468.505 Exemptions; exceptions.—

30 (4) Notwithstanding any other provision of this part, an
31 individual registered by the commission ~~on Dietetic Registration~~
32 ~~of the American Dietetic Association~~ has the right to use the
33 title "Registered Dietitian," or "Registered
34 Dietitian/Nutritionist," and the designation "R.D." or "R.D.N."
35 An individual certified by the Certification Board for Nutrition
36 Specialists has the right to use the title "Certified Nutrition
37 Specialist" and the designation "C.N.S." An individual certified
38 by the American Clinical Board of Nutrition has the right to use
39 the title "Diplomate of the American Clinical Board of
40 Nutrition" and the designation "D.A.C.B.N."



464308

41 Section 3. Subsection (3) of section 468.509, Florida
42 Statutes, is amended to read:

43 468.509 Dietitian/nutritionist; requirements for
44 licensure.—

45 (3) The board shall waive the examination requirement for
46 an applicant who presents evidence satisfactory to the board
47 that the applicant is:

48 (a) A registered dietitian or registered
49 dietitian/nutritionist who is in compliance with the
50 qualification requirements under this section; or

51 (b) A certified nutrition specialist who is certified by
52 the Certification Board for Nutrition Specialists or is a
53 Diplomate of the American Clinical Board of Nutrition, and who
54 is in compliance with the qualification requirements under this
55 section.

56 Section 4. Subsection (3) is added to section 468.516,
57 Florida Statutes, to read:

58 468.516 Practice requirements.—

59 (3) This section does not preclude a licensed
60 dietitian/nutritionist from independently ordering a therapeutic
61 diet if otherwise authorized to order such a diet in this state.

62 Section 5. This act shall take effect July 1, 2015.

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete everything before the enacting clause
67 and insert:

68 A bill to be entitled

69 An act relating to dietetics and nutrition; amending



464308

70 s. 468.503, F.S.; defining the term "commission";
71 redefining terms; amending s. 468.505, F.S.;
72 authorizing certain registered or certified
73 individuals to use specified titles and designations;
74 amending s. 468.509, F.S.; requiring the Board of
75 Medicine to waive the examination requirement for
76 specified applicants; amending s. 468.516, F.S.;
77 providing that a licensed dietitian/nutritionist
78 treating a patient who is under the active care of a
79 licensed physician or licensed chiropractor is not
80 precluded from ordering a therapeutic diet if
81 otherwise authorized to order such a diet; providing
82 an effective date.

By Senator Bean

4-01067-15

20151208__

1 A bill to be entitled
2 An act relating to dietetics and nutrition; amending
3 s. 468.502, F.S.; revising the purpose and intent of
4 the Dietetics and Nutrition Practice Act; amending s.
5 468.503, F.S.; revising and providing definitions;
6 amending s. 468.504, F.S.; prohibiting the unlicensed
7 practice of medical nutrition therapy; amending s.
8 468.505, F.S.; conforming provisions; authorizing
9 certain certified individuals to use specified titles
10 and designations; amending s. 468.506, F.S.; renaming
11 the Dietetics and Nutrition Practice Council as the
12 Dietetics and Nutrition Practice Board; revising
13 provisions regarding membership of the board;
14 requiring certain board members to apply for licensure
15 within a specified time period; amending s. 468.509,
16 F.S.; requiring the board to waive the examination
17 requirement for specified applicants; conforming
18 provisions; amending s. 468.511, F.S.; making
19 editorial changes; amending s. 468.513, F.S.; revising
20 requirements for licensure by endorsement; conforming
21 provisions; amending s. 468.516, F.S.; providing that
22 a licensed dietitian or nutritionist treating a
23 patient who is under the active care of a licensed
24 physician or licensed chiropractor is not precluded
25 from ordering a therapeutic diet; amending ss.
26 468.514, 468.515, and 468.518, F.S.; conforming
27 provisions; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 468.502, Florida Statutes, is reordered and amended to read:

468.502 Purpose and intent.—The Legislature finds that the practice of dietetics and nutrition or nutrition counseling plays an important part in promoting the maintenance and improvement of health. The Legislature further finds that such practice by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature further finds that it is difficult for the public to make informed choices about dietitians and nutritionists and that the consequences of wrong choices could seriously endanger the public health and safety. The sole legislative purpose in enacting this part is to ensure that every person who practices dietetics and nutrition or nutrition counseling in this state meets minimum requirements for safe practice. It is the legislative intent that any person practicing dietetics and nutrition or nutrition counseling who falls below minimum competency or who otherwise presents a danger to the public be prohibited from practicing in this state. It is also the intent of the Legislature that the practice of nutrition counseling be authorized and regulated solely within the limits expressly provided by this part and any rules adopted pursuant thereto.

Section 2. Section 468.503, Florida Statutes, is reordered and amended to read:

468.503 Definitions.—As used in this part:

~~(1) "Agency" means the Agency for Health Care Administration.~~

(1)(2) "Board" means the Dietetics and Nutrition Practice

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59 Board of Medicine.

60 (2) "Commission" means the Commission on Dietetic
61 Registration, the accrediting body of the Academy of Nutrition
62 and Dietetics.

63 (3) "Department" means the Department of Health.

64 (4)~~(3)~~ "Dietetics" means the integration and application of
65 the principles derived from the sciences of nutrition,
66 biochemistry, food, physiology, and management and from the
67 behavioral and social sciences to achieve and maintain a
68 person's health throughout the person's life. It is an integral
69 part of preventive, diagnostic, curative, and restorative health
70 care of individuals, groups, or both.

71 (5)~~(4)~~ "Dietetics and nutrition practice" includes the use
72 of the nutrition care process for ~~shall include~~ assessing
73 nutrition needs and status using appropriate data; recommending
74 appropriate dietary regimens, medical nutrition therapy, food
75 and prescription drug interactions, nutrition support, and
76 nutrient intake; ordering therapeutic diets; improving health
77 status through nutrition research, counseling, and education;
78 and developing, implementing, and managing nutrition care
79 systems, which includes, but is not limited to, evaluating,
80 modifying, and maintaining appropriate standards of high quality
81 in food and nutrition care services.

82 (9)~~(5)~~ "Nutrition and dietetics ~~Dietetic~~ technician,
83 registered" means a person who has an associate or baccalaureate
84 degree in nutrition, food and nutrition, dietetics, food
85 management, or an equivalent major course of study, from a
86 school or program that is accredited at the time of graduation
87 by an accrediting body recognized by the United States

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88 Department of Education, who assists in the provision of
89 dietetic and nutrition services under the supervision of a
90 qualified professional, and who is registered with the
91 commission.

92 (6) "Licensed dietitian or nutritionist
93 ~~dietitian/nutritionist~~" means a person licensed pursuant to s.
94 468.509.

95 (7) "Licensed nutrition counselor" means a person licensed
96 pursuant to s. 468.51.

97 (8) "Medical nutrition therapy" means the use of specific
98 nutrition services for the purpose of disease management or to
99 treat or rehabilitate an illness, injury, or condition.

100 (10) ~~(8)~~ "Nutrition assessment" means the systematic process
101 of obtaining, verifying, and interpreting biochemical,
102 anthropometric, physical, and dietary data to make decisions
103 about the nature and cause of nutrition-related problems.
104 Nutrition assessment involves initial data collection,
105 reassessment, and analysis of client or community needs and
106 provides the foundation for nutrition diagnosis and nutritional
107 recommendations, including enteral and parenteral nutrition
108 ~~evaluation of the nutrition needs of individuals or groups,~~
109 ~~using appropriate data to determine nutrient needs or status and~~
110 ~~make appropriate nutrition recommendations.~~

111 (11) "Nutrition care process" means the systematic problem-
112 solving method that dietitians and nutritionists use when
113 providing medical nutrition therapy, addressing nutrition-
114 related problems, and providing safe, effective, and high-
115 quality care. The nutrition care process includes four distinct,
116 but interrelated steps, including nutrition assessment,

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117 nutrition diagnosis, nutrition intervention, and nutrition
118 monitoring and evaluation. As used in this subsection,
119 "nutrition monitoring and evaluation" means identifying patient
120 outcomes relevant to the nutrition diagnosis and nutrition
121 intervention plans and goals, comparing such outcomes with the
122 patient's status or intervention goals before treatment or with
123 a reference standard to determine the progress made in achieving
124 the desired outcome of nutrition care, and whether planned
125 nutrition interventions should be continued or revised.

126 (12)-(9) "Nutrition counseling" means advising and assisting
127 individuals or groups on appropriate nutrition intake by
128 integrating information from the nutrition assessment with
129 information about food, other sources of nutrients, and meal
130 preparation while considering cultural background and
131 socioeconomic status.

132 (13) "Nutrition diagnosis" means the identification of
133 nutritional problems that a licensed or registered dietician or
134 nutritionist is responsible for treating independently.

135 (14) "Nutrition intervention" means planned actions
136 intended to positively change a nutrition-related behavior, risk
137 factor, environmental condition, or aspect of health status for
138 an individual and his or her family or caregivers, target
139 groups, or the community at large.

140 (15)-(10) "Preprofessional experience component" means at
141 least 900 hours of a planned and continuous supervised practice
142 experience in dietetics or nutrition.

143 (16)-(11) "Registered dietitian" or "registered
144 nutritionist" means an individual registered with the commission
145 on Dietetic Registration, the accrediting body of the American

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146 ~~Dietetic Association.~~

147 Section 3. Section 468.504, Florida Statutes, is amended to
148 read:

149 468.504 License required.—No person may practice medical
150 nutrition therapy or engage for remuneration in dietetics and
151 nutrition practice or nutrition counseling or hold himself or
152 herself out as a practitioner of dietetics and nutrition
153 practice or nutrition counseling unless the person is licensed
154 in accordance with the provisions of this part.

155 Section 4. Paragraphs (b), (c), (d), (f), (j), (k), and (m)
156 of subsection (1) and subsections (2) and (4) of section
157 468.505, Florida Statutes, are amended to read:

158 468.505 Exemptions; exceptions.—

159 (1) Nothing in this part may be construed as prohibiting or
160 restricting the practice, services, or activities of:

161 (b) A person employed as a dietitian or nutritionist by the
162 government of the United States, if the person engages in
163 dietetics solely under direction or control of the organization
164 by which the person is employed.

165 (c) A person employed as an extension agent specializing in
166 family and consumer services ~~a cooperative extension home~~
167 ~~economist~~.

168 (d) A person pursuing a course of study leading to a degree
169 in dietetics and nutrition from a program or school accredited
170 pursuant to s. 468.509(2), if the activities and services
171 constitute a part of a supervised course of study and if the
172 person is designated by a title that clearly indicates the
173 person's status as a student, intern, or trainee.

174 (f) Any dietitian or nutritionist from another state

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175 practicing dietetics or nutrition incidental to a course of
176 study when taking or giving a postgraduate course or other
177 course of study in this state, provided such dietitian or
178 nutritionist is licensed in another jurisdiction or is a
179 registered dietitian or nutritionist or holds an appointment on
180 the faculty of a school accredited pursuant to s. 468.509(2).

181 (j) Any person who provides weight control services or
182 related weight control products, provided the program has been
183 reviewed by, consultation is available from, and no program
184 change can be initiated without prior approval by a licensed
185 dietitian or nutritionist ~~dietitian/nutritionist~~, a dietitian or
186 nutritionist licensed in another state that has licensure
187 requirements considered by the council to be at least as
188 stringent as the requirements for licensure under this part, or
189 a registered dietitian or nutritionist.

190 (k) A person employed by a hospital licensed under chapter
191 395, by a nursing home licensed under part II of chapter 400, by
192 an assisted living facility licensed under chapter 429, or by a
193 continuing care facility certified under chapter 651, if the
194 person is employed in compliance with the laws and rules adopted
195 thereunder regarding the operation of its dietetic or nutrition
196 ~~dietetic~~ department.

197 (m) A person employed as a nutrition and dietetics ~~dietetic~~
198 technician, registered.

199 (2) Nothing in this part may be construed to prohibit or
200 limit any person from the free dissemination of information
201 through, ~~or from conducting~~ a class, ~~or seminar~~, or ~~giving a~~
202 speech, related to nutrition.

203 (4) Notwithstanding any other provision of this part, an

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204 individual registered by the commission ~~on Dietetic Registration~~
205 ~~of the American Dietetic Association~~ has the right to use the
206 title "Registered Dietitian," "Registered Nutritionist," and the
207 designation "R.D.N." "~~R.D.~~" An individual certified by the
208 Certification Board for Nutrition Specialists has the right to
209 use the title "Certified Nutrition Specialist" and the
210 designation "CNS" and an individual certified by the American
211 Clinical Board of Nutrition has the right to use the title
212 "Diplomate of the American Clinical Board of Nutrition" and use
213 the designation "DACBN."

214 Section 5. Section 468.506, Florida Statutes, is amended to
215 read:

216 468.506 Dietetics and Nutrition Practice Board Council.—
217 There is created the Dietetics and Nutrition Practice Board
218 ~~Council~~ under the supervision of the board. The board council
219 shall consist of six ~~four~~ persons licensed under this part and
220 one consumer. At least one member of the board shall be who is
221 60 years of age or older. Board Council members shall be
222 appointed by the Governor ~~board~~. Licensed members shall be
223 appointed based on the proportion of licensees within each of
224 the respective disciplines. Members shall be appointed for 4-
225 year staggered terms. In order to be eligible for appointment,
226 each licensed member must have been a licensee under this part
227 for at least 3 years before ~~prior to~~ his or her appointment. An
228 initial board member for a newly added discipline is eligible to
229 be licensed and shall apply for licensure within 1 year after
230 October 1, 2015. No board council member shall serve more than
231 two successive terms. The board may delegate such powers and
232 duties ~~to the council~~ as it may deem proper to carry out the

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233 operations and procedures necessary to effectuate the provisions
 234 of this part. However, the powers and duties delegated ~~to the~~
 235 ~~council by the board~~ must encompass both dietetics and nutrition
 236 practice and nutrition counseling. Any time there is a vacancy
 237 on the board ~~council~~, any professional association composed of
 238 persons licensed under this part may recommend licensees to fill
 239 the vacancy to the Governor ~~board~~ in a number at least twice the
 240 number of vacancies to be filled, and the Governor ~~board~~ may
 241 appoint from the submitted list, in his or her ~~its~~ discretion,
 242 any of those persons so recommended. Any professional
 243 association composed of persons licensed under this part may
 244 file an appeal regarding a board ~~council~~ appointment with the
 245 State Surgeon General, whose decision shall be final. The board
 246 shall fix ~~council~~ members' compensation and pay their expenses
 247 in the same manner as provided in s. 456.011.

248 Section 6. Section 468.509, Florida Statutes, is amended to
 249 read:

250 468.509 Dietitian or nutritionist; ~~Dietitian/nutritionist;~~
 251 requirements for licensure.—

252 (1) Any person desiring to be licensed as a dietitian or
 253 nutritionist ~~dietitian/nutritionist~~ shall apply to the
 254 department ~~agency~~ to take the licensure examination.

255 (2) The department ~~agency~~ shall examine any applicant who
 256 the board certifies has completed the application form and
 257 remitted the application and examination fees specified in s.
 258 468.508 and who:

259 (a)1. Possesses a baccalaureate or postbaccalaureate degree
 260 with a major course of study in human nutrition, food and
 261 nutrition, dietetics, or food management, or an equivalent major

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262 course of study, from a school or program accredited, at the
263 time of the applicant's graduation, by the appropriate
264 accrediting body ~~agency~~ recognized by the Commission on
265 Recognition of Postsecondary Accreditation and the United States
266 Department of Education; and

267 2. Has completed a preprofessional experience component of
268 not less than 900 hours or has education or experience
269 determined to be equivalent by the board; or

270 (b)1. Has an academic degree, from a foreign country, that
271 has been validated by an accrediting body ~~agency~~ approved by the
272 United States Department of Education as equivalent to the
273 baccalaureate or postbaccalaureate degree conferred by a
274 regionally accredited college or university in the United
275 States;

276 2. Has completed a major course of study in human
277 nutrition, food and nutrition, dietetics, or food management;
278 and

279 3. Has completed a preprofessional experience component of
280 at least ~~not less than~~ 900 hours or has education or experience
281 determined to be equivalent by the board.

282 (3) The board shall waive the examination requirement for
283 an applicant who presents evidence satisfactory to the board
284 that the applicant is:

285 (a) A registered dietitian or nutritionist who is
286 registered with the commission and in compliance with all of the
287 qualifications as stated in chapter 468 or chapter 509; or

288 (b) A certified nutrition specialist who is certified by
289 the Certification Board for Nutrition Specialists or who is a
290 Diplomate of the American Clinical Board of Nutrition and who is

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291 in compliance with the qualifications under this section.

292 (4) The department ~~agency~~ shall license as a dietitian or
293 nutritionist ~~dietitian/nutritionist~~ any applicant who has
294 remitted the initial licensure fee and has passed the
295 examination in accordance with this section.

296 Section 7. Subsection (6) of section 468.511, Florida
297 Statutes, is amended to read:

298 468.511 Dietitian or nutritionist ~~Dietitian/nutritionist~~;
299 temporary permit.—

300 (6) If the board determines that an applicant has not
301 passed an examination recognized by the board and is not
302 qualified to be licensed by endorsement, but has otherwise met
303 all the requirements of s. 468.509 and has applied ~~made~~
304 ~~application~~ for the ~~next scheduled~~ examination, the board may
305 issue the applicant a temporary permit allowing him or her to
306 practice dietetics and nutrition under the supervision of a
307 licensed dietitian or nutritionist ~~dietitian/nutritionist~~ until
308 notification of the results of the examination.

309 Section 8. Section 468.513, Florida Statutes, is amended to
310 read:

311 468.513 Dietitian or nutritionist ~~Dietitian/nutritionist~~;
312 licensure by endorsement.—

313 (1) The department ~~agency~~ shall issue a license to practice
314 dietetics and nutrition by endorsement to any applicant who the
315 board certifies as qualified, upon receipt of a completed
316 application and the fee specified in s. 468.508.

317 (2) The board shall certify as qualified for licensure by
318 endorsement under this section any applicant who complies with
319 the licensure requirements under s. 468.509 and+

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320 ~~(a) Presents evidence satisfactory to the board that he or~~
321 ~~she is a registered dietitian; or~~

322 ~~(b)~~ holds a valid license to practice dietetics or
323 nutrition issued by another state, district, or territory of the
324 United States, if the criteria for issuance of such license are
325 determined by the board to be substantially equivalent to or
326 more stringent than those of this state.

327 (3) The department ~~agency~~ shall not issue a license by
328 endorsement under this section to any applicant who is under
329 investigation in any jurisdiction for any act which would
330 constitute a violation of this part or chapter 456 until such
331 time as the investigation is complete and disciplinary
332 proceedings have been terminated.

333 Section 9. Section 468.514, Florida Statutes, is amended to
334 read:

335 468.514 Renewal of license.—

336 (1) The department ~~agency~~ shall renew a license under this
337 part upon receipt of the renewal application, fee, and proof of
338 the successful completion of continuing education requirements
339 as determined by the board.

340 (2) The department ~~agency~~ shall adopt rules establishing a
341 procedure for the biennial renewal of licenses under this part.

342 Section 10. Subsection (1) of section 468.515, Florida
343 Statutes, is amended to read:

344 468.515 Inactive status.—

345 (2) The department ~~agency~~ shall reactivate a license under
346 this part upon receipt of the reactivation application, fee, and
347 proof of the successful completion of continuing education
348 prescribed by the board.

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349 Section 11. Subsection (3) is added to section 468.516,
350 Florida Statutes, to read:

351 468.516 Practice requirements.—

352 (3) This section does not preclude a licensed dietitian or
353 nutritionist from independently ordering a therapeutic diet if
354 otherwise authorized to order such a diet in this state.

355 Section 12. Paragraph (a) of subsection (1) and subsection
356 (3) of section 468.518, Florida Statutes, are amended to read:

357 468.518 Grounds for disciplinary action.—

358 (1) The following acts constitute grounds for denial of a
359 license or disciplinary action, as specified in s. 456.072(2):

360 (a) Violating any provision of this part, any board or
361 department ~~agency~~ rule adopted pursuant thereto, or any lawful
362 order of the board or department ~~agency~~ previously entered in a
363 disciplinary hearing held pursuant to this part, or failing to
364 comply with a lawfully issued subpoena of the department ~~agency~~.
365 The provisions of this paragraph also apply to any order or
366 subpoena previously issued by the department ~~of Health~~ during
367 its period of regulatory control over this part.

368 (3) The department ~~agency~~ shall reissue the license of a
369 disciplined dietitian or nutritionist ~~dietitian/nutritionist~~ or
370 nutrition counselor upon certification by the board that the
371 disciplined dietitian or nutritionist ~~dietitian/nutritionist~~ or
372 nutrition counselor has complied with all of the terms and
373 conditions set forth in the final order.

374 Section 13. This act shall take effect July 1, 2015.

APPEARANCE RECORD

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

Mar. 17, '15

Meeting Date

SB 1208

Bill Number (if applicable)

Topic (SB 1208) Bill leaves out highly qualified practitioners Amendment Barcode (if applicable)

Name SARAH BINGHAM Practitioners

Job Title Nutrition Consultant

Address 347 Audubon Oaks Dr., Apt. 208

Phone (c) 413-822-5067

Lakeland FL 33809

City

State

Zip

Email sarah@fast-foodhealing.com

Speaking: For Against Information

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

Representing Practitioners negatively affected by law & proposed amended

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

S1208

Bill Number (if applicable)

Topic Dietetic & Nutrition Practice

Amendment Barcode (if applicable)

Name Christine Stapell

Job Title Executive Director

Address 2834 Remington Green, Suite 102

Phone 850-386-8850

Street

Tallahassee, Fl. 32308

Email cstapell@eatrightflorida.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Academy of Nutrition and Dietetics

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)

3-17-2015

Meeting Date

SB1208

Bill Number (if applicable)

Topic Dialectics and Negotiation

Amendment Barcode (if applicable)

Name Janell Smith RD/LD, PhD

Job Title Consulting dialectician

cell (407) 399-8586

Address 5300 E. Grant ST

Phone (407) 277-1368

Street

Orlando FL 32812

City

State

Zip

Email Janell-Smith@hotmail.com

Speaking: For Against Information

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

with revisions

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

1208

Bill Number (if applicable)

Topic NUTRITION

Amendment Barcode (if applicable)

Name DIANA PADGETT

Job Title CONSULTANT

Address 1371 MILLSTREAM RD.

Street

Phone 850-212-4204

TALLAHASSEE

City

State

Zip

Email DHPCONSULTING@
EARTHLINK.NET

Speaking: For Against Information

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

Representing FLORIDA SCHOOL NUTRITION 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)

3/16/15

Meeting Date

1208

Bill Number (if applicable)

Topic SB 1208 Concerns with bill as written

Amendment Barcode (if applicable)

Name Judy Stone

Job Title Legislative Policy Director

Address 4707 Willow Springs Ste 207

Phone 734-996-0761

Street

LaGrange

IL

60525

Email jstone@nutritionspecialists.org

City

State

Zip

Speaking: For Against Information

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

Representing Board for Certification of Nutrition Specialists

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.

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 614

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Drug Prescription by Advanced Registered Nurse Practitioners and Physician Assistants

DATE: March 18, 2015 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 614 authorizes physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs. However, PAs and ARNPs are prohibited from prescribing controlled substances in a pain-management clinic.

The bill requires PAs and ARNPs who prescribe and dispense controlled substances to comply with similar prescribing and dispensing obligations as those required for physicians. These PAs and ARNPs are subject to similar disciplinary or other sanctions as those for physicians.

The bill adds the American Board of Interventional Pain Physicians and the American Association of Physician Specialists to the list of boards in which a medical specialist may be board certified or board eligible in pain medicine in order to be exempted from the statutory standards of practice in s. 456.44, F.S., relating to prescribing controlled substances for the treatment of chronic nonmalignant pain.

Several statutes are amended to recognize that a PA or an ARNP may be a prescriber of controlled substances. These include statutes relating to pilot licensure and criminal probation. Also, a PA and an ARNP are authorized to prescribe brand name drugs when medically necessary under the state employees' prescription drug program.

II. Present Situation:

Unlike all other states, Florida does not allow ARNPs to prescribe controlled substances and is one of two states that does not allow PAs to prescribe controlled substances.¹ The states have varying permissions with respect to the Schedules² from which an ARNP or PA may prescribe as well as the additional functions, such as dispensing, administering, or handling samples, that an ARNP or PA may perform.

According to a recent study commissioned by the Safety Net Hospital Alliance of Florida:³

Florida's total current supply of primary care physicians falls short of the number needed to provide a national average level of care by approximately 6 percent. Under a traditional definition of primary care specialties (i.e., general and family practice, general internal medicine, general pediatrics and geriatric medicine) supply falls short of demand by approximately 3 percent. [Based on simulation models, the report concludes that] over the next several years, this shortfall will grow slightly as more people obtain insurance coverage as mandated by the federal Affordable Care Act. However, if current trends continue, this shortfall should disappear within a decade. While supply may be adequate at the state level to provide a national average level of care, there is substantial geographic variation in adequacy of care.

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of medicine by the Board of Medicine. Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine. Physician assistants are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.⁴ During state the 2013-2014 fiscal year, there were 6,118 in-state, actively licensed PAs in Florida.⁵

Physician assistants are trained and required by statute to work under the supervision and control of medical physicians or osteopathic physicians.⁶ The Board of Medicine and the Board of

¹ DEA Diversion Control, U.S. Department of Justice, *Mid-Level Practitioners Authorization by State*, (last updated March 12, 2015), available at http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf, (last visited Mar. 13, 2015). Kentucky does not allow PAs to prescribe controlled substances.

² Controlled substances are assigned to Schedules I - V based on their accepted medical use and potential for abuse.

³ IHS Global Inc., *Florida Statewide and Regional Physician Workforce Analysis: Estimating Current and Forecasting Future Supply and Demand*, (January 28, 2015), as presented to the Senate Health Policy Committee on Feb. 17, 2015). The report is available in the committee meeting packet at: http://www.flsenate.gov/PublishedContent/Committees/2014-2016/HP/MeetingRecords/MeetingPacket_2854_4.pdf, (last visited Mar. 14, 2015).

⁴ The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (ss. 458.348(9) and 459.022(9), F.S.)

⁵ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014*, p. 14, available at: <http://mqawebteam.com/annualreports/1314/#1/z>, (last visited Mar. 14, 2015).

⁶ Sections 458.347(4) and 459.022(4), F.S.

Osteopathic Medicine have adopted rules that set out the general principles a supervising physicians must use in developing the scope of practice of the PA under both direct⁷ and indirect⁸ supervision. A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.⁹ Each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to perform and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.¹⁰

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.¹¹ However, the law allows a supervisory physician to delegate authority to a PA to order any medication, which would include controlled substances, general anesthetics, and radiographic contrast materials, for a patient of the physician during the patient's stay in a facility licensed under ch. 395, F.S.¹²

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health and are regulated by the Board of Nursing.¹³ During state the 2013-2014 fiscal year, there were 16,887 in-state, actively licensed ARNPs in Florida¹⁴

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.¹⁵ Florida recognizes three types of ARNP: nurse practitioner (NP), certified registered nurse anesthetist (CRNA), and certified nurse midwife (CNM).¹⁶ To be certified as an ARNP, a nurse must hold a

⁷ "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).

⁸ "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.).

⁹ Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

¹⁰ Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.

¹¹ Sections 458.347(4)(e) and (f)1. and 459.022(4)(e), F.S.

¹² *See* s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

¹³ The Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. *See* s. 464.004(2), F.S.

¹⁴ *Supra* note 4. Certified Nurse Specialists account for 24 of the in-state actively licensed ARNPs.

¹⁵ "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the Board of Nursing which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an advanced registered nurse practitioner. (s. 464.003(2), F.S.)

¹⁶ Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from advanced registered nurse practitioners. (*See* ss. 464.003(7) and 464.0115, F.S.).

current license as a registered nurse¹⁷ and submit proof to the Board of Nursing that he or she meets one of the following requirements:¹⁸

- Satisfactory completion of a formal post basic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;¹⁹ or
- Completion of a master's degree program in the appropriate clinical specialty with preparation in specialty-specific skills.

Advanced or specialized nursing acts may only be performed under protocol of a supervising physician. Within the established framework of the protocol, an ARNP may:²⁰

- Monitor and alter drug therapies.
- Initiate appropriate therapies for certain conditions.
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).²¹

ARNPs must meet financial responsibility requirements, as determined by rule of the Board of Nursing, and the practitioner profiling requirements.²² The Board of Nursing requires professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.²³

Florida does not allow ARNPs to prescribe controlled substances.²⁴ However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

Educational Preparation

Physician Assistants²⁵

PA education is modeled on physician education. PA programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant. All PA programs must meet the same set of national standards for accreditation. PA program applicants must complete at least 2 years of

¹⁷ Practice of professional nursing. (See s. 464.003(20), F.S.)

¹⁸ Section 464.012(1), F.S.

¹⁹ Specialty boards expressly recognized by the Board of Nursing include: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

²⁰ Section 464.012(3), F.S.

²¹ Section 464.012(4), F.S.

²² Sections 456.0391 and 456.041, F.S.

²³ Rule 64B9-4.002(5), F.A.C.

²⁴ Sections 893.02(21) and 893.05(1), F.S.

²⁵ See American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications – Issue Brief*, (June 2014), (on file with the Senate Committee on Health Policy).

college courses in basic science and behavioral science as a prerequisite to PA training. The average length of PA education programs is about 26 months. Students begin their course of study with a year of basic medical science classes (anatomy, pathophysiology, pharmacology, physical diagnosis, etc.) Then the PA students enter the clinical phase of training, which includes classroom instruction and clinical rotations in medical and surgical specialties. PA students complete at least 2,000 hours of supervised clinical practice by the time they graduate.

All PA educational programs include pharmacology courses, and nationally, the average amount of required formal classroom instruction in pharmacology is 75 hours. This does not include instruction in pharmacology that students receive during clinical medicine coursework and clinical clerkships. Based on national data, the mean amount of total instruction in clinical medicine is 358.9 hours. And the average length of required clinical clerkships is 48.5 weeks. A significant percentage of time is focused on patient management, including pharmacotherapeutics. Coursework in pharmacology addresses, but is not limited to, pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage.

Advanced Registered Nurse Practitioners²⁶

Applicants for Florida licensure who graduated on or after October 1, 1998, must have completed requirements for a master's degree or post-master's degree.²⁷ Applicants who graduated before that date, may be or may have been eligible through a certificate program.²⁸

The curriculum of a program leading to an advanced degree must include, among other things:

- Theory and directed clinical experience in physical and biopsychosocial assessment.
- Interviewing and communication skills relevant to obtaining and maintaining a health history.
- Pharmacotherapeutics, including selecting, prescribing, initiating, and modifying medications in the management of health and illness.
- Selecting, initiating and modifying diets and therapies in the management of health and illness.
- Performance of specialized diagnostic tests that are essential to the area of advanced practice.
- Differential diagnosis pertinent to the specialty area.
- Interpretation of laboratory findings.
- Management of selected diseases and illnesses.
- Professional socialization and role realignment.
- Legal implications of the advanced nursing practice and nurse practitioner role.
- Health delivery systems, including assessment of community resources and referrals to appropriate professionals or agencies.
- Providing emergency treatments.

The program must provide a minimum of 500 hours of preceptorship/supervised clinical experience²⁹ in the performance of the specialized diagnostic procedures that are essential to practice in that specialty area.

²⁶ Rule 64B9-4.003, F.A.C.

²⁷ Florida Board of Nursing, *ARNP Licensure Requirements* <http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/>, (last visited Mar. 13, 2014).

²⁸ *Id.*, and s. 464.012(1), F.S.

²⁹ Preceptorship/supervised clinical experience must be under the supervision of a qualified preceptor, who is defined as a practicing certified ARNP, a licensed medical doctor, osteopathic physician, or a dentist. *See* Rule 64B9-4.001(13), F.A.C.

The curriculum of a nurse practitioner certificate program is based on the philosophy and objectives of the program. It must be at least one academic year in length and include theory in the biological, behavioral, nursing, and medical sciences relevant to the area of advanced practice. It must also include clinical experience with a qualified preceptor. At a minimum, the program must include:

- Theory and directed clinical experience in comprehensive physical and biopsychosocial assessment.
- Interviewing and communication skills.
- Eliciting, recording, and maintaining a health history.
- Interpretation of laboratory findings.
- Pharmacotherapeutics, to include the initiation, selection, and modification of selected medications.
- Initiation and modification of selected therapies.
- Nutrition, including modifications of diet.
- Providing emergency treatments.
- Assessment of community resources and referrals to appropriate professionals or agencies.
- Role realignment.
- Legal implications of the ARNP role.
- Health care delivery systems.
- Management of selected diseases and illnesses.

The program must provide a minimum of 500 hours of supervised clinical experience in the performance of the specialized diagnostic procedures that are essential to practice in that specialty area.

Drug Enforcement Agency Registration

The Drug Enforcement Agency (DEA) registration grants practitioners federal authority to handle controlled substances. However, the DEA registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.³⁰

According to requirements of the DEA, a prescription for a controlled substance may only be issued by a physician, dentist, podiatrist, veterinarian, mid-level practitioner,³¹ or other registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice.
- Registered with DEA or exempted from registration (that is, Public Health Service, Federal Bureau of Prisons, or military practitioners).
- An agent or employee of a hospital or other institution acting in the normal course of business or employment under the registration of the hospital or other institution which is registered in lieu of the individual practitioner being registered provided that additional requirements are met.³²

These requirements include:

³⁰ U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, 27 (2006), p. 7, available at http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf (last visited Mar. 13, 2015).

³¹ Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.

³² *Supra* note 27, at p. 18.

- The dispensing, administering, or prescribing is in the usual course of professional practice;
- The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.³³

III. Effect of Proposed Changes:

CS/SB 614 authorizes physician assistants (PAs) licensed under the Medical Practice Act or the Osteopathic Medical Practice Act and advanced registered nurse practitioners (ARNPs) certified under part I of the Nurse Practice Act to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs. The bill imposes similar practice and disciplinary standards on PAs and ARNPs as those applicable to physicians.

For PAs, this is accomplished by removing controlled substances from the formulary of medicinal drugs that a PA may not prescribe in the Medical Practice Act. (Section 8) The Osteopathic Medical Practice Act refers to the formulary in the Medical Practice Act, so no changes are made to that act.³⁴ Also, a PA licensed under either medical practice act is added to the definition of practitioner in ch. 893, F.S. This definition requires the practitioner to hold a valid federal controlled substance registry number. (Section 12) Disciplinary standards that are applicable to physicians are already applicable to PAs pursuant to ss. 458.347(7)(g) and 459.022(7)(g), F.S., so no additional amendments are needed for disciplinary and enforcement action for violations of the applicable practice act relating to controlled substances.

For ARNPs, the authorization to prescribe controlled substances is accomplished by revising the authority pertaining to drug therapies. The bill authorizes an ARNP to prescribe, dispense, administer, or order any drug, which would include controlled substances. (Section 10) Additionally, an ARNP is added to the definition of practitioner in ch. 893, F.S. This definition requires the practitioner to hold a valid federal controlled substance registry number. (Section 12)

ARNP disciplinary sanctions are added to the bill in s. 456.072, F.S., (Section 5) to mirror a physician's sanctions for prescribing or dispensing a controlled substance other in the course of professional practice or failing to meet practice standards. Additional acts for which discipline may be taken against an ARNP relating to practicing with controlled substances that are added to the Nurse Practice Act (Section 10) include:

- Presigning blank prescription forms.

³³ *Supra* note 27, at p. 12.

³⁴ Section 459.022(4)(e), F.S.

- Prescribing a Schedule II for office use.
- Prescribing, dispensing, or administering an amphetamine or sympathomimetic amine drug, except for specified conditions.
- Prescribing, dispensing, or administering certain hormones for muscle-building or athletic performance.
- Promoting or advertising a pharmacy on a prescription form unless the form also states that the prescription may be filled at the pharmacy of your choice.
- Prescribing, dispensing, or administering drugs, including controlled substances, other than in the course of his or her professional practice.
- Prescribing, dispensing, or administering a controlled substance to himself or herself.
- Prescribing, dispensing, or administering laetrile.
- Dispensing a controlled substance listed in Schedule II or Schedule III in violation of the requirements for dispensing practitioners in the Pharmacy Practice Act.
- Promoting or advertising controlled substances.

A PA or ARNP who prescribes any controlled substance that is listed in Schedule II, Schedule III, or Schedule IV, for the treatment of chronic nonmalignant pain is required to designate himself or herself as a controlled substance prescribing practitioner on his or her practitioner profile maintained by the DOH. Currently, PAs do not have practitioner profiles so the DOH will need to develop a profile for PAs to comply with this requirement.³⁵ (Section 6)

The statutes regulating pain-management clinics under the Medical Practice Act and the Osteopathic Medical Practice Act are amended to limit the prescribing of controlled substances in a pain-management clinic to physicians licensed under ch. 458, F.S., or ch. 459, F.S. (Sections 7 and 9) Accordingly, PAs and ARNPs are prohibited from prescribing controlled substances in pain-management clinics.

Under current law, a medical specialist who is board certified or board eligible in pain medicine by certain boards is exempted from the statutory standards of practice in s. 456.44, F.S., relating to prescribing controlled substances for the treatment of chronic nonmalignant pain. Two additional boards are added to that list. The boards are the American Board of Interventional Pain Physicians and the American Association of Physician Specialists. (Section 6)

Sections 1 – 4, and 11 amend various statutes to authorize or recognize that a PA or an ARNP may be a prescriber of controlled substances as follows:

- Section 110.12315, F.S., relating to the state employees' prescription drug program, authorizes ARNPs and PAs to prescribe brand name drugs which are medically necessary or are included on the formulary of drugs which may not be interchanged.
- Section 310.071, F.S., relating to deputy pilot certification; s. 310.073, F.S. relating to state pilot licensing; and s. 310.081, F.S., relating to licensed state pilots and certified deputy pilots, allows the presence of a controlled substance in the pilot's drug test results, which was prescribed by an ARNP or PA whose care the pilot is under, as a part of the annual physical examination required for initial certification, initial licensure, and certification and licensure retention.

³⁵ Department of Health, *Senate Bill 614 Analysis* (Feb. 13, 2015) (on file with the Senate Committee on Health Policy).

- Section 948.03, F.S., relating to terms and condition of criminal probation, includes an ARNP and PA as an authorized prescriber of drugs or narcotics that a person on probation may lawfully possess.

Additional conforming and grammatical changes are made in the bill.

The bill takes effect on 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:

PAs and ARNPs who are authorized by the supervising physician or under a protocol to prescribe controlled substances may be able to care for more patients due to reduced coordination with the supervising physician each time a controlled substance is recommended for a patient. Patients may see reduced health care costs and efficiencies in health care delivery as a result of having their health care needs more fully addressed by the PA or ARNP without specific involvement of a physician prescribing a needed controlled substance for treatment. Any such impacts are indeterminate.

C. Government Sector Impact:

The Department of Health indicates that it will incur costs for rulemaking, modifications to develop a profile for PAs, and workload impacts related to additional complaints and investigations. These costs can be absorbed within current resources and budget authority.³⁶

³⁶ *Supra* note 32.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.12315, 310.071, 310.073, 310.081, 456.072, 456.44, 458.347, 464.012, 464.018, 893.02, 948.03, 466.02751, 458.303, 458.3475, 459.022, 459.023, 456.041, 458.348, 459.025, 320.0848, 464.008, 464.009, 464.0205, 775.051, 944.17, 948.001, 948.101.

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 17, 2015:

The CS limits the prescribing of controlled substances in a pain-management clinic to physicians, removes the term “certified” before a reference to nurse practitioner, and makes other technical changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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The Committee on Health Policy (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 346 - 409
and insert:

Section 7. Paragraph (b) of subsection (2) of section
458.3265, Florida Statutes, is amended to read:

458.3265 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
apply to any physician who provides professional services in a



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11 pain-management clinic that is required to be registered in
12 subsection (1).

13 (b) A person may not dispense any medication on the
14 premises of a registered pain-management clinic unless he or she
15 is a physician licensed under this chapter or chapter 459. A
16 person may not prescribe any controlled substance regulated
17 under chapter 893 on the premises of a registered pain-
18 management clinic unless he or she is a physician licensed under
19 this chapter or chapter 459.

20 Section 8. Paragraph (f) of subsection (4) of section
21 458.347, Florida Statutes, is amended to read:

22 458.347 Physician assistants.—

23 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

24 (f)1. The council shall establish a formulary of medicinal
25 drugs that a fully licensed physician assistant having
26 prescribing authority under this section or s. 459.022 may not
27 prescribe. The formulary must include ~~controlled substances as~~
28 ~~defined in chapter 893,~~ general anesthetics, and radiographic
29 contrast materials.

30 2. In establishing the formulary, the council shall consult
31 with a pharmacist licensed under chapter 465, but not licensed
32 under this chapter or chapter 459, who shall be selected by the
33 State Surgeon General.

34 3. Only the council shall add to, delete from, or modify
35 the formulary. Any person who requests an addition, deletion, or
36 modification of a medicinal drug listed on such formulary has
37 the burden of proof to show cause why such addition, deletion,
38 or modification should be made.

39 4. The boards shall adopt the formulary required by this



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40 paragraph, and each addition, deletion, or modification to the
41 formulary, by rule. Notwithstanding any provision of chapter 120
42 to the contrary, the formulary rule shall be effective 60 days
43 after the date it is filed with the Secretary of State. Upon
44 adoption of the formulary, the department shall mail a copy of
45 such formulary to each fully licensed physician assistant having
46 prescribing authority under this section or s. 459.022, and to
47 each pharmacy licensed by the state. The boards shall establish,
48 by rule, a fee not to exceed \$200 to fund the provisions of this
49 paragraph and paragraph (e).

50 Section 9. Paragraph (b) of subsection (2) of section
51 459.0137, Florida Statutes, is amended to read:

52 459.0137 Pain-management clinics.—

53 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
54 apply to any osteopathic physician who provides professional
55 services in a pain-management clinic that is required to be
56 registered in subsection (1).

57 (b) A person may not dispense any medication on the
58 premises of a registered pain-management clinic unless he or she
59 is a physician licensed under this chapter or chapter 458. A
60 person may not prescribe any controlled substance regulated
61 under chapter 893 on the premises of a registered pain-
62 management clinic unless he or she is a physician licensed under
63 this chapter or chapter 458.

64 Section 10. Section 464.012, Florida Statutes, is amended
65 to read:

66 464.012 Certification of advanced registered nurse
67 practitioners; fees; controlled substance prescribing.—

68 (1) Any nurse desiring to be certified as an advanced



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69 registered nurse practitioner shall apply to the department and
70 submit proof that he or she holds a current license to practice
71 professional nursing and that he or she meets one or more of the
72 following requirements as determined by the board:

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

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

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

94 (2) The board shall provide by rule the appropriate
95 requirements for advanced registered nurse practitioners in the
96 categories of certified registered nurse anesthetist, certified
97 nurse midwife, and nurse practitioner.



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

101 And the title is amended as follows:

102 Delete line 22

103 and insert:

104 practice; providing applicability; amending ss.

105 458.3265 and 459.0137, F.S.; limiting the authority to

106 prescribe a controlled substance in a pain-management

107 clinic to a physician licensed under chapter 458 or

108 chapter 459; amending s. 458.347,

109



273900

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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The Committee on Health Policy (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 603 - 606

and insert:

Section 14. Section 458.303, subsection (10) of s. 458.331, paragraph (e) of subsection (4), paragraph (g) of subsection (7), and paragraph (c) of subsection (9) of s. 458.347, paragraph (b) of subsection (7) of s. 458.3475, subsection (10) of s. 459.015, paragraph (e) of subsection (4), paragraph (f) of subsection (7), and paragraph (c) of subsection (9) of s.



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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 lines 45 - 46

and insert:

thereto; reenacting ss. 458.303, 458.331(10),
458.347(4)(e), (7)(g), and (9)(c), 458.3475(7)(b),
459.015(10), 459.022(4)(e), (7)(f), and (9)(c), and

By Senator Grimsley

21-00421A-15

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1 A bill to be entitled
2 An act relating to drug prescription by advanced
3 registered nurse practitioners and physician
4 assistants; amending s. 110.12315, F.S.; expanding the
5 categories of persons who may prescribe brand drugs
6 under the prescription drug program when medically
7 necessary; amending ss. 310.071, 310.073, and 310.081,
8 F.S.; exempting controlled substances prescribed by an
9 advanced registered nurse practitioner or a physician
10 assistant from the disqualifications for certification
11 or licensure, and for continued certification or
12 licensure, as a deputy or state pilot; amending s.
13 456.072, F.S.; applying existing penalties for
14 violations relating to the prescribing or dispensing
15 of controlled substances to an advanced registered
16 nurse practitioner; amending s. 456.44, F.S.; deleting
17 an obsolete date; requiring advanced registered nurse
18 practitioners and physician assistants who prescribe
19 controlled substances for certain pain to make a
20 certain designation, comply with registration
21 requirements, and follow specified standards of
22 practice; providing applicability; amending 458.347,
23 F.S.; expanding the prescribing authority of a
24 licensed physician assistant; amending s. 464.012,
25 F.S.; authorizing an advanced registered nurse
26 practitioner to prescribe, dispense, administer, or
27 order drugs, rather than to monitor and alter drug
28 therapies; amending s. 464.018, F.S.; specifying acts
29 that constitute grounds for denial of a license for or

21-00421A-15

2015614__

30 disciplinary action against an advanced registered
31 nurse practitioner; amending s. 893.02, F.S.;
32 redefining the term "practitioner" to include advanced
33 registered nurse practitioners and physician
34 assistants under the Florida Comprehensive Drug Abuse
35 Prevention and Control Act; amending s. 948.03, F.S.;
36 providing that possession of drugs or narcotics
37 prescribed by an advanced registered nurse
38 practitioner or physician assistant is an exception
39 from a prohibition relating to the possession of drugs
40 or narcotics during probation; reenacting s.
41 310.071(3), F.S., to incorporate the amendment made to
42 s. 310.071, F.S., in a reference thereto; reenacting
43 ss. 456.072(1)(mm) and 466.02751, F.S., to incorporate
44 the amendment made to s. 456.44, F.S., in references
45 thereto; reenacting ss. 458.303, 458.347(4)(e) and
46 (9)(c), 458.3475(7)(b), 459.022(4)(e) and (9)(c), and
47 459.023(7)(b), F.S., to incorporate the amendment made
48 to s. 458.347, F.S., in references thereto; reenacting
49 ss. 456.041(1)(a), 458.348(1) and (2), and 459.025(1),
50 F.S., to incorporate the amendment made to s. 464.012,
51 F.S., in references thereto; reenacting ss.
52 320.0848(11), 464.008(2), 464.009(5), 464.018(2), and
53 464.0205(1)(b), (3), and (4)(b), F.S., to incorporate
54 the amendment made to s. 464.018, F.S., in references
55 thereto; reenacting s. 775.051, F.S., to incorporate
56 the amendment made to s. 893.02, F.S., in a reference
57 thereto; reenacting ss. 944.17(3)(a), 948.001(8), and
58 948.101(1)(e), F.S., to incorporate the amendment made

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59 to s. 948.03, F.S., in references thereto; providing
60 an effective date.

61

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

63

64 Section 1. Subsection (7) of section 110.12315, Florida
65 Statutes, is amended to read:

66 110.12315 Prescription drug program.—The state employees'
67 prescription drug program is established. This program shall be
68 administered by the Department of Management Services, according
69 to the terms and conditions of the plan as established by the
70 relevant provisions of the annual General Appropriations Act and
71 implementing legislation, subject to the following conditions:

72 (7) The department shall establish the reimbursement
73 schedule for prescription pharmaceuticals dispensed under the
74 program. Reimbursement rates for a prescription pharmaceutical
75 must be based on the cost of the generic equivalent drug if a
76 generic equivalent exists, unless the physician, advanced
77 registered nurse practitioner, or physician assistant
78 prescribing the pharmaceutical clearly states on the
79 prescription that the brand name drug is medically necessary or
80 that the drug product is included on the formulary of drug
81 products that may not be interchanged as provided in chapter
82 465, in which case reimbursement must be based on the cost of
83 the brand name drug as specified in the reimbursement schedule
84 adopted by the department.

85 Section 2. Paragraph (c) of subsection (1) of section
86 310.071, Florida Statutes, is amended to read:

87 310.071 Deputy pilot certification.—

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88 (1) In addition to meeting other requirements specified in
89 this chapter, each applicant for certification as a deputy pilot
90 must:

91 (c) Be in good physical and mental health, as evidenced by
92 documentary proof of having satisfactorily passed a complete
93 physical examination administered by a licensed physician within
94 the preceding 6 months. The board shall adopt rules to establish
95 requirements for passing the physical examination, which rules
96 shall establish minimum standards for the physical or mental
97 capabilities necessary to carry out the professional duties of a
98 certificated deputy pilot. Such standards shall include zero
99 tolerance for any controlled substance regulated under chapter
100 893 unless that individual is under the care of a physician,
101 advanced registered nurse practitioner, or physician assistant
102 and that controlled substance was prescribed by that physician,
103 advanced registered nurse practitioner, or physician assistant.
104 To maintain eligibility as a certificated deputy pilot, each
105 certificated deputy pilot must annually provide documentary
106 proof of having satisfactorily passed a complete physical
107 examination administered by a licensed physician. The physician
108 must know the minimum standards and certify that the
109 certificateholder satisfactorily meets the standards. The
110 standards for certificateholders shall include a drug test.

111 Section 3. Subsection (3) of section 310.073, Florida
112 Statutes, is amended to read:

113 310.073 State pilot licensing.—In addition to meeting other
114 requirements specified in this chapter, each applicant for
115 license as a state pilot must:

116 (3) Be in good physical and mental health, as evidenced by

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117 documentary proof of having satisfactorily passed a complete
118 physical examination administered by a licensed physician within
119 the preceding 6 months. The board shall adopt rules to establish
120 requirements for passing the physical examination, which rules
121 shall establish minimum standards for the physical or mental
122 capabilities necessary to carry out the professional duties of a
123 licensed state pilot. Such standards shall include zero
124 tolerance for any controlled substance regulated under chapter
125 893 unless that individual is under the care of a physician,
126 advanced registered nurse practitioner, or physician assistant
127 and that controlled substance was prescribed by that physician,
128 advanced registered nurse practitioner, or physician assistant.
129 To maintain eligibility as a licensed state pilot, each licensed
130 state pilot must annually provide documentary proof of having
131 satisfactorily passed a complete physical examination
132 administered by a licensed physician. The physician must know
133 the minimum standards and certify that the licensee
134 satisfactorily meets the standards. The standards for licensees
135 shall include a drug test.

136 Section 4. Paragraph (b) of subsection (3) of section
137 310.081, Florida Statutes, is amended to read:

138 310.081 Department to examine and license state pilots and
139 certificate deputy pilots; vacancies.—

140 (3) Pilots shall hold their licenses or certificates
141 pursuant to the requirements of this chapter so long as they:

142 (b) Are in good physical and mental health as evidenced by
143 documentary proof of having satisfactorily passed a physical
144 examination administered by a licensed physician or physician
145 assistant within each calendar year. The board shall adopt rules

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146 to establish requirements for passing the physical examination,
147 which rules shall establish minimum standards for the physical
148 or mental capabilities necessary to carry out the professional
149 duties of a licensed state pilot or a certificated deputy pilot.
150 Such standards shall include zero tolerance for any controlled
151 substance regulated under chapter 893 unless that individual is
152 under the care of a physician, advanced registered nurse
153 practitioner, or physician assistant and that controlled
154 substance was prescribed by that physician, advanced registered
155 nurse practitioner, or physician assistant. To maintain
156 eligibility as a certificated deputy pilot or licensed state
157 pilot, each certificated deputy pilot or licensed state pilot
158 must annually provide documentary proof of having satisfactorily
159 passed a complete physical examination administered by a
160 licensed physician. The physician must know the minimum
161 standards and certify that the certificateholder or licensee
162 satisfactorily meets the standards. The standards for
163 certificateholders and for licensees shall include a drug test.

164
165 Upon resignation or in the case of disability permanently
166 affecting a pilot's ability to serve, the state license or
167 certificate issued under this chapter shall be revoked by the
168 department.

169 Section 5. Subsection (7) of section 456.072, Florida
170 Statutes, is amended to read:

171 456.072 Grounds for discipline; penalties; enforcement.—

172 (7) Notwithstanding subsection (2), upon a finding that a
173 physician has prescribed or dispensed a controlled substance, or
174 caused a controlled substance to be prescribed or dispensed, in

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175 a manner that violates the standard of practice set forth in s.
176 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o)
177 or (s), or s. 466.028(1)(p) or (x), or that an advanced
178 registered nurse practitioner has prescribed or dispensed a
179 controlled substance, or caused a controlled substance to be
180 prescribed or dispensed, in a manner that violates the standard
181 of practice set forth in s. 464.018(1)(n) or (p)6., the
182 physician or advanced registered nurse practitioner shall be
183 suspended for a period of not less than 6 months and pay a fine
184 of not less than \$10,000 per count. Repeated violations shall
185 result in increased penalties.

186 Section 6. Subsections (2) and (3) of section 456.44,
187 Florida Statutes, are amended to read:

188 456.44 Controlled substance prescribing.—

189 (2) REGISTRATION.—~~Effective January 1, 2012,~~ A physician
190 licensed under chapter 458, chapter 459, chapter 461, or chapter
191 466, a physician assistant licensed under chapter 458 or chapter
192 459, or an advanced registered nurse practitioner certified
193 under part I of chapter 464 who prescribes any controlled
194 substance, listed in Schedule II, Schedule III, or Schedule IV
195 as defined in s. 893.03, for the treatment of chronic
196 nonmalignant pain, must:

197 (a) Designate himself or herself as a controlled substance
198 prescribing practitioner on his or her ~~the physician's~~
199 practitioner profile.

200 (b) Comply with the requirements of this section and
201 applicable board rules.

202 (3) STANDARDS OF PRACTICE.—The standards of practice in
203 this section do not supersede the level of care, skill, and

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204 treatment recognized in general law related to health care
205 licensure.

206 (a) A complete medical history and a physical examination
207 must be conducted before beginning any treatment and must be
208 documented in the medical record. The exact components of the
209 physical examination shall be left to the judgment of the
210 registrant ~~clinician~~ who is expected to perform a physical
211 examination proportionate to the diagnosis that justifies a
212 treatment. The medical record must, at a minimum, document the
213 nature and intensity of the pain, current and past treatments
214 for pain, underlying or coexisting diseases or conditions, the
215 effect of the pain on physical and psychological function, a
216 review of previous medical records, previous diagnostic studies,
217 and history of alcohol and substance abuse. The medical record
218 shall also document the presence of one or more recognized
219 medical indications for the use of a controlled substance. Each
220 registrant must develop a written plan for assessing each
221 patient's risk of aberrant drug-related behavior, which may
222 include patient drug testing. Registrants must assess each
223 patient's risk for aberrant drug-related behavior and monitor
224 that risk on an ongoing basis in accordance with the plan.

225 (b) Each registrant must develop a written individualized
226 treatment plan for each patient. The treatment plan shall state
227 objectives that will be used to determine treatment success,
228 such as pain relief and improved physical and psychosocial
229 function, and shall indicate if any further diagnostic
230 evaluations or other treatments are planned. After treatment
231 begins, the registrant ~~physician~~ shall adjust drug therapy to
232 the individual medical needs of each patient. Other treatment

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233 modalities, including a rehabilitation program, shall be
234 considered depending on the etiology of the pain and the extent
235 to which the pain is associated with physical and psychosocial
236 impairment. The interdisciplinary nature of the treatment plan
237 shall be documented.

238 (c) The registrant ~~physician~~ shall discuss the risks and
239 benefits of the use of controlled substances, including the
240 risks of abuse and addiction, as well as physical dependence and
241 its consequences, with the patient, persons designated by the
242 patient, or the patient's surrogate or guardian if the patient
243 is incompetent. The registrant ~~physician~~ shall use a written
244 controlled substance agreement between the registrant ~~physician~~
245 and the patient outlining the patient's responsibilities,
246 including, but not limited to:

247 1. Number and frequency of controlled substance
248 prescriptions and refills.

249 2. Patient compliance and reasons for which drug therapy
250 may be discontinued, such as a violation of the agreement.

251 3. An agreement that controlled substances for the
252 treatment of chronic nonmalignant pain shall be prescribed by a
253 single treating registrant ~~physician~~ unless otherwise authorized
254 by the treating registrant ~~physician~~ and documented in the
255 medical record.

256 (d) The patient shall be seen by the registrant ~~physician~~
257 at regular intervals, not to exceed 3 months, to assess the
258 efficacy of treatment, ensure that controlled substance therapy
259 remains indicated, evaluate the patient's progress toward
260 treatment objectives, consider adverse drug effects, and review
261 the etiology of the pain. Continuation or modification of

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262 therapy shall depend on the registrant's ~~physician's~~ evaluation
263 of the patient's progress. If treatment goals are not being
264 achieved, despite medication adjustments, the registrant
265 ~~physician~~ shall reevaluate the appropriateness of continued
266 treatment. The registrant ~~physician~~ shall monitor patient
267 compliance in medication usage, related treatment plans,
268 controlled substance agreements, and indications of substance
269 abuse or diversion at a minimum of 3-month intervals.

270 (e) The registrant ~~physician~~ shall refer the patient as
271 necessary for additional evaluation and treatment in order to
272 achieve treatment objectives. Special attention shall be given
273 to those patients who are at risk for misusing their medications
274 and those whose living arrangements pose a risk for medication
275 misuse or diversion. The management of pain in patients with a
276 history of substance abuse or with a comorbid psychiatric
277 disorder requires extra care, monitoring, and documentation and
278 requires consultation with or referral to an addiction medicine
279 specialist or psychiatrist.

280 (f) A registrant ~~physician~~ registered under this section
281 must maintain accurate, current, and complete records that are
282 accessible and readily available for review and comply with the
283 requirements of this section, the applicable practice act, and
284 applicable board rules. The medical records must include, but
285 are not limited to:

- 286 1. The complete medical history and a physical examination,
287 including history of drug abuse or dependence.
- 288 2. Diagnostic, therapeutic, and laboratory results.
- 289 3. Evaluations and consultations.
- 290 4. Treatment objectives.

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- 291 5. Discussion of risks and benefits.
- 292 6. Treatments.
- 293 7. Medications, including date, type, dosage, and quantity
294 prescribed.
- 295 8. Instructions and agreements.
- 296 9. Periodic reviews.
- 297 10. Results of any drug testing.
- 298 11. A photocopy of the patient's government-issued photo
299 identification.
- 300 12. If a written prescription for a controlled substance is
301 given to the patient, a duplicate of the prescription.
- 302 13. The registrant's ~~physician's~~ full name presented in a
303 legible manner.
- 304 (g) Patients with signs or symptoms of substance abuse
305 shall be immediately referred to a board-certified pain
306 management physician, an addiction medicine specialist, or a
307 mental health addiction facility as it pertains to drug abuse or
308 addiction unless the registrant is a physician who is board-
309 certified or board-eligible in pain management. Throughout the
310 period of time before receiving the consultant's report, a
311 prescribing registrant ~~physician~~ shall clearly and completely
312 document medical justification for continued treatment with
313 controlled substances and those steps taken to ensure medically
314 appropriate use of controlled substances by the patient. Upon
315 receipt of the consultant's written report, the prescribing
316 registrant ~~physician~~ shall incorporate the consultant's
317 recommendations for continuing, modifying, or discontinuing
318 controlled substance therapy. The resulting changes in treatment
319 shall be specifically documented in the patient's medical

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320 record. Evidence or behavioral indications of diversion shall be
321 followed by discontinuation of controlled substance therapy, and
322 the patient shall be discharged, and all results of testing and
323 actions taken by the registrant ~~physician~~ shall be documented in
324 the patient's medical record.

325

326 This subsection does not apply to a board-eligible or board-
327 certified anesthesiologist, physiatrist, rheumatologist, or
328 neurologist, or to a board-certified physician who has surgical
329 privileges at a hospital or ambulatory surgery center and
330 primarily provides surgical services. This subsection does not
331 apply to a board-eligible or board-certified medical specialist
332 who has also completed a fellowship in pain medicine approved by
333 the Accreditation Council for Graduate Medical Education or the
334 American Osteopathic Association, or who is board eligible or
335 board certified in pain medicine by the American Board of Pain
336 Medicine, the American Board of Interventional Pain Physicians,
337 the American Association of Physician Specialists, or a board
338 approved by the American Board of Medical Specialties or the
339 American Osteopathic Association and performs interventional
340 pain procedures of the type routinely billed using surgical
341 codes. This subsection does not apply to a registrant, advanced
342 registered nurse practitioner, or physician assistant who
343 prescribes medically necessary controlled substances for a
344 patient during an inpatient stay in a hospital licensed under
345 chapter 395.

346 Section 7. Paragraph (f) of subsection (4) of section
347 458.347, Florida Statutes, is amended to read:

348 458.347 Physician assistants.—

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349 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

350 (f)1. The council shall establish a formulary of medicinal
351 drugs that a fully licensed physician assistant having
352 prescribing authority under this section or s. 459.022 may not
353 prescribe. The formulary must include ~~controlled substances as~~
354 ~~defined in chapter 893,~~ general anesthetics, and radiographic
355 contrast materials.

356 2. In establishing the formulary, the council shall consult
357 with a pharmacist licensed under chapter 465, but not licensed
358 under this chapter or chapter 459, who shall be selected by the
359 State Surgeon General.

360 3. Only the council shall add to, delete from, or modify
361 the formulary. Any person who requests an addition, deletion, or
362 modification of a medicinal drug listed on such formulary has
363 the burden of proof to show cause why such addition, deletion,
364 or modification should be made.

365 4. The boards shall adopt the formulary required by this
366 paragraph, and each addition, deletion, or modification to the
367 formulary, by rule. Notwithstanding any provision of chapter 120
368 to the contrary, the formulary rule shall be effective 60 days
369 after the date it is filed with the Secretary of State. Upon
370 adoption of the formulary, the department shall mail a copy of
371 such formulary to each fully licensed physician assistant having
372 prescribing authority under this section or s. 459.022, and to
373 each pharmacy licensed by the state. The boards shall establish,
374 by rule, a fee not to exceed \$200 to fund the provisions of this
375 paragraph and paragraph (e).

376 Section 8. Section 464.012, Florida Statutes, is amended to
377 read:

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378 464.012 Certification of advanced registered nurse
379 practitioners; fees; controlled substance prescribing.—

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

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

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

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

406 (2) The board shall provide by rule the appropriate

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407 requirements for advanced registered nurse practitioners in the
408 categories of certified registered nurse anesthetist, certified
409 nurse midwife, and certified nurse practitioner.

410 (3) An advanced registered nurse practitioner shall perform
411 those functions authorized in this section within the framework
412 of an established protocol that is filed with the board upon
413 biennial license renewal and within 30 days after entering into
414 a supervisory relationship with a physician or changes to the
415 protocol. The board shall review the protocol to ensure
416 compliance with applicable regulatory standards for protocols.
417 The board shall refer to the department licensees submitting
418 protocols that are not compliant with the regulatory standards
419 for protocols. A practitioner currently licensed under chapter
420 458, chapter 459, or chapter 466 shall maintain supervision for
421 directing the specific course of medical treatment. Within the
422 established framework, an advanced registered nurse practitioner
423 may:

424 (a) Prescribe, dispense, administer, or order any ~~Monitor~~
425 ~~and alter~~ drug therapies.

426 (b) Initiate appropriate therapies for certain conditions.

427 (c) Perform additional functions as may be determined by
428 rule in accordance with s. 464.003(2).

429 (d) Order diagnostic tests and physical and occupational
430 therapy.

431 (4) In addition to the general functions specified in
432 subsection (3), an advanced registered nurse practitioner may
433 perform the following acts within his or her specialty:

434 (a) The certified registered nurse anesthetist may, to the
435 extent authorized by established protocol approved by the

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436 medical staff of the facility in which the anesthetic service is
437 performed, perform any or all of the following:

438 1. Determine the health status of the patient as it relates
439 to the risk factors and to the anesthetic management of the
440 patient through the performance of the general functions.

441 2. Based on history, physical assessment, and supplemental
442 laboratory results, determine, with the consent of the
443 responsible physician, the appropriate type of anesthesia within
444 the framework of the protocol.

445 3. Order under the protocol preanesthetic medication.

446 4. Perform under the protocol procedures commonly used to
447 render the patient insensible to pain during the performance of
448 surgical, obstetrical, therapeutic, or diagnostic clinical
449 procedures. These procedures include ordering and administering
450 regional, spinal, and general anesthesia; inhalation agents and
451 techniques; intravenous agents and techniques; and techniques of
452 hypnosis.

453 5. Order or perform monitoring procedures indicated as
454 pertinent to the anesthetic health care management of the
455 patient.

456 6. Support life functions during anesthesia health care,
457 including induction and intubation procedures, the use of
458 appropriate mechanical supportive devices, and the management of
459 fluid, electrolyte, and blood component balances.

460 7. Recognize and take appropriate corrective action for
461 abnormal patient responses to anesthesia, adjunctive medication,
462 or other forms of therapy.

463 8. Recognize and treat a cardiac arrhythmia while the
464 patient is under anesthetic care.

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465 9. Participate in management of the patient while in the
466 postanesthesia recovery area, including ordering the
467 administration of fluids and drugs.

468 10. Place special peripheral and central venous and
469 arterial lines for blood sampling and monitoring as appropriate.

470 (b) The certified nurse midwife may, to the extent
471 authorized by an established protocol which has been approved by
472 the medical staff of the health care facility in which the
473 midwifery services are performed, or approved by the nurse
474 midwife's physician backup when the delivery is performed in a
475 patient's home, perform any or all of the following:

476 1. Perform superficial minor surgical procedures.

477 2. Manage the patient during labor and delivery to include
478 amniotomy, episiotomy, and repair.

479 3. Order, initiate, and perform appropriate anesthetic
480 procedures.

481 4. Perform postpartum examination.

482 5. Order appropriate medications.

483 6. Provide family-planning services and well-woman care.

484 7. Manage the medical care of the normal obstetrical
485 patient and the initial care of a newborn patient.

486 (c) The nurse practitioner may perform any or all of the
487 following acts within the framework of established protocol:

488 1. Manage selected medical problems.

489 2. Order physical and occupational therapy.

490 3. Initiate, monitor, or alter therapies for certain
491 uncomplicated acute illnesses.

492 4. Monitor and manage patients with stable chronic
493 diseases.

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494 5. Establish behavioral problems and diagnosis and make
495 treatment recommendations.

496 (5) The board shall certify, and the department shall issue
497 a certificate to, any nurse meeting the qualifications in this
498 section. The board shall establish an application fee not to
499 exceed \$100 and a biennial renewal fee not to exceed \$50. The
500 board is authorized to adopt such other rules as are necessary
501 to implement the provisions of this section.

502 Section 9. Paragraph (p) is added to subsection (1) of
503 section 464.018, Florida Statutes, to read:

504 464.018 Disciplinary actions.—

505 (1) The following acts constitute grounds for denial of a
506 license or disciplinary action, as specified in s. 456.072(2):

507 (p) For an advanced registered nurse practitioner:

508 1. Presigning blank prescription forms.

509 2. Prescribing for office use any medicinal drug appearing
510 on Schedule II in chapter 893.

511 3. Prescribing, ordering, dispensing, administering,
512 supplying, selling, or giving a drug that is an amphetamine or a
513 sympathomimetic amine drug, or a compound designated pursuant to
514 chapter 893 as a Schedule II controlled substance, to or for any
515 person except for:

516 a. The treatment of narcolepsy; hyperkinesis; behavioral
517 syndrome in children characterized by the developmentally
518 inappropriate symptoms of moderate to severe distractibility,
519 short attention span, hyperactivity, emotional lability, and
520 impulsivity; or drug-induced brain dysfunction.

521 b. The differential diagnostic psychiatric evaluation of
522 depression or the treatment of depression shown to be refractory

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523 to other therapeutic modalities.

524 c. The clinical investigation of the effects of such drugs
525 or compounds when an investigative protocol is submitted to,
526 reviewed by, and approved by the department before such
527 investigation is begun.

528 4. Prescribing, ordering, dispensing, administering,
529 supplying, selling, or giving growth hormones, testosterone or
530 its analogs, human chorionic gonadotropin (HCG), or other
531 hormones for the purpose of muscle building or to enhance
532 athletic performance. As used in this subparagraph, the term
533 "muscle building" does not include the treatment of injured
534 muscle. A prescription written for the drug products listed in
535 this paragraph may be dispensed by a pharmacist with the
536 presumption that the prescription is for legitimate medical use.

537 5. Promoting or advertising on any prescription form a
538 community pharmacy unless the form also states: "This
539 prescription may be filled at any pharmacy of your choice."

540 6. Prescribing, dispensing, administering, mixing, or
541 otherwise preparing a legend drug, including a controlled
542 substance, other than in the course of his or her professional
543 practice. For the purposes of this subparagraph, it is legally
544 presumed that prescribing, dispensing, administering, mixing, or
545 otherwise preparing legend drugs, including all controlled
546 substances, inappropriately or in excessive or inappropriate
547 quantities is not in the best interest of the patient and is not
548 in the course of the advanced registered nurse practitioner's
549 professional practice, without regard to his or her intent.

550 7. Prescribing, dispensing, or administering a medicinal
551 drug appearing on any schedule set forth in chapter 893 to

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552 himself or herself, except a drug prescribed, dispensed, or
553 administered to the advanced registered nurse practitioner by
554 another practitioner authorized to prescribe, dispense, or
555 administer medicinal drugs.

556 8. Prescribing, ordering, dispensing, administering,
557 supplying, selling, or giving amygdalin (laetrile) to any
558 person.

559 9. Dispensing a controlled substance listed on Schedule II
560 or Schedule III in chapter 893 in violation of s. 465.0276.

561 10. Promoting or advertising through any communication
562 medium the use, sale, or dispensing of a controlled substance
563 appearing on any schedule in chapter 893.

564 Section 10. Subsection (21) of section 893.02, Florida
565 Statutes, is amended to read:

566 893.02 Definitions.—The following words and phrases as used
567 in this chapter shall have the following meanings, unless the
568 context otherwise requires:

569 (21) "Practitioner" means a physician licensed under
570 ~~pursuant to~~ chapter 458, a dentist licensed under ~~pursuant to~~
571 chapter 466, a veterinarian licensed under ~~pursuant to~~ chapter
572 474, an osteopathic physician licensed under ~~pursuant to~~ chapter
573 459, an advanced registered nurse practitioner certified under
574 chapter 464, a naturopath licensed under ~~pursuant to~~ chapter
575 462, a certified optometrist licensed under ~~pursuant to~~ chapter
576 463, ~~or~~ a podiatric physician licensed under ~~pursuant to~~ chapter
577 461, or a physician assistant licensed under chapter 458 or
578 chapter 459, provided such practitioner holds a valid federal
579 controlled substance registry number.

580 Section 11. Paragraph (n) of subsection (1) of section

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581 948.03, Florida Statutes, is amended to read:

582 948.03 Terms and conditions of probation.—

583 (1) The court shall determine the terms and conditions of
584 probation. Conditions specified in this section do not require
585 oral pronouncement at the time of sentencing and may be
586 considered standard conditions of probation. These conditions
587 may include among them the following, that the probationer or
588 offender in community control shall:

589 (n) Be prohibited from using intoxicants to excess or
590 possessing any drugs or narcotics unless prescribed by a
591 physician, advanced registered nurse practitioner, or physician
592 assistant. The probationer or community controllee may ~~shall~~ not
593 knowingly visit places where intoxicants, drugs, or other
594 dangerous substances are unlawfully sold, dispensed, or used.

595 Section 12. Subsection (3) of s. 310.071, Florida Statutes,
596 is reenacted for the purpose of incorporating the amendment made
597 by this act to s. 310.071, Florida Statutes, in a reference
598 thereto.

599 Section 13. Paragraph (mm) of subsection (1) of s. 456.072
600 and s. 466.02751, Florida Statutes, are reenacted for the
601 purpose of incorporating the amendment made by this act to s.
602 456.44, Florida Statutes, in references thereto.

603 Section 14. Section 458.303, paragraph (e) of subsection
604 (4) and paragraph (c) of subsection (9) of s. 458.347, paragraph
605 (b) of subsection (7) of s. 458.3475, paragraph (e) of
606 subsection (4) and paragraph (c) of subsection (9) of s.
607 459.022, and paragraph (b) of subsection (7) of s. 459.023,
608 Florida Statutes, are reenacted for the purpose of incorporating
609 the amendment made by this act to s. 458.347, Florida Statutes,

21-00421A-15

2015614__

610 in references thereto.

611 Section 15. Paragraph (a) of subsection (1) of s. 456.041,
612 subsections (1) and (2) of s. 458.348, and subsection (1) of s.
613 459.025, Florida Statutes, are reenacted for the purpose of
614 incorporating the amendment made by this act to s. 464.012,
615 Florida Statutes, in references thereto.

616 Section 16. Subsection (11) of s. 320.0848, subsection (2)
617 of s. 464.008, subsection (5) of s. 464.009, subsection (2) of
618 s. 464.018, and paragraph (b) of subsection (1), subsection (3),
619 and paragraph (b) of subsection (4) of s. 464.0205, Florida
620 Statutes, are reenacted for the purpose of incorporating the
621 amendment made by this act to s. 464.018, Florida Statutes, in
622 references thereto.

623 Section 17. Section 775.051, Florida Statutes, is reenacted
624 for the purpose of incorporating the amendment made by this act
625 to s. 893.02, Florida Statutes, in a reference thereto.

626 Section 18. Paragraph (a) of subsection (3) of s. 944.17,
627 subsection (8) of s. 948.001, and paragraph (e) of subsection
628 (1) of s. 948.101, Florida Statutes, are reenacted for the
629 purpose of incorporating the amendment made by this act to s.
630 948.03, Florida Statutes, in references thereto.

631 Section 19. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

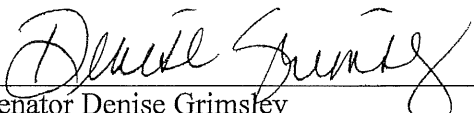
To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 17, 2015

I respectfully request that **Senate Bill #614**, relating to Drug Prescription by ARNPs & PAs, be placed on the:

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



Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17
Meeting Date

614
Bill Number (if applicable)

Topic PA & ARNP prescribing

Amendment Barcode (if applicable)

Name Alisa Lafolt

Job Title Lobbyist

Address PO Box 1344

Phone 850-443-1319

Street

Tallahassee, FL 32302

Email alisa@gotopsai.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Nurses Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/2015
Meeting Date

614
Bill Number (if applicable)

Topic Controlled Substance Prescribing

Amendment Barcode (if applicable)

Name Nelson Anthony Guzman, PA-C

Job Title President

Address 2301 Harvard Av
Street

Phone 239 273 9522

Fort Myers FL 33907
City State Zip

Email NELSONAGUZMAN@GMAIL.COM

Speaking: For Against Information

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

Representing Florida Academy of Physician Assistants (President)

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)

3/17/15
Meeting Date

SB614
Bill Number (if applicable)

Topic controlled substance prescribing by NPs/PAs Amendment Barcode (if applicable)

Name Deborah Gerbert, PA-C

Job Title Physician Assistant, Past Chair of PA Council of Board of Medicine

Address 101 Abalone Lane W Phone 904-955-4381

Street

Ponte Vedra Beach FL

City

State

32082

Zip

Email dag54@comcast.net

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

SB 614

Bill Number (if applicable)

Topic Controlled Substance Prescribing

Amendment Barcode (if applicable)

Name Dayne Alonso, PA-C

Job Title Oncology physician assistant

Address 8700 N. Kendall Drive Suite 300E Phone (305) 903-5636

Street

Miami, FL

City

State

33176

Zip

Email daynepa@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

614

Bill Number (if applicable)

Topic Drug Prescription by APRN & PA's

Amendment Barcode (if applicable)

Name Stan Whitaker

Job Title _____

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Assoc of Nurse Practitioners

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)

APPEARANCE RECORD

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

3/17/2015 Meeting Date

814 Bill Number (if applicable)

Topic Drug Prescription by Advanced Reg. Nurse Practitioner & PA's

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address 515 Danube Ave Street

Phone 813-624-5117

Tampa FL 33606 City State Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Florida Association of Nurse Practitioners

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

614
Bill Number (if applicable)

Topic Drug Prescription by ANMP & PA's

Amendment Barcode (if applicable)

Name Susan Lynch

Job Title CEO & President

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL ASSOC. OF NURSE PRACTITIONERS

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)

3/17/15
Meeting Date

SB614
Bill Number (if applicable)

Topic Prescribing for Nurse

Amendment Barcode (if applicable)

Name Carol Berkowitz

Job Title Director

Address 307 W PARK Ave
Street

Phone 850-224-3907

Tallahassee FL 32301
City State Zip

Email

Speaking: For Against Information

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

Representing Fla Health Care 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

SB 614

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.

Phone 850 224-6496

Street

Email j.scott@flmedical.org

City

State

Zip

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.

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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)

3/17

Meeting Date

SB 614

Bill Number (if applicable)

Topic ARNP & PA

Amendment Barcode (if applicable)

Name Mike ANWAY

Job Title FLORIDA Chamber

Address Street

Phone

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 Chamber

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

614
Bill Number (if applicable)

Topic AARP Practice

Amendment Barcode (if applicable)

Name JACK McRAY

Job Title _____

Address 200 W. COLLEGE ST. #304
Street

Phone 850-577-5127

TLH FL 32301
City State Zip

Email jmcray@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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-17-15
Meeting Date

SB 614
Bill Number (if applicable)

Topic SB 614

Amendment Barcode (if applicable)

Name Lisa Cook-Gordon

Job Title Family

Address 225 W Burns Lane

Phone 3134083867

Street Melvin Mr
City Dineer State Zephyrhills FL Zip

Email lisacg@calradvantagend.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-17-15

Meeting Date

604

Bill Number (if applicable)

Topic ARNP + PA Prescribing

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing

Address 306 E College Avenue

Phone (850) 222 9800

City TLH State FL Zip 32301

Email martha@fha.org

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

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

Representing Florida Hospital Assoc

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

614

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville, FL 32209

Email nulandlaw@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17
Meeting Date

614
Bill Number (if applicable)

Topic Prescriptive privilege controlled substances Amendment Barcode (if applicable)

Name THOMAS JONES

Job Title Physician Assistant

Address 3619 DEXTER DRIVE

Phone 850-545-5914

Street

Tallahassee FL 32312

City

State

Zip

Email tjones@3619@comcast.net

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

03/17/15

Meeting Date

SB 614

Bill Number (if applicable)

Topic Prescriptions by Nurse Practitioner / PAs

Amendment Barcode (if applicable)

Name BARBARA HUMPHREY

Job Title CONSULTANT

Address 468 Green Springs Cir

Phone _____

Street

Winter Springs

City

FL

State

32708

Zip

Email barbara.humphrey@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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-17-15

Meeting Date

SB 614

Bill Number (if applicable)

Topic ARNP/PA Prescribing

Amendment Barcode (if applicable)

Name ALLISON CARVAJAL

Job Title Consultant

Address 120 S. MONROE ST.

Phone 727-7087

Street

T/lt. 32303

Email allison@rambaconsulting.com

City

State

Zip

Speaking: For Against Information

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

WAIVE IN SUPPORT

Representing FLORIDA NURSE PRACTITIONER NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

5/17/15
Meeting Date

614
Bill Number (if applicable)

Topic Drug Prescription ARRP & PA

Amendment Barcode (if applicable)

Name Christie Dughi

Job Title AIF

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing AIF

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

5/16/15

Meeting Date

014

Bill Number (if applicable)

Topic ARNP

Amendment Barcode (if applicable)

Name Phillis Osters

Job Title V. President ~~6040 Comm~~ Baptist Health of Miami

Address 6855 Red Road

Phone 305-662-4096

Coral Gables Fl.

33146

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

3.17.15

Meeting Date

614

Bill Number (if applicable)

Topic SB 614

Amendment Barcode (if applicable)

Name Molly Nobles

Job Title Director Government Relations

Address Phone

Street

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 BAPTIST HEALTH CARE / LAKEVIEW CENTER PENSACOLA

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

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

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

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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 17, 2015

Senator Bean, Chair
Health Policy
302 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chair Bean:

I respectfully request an excused absence for the Health Policy meeting on, March 17, 2015.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Oscar Braynon II,
District 36

A large, stylized handwritten signature in black ink, appearing to read "Garrett Richter".

cc. Senator Arthenia Joyner, Minority Leader
Sandra Stovall, Staff Director
Celia Georgiades, Committee Administrative Asst.

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations
Appropriations Subcommittee on Education
Education Pre-K - 12
Health Policy
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR BILL GALVANO

Majority Leader
26th District

March 16, 2015

Senator Aaron Bean
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Bean:

I am writing to respectfully request approval to be excused from the Committee on Health Policy meeting scheduled for Tuesday, March 17, 2015. I am out of the state on law business. Due to an unforeseen change in my flight, I will be unable to attend the Health Policy meeting.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc.: Sandra Stovall
Celia Georgiades

A large handwritten signature in cursive script that reads "Aaron Bean".

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Caption: Senate Health Policy Committee

Case:

Judge:

Type:

Started: 3/17/2015 9:02:41 AM

Ends: 3/17/2015 10:29:57 AM

Length: 01:27:17

9:02:46 AM Chair, Sen. Bean
9:03:06 AM Roll Call
9:03:11 AM Quorum Present
9:03:33 AM Chair
9:03:58 AM TAB 3: SB 512 by Thompson; HIV Testing
9:04:24 AM Sen. Thompson Presenting
9:05:28 AM Chair
9:05:30 AM AM 532310
9:05:57 AM Sen. Thompson
9:06:35 AM Chair
9:06:53 AM AM 532310 is adopted
9:07:07 AM Public Testimony
9:07:13 AM Chris Ruland, FL Public Health Association, waives in support
9:07:25 AM Avery Coleman, Lobbyist, FL Association of Community Health Centers, waives in support
9:07:41 AM Stephen R. Winn, Executive Dir., FL Osteopathic Medical Association, waives in support
9:07:51 AM Jesse Fry, State Policy Analyst, The AIDS Institute, waives in support
9:08:05 AM Martha DeCastro, VP for Nursing, FL Hospital Association, waives in support
9:08:25 AM Sen. Thompson waives close
9:08:39 AM Sen. Gaetz requests bill be considered as a committee substitute
9:08:49 AM Roll Call on CS for SB 512
9:08:57 AM CS for SB 512 reported favorably
9:09:27 AM TAB 2: SB 1390 by Hays; Public Food Service Establishments
9:09:47 AM Sen. Joyner recognized
9:10:16 AM Response by Aide
9:10:21 AM AM 186938
9:10:47 AM Response by Aide
9:10:58 AM Chair
9:11:00 AM Response by Aide
9:11:18 AM Chair
9:11:23 AM AM 186938 is adopted
9:11:29 AM Public Testimony
9:11:35 AM Richard Turner, General Counsel, FL Restaurant and Lodging Association, waives in support
9:11:41 AM Grace Lovett, Legislative Dir., Representing AG Commissioner Adam Putnam, waives in support
9:12:11 AM Motion to Consider CS for SB 1390
9:12:31 AM Roll Call on CS for SB 1390
9:12:38 AM CS for SB 1390 reported favorably
9:12:48 AM TAB 1: SB 634 by Stargel; Responsibilities of Health Care Facilities
9:13:33 AM Jeff Scott, FL Medical Association, waives in support
9:13:40 AM Stephen R. Winn, Executive Dir., FL Osteopathic Medical Association, waives in support
9:13:54 AM Roll Call on SB 634
9:14:21 AM SB 634 reported favorably
9:14:49 AM Sen. Bean hands over chair to Sen. Sobel
9:15:05 AM Sen. Sobel as Chair
9:15:13 AM TAB 5; SB 628 by Bean; Behavior Analysts
9:15:20 AM Sen. Bean
9:17:27 AM AM 937594
9:17:47 AM Sen. Sobel as Chair
9:18:07 AM Sen. Bean waives close
9:18:14 AM AM 937594 is adopted
9:18:24 AM Sen. Joyner recognized
9:18:46 AM Sen. Bean responds
9:19:48 AM Sen. Joyner

9:20:03 AM Sen. Bean responds
9:20:54 AM Sen. Joyner
9:21:00 AM Sen. Sobel as Chair
9:21:05 AM Public Testimony
9:21:08 AM Ron Watson, Parent, Watson Strategies, waives in support
9:21:12 AM Debbie McDaniel, Parent, speaks in support
9:25:44 AM Sen. Sobel as Chair
9:25:47 AM Mary M. Riordan, Behavior Analyst, Association for Professional Behavior Analysts, waives support
9:25:58 AM Dr. Amy Polick, Behavior Analyst, Florida Association for Behavior Analysts, waives in support
9:26:06 AM Doug Bell, Behavior Analysis Certification Board, waives in support
9:26:28 AM Sen. Sobel as Chair
9:28:02 AM Sen. Bean closes
9:28:30 AM Sen. Sobel as Chair
9:28:34 AM Roll Call on CS for SB 628
9:28:39 AM CS for SB 628 reported favorably
9:28:55 AM Chair returns to Sen. Bean
9:29:20 AM TAB 4: SB 1052 by Brandes; Florida Right To Try Act
9:29:48 AM Sen. Brandes Presents
9:30:14 AM Chair
9:30:38 AM Sen. Brandes responds
9:31:20 AM Chair
9:31:36 AM Sen. Brandes responds
9:31:38 AM Chair
9:31:39 AM Chair
9:32:02 AM AM 482400
9:32:23 AM Sen. Brandes
9:33:19 AM Public Testimony on AM 482400
9:33:33 AM Chris Floyd, Consultant, FL Association of Nurse Practitioners, waives in support
9:33:40 AM Paul Ledford, President and CEO, FL Hospice and Palliative Care Association, waives in support
9:33:53 AM Marshall Kapp, Professor at FSU, recognized to speak on AM
9:37:20 AM Chair
9:37:43 AM Michael Sheedy, Executive Director, FL Conference of Catholic Bishops, speaks on AM
9:38:40 AM Sen. Joyner recognized
9:38:51 AM Michael Sheedy responds
9:39:42 AM Sen. Joyner
9:39:48 AM Michael Sheedy Responds
9:39:53 AM Sen. Joyner
9:39:57 AM Michael Sheedy responds
9:40:58 AM Sen. Gaetz
9:41:03 AM Vice Chair, Sen. Sobel
9:41:20 AM Michael Sheedy responds
9:41:56 AM Vice Chair
9:41:58 AM Michael Sheedy responds
9:42:03 AM Sen. Gaetz
9:42:14 AM Michael Sheedy responds
9:44:32 AM Sen. Gaetz
9:44:36 AM Michael Sheedy responds
9:45:52 AM Chair
9:46:21 AM Debate on AM 482400
9:46:23 AM Sen. Joyner
9:46:34 AM Sen. Brandes
9:47:55 AM Sen. Joyner
9:49:22 AM Chair
9:49:41 AM Sen. Brandes recognized to close
9:50:08 AM Vice Chair
9:50:18 AM Sen. Brandes
9:50:25 AM Chair
9:50:26 AM AM 482400 is adopted
9:50:43 AM Public Testimony on bill as amended
9:50:50 AM Chris Floyd, Consultant, FL Association of Nurse Practitioners, waives in support
9:50:54 AM Stan Whitacker, FL Association of Nurse Practitioners, waives in support
9:51:01 AM Susan Lynch, CEO and President, FL Association of Nurse Practitioners, waives in support

9:51:06 AM Craig Handzlik, State Policy Coordinator, Goldwater Institute, waives in support
9:51:27 AM Debate on bill as amended
9:51:35 AM Sen. Brandes waives close on bill as amended
9:51:45 AM Roll Call on CS for SB 1052
9:51:56 AM CS for SB 1052 reported favorably
9:52:18 AM Chair turned over to Sen. Sobel
9:52:24 AM TAB 6: SB 904 by Bean; Nurse Registries
9:52:28 AM Sen. Bean presents bill
9:52:48 AM Sen. Sobel as Chair
9:52:52 AM AM 473518 Explained
9:53:07 AM Sen. Sobel as Chair
9:53:20 AM Public Testimony
9:53:25 AM Drew Smith, Governmental Consultant, Home Care Association of America, waives in support
9:53:44 AM Sen Bean recognized to close on amendment
9:54:16 AM Sen. Sobel as Chair
9:54:23 AM AM 473518 is adopted
9:54:25 AM Back on bill as amended
9:54:34 AM Drew Smith , Governmental Consultant, Home Care Association of America, waives in support
9:54:38 AM David Beale, Private Care Association, waives in support
9:54:58 AM Roll Call on CS for SB 904
9:55:06 AM CS for SB 904 reported favorably
9:55:42 AM TAB 7: SB 1208 by Bean; Dietetics and Nutrition
9:55:53 AM Presented by Sen. Bean
9:56:20 AM AM 464308
9:56:51 AM Sen. Sobel as Chair
9:57:08 AM AM 464308 is adopted
9:57:34 AM Public Testimony
9:57:40 AM Diana Padgett, Consultant, FL School Nutrition Association, waives in support
9:57:49 AM Judy Stone, Legislative Policy Director, Board for Certification of Nutrition Specialists, speaks on bill
10:03:32 AM Sen. Sobel as Chair
10:03:46 AM Janell Smith, Consulting Dietitan, speaks on bill
10:05:48 AM Sen. Sobel as Chair
10:05:52 AM Janell Smith Responds
10:06:25 AM Sen. Sobel as Chair
10:06:40 AM Christine Stapell, Execuitve Director, Florida Academy of Nutrition and Dietetics, waives in support
10:06:46 AM Sarah Bingham, Nutrition Consultant, speaks on bill
10:11:23 AM Sen. Sobel as Chair
10:11:31 AM Sen. Bean recognized to close
10:12:38 AM Sen. Sobel as Chair
10:13:10 AM Roll Call on CS fro SB 1208
10:13:19 AM CS for SB 1208 reported favorably
10:13:44 AM Sen. Bean returns as Chair
10:13:57 AM TAB 8: SB 614 by Grimsley; Drug Prescription by Advanced Registered Nurse Practitioners and
Physician Assistants
10:14:03 AM Presented by Sen. Grimsley
10:14:40 AM Chair
10:14:48 AM Sen. Grimsley responds
10:15:10 AM Chair
10:15:14 AM Sen. Grimsley responds
10:15:27 AM Chair
10:15:46 AM AM 726338
10:16:13 AM Sen Grimsley
10:16:15 AM Chair
10:16:19 AM Sen. Joyner
10:16:32 AM Sen. Grimsley responds
10:17:15 AM Sen. Joyner
10:17:41 AM Sen. Grimsley responds
10:17:56 AM Chair
10:18:13 AM AM 726338 is adopted
10:18:27 AM AM 273900
10:18:37 AM AM 273900 is adopted
10:19:05 AM On Bill as Amended

10:19:20 AM Public Testimony
10:19:21 AM Alisa LaPolt, Lobbyist, FL Nurses Association, waives in support
10:19:26 AM Nelson Anthony Guzman, President, Florida Academy of Physician Assistants, waives in support
10:19:34 AM Deborah Gerbert, Physician Assistant, waives in support
10:19:39 AM Dayne Alonso, Oncology Physician Assistant, waives in support
10:19:43 AM Stan Whitacker, FL Association of Nurse Practitioners, waives in support
10:19:48 AM Chris Floyd, Consultant, FL Association of Nurse Practitioners, waives in support
10:19:51 AM Susan Lynch, CEO and President, FL Association of Nurse Practitioners, waives in support
10:19:56 AM Carol Berkowitz, Director, FL Health Care Association, waives in support
10:20:00 AM Jeff Scott, Florida Medical Association, waives in opposition
10:20:13 AM Mike Anway, Florida Chamber, waives in support
10:20:19 AM Jack McRay, AARP, waives in support
10:20:26 AM Lisa Cook-Gordan, waives in support
10:20:29 AM Martha DeCastro, VP for Nursing, Florida Hospital Association, waives in support
10:20:37 AM Cris Ruland, FL Chapter, American College of Physicians, speaks on bill
10:21:36 AM Thomas Jones, Physician Assistant, waives in support
10:21:45 AM Barbara Lumpkin, Consultant, Baptist Health South Florida, waives in support
10:21:54 AM Allison Carvajal, Consultant, Florida Nurse Practitioner Network, waives in support
10:22:01 AM Leslie Dughe, AIF, waives in support
10:22:08 AM Phillis Oeters, VP, Baptist Health of Miami, waives in support
10:22:16 AM Molly Nobles, Director Governmental Relations, Baptist Health Care/Lakeview Center Pensacola, waives
in support
10:22:39 AM Debate on SB 614
10:22:43 AM Sen. Joyner
10:25:03 AM Chair
10:25:07 AM Vice Chair
10:26:29 AM Chair
10:27:07 AM Sen. Gaetz
10:28:22 AM Sen. Grimsley recognized to close on bill
10:28:59 AM Chair
10:29:03 AM CS for SB 614
10:29:09 AM Roll Call on CS for SB 614
10:29:15 AM CS for SB 614 reported favorably
10:29:32 AM Sen. Garcia requests to be shown in the affirmative on SB 512, SB 1390, SB 634, SB 628, SB 1052, SB
904, and SB 1208
10:29:43 AM Chair
10:29:45 AM Leader Joyner moves to rise
10:29:49 AM Meeting Adjourned