The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, April 7, 2015
TIME: 1:30 —3:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	State Surgeon General		
1	Armstrong, John H. (Ocala)	Pleasure of Governor	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	**CS/SB 1224** Judiciary / Joyner (Similar CS/CS/H 889)	Health Care Representatives; Providing an exception for a patient who has designated a surrogate to make health care decisions and receive health information without a determination of incapacity being required; revising provisions relating to the designation of health care surrogates; providing for the designation of health care surrogates for minors, etc. JU 03/31/2015 Fav/CS HP 04/07/2015 Favorable RC	Favorable Yeas 9 Nays 0
3	**SPB 7084**	Quality Health Care Services; Specifying that a direct primary care agreement does not constitute insurance and is not subject to the Florida Insurance Code; requiring an analysis of medical tourism for quality health care services in the Economic Development Programs Evaluation; requiring Enterprise Florida, Inc., to collaborate with the Department of Economic Opportunity to market this state as a health care destination, etc.	Submitted as Committee Bill Yeas 9 Nays 0
4	**SB 710** Grimsley (Compare CS/CS/H 515)	Physical Therapy Practice; Redefining the terms “physical therapist,” “physical therapy practitioner,” “physical therapy” or “physiotherapy,” and “practice of physical therapy”; providing additional powers to the Board of Physical Therapy Practice; providing restrictions on the use of the title “doctor”; prohibiting a person who is not licensed as a physical therapist from using certain designations for false representation, etc. HP 04/07/2015 Fav/CS AHS FP	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 438** Sobel (Similar H 511)	Palliative Care; Requiring the Department of Health to establish a palliative care consumer and professional information and education program; requiring the department to publish certain educational information and referral materials about palliative care on the department website; requiring the department to consult with the Palliative Care and Quality of Life Interdisciplinary Task Force; creating the Palliative Care and Quality of Life Interdisciplinary Task Force within the Department of Health; specifying the purpose of the task force; requiring the task force to meet at least twice each year, etc. HP 04/07/2015 Favorable AHS FP	Favorable Yeas 9 Nays 0
6	**SB 790** Sobel (Identical H 807)	Hair Restoration or Transplant; Authorizing the Board of Medicine, the Board of Osteopathic Medicine, and the Department of Health to deny a license to or to discipline a hair restoration or transplant surgeon for improperly delegating certain tasks; requiring a health care provider of hair restoration or transplant to inform a patient of the identity and training status of the individuals involved in the patient's care, etc. HP 04/07/2015 Fav/CS AHS FP	Fav/CS Yeas 9 Nays 0
7	**SB 1310** Clemens (Identical H 1245)	Music Therapists; Establishing the music therapist profession within the Division of Medical Quality Assurance; creating the Music Therapy Advisory Committee; establishing requirements for licensure as a music therapist; providing for disciplinary grounds and actions, etc. HP 04/07/2015 Fav/CS AHS FP	Fav/CS Yeas 9 Nays 0
	Other Related Meeting Documents		

Amended

RICK SCOTT
GOVERNOR

RECEIVED
15 FEB 25 PM 1:18
DIVISION OF ELECTIONS
SECRETARY OF STATE

February 24, 2015

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have amended the following reappointment under the provisions of Section 20.43, Florida Statutes:

Dr. John H. Armstrong
688 Southeast 47th Loop
Ocala, Florida 34480

As State Surgeon General and Secretary of the Department of Health, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

Rick Scott
Governor

RS/vh

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

2015 FEB -2 AM 8:34

DIVISION OF ELECTIONS TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

STATE SURGEON GENERAL & SECRETARY OF HEALTH

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." *See* § 92.52, Fla. Stat.]

John H. Armstrong MD

Signature

Sworn to and subscribed before me this 29 *day of* January, 2015

Margaret H. Medina

Signature of Officer Administering Oath or of Notary Public

Margaret H. Medina

Print, Type, or Stamp Commissioned Name of Notary Public

MARGARET HARVARD MEDINA
Commission # FF 008844
Expires April 23, 2017
Bonded Thru Troy Fain Insurance 800-365-7019

Personally Known ☒ ***OR*** *Produced Identification* ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☑ Office

4052 Bald Cypress Way, BIN #00
Street or Post Office Box

Tallahassee, Florida 32399
City, State, Zip Code

JOHN H. ARMSTRONG, MD, FACS
Print name as you desire commission issued

John H Armstrong MD
Signature

DS-DE 56 (Rev. 02/10)

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared John H. Armstrong, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

John H. Armstrong
Signature of Applicant-Affiant

Sworn to and subscribed before me this 23 day of January, 2015.

Margaret H. Medina
Signature of Notary Public-State of Florida

Margaret H. Medina
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: April 23, 2017

Personally Known [X] **OR** Produced Identification [ ]

Type of Identification Produced _____

MARGARET HARVARD MEDINA
Commission # FF 008844
Expires April 23, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

(seal)

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

John H. Armstrong

State Surgeon General

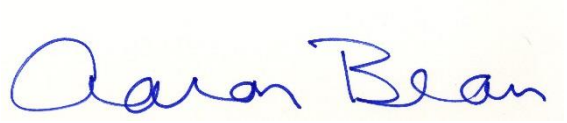
NOTICE OF HEARING

TO: Dr. John H. Armstrong

YOU ARE HEREBY NOTIFIED that the Committee on Health Policy of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, April 07, 2015, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 2nd day of April, 2015

Committee on Health Policy



Senator Aaron Bean
As Chair and by authority of the committee

cc: Members, Committee on Health Policy
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: John Armstrong

ANSWER: I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Health Policy

DATE: April 7, 2015

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	CS/SB 1224
INTRODUCER:	Judiciary Committee and Senator Joyner
SUBJECT:	Health Care Representatives
DATE:	April 3, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Cibula	JU	**Fav/CS**
2.	Looke	Stovall	HP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1224 authorizes the appointment of a health care surrogate which is not conditioned upon the incapacity of the principal. It allows for the principal's health information to be shared with the surrogate prior to incapacity. The bill also allows the parents, legal custodian, or legal guardian of a minor to name a health care surrogate to act for a minor if the parents, legal custodian, or legal guardian cannot be timely contacted to make medical decisions for the minor.

II. Present Situation:

Part II of ch. 765, F.S., entitled "Health Care Surrogate," governs the designation of health care surrogates in Florida. A health care surrogate is a competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal's incapacity.[1] Section 765.203, F.S., provides a suggested form for the designation of a health care surrogate. If an adult fails to designate a surrogate or a designated surrogate is unwilling or unable to perform his or her duties, a health care facility may seek the appointment of a proxy[2] to serve as surrogate upon the incapacity of such person.[3] A surrogate appointed by the principal or

[1] Section 765.101(16), F.S.

[2] "Proxy" means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401, F.S., to make health care decisions for such individual. s. 765.101(15), F.S.

[3] Sections 765.202(4) and 765.401, F.S.

by proxy, may, subject to any limitations and instructions provided by the principal, take the following actions:[4]

- Make all health care decisions[5] for the principal during the principal's incapacity;
- Consult expeditiously with appropriate health care providers to provide informed consent, including written consent where required, provided that such consent reflects the principal's wishes or the principal's best interests;
- Have access to the appropriate medical records of the principal;
- Apply for public benefits for the principal and have access to information regarding the principal's income, assets, and financial records to the extent required to make such application;
- Authorize the release of information and medical records to appropriate persons to ensure continuity of the principal's health care; and
- Authorize the admission, discharge, or transfer of the principal to or from a health care facility.[6]

The surrogate's authority to act commences upon a determination that the principle is incapacitated.[7] A determination of incapacity is required to be made by an attending physician.[8] If the physician's evaluation finds that the principal is incapacitated and the principal has designated a health care surrogate, a health care facility will notify such surrogate in writing that her or his authority under the instrument has commenced.[9] The heath care surrogate's authority continues until a determination that the principal has regained capacity. If a principal goes in and out of capacity, a redetermination of incapacity is necessary each time before a health care surrogate may make health care decisions.[10]

This process can hinder effective and timely assistance and is cumbersome. Further, some competent persons desire the assistance of a health care surrogate with the sometimes complex task of understanding health care treatments and procedures and with making health care decisions, but may not effectively empower such persons to act on their behalf due to the restriction that a health care surrogate act only for incapacitated persons.

Health Care Decisions for Minors

In general, healthcare decisions for minors are made by that minor's parent, legal custodian, or legal guardian.[11] When the minor's parent or guardian cannot be contacted in a non-emergency situation, s. 743.0645, F.S., establishes, in order of priority, the people who are authorized to

[4] Section 765.205, F.S.
[5] "Health care decision" means: informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives; the decision to apply for private, public, government, or veterans' benefits to defray the cost of health care; the right of access to all records of the principal reasonably necessary for a health care surrogate to make decisions involving health care and to apply for benefits; and the decision to make an anatomical gift pursuant to part V of ch. 765, F.S.
[6] Section 765.205(1), F.S.
[7] Section 765.204(3), F.S.
[8] Section 765.204, F.S.
[9] Section 765.204(2), F.S.
[10] Section 765.204(3), F.S.
[11] See s. 743.0645(1)(c), F.S.

consent to healthcare for that minor.[12] In an emergency situation, s. 743.064, F.S., allows a physician to provide emergency medical services to a minor in a hospital or a college infirmary and allows emergency medical services personnel to provide prehospital emergency care when the minor is unable to reveal the identity of his or her parent or guardian or if such person cannot be immediately located by telephone at their residence or place of business. The minor's parent or guardian must be notified of any emergency services as soon as possible after the treatment is administered.

III. Effect of Proposed Changes:

Health Care Surrogate for an Adult

The bill creates s. 765.202(6), F.S., (**section 8**) to provide that an individual may elect to appoint a health care surrogate who may act while the individual is still competent to make healthcare decisions and to have access to the individual's health information. To that end, the bill:

- Adds a legislative finding at s. 765.102(3), F.S., (**section 3**) that some adults want a health care surrogate to assist them with making medical decisions or accessing health information.
- Provides that statutory provisions for review of the decision of a health care surrogate at s. 765.105, F.S., (**section 5**) do not apply where the individual who appointed the health care surrogate is still competent.
- Amends s. 765.204, F.S., (**section 12**) to require a health care facility to notify the surrogate upon a finding of incapacity. The notification requirement also requires notice to the attorney in fact if the health care facility knows of a durable power of attorney.
- Adds that an alternate may also act where the primary surrogate is not reasonably available. Current law such as s. 765.202(3), F.S., (**section 8**) provides that an alternate health care surrogate may act where the primary surrogate is unwilling or unable to act.

Section 765.203, F.S., (**section 9**) is amended to add a suggested form for the designation of a health care surrogate and delete the current form. The information on the form includes:

- The principal's name;
- A statement that the principal designates as his or her health care surrogate;
- The name, address, and phone number of the surrogate;
- A statement relating to the healthcare surrogate who is not willing, able, or reasonably available to perform his or her duties, and an opportunity to designate an alternate health care surrogate;
- Instructions and authorization for health care that includes some fill in the blank, some required initialing, and further specific instructions and restrictions;
- Instructions and notice of how to amend or revoke the surrogate designation;
- Acknowledgements as to understanding and authority delegated;
- Signature and date, printed name and address of the principal; and
- Signature and date, printed name and address of two witnesses.

[12] The list includes, in order, a person with a power of attorney to provide consent for the minor, a stepparent, a grandparent, an adult brother or sister, and an adult aunt or uncle.

Health Care Surrogate for a Minor

The bill creates s. 765.2035, F.S., (**section 10**) to create statutory authority for a parent or legal guardian to designate a health care surrogate who may consent to medical care for a minor. The designation must be in writing and signed by two witnesses. The designated surrogate may not be a witness.

Like a surrogate for an adult, an alternate surrogate may be appointed to act if the original surrogate is not willing, able, or reasonably available to act.

In addition to regular and emergency treatment, a health care surrogate for a minor is authorized to consent to mental health treatment unless the document specifically provides otherwise. The appointment of a health care surrogate for a minor remains in place until the termination date provided in the designation (if any), the minor reaches the age of majority, or the designation is revoked.

The bill also creates a sample form for minors at s. 765.2038, F.S. (**section 11**).

The bill amends s. 743.0645, F.S., (**section 1**) the statute on other persons who may consent to medical care or treatment of a minor, to conform to the changes made in the bill. The bill also amends that statute to recognize that a power of attorney regarding consent to authorize health care for a minor, executed between July 1, 2001 and September 30, 2015, (the day before the effective date of this bill) will be recognized as authority to consent to treatment. A designation of health care surrogate or a power of attorney is deemed to include authority to consent to surgery or anesthesia unless those procedures are specifically excluded.

Other

The bill amends ss. 765.102 and 765.202, F.S., (**sections 3 and 8**) to specify that a right to consent to treatment of an individual (adult or minor) also includes the right to obtain health information regarding that individual. Section 765.101, F.S., (**section 2**) is amended to add a definition for the term "health information" to be consistent with the Health Insurance Portability and Accountability Act (known as "HIPAA"). The terms "health care," "health information," "minor's principal," "primary physician," and "reasonably available" are also added and defined. The definitions of the terms "advanced directive," "attending physician," "close personal friend," "health care decision," and "principal" are amended.

The term "surrogate" that is currently defined to mean "any competent adult expressly designated by a principal to make health care decisions" is amended to add "and receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of capacity or only upon the principal's incapacity as provided in s. 765.204." The phrase "on behalf of the principal upon the principal's incapacity" in the current definition is deleted.

The bill makes technical changes by revising references to the type of physician (i.e., attending or primary) consistent with the definitions in statutes related to advance directives, health care

surrogates, pain management, palliative care, capacity, living wills, determination of patient condition, persistent vegetative state, and anatomical gifts. This change in terminology should have no practical effect.

Finally, technical and conforming changes are made throughout the bill.

The bill takes effect on October 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:

In the bill's definition of the term "surrogate" is a statement of the delegated authority:

> The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of capacity or only upon the principal's incapacity as provided in s. 765.204.

This authority does not contribute to clarifying who the surrogate is. It is substantive and would fit better in part II, relating to the health care surrogate.[13]

[13] See Office of Bill Drafting Services, The Florida Senate, *Manual for Drafting Legislation*, p. 45 (6th ed. 2009).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 743.0645, 765.101, 765.102, 765.104, 765.105, 765.1103, 765.1105, 765.202, 765.203, 765.204, 765.205, 765.302, 765.303, 765.304, 765.306, 765.404, and 765.516.

This bill creates the following sections 765.2035 and 765.2038 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 31, 2015:

The CS makes the following changes to the bill:

- Deletes the requirement that power of attorney documents affected by the changes in the bill must be executed before October 1, 2015.
- Reinstates the definition of "attending physician" and revises the meaning to the physician providing treatment and care of the patient while the patient receives treatment or care in a hospital defined in s. 395.002(12), F.S.
- Revises the definition of the term "close personal friend" to change the type of physician referenced from attending or treating to primary.
- Modifies the surrogate designation form to add instructions and notice of how to amend or revoke the surrogate designation.
- Adds the condition that an attending physician must notify the primary physician of his or her determination that the principal lacks capacity.
- Removes the caveat that even though a surrogate has been designated, self-determination of the principal is controlling and that the primary physician does not have to communication to the principal the decision made by the surrogate.
- Changes the references to an attending and/or treating physician to references to a primary physician and makes other conforming changes.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Joyner

590-03296-15 20151224c1

A bill to be entitled

An act relating to health care representatives; amending s. 743.0645, F.S.; conforming provisions to changes made by the act; amending s. 765.101, F.S.; defining terms for purposes of provisions relating to health care advanced directives; revising definitions to conform to changes made by the act; amending s. 765.102, F.S.; revising legislative intent to include reference to surrogate authority that is not dependent on a determination of incapacity; amending s. 765.104, F.S.; conforming provisions to changes made by the act; amending s. 765.105, F.S.; conforming provisions to changes made by the act; providing an exception for a patient who has designated a surrogate to make health care decisions and receive health information without a determination of incapacity being required; amending ss. 765.1103 and 765.1105, F.S.; conforming provisions to changes made by the act; amending s. 765.202, F.S.; revising provisions relating to the designation of health care surrogates; amending s. 765.203, F.S.; revising the suggested form for designation of a health care surrogate; creating s. 765.2035, F.S.; providing for the designation of health care surrogates for minors; providing for designation of an alternate surrogate; providing for decisionmaking if neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available to make health care decisions for the minor on behalf of the minor's principal;

authorizing designation of a separate surrogate to consent to mental health treatment for a minor; providing that the health care surrogate authorized to make health care decisions for a minor is also the minor's principal's choice to make decisions regarding mental health treatment for the minor unless provided otherwise; providing that a written designation of a health care surrogate establishes a rebuttable presumption of clear and convincing evidence of the minor's principal's designation of the surrogate; creating s. 765.2038, F.S.; providing a suggested form for the designation of a health care surrogate for a minor; amending s. 765.204, F.S.; conforming provisions to changes made by the act; providing for notification of incapacity of a principal; amending s. 765.205, F.S.; conforming provisions to changes made by the act; amending ss. 765.302, 765.303, 765.304, 765.306, 765.404, and 765.516, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 743.0645, Florida Statutes, are amended to read:

743.0645 Other persons who may consent to medical care or treatment of a minor.—

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

(b) "Medical care and treatment" includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, health care surrogate designation under s. 765.2035 executed after September 30, 2015, power of attorney executed after July 1, 2001, or informed consent as provided by law is required, except as provided in s. 39.407(3).

(2) Any of the following persons, in order of priority listed, may consent to the medical care or treatment of a minor who is not committed to the Department of Children and Families or the Department of Juvenile Justice or in their custody under chapter 39, chapter 984, or chapter 985 when, after a reasonable attempt, a person who has the power to consent as otherwise provided by law cannot be contacted by the treatment provider and actual notice to the contrary has not been given to the provider by that person:

(a) A health care surrogate designated under s. 765.2035 after September 30, 2015, or a person who possesses a power of attorney to provide medical consent for the minor. A health care surrogate designation under s. 765.2035 executed after September 30, 2015, and a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual executing the health care surrogate for a minor or power of attorney.

There shall be maintained in the treatment provider's records of the minor documentation that a reasonable attempt was made to contact the person who has the power to consent.

Section 2. Section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.—As used in this chapter:

(1) "Advance directive" means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal's desires are expressed concerning any aspect of the principal's health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of this chapter.

(2) "Attending physician" means the ~~primary~~ physician who has primary responsibility for the treatment and care of the patient while the patient receives such treatment or care in a hospital as defined in s. 395.002(12).

(3) "Close personal friend" means any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the health care facility or to the primary ~~attending or treating~~ physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient's health care; and has maintained such regular contact with the patient so as to be familiar with the patient's activities, health, and religious or moral beliefs.

(4) "End-stage condition" means an irreversible condition that is caused by injury, disease, or illness which has resulted

in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

(5) "Health care" means care, services, or supplies related to the health of an individual and includes, but is not limited to, preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the individual's physical or mental condition or functional status or that affect the structure or function of the individual's body.

(6) ~~(5)~~ "Health care decision" means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

(b) The decision to apply for private, public, government, or veterans' benefits to defray the cost of health care.

(c) The right of access to health information ~~all records~~ of the principal reasonably necessary for a health care surrogate or proxy to make decisions involving health care and to apply for benefits.

(d) The decision to make an anatomical gift pursuant to part V of this chapter.

(7) ~~(6)~~ "Health care facility" means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(8) ~~(7)~~ "Health care provider" or "provider" means any person licensed, certified, or otherwise authorized by law to

administer health care in the ordinary course of business or practice of a profession.

(9) "Health information" means any information, whether oral or recorded in any form or medium, as defined in 45 C.F.R. s. 160.103 and the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended, that:

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

(b) Relates to the past, present, or future physical or mental health or condition of the principal; the provision of health care to the principal; or the past, present, or future payment for the provision of health care to the principal.

(10) ~~(8)~~ "Incapacity" or "incompetent" means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

(11) ~~(9)~~ "Informed consent" means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

(12) ~~(10)~~ "Life-prolonging procedure" means any medical

procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

(13) ~~(11)~~ "Living will" or "declaration" means:

(a) A witnessed document in writing, voluntarily executed by the principal in accordance with s. 765.302; or

(b) A witnessed oral statement made by the principal expressing the principal's instructions concerning life-prolonging procedures.

(14) "Minor's principal" means a principal who is a natural guardian as defined in s. 744.301(1); legal custodian; or, subject to chapter 744, legal guardian of the person of a minor.

(15) ~~(12)~~ "Persistent vegetative state" means a permanent and irreversible condition of unconsciousness in which there is:

(a) The absence of voluntary action or cognitive behavior of any kind.

(b) An inability to communicate or interact purposefully with the environment.

(16) ~~(13)~~ "Physician" means a person licensed pursuant to chapter 458 or chapter 459.

(17) "Primary physician" means a physician designated by an individual or the individual's surrogate, proxy, or agent under a durable power of attorney, as provided in chapter 709, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the

responsibility.

(18)~~(14)~~ "Principal" means a competent adult executing an advance directive and on whose behalf health care decisions are to be made or health care information is to be received, or both.

(19)~~(15)~~ "Proxy" means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401 to make health care decisions for such individual.

(20) "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

(21)~~(16)~~ "Surrogate" means any competent adult expressly designated by a principal to make health care decisions and to receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of incapacity or only upon the principal's incapacity as provided in s. 765.204 ~~on behalf of the principal upon the principal's incapacity~~.

(22)~~(17)~~ "Terminal condition" means a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

Section 3. Subsections (3) through (6) of section 765.102, Florida Statutes, are renumbered as subsections (4) through (7), respectively, present subsections (2) and (3) are amended, and a

new subsection (3) is added to that section, to read:

765.102 Legislative findings and intent.—

(2) To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by executing a document or orally designating another person to direct the course of his or her health care or receive his or her health information, or both, ~~medical treatment~~ upon his or her incapacity. Such procedure should be less expensive and less restrictive than guardianship and permit a previously incapacitated person to exercise his or her full right to make health care decisions as soon as the capacity to make such decisions has been regained.

(3) The Legislature also recognizes that some competent adults may want to receive immediate assistance in making health care decisions or accessing health information, or both, without a determination of incapacity. The Legislature intends that a procedure be established to allow a person to designate a surrogate to make health care decisions or receive health information, or both, without the necessity for a determination of incapacity under this chapter.

(4)~~(3)~~ The Legislature recognizes that for some the administration of life-prolonging medical procedures may result in only a precarious and burdensome existence. In order to ensure that the rights and intentions of a person may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws

of this state recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold, or withdraw life-prolonging procedures~~,~~ or to designate another to make the health care ~~treatment~~ decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her health ~~medical~~ care.

Section 4. Subsection (1) of section 765.104, Florida Statutes, is amended to read:

765.104 Amendment or revocation.—

(1) An advance directive ~~or designation of a surrogate~~ may be amended or revoked at any time by a competent principal:

(a) By means of a signed, dated writing;

(b) By means of the physical cancellation or destruction of the advance directive by the principal or by another in the principal's presence and at the principal's direction;

(c) By means of an oral expression of intent to amend or revoke; or

(d) By means of a subsequently executed advance directive that is materially different from a previously executed advance directive.

Section 5. Section 765.105, Florida Statutes, is amended to read:

765.105 Review of surrogate or proxy's decision.—

(1) The patient's family, the health care facility, or the primary ~~attending~~ physician, or any other interested person who may reasonably be expected to be directly affected by the surrogate or proxy's decision concerning any health care decision may seek expedited judicial intervention pursuant to

rule 5.900 of the Florida Probate Rules, if that person believes:

(a) ~~(1)~~ The surrogate or proxy's decision is not in accord with the patient's known desires or ~~the provisions of~~ this chapter;

(b) ~~(2)~~ The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;

(c) ~~(3)~~ The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;

(d) ~~(4)~~ The surrogate or proxy has failed to discharge duties, or incapacity or illness renders the surrogate or proxy incapable of discharging duties;

(e) ~~(5)~~ The surrogate or proxy has abused his or her powers; or

(f) ~~(6)~~ The patient has sufficient capacity to make his or her own health care decisions.

(2) This section does not apply to a patient who is not incapacitated and who has designated a surrogate who has immediate authority to make health care decisions and receive health information, or both, on behalf of the patient.

Section 6. Subsection (1) of section 765.1103, Florida Statutes, is amended to read:

765.1103 Pain management and palliative care.—

(1) A patient shall be given information concerning pain management and palliative care when he or she discusses with the primary ~~attending or treating~~ physician, or such physician's designee, the diagnosis, planned course of treatment,

alternatives, risks, or prognosis for his or her illness. If the patient is incapacitated, the information shall be given to the patient's health care surrogate or proxy, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 7. Section 765.1105, Florida Statutes, is amended to read:

765.1105 Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with a patient's advance directive, or the treatment decision of his or her surrogate <u>or proxy</u>, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive or treatment decision. This chapter does not require a health care provider or facility to commit any act which is contrary to the provider's or facility's moral or ethical beliefs, if the patient:

(a) Is not in an emergency condition; and

(b) Has received written information upon admission informing the patient of the policies of the health care provider or facility regarding such moral or ethical beliefs.

(2) A health care provider or facility that is unwilling to carry out the wishes of the patient or the treatment decision of his or her surrogate <u>or proxy</u> because of moral or ethical beliefs must within 7 days either:

(a) Transfer the patient to another health care provider or

facility. The health care provider or facility shall pay the costs for transporting the patient to another health care provider or facility; or

(b) If the patient has not been transferred, carry out the wishes of the patient or the patient's surrogate or proxy, unless ~~the provisions of~~ s. 765.105 applies ~~apply~~.

Section 8. Subsections (1), (3), and (4) of section 765.202, Florida Statutes, are amended, subsections (6) and (7) are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

765.202 Designation of a health care surrogate.—

(1) A written document designating a surrogate to make health care decisions for a principal or receive health information on behalf of a principal, or both, shall be signed by the principal in the presence of two subscribing adult witnesses. A principal unable to sign the instrument may, in the presence of witnesses, direct that another person sign the principal's name as required herein. An exact copy of the instrument shall be provided to the surrogate.

(3) A document designating a health care surrogate may also designate an alternate surrogate provided the designation is explicit. The alternate surrogate may assume his or her duties as surrogate for the principal if the original surrogate is not willing, able, or reasonably available ~~unwilling or unable~~ to perform his or her duties. The principal's failure to designate an alternate surrogate shall not invalidate the designation of a surrogate.

(4) If neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available

~~able or willing~~ to make health care decisions on behalf of the principal and in accordance with the principal's instructions, the health care facility may seek the appointment of a proxy pursuant to part IV.

(6) A principal may stipulate in the document that the authority of the surrogate to receive health information or make health care decisions or both is exercisable immediately without the necessity for a determination of incapacity as provided in s. 765.204.

Section 9. Section 765.203, Florida Statutes, is amended to read:

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

DESIGNATION OF HEALTH CARE SURROGATE

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

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

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

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

Address: ...(address)...

Phone: ...(telephone)...

INSTRUCTIONS FOR HEALTH CARE

I authorize my health care surrogate to:

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

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

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

I further authorize my health care surrogate to:

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

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

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

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

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

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

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

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

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

(1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

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

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

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

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

FOLLOWING BOXES:

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

IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT IMMEDIATELY.

SIGNATURES: Sign and date the form here:

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

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

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

SIGNATURES OF WITNESSES:

First witness Second witness

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

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

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

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

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

~~Name:....(Last)....(First)....(Middle Initial)....~~

~~In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:~~

~~Name:.....~~

~~Address:.....~~

~~Zip~~

~~..... Code:.....~~

~~Phone:.....~~

~~If my surrogate is unwilling or unable to perform his or her duties, I wish to designate as my alternate surrogate:~~

~~Name:.....~~

~~Address:.....~~

~~Zip~~

~~..... Code:.....~~

~~Phone:.....~~

~~I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.~~

~~Additional instructions (optional):.....~~

~~.....~~

~~.....~~

~~.....~~

~~I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.~~

~~Name:.....~~

~~Name:.....~~
~~.....~~
~~.....~~
~~Signed:.....~~
~~Date:.....~~
~~Witnesses:~~ ~~1.....~~

~~2. .....~~

Section 10. Section 765.2035, Florida Statutes, is created to read:

765.2035 Designation of a health care surrogate for a minor.—

(1) A natural guardian as defined in s. 744.301(1), legal custodian, or legal guardian of the person of a minor may designate a competent adult to serve as a surrogate to make health care decisions for the minor. Such designation shall be made by a written document signed by the minor's principal in the presence of two subscribing adult witnesses. If a minor's principal is unable to sign the instrument, the principal may, in the presence of witnesses, direct that another person sign the minor's principal's name as required by this subsection. An exact copy of the instrument shall be provided to the surrogate.

(2) The person designated as surrogate may not act as witness to the execution of the document designating the health care surrogate.

(3) A document designating a health care surrogate may also designate an alternate surrogate; however, such designation must

be explicit. The alternate surrogate may assume his or her duties as surrogate if the original surrogate is not willing, able, or reasonably available to perform his or her duties. The minor's principal's failure to designate an alternate surrogate does not invalidate the designation.

(4) If neither the designated surrogate or the designated alternate surrogate is willing, able, or reasonably available to make health care decisions for the minor on behalf of the minor's principal and in accordance with the minor's principal's instructions, s. 743.0645(2) shall apply as if no surrogate had been designated.

(5) A natural guardian as defined in s. 744.301(1), legal custodian, or legal guardian of the person of a minor may designate a separate surrogate to consent to mental health treatment for the minor. However, unless the document designating the health care surrogate expressly states otherwise, the court shall assume that the health care surrogate authorized to make health care decisions for a minor under this chapter is also the minor's principal's choice to make decisions regarding mental health treatment for the minor.

(6) Unless the document states a time of termination, the designation shall remain in effect until revoked by the minor's principal. An otherwise valid designation of a surrogate for a minor shall not be invalid solely because it was made before the birth of the minor.

(7) A written designation of a health care surrogate executed pursuant to this section establishes a rebuttable presumption of clear and convincing evidence of the minor's principal's designation of the surrogate and becomes effective

pursuant to s. 743.0645(2)(a).

Section 11. Section 765.2038, Florida Statutes, is created to read:

765.2038 Designation of health care surrogate for a minor; suggested form.—A written designation of a health care surrogate for a minor executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE FOR MINOR

I/We, ...(name/names)..., the [....] natural guardian(s) as defined in s. 744.301(1), Florida Statutes; [....] legal custodian(s); [....] legal guardian(s) [check one] of the following minor(s):

.....;
.....;
.....,

pursuant to s. 765.2035, Florida Statutes, designate the following person to act as my/our surrogate for health care decisions for such minor(s) in the event that I/we am/are not able or reasonably available to provide consent for medical treatment and surgical and diagnostic procedures:

Name: ...(name)...
Address: ...(address)...
Zip Code: ...(zip code)...
Phone: ...(telephone)...

603 If my/our designated health care surrogate for a minor is
604 not willing, able, or reasonably available to perform his or her
605 duties, I/we designate the following person as my/our alternate
606 health care surrogate for a minor:
607
608 Name: ...(name)...
609 Address: ...(address)...
610 Zip Code: ...(zip code)...
611 Phone: ...(telephone)...
612
613 I/We authorize and request all physicians, hospitals, or
614 other providers of medical services to follow the instructions
615 of my/our surrogate or alternate surrogate, as the case may be,
616 at any time and under any circumstances whatsoever, with regard
617 to medical treatment and surgical and diagnostic procedures for
618 a minor, provided the medical care and treatment of any minor is
619 on the advice of a licensed physician.
620
621 I/We fully understand that this designation will permit
622 my/our designee to make health care decisions for a minor and to
623 provide, withhold, or withdraw consent on my/our behalf, to
624 apply for public benefits to defray the cost of health care, and
625 to authorize the admission or transfer of a minor to or from a
626 health care facility.
627
628 I/We will notify and send a copy of this document to the
629 following person(s) other than my/our surrogate, so that they
630 may know the identity of my/our surrogate:
631

Name: ...(name)...

Name: ...(name)...

Signed: ...(signature)...

Date: ...(date)...

WITNESSES:

1. ...(witness)...

2. ...(witness)...

Section 12. Section 765.204, Florida Statutes, is amended to read:

765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the primary or attending physician shall evaluate the principal's capacity and, if the evaluating physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the evaluating ~~attending~~ physician has a question as to whether the principal lacks capacity, another physician shall also evaluate the principal's capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician's evaluations in the principal's medical record. If

the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the health care facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in chapter 709 or s. 765.203. If an attending physician determines that the principal lacks capacity, the hospital in which the attending physician made such a determination shall notify the principal's primary physician of the determination.

(3) The surrogate's authority shall commence upon a determination under subsection (2) that the principal lacks capacity, and such authority shall remain in effect until a determination that the principal has regained such capacity. Upon commencement of the surrogate's authority, a surrogate who is not the principal's spouse shall notify the principal's spouse or adult children of the principal's designation of the surrogate. In the event the primary ~~attending~~ physician determines that the principal has regained capacity, the authority of the surrogate shall cease, but shall recommence if the principal subsequently loses capacity as determined pursuant to this section.

(4) Notwithstanding subsections (2) and (3), if the principal has designated a health care surrogate and has stipulated that the authority of the surrogate is to take effect immediately, or has appointed an agent under a durable power of attorney as provided in chapter 709 to make health care decisions for the principal, the health care facility shall notify such surrogate or agent in writing when a determination

of incapacity has been entered into the principal's medical record.

(5)~~(4)~~ A determination made pursuant to this section that a principal lacks capacity to make health care decisions shall not be construed as a finding that a principal lacks capacity for any other purpose.

(6)~~(5)~~ If ~~In the event~~ the surrogate is required to consent to withholding or withdrawing life-prolonging procedures, ~~the provisions of~~ part III applies ~~shall apply~~.

Section 13. Paragraph (d) of subsection (1) and subsection (2) of section 765.205, Florida Statutes, are amended to read:

765.205 Responsibility of the surrogate.—

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

(d) Be provided access to the appropriate health information ~~medical records~~ of the principal.

(2) The surrogate may authorize the release of health information ~~and medical records~~ to appropriate persons to ensure the continuity of the principal's health care and may authorize the admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400 or chapter 429.

Section 14. Subsection (2) of section 765.302, Florida Statutes, is amended to read:

765.302 Procedure for making a living will; notice to physician.—

(2) It is the responsibility of the principal to provide for notification to her or his primary ~~attending or treating~~

physician that the living will has been made. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. A primary ~~An attending or treating~~ physician or health care facility which is so notified shall promptly make the living will or a copy thereof a part of the principal's medical records.

Section 15. Subsection (1) of section 765.303, Florida Statutes, is amended to read:

765.303 Suggested form of a living will.—

(1) A living will may, BUT NEED NOT, be in the following form:

Living Will

Declaration made this .... day of ...., ...(year)..., I, ..., willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that, if at any time I am incapacitated and

...(initial)... I have a terminal condition

or ...(initial)... I have an end-stage condition

or ...(initial)... I am in a persistent vegetative state

and if my primary ~~attending or treating~~ physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the

performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal.

In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life-prolonging procedures, I wish to designate, as my surrogate to carry out the provisions of this declaration:

Name:.....

Address:.....

Zip

..... Code:.....

Phone:.....

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Additional Instructions (optional):

.....

.....

.....

....(Signed)....

....Witness....

....Address....

....Phone....

....Witness....

....Address....

....Phone....

Section 16. Subsection (1) of section 765.304, Florida Statutes, is amended to read:

765.304 Procedure for living will.—

(1) If a person has made a living will expressing his or her desires concerning life-prolonging procedures, but has not designated a surrogate to execute his or her wishes concerning life-prolonging procedures or designated a surrogate under part II, the person's primary ~~attending~~ physician may proceed as directed by the principal in the living will. In the event of a dispute or disagreement concerning the primary ~~attending~~ physician's decision to withhold or withdraw life-prolonging procedures, the primary ~~attending~~ physician shall not withhold or withdraw life-prolonging procedures pending review under s. 765.105. If a review of a disputed decision is not sought within 7 days following the primary ~~attending~~ physician's decision to withhold or withdraw life-prolonging procedures, the primary ~~attending~~ physician may proceed in accordance with the principal's instructions.

Section 17. Section 765.306, Florida Statutes, is amended to read:

765.306 Determination of patient condition.—In determining whether the patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state or may recover capacity, or whether a medical condition or limitation referred to in an advance directive exists, the patient's primary ~~attending or treating~~ physician and at least one other consulting physician must separately examine the patient. The

findings of each such examination must be documented in the patient's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

Section 18. Section 765.404, Florida Statutes, is amended to read:

765.404 Persistent vegetative state.—For persons in a persistent vegetative state, as determined by the person's primary ~~attending~~ physician in accordance with currently accepted medical standards, who have no advance directive and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures may be withheld or withdrawn under the following conditions:

(1) The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

(2) The guardian and the person's primary ~~attending~~ physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the patient. If there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The ethics committee shall review the case with the guardian, in

consultation with the person's primary ~~attending~~ physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in this subsection.

Section 19. Paragraph (c) of subsection (1) of section 765.516, Florida Statutes, is amended to read:

765.516 Donor amendment or revocation of anatomical gift.—

(1) A donor may amend the terms of or revoke an anatomical gift by:

(c) A statement made during a terminal illness or injury addressed to the primary ~~an attending~~ physician, who must communicate the revocation of the gift to the procurement organization.

Section 20. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.7.15
Meeting Date

1224
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 215 So Monroe St # 815
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-999-4100

Email mrdenfield@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate + Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	SB 7084
INTRODUCER:	Health Policy Committee
SUBJECT:	Quality Health Care Services
DATE:	April7, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall		**HP Submitted as Committee Bill**

I. Summary:

SB 7084 addresses direct primary care agreements, medical tourism, and volunteer health care services.

The bill provides that a direct primary care agreement is not insurance and is not subject to the Florida Insurance Code. Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between $50 and $100 per individual, to the primary care provider for defined primary care services. After paying the fee, a patient can access all services under the agreement at no extra charge.

Enterprise Florida, Inc., (EFI) and the Florida Tourism Industry Marketing Corporation (Visit Florida) are directed to promote medical tourism and market the state as a healthcare destination. Visit Florida is required to include the promotion of medical tourism in the 4-year marketing plan and showcase Florida providers. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of Economic and Demographic Research (EDR) are directed to include the medical tourism programs when analyzing Visit Florida and its programs as part of their Economic Development Programs Evaluation every 3 years.

The bill revises the description of volunteer, uncompensated services under the Access to Health Care Act (the act) to allow a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of the contracted services by volunteer health care providers without jeopardizing the sovereign immunity protections afforded under the act. This support may include employing providers to supplement, coordinate, or support the volunteers, The bill also clarifies that employees and agents of a health care provider fall within the sovereign immunity protections of the contracted health care provider when providing health care services pursuant to the contract. Section 768.28, F.S., is likewise amended to specifically include a health care provider's employees or agents to avoid any potential ambiguity between the provisions in that section of law and the act.

II. Present Situation:

Florida Office of Insurance Regulation

The Florida Office of Insurance Regulation (OIR) regulates the business of insurance in the state, in accordance with the Florida Insurance Code (Code). The Life and Health Unit (Unit) of OIR provides financial oversight of health insurers, health maintenance organizations, and other regulated entities providing health care coverage. The Unit also reviews and approves some health care coverage products offered in the state. The following chart shows the type and number of each entity in the state:[1]

Authority Category	Authorities
Health Insurers	448
Third Party Administrators	310
Continuing Care Retirement Communities	61
Discount Medical Plan Organizations	40
Health Maintenance Organizations	38
Fraternal Benefit Societies	36
Prepaid Limited Health Service Organizations/Prepaid Health Clinics	28

Direct Primary Care

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between $50 and $100 per individual,[2] to the primary care provider for defined primary care services. These primary care services may include:

- Office visits;
- Annual physical examination;
- Routine laboratory tests;
- Vaccinations;
- Wound care;
- Splinting or casting of fractured or broken bones;
- Other routine testing, e.g. echocardiogram and colon cancer screening; or
- Other medically necessary primary care procedures.

After paying the fee, a patient can utilize all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, like lab tests, mammograms, Pap

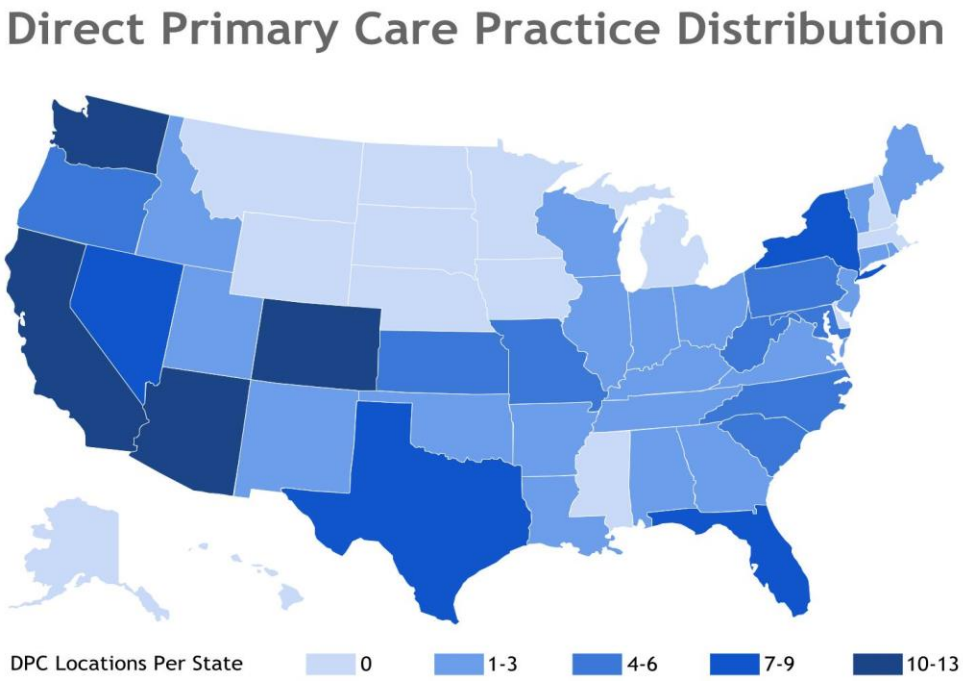
[1] Rich Robleto, Florida Office of Insurance Regulation, *Health Insurance Regulatory Responsibilities of the Office of Insurance Regulation*, PowerPoint presentation before the House Health Innovation Subcommittee, January 21, 2015, slide 7 (using data compiled on March 21, 2014 from National Association of Insurance Commissioners Insurance, *Department Resources Report for CY 2013*) *see* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2859&Session=2015&DocumentType=Meeting Packets&FileName=his 1-21-15.pdf (last visited: April 2, 2015).

[2] Approximately two thirds of DPC practices charge less than $135 per month. Jen Wieczner, *Is Obamacare Driving Doctors to Refuse Insurance?*, WALL ST. J. MARKETWATCH, Nov. 12, 2013, *available at* http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12 (last visited April 2, 2015).

screenings, and vaccinations. A primary care provider DPC model can be designed to address the large majority of health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management.

In the DPC practice model, the primary care provider eliminates practice overhead costs associated with filing claims, coding, refiling claims, write-offs, appealing denials, and employing billing staff. The cost and time savings can be reinvested in the practice, allowing more time with patients to address their primary care needs.

The following chart illustrates the concentration of DPC practices in the United States:[3]



There are an estimated 4,400 direct primary care physicians nationwide, up from 756 in 2010.[4]

DPC and Health Care Reform

The Patient Protection and Affordable Care Act (PPACA)[5] addresses the DPC practice model as part of health care reform. A qualified health plan under PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.[6] Patients who are enrolled in a DPC medical home plan are exempt from the

[3] Jay Keese, Executive Director, Direct Primary Care Coalition, *Direct Primary Care*, PowerPoint presentation before the House Health Innovation Subcommittee (Feb. 17, 2015), slide 4, available at: http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2859&Session=2015&DocumentType=Meeting Packets&FileName=his 2-17-15.pdf (last visited April 2, 2015).
[4] Daniel McCorry, *Direct Primary Care: An Innovative Alternative to Conventional Health Insurance*, The Heritage Foundation BACKGROUNDER, No. 2939 (Aug. 6, 2014), http://thf_media.s3.amazonaws.com/2014/pdf/BG2939.pdf (last visited April 2, 2015).
[5] Pub. L. No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[6] 42 U.S.C. §1802 (a)(3); 45 C.F.R. §156.245

individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, like cancer, or severe injuries that require lengthy hospital stays and rehabilitation.[7] In Colorado and Washington, qualified health plans are offering DPC medical home coverage on each state-based health insurance exchange.[8]

Enterprise Florida, Inc.

Enterprise Florida, Inc. (EFI) is a public-private organization created as a non-profit corporation in Florida law under ss. 288.901 through 288.923, F.S.[9] The EFI serves as the state's economic development agency and is overseen by a board of directors, chaired by the Governor. The state's Tourism Marketing division is located within EFI.

Section 288.001, F.S., requires the Office of Economic and Demographic Research (EDR) and the Office of Program Policy and Government Accountability (OPPAGA) to provide a detailed analysis of state economic development programs according to a recurring schedule established in law. The OPPAGA must evaluate each program over the 3 previous years for effectiveness and value to the state's taxpayers and include recommendations for consideration by the Legislature. The EDR must evaluate and determine the economic benefits, as defined in s. 288.005(1), F.S., of each program over the previous 3 years.

VISIT Florida, Inc.

VISIT Florida, Inc., is Florida's official tourism marketing corporation and is a direct-support organization[10] of Enterprise Florida, Inc. VISIT Florida is a non-profit, public private partnership created in 1996 by the Florida Legislature[11] as the Florida Tourism Industry Marketing Corporation under s. 288.1226, F.S. VISIT Florida's mission is to promote travel and drive visitation to and within Florida.[12] It is VISIT Florida's vision to make Florida the number one travel destination in the world.[13]

For every $1 spent on tourism marketing, VISIT Florida reports that more than $300 in tourism spending and $18 in new sales tax collections are generated from visitors, not residents.[14] VISIT Florida also raised more than $120 million in private sector matching funds in the last fiscal year through investments in advertising campaigns, promotional campaigns, and other marketing opportunities.[15]

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[7] 42 U.S.C. §18021(a)(3)
[8] Robleto, *Supra* note 1, slide 2.
[9] Enterprise Florida, Inc., *About EFI*, http://www.enterpriseflorida.com/about-efi/ (last visited April 3, 2015).
[10] A direct support organization generally means a not-for-profit corporation incorporated under chapter 617 and organized and operated to conduct program and activities; initiate developmental projects; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the state for the specific purposes of the non-profit corporation.
[11] VISIT Florida.com, *About VISIT FLORIDA*, http://www.visitflorida.com/en-us/about-visit-florida.html (last visited April 3, 2015).
[12] VISIT Florida.com, *Mission & Vision*, http://www.visitfloridamediablog.com/home/corporate-info/mission-vision/ (last visited April 3, 2015).
[13] Id.
[14] *Supra* note 11.
[15] Id.

VISIT Florida, Inc., is overseen by a 31-member Board of Directors comprised of Florida tourism experts. The board has 11 committees that focus on these areas:

- Advertising and internet;
- Audit;
- Communications;
- Cultural, heritage, rural and nature;
- Finance;
- Industry relations;
- International;
- Marketing Council Steering;
- Promotions;
- Meetings and travel trade; and
- Visitor services.[16]

A Florida Council of Tourism Leaders also exists which includes past Chairs of the VISIT Florida Board of Directors.[17]

The 2014-2015 General Appropriations Act earmarked $5 million for a marketing plan and grants related to medical tourism. Since the 2014 Legislative Session adjourned, the Medical Tourism Task Force has adopted a $5 million budget that includes a strategic plan, branding, and a website specific to medical tourism, medical meetings and trainings, health and wellness projects, partnerships with the Department of Health and the Department of Agriculture and Consumer Services, public service announcements with the Florida Academic Cancer Center Alliance, and matching grants.

VISIT Florida awarded 25 medical tourism grants totaling $3.1 million in January 2015. Grants were awarded in two categories: nine were awarded for medical tourism destination promotion and 16 for medical meetings and training promotion. The grants aim to help grow awareness of existing medical tourism products and services in the state, as well as strengthen Florida as a preferred destination to host medical conferences, meetings and training programs.

Each grant awarded under the medical tourism promotion program must be matched by private dollars. The applicants had to be either a destination marketing organization, health care provider, medical facility, physician or, in the case of the meetings and training program grant, a collaboration that includes one or more of these entities.[18]

The Florida Chamber Foundation (Foundation) is developing the strategic plan. Part of the process is an analysis that reviews medical tourism, medical training, and health and wellness related tourism statewide that will also include interviews with stakeholders in healthcare, medical training, tourism and events markets. The Foundation will also conduct a market analysis. Regular updates and input from task force members occurs at each meeting. The

[16] VISIT Florida.com, *Meet Us*, http://www.visitflorida.org/about-us/meet-us/ (last visited April 3, 2015).
[17] Id.
[18] *See* Discover Florida Health, Sunshine Matters, The Official Corporate Blog for Visit Florida (January 29, 2015) at: http://www.visitfloridablog.org/?p=11862, (last visited April 3, 2015).

Foundation was to complete a summary analysis by March 2015, with a final report due by October 2015.[19] The theme and logo for the website is *Discover Florida Health.*[20]

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.[21] The act is administered by the Department of Health (department) through the Volunteer Health Services Program.[22]

This section of law extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[23]

Health care providers under the act include:[24]

- A birth center licensed under ch. 383, F.S.[25]
- An ambulatory surgical center licensed under ch. 395, F.S.[26]
- A hospital licensed under ch. 395, F.S.[27]
- A physician or physician assistant licensed under ch. 458, F.S.[28]
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.[29]
- A chiropractic physician licensed under ch. 460, F.S.[30]

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[19] VISIT Florida, Medical Tourism Task Force Meeting Report (January 23, 2015) (on file with the Senate Committee on Health Policy).
[20] Id.
[21] Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $23,540 is at 200 percent of the federal poverty level using Medicaid data. *See 2015 Poverty Guidelines, Annual Guidelines* at: http://aspe.hhs.gov/poverty/15poverty.cfm (last visited April 2, 2015).
[22] *See* Florida Department of Health, *Volunteerism Volunteer Opportunities,* (last visited April 2, 2015) http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html; Rule Chapter 64I-2, F.A.C.
[23] Section 766.1115(3)(a), F.S.
[24] Section 766.1115(3)(d), F.S.
[25] Section 766.1115(3)(d)1., F.S.
[26] Section 766.1115(3)(d)2., F.S.
[27] Section 766.1115(3)(d)3., F.S.
[28] Section 766.1115(3)(d)4., F.S.
[29] Section 766.1115(3)(d)5., F.S.
[30] Section 766.1115(3)(d)6., F.S.

- A podiatric physician licensed under ch. 461, F.S.[31]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.[32]
- A dentist or dental hygienist licensed under ch. 466, F.S.[33]
- A midwife licensed under ch. 467, F.S.[34]
- A health maintenance organization certificated under part I of ch. 641, F.S.[35]
- A health care professional association and its employees or a corporate medical group and its employees.[36]
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.[37]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[38]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.[39]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.[40]

The act further specifies additional contract requirements. The contract must provide that:
- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.

[31] Section 766.1115(3)(d)7., F.S.
[32] Section 766.1115(3)(d)8., F.S.
[33] Section 766.1115(3)(d)13., F.S.
[34] Section 766.1115(3)(d)9., F.S.
[35] Section 766.1115(3)(d)10., F.S.
[36] Section 766.1115(3)(d)11., F.S.
[37] Section 766.1115(3)(d)12., F.S.
[38] Section 766.1115(3)(d)14., F.S.
[39] Section 766.1115(3)(d)15., F.S.
[40] Section 766.1115(3)(c), F.S.

- The health care provider is subject to supervision and regular inspection by the governmental contractor.[41]
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.[42]

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.[43]

According to the department, from July 1, 2012, through June 30, 2013, 13,543 licensed health care volunteers (plus an additional 26,002 clinic staff volunteers) provided 427,731 health care patient visits with a total value of donated goods and services of $294,427,678, under the act.[44] The Florida Department of Financial Services, Division of Risk Management, reported on February 14, 2014, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.[45]

Legislative Appropriation to Free and Charitable Clinics

The Florida Association of Free and Charitable Clinics received a $4.5 million appropriation in the 2014-2015 General Appropriations Act through the department.[46] The department restricted the use of these funds by free and charitable clinics that were health care providers under the act to clinic capacity building purposes in the contract which distributed this appropriation. The clinic capacity building was limited to products or processes that increase skills, infrastructure and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel. The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

[41] Section 766.1115(4), F.S.
[42] Rule 64I-2.003(2), F.A.C.
[43] Section 766.1115(5), F.S.
[44] Department of Health, *Volunteer Health Services 2012-2013 Annual Report*, available at: http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhs1213annualreport2.pdf, (last visited Mar. 7, 2015).
[45] Correspondence from Lewis R. Williams, Chief of State Liability and Property Claims, to Duane A. Ashe, Department of Health (Feb. 14, 2014) (on file with the Senate Committee on Health Policy).
[46] Chapter 2014-51, Laws of Fla., line item 461.

Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[47] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[48]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[49] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[50]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[51] The court explained:

> Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[52] Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment

[47] Section 768.28(5), F.S.
[48] *Id.*
[49] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[50] *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).
[51] *Id.* at 703.
[52] Florida Department of Health and Rehabilitative Services.

> provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[53]

III. Effect of Proposed Changes:

Direct Primary Care and the Florida Insurance Code (Section 1)

The bill creates s. 624.27. F.S., relating to the application of the Florida Insurance Code (Code) to direct primary care agreements. Several new definitions are created under this section.

- *Direct primary care agreement* means a contract between a primary care provider or a primary care group practice and a patient, the patient's legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- *Primary care provider* means a licensed health care provider under chapter 458 (medical doctor), chapter 459 (osteopathic doctor), or chapter 464 (nurses) who provides medical services which are commonly provided without referral from another health care provider.
- *Primary care service* means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

The bill provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. The bill exempts both the agreement and the activity from the Code. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or the act of entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the Code to market, sell, or offer to sell a direct primary care agreement.

The bill requires a direct primary care agreement to:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative;
- Allow either party to terminate the agreement by written notice followed by a waiting period as specified in the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for primary care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;

[53] *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason; and
- State that the agreement is not health insurance.

Economic Development Programs Evaluation (Section 2)

Section 2 amends s. 288.0001, F.S., relating to the evaluation of designated programs funded under VISIT Florida by the Offices of Economic and Demographic Research (EDR) and Program Policy Analysis and Government Accountability. The newly created provision of law relating to medical tourism is added to a list of programs to receive a detailed economic development review by EDR and OPPAGA every 3 years.

Enterprise Florida, Inc. (Sections 3 and 4)

Enterprise Florida's purpose is amended to include marketing Florida as a health care destination using medical tourism initiatives under s. 288.924, F.S., and promoting the state's quality health care services.

Within Enterprise Florida, Inc., its Division of Tourism's responsibilities are modified to include the promotion of medical tourism for quality health care services, as provided under the newly created s. 288.924, F.S.

Medical Tourism (Section 5)

Section 5 creates s. 288.924, F.S., which will require the Division of Tourism Marketing within Enterprise Florida, Inc., to include specific initiatives to establish Florida as a destination for quality, medical services within its statutorily mandated 4-year marketing plan. The plan must, at a minimum promote the state nationally and internationally on:

- The qualifications and specializations of health care providers and the scope of services available throughout the state;
- Opportunities for medical-related conferences, businesses, and training from the medical field; and
- Initiatives that showcase the selected and qualified providers that bundle packages of health and support services.

In order for a provider to be included in initiatives related to bundled health care packages, the bill requires a selection process through a solicitation of proposals that describes the available services, provider qualifications, and special arrangements for food, lodging, transportation, or other support services that may be provided to the visiting patient or their families. A proposal may come from a single provider or through a network of providers. Assessment of proposals are through the Florida Tourism Industry Marketing Corporation. To be qualified for selection, a health care provider must:

- Have a full, active, and unencumbered Florida license and ensure that all health care providers participating in the proposal have a full, active, and unencumbered license;
- Have a current accreditation that is not conditional or provisional from a nationally recognized accrediting body;

- Be a recipient of the Cancer Center of Excellence Award, as described in s. 381,925, F.S., within the recognized 3-year period of the award, or have a current national or international recognition given through a specific qualifying process in another specialty area; and
- Meet other criteria as determined by the Florida Tourism Industry Marketing Corporation in collaboration with the Agency for Health Care Administration and the Department of Health.

Access to Health Care Act (Section 6)

The bill authorizes a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act (the act) without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The bill states that the receipt and use of the appropriation or grant does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill inserts the phrase "employees or agents" in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract. Subsection (5) of the act currently recognizes employees and agents of a health care provider. This subsection requires the governmental contractor to provide written notice to each patient, or the patient's legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

Sovereign Immunity (Section 7)

Section 768.28, F.S., is amended to specifically include a health care provider's employees or agents so as to avoid any potential ambiguity between the provisions in that section of law and the act.

Additional Provisions and Effective Date

The bill removes obsolete language and makes technical and grammatical changes.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 7084 removes regulatory uncertainty for health care providers as to whether the direct primary care agreement is insurance. Additional primary care providers may elect to pursue this option and establish direct primary care practices in this state which could increase access to affordable primary care services.

Additional participation by the medical community in medical tourism may further increase revenues for the medical community. Additionally, the medical community and the public benefit financially when medical conferences and meetings convene in Florida.

Contracted free clinics may receive or continue to receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point and therefor the amount is indeterminate.

C. Government Sector Impact:

For every $1 spent on tourism marketing, VISIT Florida reports that more than $300 in tourism spending and $18 in new sales tax collections are generated from visitors, not residents.[54] VISIT Florida also raised more than $120 million in private sector matching funds in the last fiscal year through investments in advertising campaigns, promotional campaigns, and other marketing opportunities.[55]

[54] *Supra* note 11.
[55] Id.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.901, 288, 923, 766.1115, and 768.28.

This bill creates the following sections of the Florida Statutes: 624.27 and 288.924.

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.

FOR CONSIDERATION By the Committee on Health Policy

588-03391A-15 20157084pb

A bill to be entitled

An act relating to quality health care services; creating s. 624.27, F.S.; providing definitions; specifying that a direct primary care agreement does not constitute insurance and is not subject to the Florida Insurance Code; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to the code; providing that a health care provider is not required to obtain a certificate of authority to market, sell, or offer to sell a direct primary care agreement; specifying criteria for a direct primary care agreement; amending s. 288.0001. F.S.; requiring an analysis of medical tourism for quality health care services in the Economic Development Programs Evaluation; amending s. 288.901, F.S.; requiring Enterprise Florida, Inc., to collaborate with the Department of Economic Opportunity to market this state as a health care destination; amending s. 288.923, F.S.; requiring the Division of Tourism Marketing to include in its 4-year plan a discussion of the promotion of medical tourism for quality health care services; creating s. 288.924, F.S.; creating a marketing plan to promote national and international awareness of the qualifications, scope of services, and specialized expertise of health care providers in this state, to promote national and international awareness of certain business opportunities to attract practitioners to destinations in this state, and to

include an initiative to showcase qualified health care providers; specifying qualifications for participating providers; amending s. 766.1115, F.S.; redefining terms relating to agency relationships with governmental health care contractors; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; redefining the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

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

Section 1. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

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

(a) "Direct primary care agreement" means a contract between a primary care provider or primary care group practice and a patient, the patient's legal representative, or an employer which must satisfy the criteria in subsection (4) and

does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care provider licensed under chapter 458, chapter 459, or chapter 464 who provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to this code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to this code.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under this code to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient or the patient's legal representative.

(c) Allow a party to terminate the agreement by written notice to the other party after a period specified in the agreement.

(d) Describe the scope of the primary care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for primary care

services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) State that the agreement is not health insurance.

Section 2. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. VISIT Florida and its programs established or funded under ss. 288.122, 288.1226, 288.12265, ~~and~~ 288.124, and 288.924.

4. The Florida Sports Foundation and related programs

established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

Section 3. Subsection (2) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.—

(2) PURPOSES.—Enterprise Florida, Inc., shall act as the economic development organization for the state, using ~~utilizing~~ private sector and public sector expertise in collaboration with the department to:

(a) Increase private investment in Florida;

(b) Advance international and domestic trade opportunities;

(c) Market the state both as a probusiness location for new investment and as an unparalleled tourist destination;

(d) Revitalize Florida's space and aerospace industries, and promote emerging complementary industries;

(e) Promote opportunities for minority-owned businesses;

(f) Assist and market professional and amateur sport teams and sporting events in Florida; ~~and~~

(g) Assist, promote, and enhance economic opportunities in this state's rural and urban communities; and~~.~~

(h) Market the state as a health care destination by using the medical tourism initiatives as described in s. 288.924 to promote quality health care services in this state.

Section 4. Paragraph (c) of subsection (4) of section 288.923, Florida Statutes, is amended to read:

288.923 Division of Tourism Marketing; definitions; responsibilities.—

(4) The division's responsibilities and duties include, but are not limited to:

(c) Developing a 4-year marketing plan.

1. At a minimum, the marketing plan shall discuss the following:

a. Continuation of overall tourism growth in this state.

b. Expansion to new or under-represented tourist markets.

c. Maintenance of traditional and loyal tourist markets.

d. Coordination of efforts with county destination marketing organizations, other local government marketing groups, privately owned attractions and destinations, and other private sector partners to create a seamless, four-season advertising campaign for the state and its regions.

e. Development of innovative techniques or promotions to build repeat visitation by targeted segments of the tourist population.

f. Consideration of innovative sources of state funding for tourism marketing.

g. Promotion of nature-based tourism and heritage tourism.

h. Promotion of medical tourism for quality health care services, as provided under s. 288.924.

i.~~h.~~ Development of a component to address emergency response to natural and manmade disasters from a marketing standpoint.

2. The plan shall be annual in construction and ongoing in nature. Any annual revisions of the plan shall carry forward the concepts of the remaining 3-year portion of the plan and consider a continuum portion to preserve the 4-year timeframe of the plan. The plan also shall include recommendations for specific performance standards and measurable outcomes for the division and direct-support organization. The department, in

consultation with the board of directors of Enterprise Florida, Inc., shall base the actual performance metrics on these recommendations.

3. The 4-year marketing plan shall be developed in collaboration with the Florida Tourism Industry Marketing Corporation. The plan shall be annually reviewed and approved by the board of directors of Enterprise Florida, Inc.

Section 5. Section 288.924, Florida Statutes, is created to read:

288.924 Medical tourism for quality health care services; medical tourism marketing plan.—The Division of Tourism Marketing shall include within the 4-year marketing plan required under s. 288.923(4) specific initiatives to advance this state as a destination for quality bundled health care services. The plan must:

(1) Promote national and international awareness of the qualifications, scope of services, and specialized expertise of health care providers throughout this state;

(2) Promote national and international awareness of medical-related conferences, training, or business opportunities to attract practitioners from the medical field to destinations in this state; and

(3) Include an initiative that showcases selected, qualified providers offering bundled packages of health care and support services. The selection of providers to be showcased must be conducted through a solicitation of proposals from Florida hospitals and other licensed providers for plans that describe available services, provider qualifications, and special arrangements for food, lodging, transportation, or other

support services and amenities that may be provided to visiting patients and their families. A single health care provider may submit a proposal describing the available health care services offered through a network of multiple providers and explaining support services and other amenities associated with the care. The Florida Tourism Industry Marketing Corporation shall assess the qualifications and credentials of providers submitting proposals. To be qualified for selection, a health care provider must:

(a) Have a full, active, and unencumbered Florida license and ensure that all health care providers participating in the proposal have full, active, and unencumbered Florida licenses;

(b) Have a current accreditation that is not conditional or provisional from a nationally recognized accrediting body;

(c) Be a recipient of the Cancer Center of Excellence Award, as described in s. 381.925, within the recognized 3-year period of the award, or have a current national or international recognition given through a specific qualifying process in another specialty area; and

(d) Meet other criteria as determined by the Florida Tourism Industry Marketing Corporation in collaboration with the Agency for Health Care Administration and the Department of Health.

Section 6. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows the health care provider, or any employee or agent of the health care provider, to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services~~, except as provided in paragraph (4)(g)~~. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraph (4)(g). A free clinic as described in subparagraph (3)(d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt and use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all

low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992,~~ as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent of the health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under contract with the state, or any

employee or agent of such health care provider, may not be named as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992,~~ under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the

antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the

exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28. Thereafter, and with respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the health care provider ~~federally funded community health center~~ is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28.

Section 7. Paragraph (b) of subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider, and its employees or agents, when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing

patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-7-2105
Meeting Date

SB 7084
Bill Number (if applicable)

Topic Medical Tourism

Amendment Barcode (if applicable)

Name Layne Smith

Job Title Director, State Government Relations

Address 4500 San Pablo Road
Street

Phone 904-953-7334

Jacksonville FL 32224
City *State* *Zip*

Email smith.layne@mayo.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Mayo Clinic

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/
Meeting Date

7084
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Tourism

Name Phillis Oetens

Job Title V.P Govt Relations

Address 6455 Red Rd.
Street

Coral Gables, FL
City *State* *Zip*

Phone 305-322-2855

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

7084
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave
Street
Jacksonville, FL 32204
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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Physicians
Florida Society of Plastic Surgeons

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

7084
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Tourism

Name Patty Holland

Job Title Government Relations Liaison

Address 108 E. Jefferson st
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Tallahassee FL 32301
City *State* *Zip*

Phone 850-294-7583

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Medical Tourism 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)

4/7/15
Meeting Date

SB 7084
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Quality Health Care Services

Name Tim Nungesser (Nun-Guess-Er)

Job Title Legislative Director

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-445-5367

Email tim.nungesser@nfib.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business (NFIB)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

7084
Bill Number (if applicable)

Topic Quality Health Care Services

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address _____ Phone 850-443-1319
Street

Tallahassee FL 32302 Email _____
City *State* *Zip*

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

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

Representing Florida Nurses Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/7/15
Meeting Date

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

7084
Bill Number (if applicable)

Topic Quality Health Care Services

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address _____ Phone 850-443-1319
Street

Tallahassee FL 32302 Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Free & Charitable Clinics

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

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:	PCS/SB 710 (873230)
INTRODUCER:	Health Policy Committee
SUBJECT:	Physical Therapy Practice
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	**Pre-meeting**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 710 authorizes a physical therapist to implement a plan of treatment provided for a patient by a physician licensed in a state other than Florida. The bill increases the time frame for physical therapy treatment for a patient for a condition not previously assessed by a practitioner of record or a physician licensed in another state from 21 days to 42 days before the physical therapist must obtain a Florida practitioner who will review and sign the treatment plan.

The bill authorizes any person who holds a physical therapy license and obtains a degree of Doctor of Physical Therapy to use the letters “D.P.T.” or “P.T.”; however, a physical therapist may not use the title “doctor” without also clearly informing the public of his or her profession as a physical therapist.

The bill revises terms prohibited from use by a person who is not licensed as a physical therapist or a physical therapist assistant.

The bill has no fiscal impact on government entities.

II. Present Situation:

Physical Therapy Practice in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Physical therapists (PTs) in Florida are regulated by the Board of Physical Therapy Practice (Board) within the Department of Health (DOH).[1] A licensed PT or a licensed physical therapist assistant (PTA) must practice physical therapy in accordance with the provisions of the Act and the Board rules. To be eligible for licensing as a PT in Florida, an applicant must:[2]

- Be at least 18 years of age;
- Be of good moral character;
- Have graduated from an approved school of physical therapy recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation; and
- Have passed a national examination approved by the Board.

Alternatively, an applicant for a PT license may also:[3]

- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of PTs in the United States; or
- Be entitled to licensure without examination as provided in s. 486.081, F.S.[4]

Under ch. 486, F.S., a "physical therapist assistant" means a person who is licensed to perform patient-related activities, including the use of physical agents, whose license is in good standing, and whose activities are performed under the direction of a PT as set forth in rules adopted pursuant to ch. 486., F.S. Patient-related activities performed by a PTA for a board-certified orthopedic physician or physiatrist licensed pursuant to chapters 458 or 459, F.S., or a chiropractor licensed under ch. 460, F.S., must be under the general supervision of a PT, but do not require onsite supervision by a PT. Patient-related activities performed for all other health care practitioners licensed under chapters 458 and 459, F.S., and those patient-related activities performed for podiatrists licensed under ch. 461 or dentists licensed under ch. 466, F.S. must be performed under the onsite supervision of a PT.[5]

Currently, there are 14,108 PTs and 7,616 PTAs who hold active Florida licenses.[6]

---

[1] Section 486.023, F.S.
[2] Section 486.031, F.S.
[3] *Id*
[4] The Board may issue a license without examination in Florida to any applicant who presents evidence of having passed the American Registry Examination prior to 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy are determined by the Board to be as high as those of Florida.
[5] Section 486.021(6), F.S.
[6] Number of active Florida licenses calculated by adding "In State Active" practitioners and "Out of State Active" practitioners. *See* Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014: Summary of Licensed Practitioners*, available at http://mqawebteam.com/annualreports/1314/#16 (last visited Apr. 6, 2015).

Physical Therapy Scope of Practice

"Practice of physical therapy" is defined in s. 486.021(11), F.S., as the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities such as: exercise, massage, ultrasound, ice, heat, water, and equipment. A PT's professional responsibilities include:[7]

- Interpretation of a practitioner's referral;
- Delivery of the initial physical therapy assessment of the patient;
- Identification of and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long and short term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks;
- Direction and supervision of supportive staff in a manner appropriate for the patient's individual needs;
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan; and
- Collaboration with members of the health care team when appropriate.

Section 486.021(11), F.S., limits treatments that PTs may provide or what procedures may be performed for diagnosing a condition. A PT must refer a patient to, or consult with, a practitioner of record if a patient's condition is found to be outside the scope of physical therapy.[8] Under s. 486.021(11), F.S., a "practitioner of record" is a health care practitioner licensed under chapters 458 (Medical Practice), 459 (Osteopathic Medicine), 460 (Chiropractic Medicine), 461 (Podiatric Medicine), or 466 (Dentistry), F.S., and engaged in active practice. A PT may not practice chiropractic medicine, including specific spinal manipulation, and must refer a patient with the need for such to a chiropractor licensed under ch. 460, F.S.[9] Additionally, a PT is not authorized to implement a plan for a patient being treated in a hospital or an ambulatory surgical center licensed under ch. 395, F.S.[10]

Section 486.081(1), F.S., authorizes a licensed PT to use the words "physical therapist" or "physiotherapist," or the letters "P.T." in connection with his or her name or place of business to denote his or her licensure. False representation of a PT license, or willful misrepresentation or false representation to obtain a PT license is unlawful.[11]

Physical Therapy Treatment Plan and Referral for Treatment

Florida law provides that a PT may implement a plan of treatment developed by the PT for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012, F.S.[12] Currently, a PT may implement a treatment plan for a patient without a written order from a practitioner of record if the recommended

[7] Rule 64B17-6.001, F.A.C.
[8] Section 486.021(11)(a), F.S.
[9] Section 486.021(11)(c), F.S.
[10] Section 486.021(11)(d), F.S.
[11] *See* s. 486.135, F.S.
[12] *Supra* note 8.

treatment plan is performed within a 21-day timeframe. If the treatment plan requires treatment beyond 21 days, the condition must be assessed by a practitioner of record who is required to review and sign the treatment plan.[13]

III. Effect of Proposed Changes:

PCS/SB 710 amends s. 486.021(11)(a), F.S., to authorize a PT to implement a plan of treatment provided for a patient by a physician licensed in a state other than Florida.

The bill also increases the time frame for physical therapy treatment for a patient for a condition not previously assessed by a practitioner of record before the PT must obtain a practitioner who will review and sign the treatment plan. The time frame is increased from 21 days to 42 days. The bill includes physical therapy treatment for a patient for a condition not previously assessed by a physician licensed in another state in the 42 days limit before a PT must obtain a Florida practitioner of record to review and sign the treatment plan.

The bill amends s. 486.081(1), F.S., to authorize any person who holds a physical therapy license and obtains a doctoral degree in physical therapy to use the letters "D.P.T." or "P.T." A PT who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a PT.

The bill amends s. 486.135(1), F.S., to revise terms prohibited from use by a person who is not licensed as a PT or a PTA. The bill provides that use of the letters "D.P.T." in connection with a name or business is unlawful for any person who is not licensed as a PT under ch. 486, F.S. The letters "Ph.T.," "R.P.T.," and "L.P.T." are removed from statute by the bill. Similar changes are made to revise terms and letters prohibited from use by any person who is not licensed as a PTA.

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.

[13] *Id*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021, 486.081, and 486.135.

IX. Additional Information:

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

PCS (873230) by Health Policy:
The Proposed Committee Substitute leaves intact the terms of "physical therapist," "physical therapy practitioner," and "physical therapy." The PCS revises the definition of "practice of physical therapy" to authorize PTs to implement a plan of treatment provided by a physician licensed in another state. The revised definition provides that if physical therapy treatment is required beyond 42 days for a condition not previously assessed by a practitioner of record or by a physician licensed in another state, the PT must obtain a practitioner of record to review and sign the treatment plan. No sections of the Florida Statutes are reenacted.

B. Amendments:

None.

418508

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 49
and insert:
patient is required beyond 30 ~~21~~ days for a condition not

873230

588-03482-15

Proposed Committee Substitute by the Committee on Health Policy

A bill to be entitled

An act relating to physical therapy; amending s. 486.021, F.S.; redefining the term "practice of physical therapy"; amending s. 486.081, F.S.; providing that a licensed physical therapist who holds a specified doctoral degree may use specified letters in connection with her or his name or place of business; prohibiting a physical therapist with a specified doctoral degree from using the title "doctor" without informing the public of his or her profession as a physical therapist; amending s. 486.135, F.S.; revising the terms and specified letters prohibited from use by a person in connection with her or his name or place of business who is not licensed as a physical therapist or physical therapist assistant; providing an effective date.

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

Section 1. Paragraph (a) of subsection (11) of section 486.021, Florida Statutes, is amended to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related

thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record, ~~or~~ by an advanced registered nurse practitioner licensed under s. 464.012, or by a physician licensed in another state. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 42 ~~21~~ days for a condition not previously assessed by a practitioner of record~~,~~ or by a physician licensed in another state, the physical therapist shall obtain a practitioner of record who will review and sign the plan. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

Section 2. Subsection (1) of section 486.081, Florida


873230

588-03482-15

Statutes, is amended to read:

486.081 Physical therapist; issuance of license without examination to person passing examination of another authorized examining board; fee.—

(1) The board may cause a license to be issued through the department without examination to any applicant who presents evidence satisfactory to the board of having passed the American Registry Examination prior to 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy in such other state, district, territory, or foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words "physical therapist" or "physiotherapist~~,~~" or the letters "P.T.~~,~~" in connection with her or his name or place of business to denote her or his licensure hereunder. Any person who holds a license pursuant to this section and obtains a doctoral degree in physical therapy may use the letters "D.P.T." or "P.T." A physical therapist who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

Section 3. Subsection (1) of section 486.135, Florida Statutes, is amended to read:

486.135 False representation of licensure, or willful misrepresentation or fraudulent representation to obtain license, unlawful.—


873230

588-03482-15

(1)(a) It is unlawful for any person who is not licensed under this chapter as a physical therapist, or whose license has been suspended or revoked, to use in connection with her or his name or place of business the words "physical therapist," "physiotherapist," "physical therapy," "physiotherapy," "registered physical therapist," or "licensed physical therapist"; or the letters "P.T.~~,~~" or "D.P.T." ~~"Ph.T.," "R.P.T.," or "L.P.T."~~; or any other words, letters, abbreviations, or insignia indicating or implying that she or he is a physical therapist or to represent herself or himself as a physical therapist in any other way, orally, in writing, in print, or by sign, directly or by implication, unless physical therapy services are provided or supplied by a physical therapist licensed in accordance with this chapter.

(b) It is unlawful for any person who is not licensed under this chapter as a physical therapist assistant, or whose license has been suspended or revoked, to use in connection with her or his name the words "physical therapist assistant," ~~"licensed physical therapist assistant," "registered physical therapist assistant," or "physical therapy technician"; or~~ the letters "P.T.A.," ~~"L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any other words, letters, abbreviations, or insignia indicating or implying that she or he is a physical therapist assistant or to represent herself or himself as a physical therapist assistant in any other way, orally, in writing, in print, or by sign, directly or by implication.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	CS/SB 710
INTRODUCER:	Health Policy Committee and Senator Grimsley and others
SUBJECT:	Physical Therapy Practice
DATE:	April 7, 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 710 authorizes a physical therapist to implement a plan of treatment provided for a patient by a physician licensed in a state other than Florida. The bill increases the time frame for physical therapy treatment for a patient for a condition not previously assessed by a practitioner of record or a physician licensed in another state from 21 days to 30 days before the physical therapist must obtain a Florida practitioner who will review and sign the treatment plan.

The bill authorizes any person who holds a physical therapy license and obtains a degree of Doctor of Physical Therapy to use the letters “D.P.T.” or “P.T.”; however, a physical therapist may not use the title “doctor” without also clearly informing the public of his or her profession as a physical therapist.

The bill revises terms prohibited from use by a person who is not licensed as a physical therapist or a physical therapist assistant.

The bill has no fiscal impact on government entities.

II. Present Situation:

Physical Therapy Practice in Florida

The Physical Therapy Practice Act (Act) is codified in ch. 486, F.S. Physical therapists (PTs) in Florida are regulated by the Board of Physical Therapy Practice (Board) within the Department of Health (DOH).[1] A licensed PT or a licensed physical therapist assistant (PTA) must practice physical therapy in accordance with the provisions of the Act and the Board rules. To be eligible for licensing as a PT in Florida, an applicant must:[2]

- Be at least 18 years of age;
- Be of good moral character;
- Have graduated from an approved school of physical therapy recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation; and
- Have passed a national examination approved by the Board.

Alternatively, an applicant for a PT license may also:[3]

- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of PTs in the United States; or
- Be entitled to licensure without examination as provided in s. 486.081, F.S.[4]

Under ch. 486, F.S., a "physical therapist assistant" means a person who is licensed to perform patient-related activities, including the use of physical agents, whose license is in good standing, and whose activities are performed under the direction of a PT as set forth in rules adopted pursuant to ch. 486., F.S. Patient-related activities performed by a PTA for a board-certified orthopedic physician or physiatrist licensed pursuant to chapters 458 or 459, F.S., or a chiropractor licensed under ch. 460, F.S., must be under the general supervision of a PT, but do not require onsite supervision by a PT. Patient-related activities performed for all other health care practitioners licensed under chapters 458 and 459, F.S., and those patient-related activities performed for podiatrists licensed under ch. 461 or dentists licensed under ch. 466, F.S., must be performed under the onsite supervision of a PT.[5]

Currently, there are 14,108 PTs and 7,616 PTAs who hold active Florida licenses.[6]

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[1] Section 486.023, F.S.
[2] Section 486.031, F.S.
[3] *Id.*
[4] The Board may issue a license without examination in Florida to any applicant who presents evidence of having passed the American Registry Examination prior to 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy are determined by the Board to be as high as those of Florida.
[5] Section 486.021(6), F.S.
[6] Number of active Florida licenses calculated by adding "In State Active" practitioners and "Out of State Active" practitioners. *See* Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014: Summary of Licensed Practitioners*, available at http://mqawebteam.com/annualreports/1314/#16 (last visited Apr. 6, 2015).

Physical Therapy Scope of Practice

"Practice of physical therapy" is defined in s. 486.021(11), F.S., as the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities such as: exercise, massage, ultrasound, ice, heat, water, and equipment. A PT's professional responsibilities include:[7]

- Interpretation of a practitioner's referral;
- Delivery of the initial physical therapy assessment of the patient;
- Identification of and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long and short term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks;
- Direction and supervision of supportive staff in a manner appropriate for the patient's individual needs;
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan; and
- Collaboration with members of the health care team when appropriate.

Section 486.021(11), F.S., limits treatments that PTs may provide or what procedures may be performed for diagnosing a condition. A PT must refer a patient to, or consult with, a practitioner of record if a patient's condition is found to be outside the scope of physical therapy.[8] Under s. 486.021(11), F.S., a "practitioner of record" is a health care practitioner licensed under chapters 458 (Medical Practice), 459 (Osteopathic Medicine), 460 (Chiropractic Medicine), 461 (Podiatric Medicine), or 466 (Dentistry), F.S., and engaged in active practice. A PT may not practice chiropractic medicine, including specific spinal manipulation, and must refer a patient with the need for such to a chiropractor licensed under ch. 460, F.S.[9] Additionally, a PT is not authorized to implement a plan for a patient being treated in a hospital or an ambulatory surgical center licensed under ch. 395, F.S.[10]

Section 486.081(1), F.S., authorizes a licensed PT to use the words "physical therapist" or "physiotherapist," or the letters "P.T." in connection with his or her name or place of business to denote his or her licensure. False representation of a PT license, or willful misrepresentation or false representation to obtain a PT license is unlawful.[11]

Physical Therapy Treatment Plan and Referral for Treatment

Florida law provides that a PT may implement a plan of treatment developed by the PT for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012, F.S.[12] Currently, a PT may implement a treatment plan for a patient without a written order from a practitioner of record if the recommended

[7] Rule 64B17-6.001, F.A.C.
[8] Section 486.021(11)(a), F.S.
[9] Section 486.021(11)(c), F.S.
[10] Section 486.021(11)(d), F.S.
[11] *See* s. 486.135, F.S.
[12] *Supra* note 8.

treatment plan is performed within a 21-day timeframe. If the treatment plan requires treatment beyond 21 days, the condition must be assessed by a practitioner of record who is required to review and sign the treatment plan.[13]

III. Effect of Proposed Changes:

CS/SB 710 amends s. 486.021(11)(a), F.S., to authorize a PT to implement a plan of treatment provided for a patient by a physician licensed in a state other than Florida.

The bill also increases the time frame for physical therapy treatment for a patient for a condition not previously assessed by a practitioner of record before the PT must obtain a practitioner who will review and sign the treatment plan. The time frame is increased from 21 days to 30 days. The bill includes physical therapy treatment for a patient for a condition not previously assessed by a physician licensed in another state in the 30 day limit before a PT must obtain a Florida practitioner of record to review and sign the treatment plan.

The bill amends s. 486.081(1), F.S., to authorize any person who holds a physical therapy license and obtains a doctoral degree in physical therapy to use the letters "D.P.T." or "P.T." A PT who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a PT.

The bill amends s. 486.135(1), F.S., to revise terms prohibited from use by a person who is not licensed as a PT or a PTA. The bill provides that use of the letters "D.P.T." in connection with a name or business is unlawful for any person who is not licensed as a PT under ch. 486, F.S. The letters "Ph.T.," "R.P.T.," and "L.P.T." are removed from statute by the bill. Similar changes are made to revise terms and letters prohibited from use by any person who is not licensed as a PTA.

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.

[13] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021, 486.081, and 486.135.

IX. Additional Information:

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

CS by Health Policy on April 7, 2015:
The Committee Substitute leaves intact the terms "physical therapist," "physical therapy practitioner," and "physical therapy." The CS revises the definition of "practice of physical therapy" to authorize PTs to implement a plan of treatment provided by a physician licensed in another state. The revised definition provides that if physical therapy treatment is required beyond 30 days for a condition not previously assessed by a practitioner of record or by a physician licensed in another state, the PT must obtain a practitioner of record to review and sign the treatment plan. No sections of the Florida Statutes are reenacted.

B. Amendments:

None.

By Senator Grimsley

21-00402-15 2015710__

A bill to be entitled

An act relating to physical therapy practice; amending s. 486.021, F.S.; redefining the terms "physical therapist," "physical therapy practitioner," "physical therapy" or "physiotherapy," and "practice of physical therapy"; amending s. 486.025, F.S.; providing additional powers to the Board of Physical Therapy Practice; amending s. 486.081, F.S.; providing restrictions on the use of the title "doctor"; amending s. 486.135, F.S.; prohibiting a person who is not licensed as a physical therapist from using certain designations for false representation; providing restrictions on the use of the title "doctor"; reenacting ss. 1002.385(5)(c) and 1002.66(2)(d), F.S., to incorporate the amendment made to s. 486.021, F.S., in references thereto; reenacting ss. 486.021(4) and 486.031(3)(c), F.S., to incorporate the amendment made to s. 486.081, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (5), (7), (8), and (11) of section 486.021, Florida Statutes, are amended to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(5) "Physical therapist" means a person who is licensed and who engages in the practice of ~~practices~~ physical therapy ~~in accordance with the provisions of this chapter~~. A physical

therapist is fully responsible for managing all aspects of the physical therapy care of each patient and shall:

(a) Provide the initial evaluation, determination of diagnosis, prognosis, and plan of treatment intervention for each patient.

(b) Provide documentation of each encounter with a patient.

(c) Provide periodic reevaluation and documentation of each patient.

(d) Provide documentation of the discharge of each patient, including the patient's response to treatment intervention at the time of discharge.

(e) Communicate the overall plan of care with the patient or the patient's legally authorized representative.

(f) Refer the patient to, or consult with, a practitioner of record if the patient's condition is determined to be outside the scope of physical therapy or fails to improve within a reasonable timeframe. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

(7) "Physical therapy practitioner" means a physical therapist or a physical therapist assistant who is licensed and who engages in the practice of ~~practices~~ physical therapy ~~in accordance with the provisions of this chapter~~.

(8) "Physical therapy" or "physiotherapy" ~~"physiotherapy," each of which terms is deemed identical and interchangeable with each other,~~ means a health care profession in which the provider engages in the practice of physical therapy.

(11) "Practice of physical therapy" means:

(a) Examining, evaluating, and testing patients who have mechanical, physiological, or developmental impairments, functional limitations, disabilities, or other health and movement-related conditions in order to determine a diagnosis, prognosis, and plan of treatment intervention and to assess the ongoing effects of such intervention;

(b) Alleviating impairments, functional limitations, disabilities, and other health and movement-related conditions by designing, implementing, and modifying treatment interventions that may include, but are not limited to, therapeutic exercise; functional training in self-care and in home, community, or work integration or reintegration; manual therapy, including soft tissue and joint mobilization and manipulation but not including specific chiropractic manipulation; therapeutic massage; prescription application; as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction;

(c) Reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness, in populations of all ages; and

(d) Engaging in the administration of, and consultation, education, and research on, physical therapy ~~the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human~~

~~beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.~~

~~(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 21 days for a condition not previously assessed by a practitioner of record, the physical therapist shall obtain a practitioner of record who will review and sign the plan. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.~~

~~(b)~~ The term does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization~~, are not "physical therapy" for purposes of this chapter~~.

~~(c)~~ The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation. ~~For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.~~

~~(d)~~ This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395.

Section 2. Section 486.025, Florida Statutes, is amended to read:

486.025 Powers and duties of the Board of Physical Therapy Practice.—The board may administer oaths, summon witnesses, take testimony in all matters relating to its duties under this chapter, establish or modify minimum standards of practice, and adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to administer ~~implement the provisions of~~ this chapter. The board may regulate the practice of physical therapy by interpreting and enforcing this chapter and may issue advisory opinions regarding this chapter upon request. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by

the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and make personal inspection of the same.

Section 3. Subsection (1) of section 486.081, Florida Statutes, is amended to read:

486.081 Physical therapist; issuance of license without examination to person passing examination of another authorized examining board; fee.—

(1) The board may cause a license to be issued through the department without examination to any applicant who presents evidence satisfactory to the board of having passed the American Registry Examination before ~~prior to~~ 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy in such other state, district, territory, or foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words "physical therapist" or "physiotherapist," or the letters "P.T.," in connection with her or his name or place of business to denote her or his licensure hereunder. A physical therapist holding a doctor of physical therapy (D.P.T.) or other doctoral degree may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

Section 4. Subsection (1) of section 486.135, Florida

Statutes, is amended to read:

486.135 False representation of licensure, or willful misrepresentation or fraudulent representation to obtain license, unlawful.—

(1)(a) It is unlawful for any person who is not licensed under this chapter as a physical therapist, or whose license has been suspended or revoked, to use in connection with her or his name or place of business the words "physical therapist," "physiotherapist," "physical therapy," "physiotherapy," "registered physical therapist," or "licensed physical therapist"; ~~or~~ the letters "P.T." ~~"P.T.," "Ph.T.," "R.P.T.,"~~ or "D.P.T." ~~"L.P.T."~~; or any other words, letters, abbreviations, or insignia indicating or implying that she or he is a physical therapist or to represent herself or himself as a physical therapist in any other way, orally, in writing, in print, or by sign, directly or by implication, unless physical therapy services are provided or supplied by a physical therapist licensed in accordance with this chapter. A physical therapist holding a D.P.T or other doctoral degree may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

(b) It is unlawful for any person who is not licensed under this chapter as a physical therapist assistant, or whose license has been suspended or revoked, to use in connection with her or his name the words "physical therapist assistant," ~~"licensed physical therapist assistant," "registered physical therapist assistant," or "physical therapy technician"; or~~ the letters "P.T.A.," ~~"L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any other words, letters, abbreviations, or insignia indicating or

implying that she or he is a physical therapist assistant or to represent herself or himself as a physical therapist assistant in any other way, orally, in writing, in print, or by sign, directly or by implication.

Section 5. Paragraph (c) of subsection (5) of s. 1002.385 and paragraph (d) of subsection (2) of s. 1002.66, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 486.021, Florida Statutes, in references thereto.

Section 6. Subsection (4) of s. 486.021 and paragraph (c) of subsection (3) of s. 486.031, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 486.081, Florida Statutes, in references thereto.

Section 7. 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 26, 2015

I respectfully request that **Senate Bill #710**, relating to Physical Therapy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

SB 710
Bill Number (if applicable)

Topic Physical Therapy

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Gadsden St
Street

Phone 570-6307

Tallahassee FL 32301
City *State* *Zip*

Email lawyonz@earthlink.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 7, 2015
Meeting Date

SB 710
Bill Number (if applicable)

Topic Physical Therapy

Amendment Barcode (if applicable)

Name Kathy Swanick

Job Title President Florida Physical Therapy Association

Address 2104 Delta Way Suite 7
Street

Phone 850-222-1243

Tallahassee FL 32303
City *State* *Zip*

Email

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

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

Representing Florida Physical Therapy Association

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

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

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

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

S-001 (10/14/14)

The Florida Senate

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 438
INTRODUCER:	Senator Sobel and others
SUBJECT:	Palliative Care
DATE:	April 2, 2015
REVISED:	

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

I. Summary:

SB 438 establishes the Palliative Care Consumer and Professional Information and Education Program within the Department of Health (DOH) and also directs the department to house information and links on its website.

The bill creates the 11-member Florida Palliative Care and Quality of Life Interdisciplinary Task Force within the DOH. The primary purpose of the task force is to consult with and advise the DOH on matters relating to the establishment, maintenance, operation, and outcome evaluation of palliative care initiatives in this state. Members of the task force are appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force must produce a preliminary report by January 15, 2017, and a final report by December 31, 2018. The task force is dissolved December 31, 2018.

The DOH reports a negative fiscal impact of $48,901 in the first year and a recurring impact of $45,019 in the outgoing years.

The act is effective upon becoming law.

II. Present Situation:

According to the Center to Advance Palliative Care, palliative care can be defined as specialized medical care for people with serious illnesses that focuses on providing those patients with relief from the symptoms, pain, and stress of that illness with a goal of improving quality of life for both the patient and the patient's family.[1] Examples of serious illnesses helped by palliative care

[1] Center to Advance Palliative Care, *About Palliative Care*, https://www.capc.org/about/palliative-care/ (last visited April 2, 2015).

include cancer, cardiac diseases, kidney failure, Alzheimer's disease, HIV/AIDS, and Amyotrophic Lateral Sclerosis (ALS).

Palliative care focuses on helping patients get relief from symptoms caused by serious illnesses. Given alone when other treatment is not working or along with curative treatment, palliative care can be given from time of diagnosis until end of life.[2]

Access to palliative care in the United States has more than doubled in the last 5 years.[3] Ten years ago, there were almost no palliative care programs in America's hospitals. State by state calculations show that 62 percent of Florida's hospitals, with 50 or more beds, provide a palliative care team.[4] Public opinion polls show that many Americans are not knowledgeable about palliative care; however, once explained, 92 percent reported they would be highly likely to consider palliative care for themselves or families if they had a serious illness.[5]

Palliative Care in Florida

Under s. 765.102(5) and (6), F.S., the Legislature has recognized the need to establish end-of-life care standards, including pain management and palliative care. Subsection (6) specifically requires the Department of Health, the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA) to jointly develop an end-of-life care campaign. Under current law, the focus, however, is on planning for end-of-life care and includes:[6]

- An opportunity to discuss and plan for end-of-life care;
- Assurance that physical and mental suffering will be carefully attended to;
- Assurance that preferences for withholding and withdrawing life-sustaining interventions will be honored;
- Assurance that the personal goals of the dying person will be addressed;
- Assurance that the dignity of the dying person will be a priority;
- Assurance that health care providers will not abandon the dying person;
- Assurance that the burden to family and others will be addressed;
- Assurance that advance directives for care will be respected regardless of the location of care;
- Assurance that organizational mechanisms are in place to evaluate the availability and quality of end-of-life, palliative, and hospice care services, including the evaluation of administrative and regulatory barriers;
- Assurance that necessary health care services will be provided and that relevant reimbursement policies are available; and
- Assurance that the goals will be accomplished in a culturally appropriate manner.

[2] American Cancer Society, *A Guide to Palliative or Supportive Care* (last revised Sept. 23, 2014) http://www.cancer.org/treatment/treatmentsandsideeffects/palliativecare/supportive-care (last visited April 2, 2015).
[3] Center to Advance Palliative Care, *Executive Summary*, http://www.capc.org/reportcard/summary (last visited April 2, 2015).
[4] Center to Advance Palliative Care, *State by State Report Card - Florida*, http://www.capc.org/reportcard/home/FL/RC/Florida (last visited: April 2, 2015).
[5] American Cancer Society, *Palliative Care at a Glance*, http://www.acscan.org/content/wp-content/uploads/2012/07/Palliative-Care-at-a-Glance.pdf (last visited April 2, 2015).
[6] Section 765.102(5)(b), F.S.

In 2013, the DOH's Cancer Program and Cancer Control and Research Advisory Council jointly sponsored a workshop and webinar on palliative care that included speakers from Florida and other national organizations.

The AHCA, the DOH, and the DOEA have webpages devoted to end of life resources with links to mostly external resources. In 2005, the DOEA published *Making Choices: A Guide to End of Life Planning* to address strategies for advance care planning.[7] The guide is available on the DOEA's website.

The AHCA is responsible for the licensing and regulation of facilities that provide palliative care including hospitals, long-term care facilities, nursing homes, home health agencies, hospices, intermediate care facilities, prescribed pediatric care centers, and assisted living facilities under chs. 395, 400, and 429, F.S.

The DOH is responsible for the regulation of health care professionals, which includes, among others, allopathic and osteopathic physicians, physician assistants, and nurses under chs. 458, 459, and 464, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 381.825, F.S., to establish the palliative care consumer and professional information and education program. Definitions for the new section are provided for:

- "Appropriate" means consistent with applicable legal, health, and professional standards; consistent with the patient's clinical and other circumstances; and consistent with the patient's reasonably known wishes and beliefs;
- "Medical care" means services provided, requested, or supervised by a physician, a physician assistant, or an advanced registered nurse practitioner;
- "Palliative care" means patient- and family-centered medical care offered throughout the continuum of an illness which optimizes quality of life by anticipating, preventing, and treating the suffering caused by a serious illness. Palliative care also addresses:
  - Physical needs;
  - Emotional needs;
  - Social needs;
  - Spiritual needs;
  - Autonomy;
  - Access to information; and
  - Choice.

  The term also includes, but is not limited to, discussion of the patient's goals for treatment, appropriate options for the patient, including hospice care, and comprehensive pain and symptom management.
- "Serious illness" means a medical illness or physical injury or condition that substantially impacts quality of life for more than a short period of time. The term includes, but is not limited to:
- Cancer;

[7] Department of Elder Affairs, *Making Choices: A Guide to End of Life Planning* (2005) http://elderaffairs.state.fl.us/doea/pubs/pubs/EOL.pdf (last visited April 2, 2015).

- Renal or liver failure;
- Heart or lung disease; and
- Alzheimer's disease and related dementia.

The DOH is required to establish a palliative care consumer and professional information and education program to maximize the effectiveness of palliative care initiatives in the state. The DOH is directed to consult with the Palliative Care and Quality of Life Interdisciplinary Task Force in implementing the program.

The program is required to:

- Make comprehensive and accurate information available about palliative care available to the public, health care practitioners, and health care facilities; and
- Publish information and resources on its website about continuing education opportunities for health care practitioners; information about palliative care delivery in the home and other health care settings, best practices for palliative care delivery; and consumer educational materials and referral information for palliative care, including hospice.

The DOH is also authorized to develop and implement other initiatives on palliative care that further the purposes of the program.

Section 2 establishes the Palliative Care and Quality of Life Interdisciplinary Advisory Task Force. The task force[8] is established within the DOH and consists of 11 members. Five members are appointed by the Governor, three are appointed by the President of the Senate, and three are appointed by the Speaker of the House of Representatives. All appointments are to be made by December 31, 2015.

Task force members are to include, but not be limited to, professionals with expertise in different aspects of palliative care and patient and family caregivers or their advocates. The bill designates the representative groups for five of the appointments and directs the appointing officials to consult with the State Surgeon General to ensure broad representation on the task force. The specific designees to the task force are:

Task Force Designee	Appointing Official
American Cancer Society	Governor
Florida Hospice & Palliative Care Association	Governor
Department of Veterans' Affairs	Governor
2 - Board Certified Hospice and Palliative Care Medicine Physicians, Physician Assistants, or Nurses	1 - President of Senate 1 - Speaker of the House of Representatives

[8] A "committee" or "task force" is defined under s. 20.03(8), F.S., to mean "an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by a specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

The bill directs the task force to adopt organizational procedures and to elect a chair and vice chair, whose duties will be established by the task force. The DOH is to provide support for the task force and establish a regular schedule of meetings which must include a minimum of two meetings per year. Members will serve without compensation; however, they may be reimbursed for travel expenditures in accordance with s. 112.061, F.S.

The task force must submit a preliminary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 15, 2017, with recommendations for palliative care initiatives in this state, including statutory changes for legislative consideration.

The task force must submit a follow-up report by December 31, 2018, with details of any implementation activities by the DOH or legislative action on the recommendations from the preliminary report.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private sector palliative care vendors and service providers may benefit through additional information and resources being posted to the new website as required under this bill. The availability of these resources may result in additional public interest and increased use of services.

C. Government Sector Impact:

The DOH has three main responsibilities under the bill: dissemination of information under the education program, development of website resources and linkages, and administrative support of the task force. The DOH has identified a fiscal impact to support these responsibilities of $48,901 for the first year and $45,019 in the second year.

Estimated Expenditures	1st Year	2nd Year Annualized\Recurring
Salaries		
Other Personnel Services *1 PT OPS Health Educator* *Benefits @1.45%* *Coordinating Biannual meetings, preparing meeting materials, staffing education program, developing and maintaining web pages* *Estimated 20 hours per week*	$13,963 $202	$13,963 $202
Expense		
1 - OPS *Standard DOH professional package with limited travel*	$15,616	$11,734
Palliative Care Task Force *Travel reimbursement for members - (11 members X $500) for 2 meetings*	$11,000	$11,000
Human Resources Services *Calculated with standard DOH OPS package*	$120	$120
Operating Capital Outlay	$0.00	$0.00
Contractual Services	$8,000	$8,000
TOTAL ESTIMATED EXPENDITURES	**$48,901**	**$45,019**

VI. Technical Deficiencies:

Under s. 20.03, F.S., a "committee" or a "task force" is time limited for a period not to exceed 3 years. SB 438 is effective upon becoming law and the section specific to the task force expires December 31, 2018.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.825 of the Florida Statutes.

This bill creates one undesignated section of law.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Sobel

33-00370A-15 2015438__

A bill to be entitled

An act relating to palliative care; creating s. 381.825, F.S.; defining terms; requiring the Department of Health to establish a palliative care consumer and professional information and education program; specifying the purpose of the program; requiring the department to publish certain educational information and referral materials about palliative care on the department website; authorizing the department to develop and implement other services and education initiatives regarding palliative care; requiring the department to consult with the Palliative Care and Quality of Life Interdisciplinary Task Force; creating the Palliative Care and Quality of Life Interdisciplinary Task Force within the Department of Health; specifying the purpose of the task force; providing for membership by a specified time; requiring the task force to adopt certain internal organizational procedures; requiring the department to provide staff, information, and other assistance, as necessary, to the task force; authorizing the reimbursement of task force members for certain expenses; requiring the department to set regular meeting times for the task force; requiring the task force to meet at least twice each year; requiring reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives by specified dates; providing for future repeal of the task force; providing an

effective date.

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

Section 1. Section 381.825, Florida Statutes, is created to read:

381.825 Palliative care consumer and professional information and education program.—

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

(a) "Appropriate" means consistent with applicable legal, health, and professional standards; consistent with the patient's clinical and other circumstances; and consistent with the patient's reasonably known wishes and beliefs.

(b) "Medical care" means services provided, requested, or supervised by a physician, a physician assistant, or an advanced registered nurse practitioner.

(c) "Palliative care" means patient- and family-centered medical care offered throughout the continuum of an illness which optimizes quality of life by anticipating, preventing, and treating the suffering caused by a serious illness. Palliative care involves addressing physical, emotional, social, and spiritual needs and facilitating patient autonomy, access to information, and choice. The term includes, but is not limited to, discussions of the patient's goals for treatment; discussion of treatment options appropriate to the patient, including, if appropriate, hospice care; and comprehensive pain and symptom management.

(d) "Serious illness" means a medical illness or physical injury or condition that substantially impacts quality of life

for more than a short period of time. The term includes, but is not limited to, cancer, renal or liver failure, heart or lung disease, and Alzheimer's disease and related dementias.

(2) The department shall establish a palliative care consumer and professional information and education program. The purpose of the program is to maximize the effectiveness of palliative care initiatives in this state by making comprehensive and accurate information and education about palliative care available to the public, health care practitioners, and health care facilities.

(3) The department shall publish on its website information and resources, including links to external resources, about palliative care which shall include, but not be limited to, continuing education opportunities for health care practitioners; information about palliative care delivery in the home and in primary, secondary, and tertiary care settings; best practices for palliative care delivery; and consumer educational materials and referral information for palliative care, including hospice.

(4) The department may develop and implement other initiatives regarding palliative care services and education to further the purposes of this section.

(5) The department shall consult with the Palliative Care and Quality of Life Interdisciplinary Task Force in implementing this section.

Section 2. Palliative Care and Quality of Life Interdisciplinary Task Force.—There is established within the Department of Health a Palliative Care and Quality of Life Interdisciplinary Task Force, which is a task force as defined

in s. 20.03, Florida Statutes.

(1) The primary purpose of the task force is to consult with and advise the department on matters relating to the establishment, maintenance, operation, and outcome evaluation of palliative care initiatives in this state.

(2) The task force shall consist of 11 members, 5 of whom are appointed by the Governor, 3 of whom are appointed by the President of the Senate, and 3 of whom are appointed by the Speaker of the House of Representatives. All appointments shall be made by December 31, 2015. The task force membership shall include:

(a) Professionals who have expertise in various aspects of palliative care, including, but not limited to, interdisciplinary palliative care; medical, nursing, social work, pharmacy, and spiritual expertise; and patient and family caregivers or their advocates. The appointing officials, in consultation with the State Surgeon General, shall ensure that representation on the task force reflects a broad perspective of palliative care in a variety of inpatient, outpatient, and community settings, such as acute care, long-term care, and hospice, and with a variety of populations, including pediatric, youth, and adult.

(b) One member who is a designee of the American Cancer Society, appointed by the Governor.

(c) One member who is a designee of the Florida Hospice and Palliative Care Association, appointed by the Governor.

(d) One member who is a designee of the Department of Veterans' Affairs, appointed by the Governor.

(e) At least two members who are board-certified hospice

and palliative medicine physicians, physician assistants, or nurses, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(3) The task force shall adopt internal organizational procedures as necessary for its efficient organization which must, at a minimum, require the task force to elect a chair and vice chair whose duties shall be established by the task force.

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

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

(6) The department shall establish a time and place for regular meetings of the task force, which shall meet at least twice a year.

(7) The task force shall submit a preliminary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2017, detailing its recommendations for the establishment, maintenance, operation, and outcome evaluation of palliative care initiatives in this state and its recommendation for any statutory changes to be considered by the Legislature. The task force shall also submit a followup report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018, detailing the implementation, by the department or by legislative action, of the recommendations in the preliminary report.

(8) This section expires December 31, 2018.

Section 3. This act shall take effect upon becoming a law.

GEORGIADES.CELIA

From: SHIR.JEREMY
Sent: Monday, February 09, 2015 2:13 PM
To: STOVALL.SANDRA
Cc: GEORGIADES.CELIA
Subject: Senator Sobel Request to Agenda SB438 Palliative Care at next Health Policy Committee meeting

Hi Sandra, just wanted to let you know that we sent this agenda request for SB438 Palliative Care to Chair Bean.

Sincerely,
Jeremy

From: SHIR.JEREMY
Sent: Monday, February 09, 2015 2:12 PM
To: BEAN.AARON
Cc: ALEXANDER.DEE; ENDICOTT.JOSEPH; TARSITANO.MEGHAN
Subject: Senator Sobel Request to Agenda SB438 Palliative Care at next Health Policy Committee meeting

Dear Chair Bean:

This letter is to request that SB 438 relating to Palliative Care be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would create a Palliative Care and Quality of Life Interdisciplinary Advisory Council. It would also require the department to establish a palliative care consumer and professional information and education program. Palliative Care is about treating the whole patient, not just the disease; it has proven results in increasing quality of life, length of life, and decreasing costs of care.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel

Eleanor Sobel
State Senator, 33rd District

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

412-K

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-7-2015
Meeting Date

SB 438
Bill Number (if applicable)

Topic PALLIATIVE CARE

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE ROAD PINES DRIVE
Street

Phone 878-7364

TALLAHASSEE FL 32301
City *State* *Zip*

Email

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

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

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

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

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

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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)

438

Meeting Date | *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave *Street*

Jacksonville, FL 32204 *City* *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-7-2105
Meeting Date

SB 438
Bill Number (if applicable)

Topic Palliative Care

Amendment Barcode (if applicable)

Name Layne Smith

Job Title Director, State Government Relations

Address 4500 San Pablo Road
Street

Phone 904-953-7334

Jacksonville FL 32224
City *State* *Zip*

Email smith.layne@mayo.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Mayo Clinic

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

SB 438
Bill Number (if applicable)

Topic Palliative Care

Amendment Barcode (if applicable)

Name Melanie Brown

Job Title

Address 537 East Park Avenue
Street

Tallahassee FL
City *State* *Zip*

Phone 850 224 1900

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Hospice & Palliative 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)

4-7-15
Meeting Date

438
Bill Number (if applicable)

Topic Palliative Care

Amendment Barcode (if applicable)

Name David Francis

Job Title Government Relations Director

Address 2851 Remington Green Cir Ste C Phone 850-567-0598
Street

Tall FL 32308 Email david.francis@heart.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Heart 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

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4/7/15
Meeting Date

438
Bill Number (if applicable)

Topic Palliative Care

Amendment Barcode (if applicable)

Name Laura Cantwell

Job Title

Address 400 Carillon Pkwy, Suite 100
Street

St. Pete FL 33716
City *State* *Zip*

Phone 850-370-2110

Email

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/2015
Meeting Date

438
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic palliative care

Name Heather Yaumans

Job Title Director, Gov Relations

Address 2019 Centennial Blvd Suite C Phone 251-2111
Street

Tallahassee FL 32308 Email heather.yaumans@cancer.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Cancer Society - Cancer Action 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.

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:	PCS/SB 790 (831586)
INTRODUCER:	Health Policy Committee
SUBJECT:	Hair Restoration or Transplant
DATE:	April 1, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Pre-meeting**
2.			AHS	
3.			FP	

I. Summary:

PCS/SB 790 restricts a physician from delegating certain aspects of a hair transplant or hair restoration surgery to anyone other than a physician assistant (PA) or an advanced registered nurse practitioner (ARNP). The bill requires the physician to document the licensure, education, training, and experience of the person to whom he or she is delegating the procedure and requires health care practitioners who offer such procedures to inform the patient of the identity and training of all individuals involved in the patient's care.

II. Present Situation:

Hair Restoration Procedures

There are several techniques which a physician can employ to restore hair to bald or balding portions of the human scalp. The most recently developed procedure is the follicular unit transplant. This procedure involves the removal of a strip of tissue from the donor area of the patient's scalp which is then divided into a number of individual follicular units. The physician then grafts the individual follicular units into tiny holes made in the bald area of the scalp called recipient sites.[1]

Another type of hair restoration procedure is the bald scalp reduction procedure. As implied by the name, a bald scalp reduction procedure entails the removal of a bald area of the patient's scalp and hair-producing areas of the scalp are stretched to cover the area removed. A similar procedure, the scalp flap surgery, involves the cutting and grafting of an entire flap of hair-producing scalp on a bald area of the scalp. Both bald scalp reduction and scalp flap surgeries can have rapid results, but the follicular unit transplant surgery is generally preferred due to the

[1] Bernstein Medical-Center for Hair Restoration, *Follicular Unit Transplant*, available at http://www.bernsteinmedical.com/fut-hair-transplant/, (last visited on April 3, 2015).

more natural look produced by the follicular unit transplant surgery and the risk of scarring or failure inherent with bald scalp reduction and scalp flap surgeries.[2]

Tissue or scalp expansion procedures can also be used to restore bald areas of the scalp. Tissue expansion uses a balloon, called an expander, to stretch the skin in order to create extra skin which can be removed and grafted onto the bald area. Tissue expansion can be used for scalp repair since the stretched skin on the scalp retains normal hair growth.[3]

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. PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.[4]

Physician assistants are trained and required by statute to work under the supervision and control of medical physicians or osteopathic physicians.[5] The Board of Medicine and the Board of Osteopathic Medicine have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[6] and indirect[7] 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.[8] 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 must be individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[9]

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.[10]

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[2] Bald Scalp Reduction and Scalp Flap Surgery, available at http://www.foundhair.com/pages/baldScalp.shtml, (last visited on April 3, 2015).
[3] Tissue Expansion, available at http://www.chp.edu/CHP/Tissue+Expansion, (last visited on April 3, 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. (*See* ss. 458.347(9) and 459.022(9), F.S.)
[5] Sections 458.347(4) and 459.022(4), F.S.
[6] "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.)
[7] "Indirect supervision" refers to the easy availability of the supervising physician to the physician assistant, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)
[8] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[9] Sections 458.347(3) and 459.022(3), F.S.
[10] 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

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.[11] Florida recognizes three types of ARNP: nurse practitioner (NP), certified registered nurse anesthetist (CRNA), and certified nurse midwife (CNM).[12] To be certified as an ARNP, a nurse must hold a current license as a registered nurse[13] and submit proof to the Board of Nursing that he or she meets one of the following requirements:[14]

- Satisfactory completion of a formal postbasic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;[15] or
- Graduation from a master's degree program in a nursing clinical specialty area with preparation in specialized practitioner 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:[16]

- 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).[17]

Advanced registered nurse practitioners must meet financial responsibility requirements, as determined by rule of the Board of Nursing, and the practitioner profiling requirements.[18] 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.[19]

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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.)

[11] "Advanced or 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. (*See* s. 464.003(2), F.S.)

[12] 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.)

[13] Practice of professional nursing. (See s. 464.003(20), F.S.)

[14] Section 464.012(1), F.S.

[15] 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. (*See* Rule 64B9-4.002(2), F.A.C.)

[16] Section 464.012(3), F.S.

[17] Section 464.012(4), F.S.

[18] Sections 456.0391 and 456.041, F.S.

[19] Rule 64B9-4.002(5), F.A.C.

III. Effect of Proposed Changes:

PCS/SB 790 amends chapters 458 and 459, F.S., to restrict a physician licensed under either chapter from delegating the incisional or excisional aspects of a follicular unit transplant, a scalp reduction surgery, a scalp flap surgery, or a scalp expansion surgery to anyone other than a PA licensed under ch. 458 or ch. 459, F.S., or an ARNP, certified under ch. 464, F.S. The proposed committee substitute also authorizes a physician to delegate the performance of these procedures to PAs and authorizes an ARNP to perform such procedures within the framework of an established protocol.

The bill creates ss. 458.352 and 459.027, F.S., to require that a physician document the licensure, education, training, and experience of the individual to whom he or she delegates such a procedure and to require health care practitioners who provide such procedures to inform a patient who is undergoing the procedure of the identity and training of all individuals involved in the patient's care.

The effective date of the proposed committee substitute is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.331, 458.347, 459.015, 459.022, and 464.012

This bill creates the following sections of the Florida Statutes: 458.352 and 459.027

IX. Additional Information:

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

None.

B. Amendments:

None.

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588-03456A-15

Proposed Committee Substitute by the Committee on Health Policy

A bill to be entitled

An act relating to hair restoration or transplant; amending ss. 458.331 and 459.015, F.S.; authorizing the Board of Medicine, the Board of Osteopathic Medicine, and the Department of Health to deny a license to or to discipline a physician for improperly delegating certain tasks; amending ss. 458.347, 459.022, and 464.012, F.S.; authorizing a physician to delegate to a physician assistant and an advanced registered nurse practitioner certain tasks; creating ss. 458.352 and 459.027, F.S.; requiring a physician to document the licensure, education, training, and experience of an individual when the physician delegates certain tasks; requiring a health care practitioner who provides specified services to inform a patient of the identity and training status of all individuals involved in the patient's care; providing an effective date.

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

Section 1. Paragraph (tt) is added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

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

(tt) Delegating a procedure specified in s. 458.352(1) to a

person other than a physician assistant licensed under this chapter or chapter 459 or an advanced registered nurse practitioner certified under chapter 464.

Section 2. Paragraph (h) is added to subsection (4) of section 458.347, Florida Statutes, to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(h) A supervisory physician may delegate to a licensed physician assistant the authority to conduct a procedure specified in s. 458.352(1).

Section 3. Section 458.352, Florida Statutes, is created to read:

458.352 Delegation of hair restoration or transplant services.—

(1) If a physician delegates an incisional or excisional aspect of a follicular unit transplant, a follicular unit extraction, a scalp reduction surgery, a scalp flap surgery, or a scalp expansion surgery to a physician assistant, licensed under this chapter or chapter 459, or to an advanced registered nurse practitioner, certified under chapter 464, the delegating physician must document the licensure, education, training, and experience of the individual to whom he or she is delegating the procedure.

(2) A health care practitioner who provides a service specified in subsection (1) must inform a patient who is receiving such services of the identity and training status of all individuals involved in the patient’s care.

Section 4. Paragraph (vv) is added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

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

(vv) Delegating a procedure specified in s. 459.027(1) to a person other than a physician assistant licensed under this chapter or chapter 458 or an advanced registered nurse practitioner certified under chapter 464.

Section 5. Paragraph (g) is added to subsection (4) of section 459.022, Florida Statutes, to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed physician assistant the authority to conduct a procedure specified in s. 459.027(1).

Section 6. Section 459.027, Florida Statutes, is created to read:

459.027 Delegation of hair restoration or transplant services.—

(1) If a physician, licensed under this chapter or chapter 458, delegates an incisional or excisional aspect of a follicular unit transplant, a follicular unit extraction, a scalp reduction surgery, a scalp flap surgery, or a scalp expansion surgery to a physician assistant, licensed under this chapter or chapter 458, or to an advanced registered nurse practitioner, certified under chapter 464, the delegating physician must document the licensure, education, training, and experience of the individual to whom he or she is delegating the procedure.


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588-03456A-15

(2) A health care practitioner who provides a service specified in subsection (1) must inform a patient who is receiving such services of the identity and training status of all individuals involved in the patient's care.

Section 7. Paragraph (c) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(4) In addition to the general functions specified in subsection (3), an advanced registered nurse practitioner may perform the following acts within his or her specialty:

(c) The nurse practitioner may perform any or all of the following acts within the framework of established protocol:

1. Manage selected medical problems.

2. Order physical and occupational therapy.

3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.

4. Monitor and manage patients with stable chronic diseases.

5. Establish behavioral problems and diagnosis and make treatment recommendations.

6. Conduct a procedure that includes the incisional or excisional aspect of a follicular unit transplant, a follicular unit extraction, a scalp reduction surgery, a scalp flap surgery, or a scalp expansion surgery if a physician licensed under chapter 458 or chapter 459 delegates such procedure.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	CS/SB 790
INTRODUCER:	Health Policy Committee and Senator Sobel
SUBJECT:	Hair Restoration or Transplant
DATE:	April 7, 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 790 restricts a physician from delegating certain aspects of a hair transplant or hair restoration surgery to anyone other than a physician assistant (PA) or an advanced registered nurse practitioner (ARNP). The bill requires the physician to document the licensure, education, training, and experience of the person to whom he or she is delegating the procedure and requires health care practitioners who offer such procedures to inform the patient of the identity and training of all individuals involved in the patient's care.

II. Present Situation:

Hair Restoration Procedures

There are several techniques which a physician can employ to restore hair to bald or balding portions of the human scalp. The most recently developed procedure is the follicular unit transplant. This procedure involves the removal of a strip of tissue from the donor area of the patient's scalp which is then divided into a number of individual follicular units. The physician then grafts the individual follicular units into tiny holes made in the bald area of the scalp called recipient sites.[1]

[1] Bernstein Medical-Center for Hair Restoration, *Follicular Unit Transplant*, available at http://www.bernsteinmedical.com/fut-hair-transplant/, (last visited on April 3, 2015).

Another type of hair restoration procedure is the bald scalp reduction procedure. As implied by the name, a bald scalp reduction procedure entails the removal of a bald area of the patient's scalp and hair-producing areas of the scalp are stretched to cover the area removed. A similar procedure, the scalp flap surgery, involves the cutting and grafting of an entire flap of hair-producing scalp on a bald area of the scalp. Both bald scalp reduction and scalp flap surgeries can have rapid results, but the follicular unit transplant surgery is generally preferred due to the more natural look produced by the follicular unit transplant surgery and the risk of scarring or failure inherent with bald scalp reduction and scalp flap surgeries.[2]

Tissue or scalp expansion procedures can also be used to restore bald areas of the scalp. Tissue expansion uses a balloon, called an expander, to stretch the skin in order to create extra skin which can be removed and grafted onto the bald area. Tissue expansion can be used for scalp repair since the stretched skin on the scalp retains normal hair growth.[3]

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. PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.[4]

Physician assistants are trained and required by statute to work under the supervision and control of medical physicians or osteopathic physicians.[5] The Board of Medicine and the Board of Osteopathic Medicine have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[6] and indirect[7] 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.[8] 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 must be individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[9]

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[2] Bald Scalp Reduction and Scalp Flap Surgery, available at http://www.foundhair.com/pages/baldScalp.shtml, (last visited on April 3, 2015).
[3] Tissue Expansion, available at http://www.chp.edu/CHP/Tissue+Expansion, (last visited on April 3, 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. (*See* ss. 458.347(9) and 459.022(9), F.S.)
[5] Sections 458.347(4) and 459.022(4), F.S.
[6] "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.)
[7] "Indirect supervision" refers to the easy availability of the supervising physician to the physician assistant, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)
[8] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[9] Sections 458.347(3) and 459.022(3), F.S.

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.[10]

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.[11] Florida recognizes three types of ARNP: nurse practitioner (NP), certified registered nurse anesthetist (CRNA), and certified nurse midwife (CNM).[12] To be certified as an ARNP, a nurse must hold a current license as a registered nurse[13] and submit proof to the Board of Nursing that he or she meets one of the following requirements:[14]

- Satisfactory completion of a formal postbasic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;[15] or
- Graduation from a master's degree program in a nursing clinical specialty area with preparation in specialized practitioner 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:[16]

- 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).[17]

[10] 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.)

[11] "Advanced or 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. (*See* s. 464.003(2), F.S.)

[12] 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.)

[13] Practice of professional nursing. (See s. 464.003(20), F.S.)

[14] Section 464.012(1), F.S.

[15] 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. (*See* Rule 64B9-4.002(2), F.A.C.)

[16] Section 464.012(3), F.S.

[17] Section 464.012(4), F.S.

Advanced registered nurse practitioners must meet financial responsibility requirements, as determined by rule of the Board of Nursing, and the practitioner profiling requirements.[18] 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.[19]

III. Effect of Proposed Changes:

CS/SB 790 amends chapters 458 and 459, F.S., to restrict a physician licensed under either chapter from delegating the incisional or excisional aspects of a follicular unit transplant, a scalp reduction surgery, a scalp flap surgery, or a scalp expansion surgery to anyone other than a PA licensed under ch. 458 or ch. 459, F.S., or an ARNP, certified under ch. 464, F.S. The proposed committee substitute also authorizes a physician to delegate the performance of these procedures to PAs and authorizes an ARNP to perform such procedures within the framework of an established protocol.

The bill creates ss. 458.352 and 459.027, F.S., to require that a physician document the licensure, education, training, and experience of the individual to whom he or she delegates such a procedure and to require health care practitioners who provide such procedures to inform a patient who is undergoing the procedure of the identity and training of all individuals involved in the patient's care.

The effective date of the proposed committee substitute is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[18] Sections 456.0391 and 456.041, F.S.
[19] Rule 64B9-4.002(5), F.A.C.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.331, 458.347, 459.015, 459.022, and 464.012

This bill creates the following sections of the Florida Statutes: 458.352 and 459.027

IX. Additional Information:

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

CS by Health Policy on April 7, 2015:
The CS amends SB 790 to make numerous technical and conforming changes to more closely align the bill with the current regulatory structure. Provisions prohibiting a person other than a PA or ARNP from accepting a delegation of the listed hair restoration procedures are deleted from the bill in favor of provisions restricting a physician from making such delegations.

B. Amendments:

None.

By Senator Sobel

33-00366A-15 2015790__

A bill to be entitled

An act relating to hair restoration or transplant; amending ss. 458.331 and 459.015, F.S.; authorizing the Board of Medicine, the Board of Osteopathic Medicine, and the Department of Health to deny a license to or to discipline a hair restoration or transplant surgeon for improperly delegating certain tasks; authorizing the boards and the department to discipline an individual other than a physician assistant or an advanced registered nurse practitioner for improperly accepting the delegation of certain tasks; amending ss. 458.347, 459.022, and 464.012, F.S.; authorizing a supervisory hair restoration or transplant surgeon to delegate to a physician assistant and an advanced registered nurse practitioner certain tasks; creating ss. 458.352 and 459.027, F.S.; requiring a hair restoration or transplant surgeon to document the licensure, education, training, and experience of an individual who accepts the delegation of certain tasks; defining the term "surgical procedure"; requiring a health care provider of hair restoration or transplant to inform a patient of the identity and training status of the individuals involved in the patient's care; providing an effective date.

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

Section 1. Paragraphs (tt) and (uu) are added to subsection

(1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

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

(tt) Delegating a surgical procedure, as defined in s. 458.352(1), or delegating an incisional or excisional aspect of such surgical procedure, to a person other than a physician assistant licensed under this chapter or chapter 459 or an advanced registered nurse practitioner certified under chapter 464, by a hair restoration or transplant surgeon.

(uu) Accepting a delegation of a surgical procedure, as defined in s. 458.352(1), or accepting an incisional or excisional aspect of such surgical procedure, by a person other than a physician assistant licensed under this chapter or chapter 459 or an advanced registered nurse practitioner certified under chapter 464, from a hair restoration or transplant surgeon.

Section 2. Paragraph (h) is added to subsection (4) of section 458.347, Florida Statutes, to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(h) A supervisory hair restoration or transplant surgeon licensed under this chapter or chapter 459 may delegate to a physician assistant the authority to conduct the incisional or excisional aspects of a surgical procedure as defined in s. 458.352(1).

Section 3. Section 458.352, Florida Statutes, is created to read:

458.352 Hair restoration or transplant.—

(1) If a hair restoration or transplant surgeon delegates an incisional or excisional aspect of a surgical procedure, the surgeon must document the licensure, education, training, and experience of the individual who receives the delegation. As used in this subsection, the term "surgical procedure" means a follicular unit transplant, follicular unit extraction, scalp reduction surgery, scalp flap surgery, or scalp expansion surgery.

(2) A health care provider of hair restoration or transplant must inform a patient of the identity and training status of the individuals involved in the patient's care.

Section 4. Paragraphs (vv) and (ww) are added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

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

(vv) Delegating a surgical procedure, as defined in s. 459.027(1), or delegating an incisional or excisional aspect of such surgical procedure, to a person other than a physician assistant licensed under this chapter or chapter 458 or an advanced registered nurse practitioner certified under chapter 464, by a hair restoration or transplant surgeon.

(ww) Accepting a delegation of a surgical procedure, as defined in s. 459.027(1), or accepting an incisional or excisional aspect of such surgical procedure, by a person other than a physician assistant licensed under this chapter or chapter 458 or an advanced registered nurse practitioner

certified under chapter 464, from a hair restoration or transplant surgeon.

Section 5. Paragraph (g) is added to subsection (4) of section 459.022, Florida Statutes, to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory hair restoration or transplant surgeon licensed under this chapter or chapter 458 may delegate to a physician assistant the authority to conduct the incisional or excisional aspects of a surgical procedure as defined in s. 459.027(1).

Section 6. Section 459.027, Florida Statutes, is created to read:

459.027 Hair restoration or transplant.—

(1) If a hair restoration or transplant surgeon delegates an incisional or excisional aspect of a surgical procedure, the surgeon must document the licensure, education, training, and experience of the individual who receives the delegation. As used in this subsection, the term “surgical procedure” means a follicular unit transplant, follicular unit extraction, scalp reduction surgery, scalp flap surgery, or scalp expansion surgery.

(2) A health care provider of hair restoration or transplant must inform a patient of the identity and training status of the individuals involved in the patient’s care.

Section 7. Paragraph (c) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(4) In addition to the general functions specified in subsection (3), an advanced registered nurse practitioner may perform the following acts within his or her specialty:

(c) The nurse practitioner may perform any or all of the following acts within the framework of established protocol:

1. Manage selected medical problems.

2. Order physical and occupational therapy.

3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.

4. Monitor and manage patients with stable chronic diseases.

5. Establish behavioral problems and diagnosis and make treatment recommendations.

6. Accept a delegation from a hair restoration or transplant surgeon licensed under chapter 458 or chapter 459 to perform the incisional or excisional aspects of a surgical procedure as defined in s. 458.352(1).

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

March 30, 2015

Senator Aaron Bean, Chair
Health Policy
302 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Bean:

This letter is to request that **SB 790** relating to **hair restoration or transplant** be placed on the agenda of the next scheduled meeting of the Health Policy Committee. The proposed legislation would prevent improper delegation of transplant surgeries, ultimately cutting down on unnecessary injury and malpractice claims.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel

Eleanor Sobel
State Senator, 33rd District

Cc: Celia Georgiades, Sandra Stovall

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

DON GAETZ
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)

4/7/15
Meeting Date

790
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave
Street
Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Society of Plastic Surgeons

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1310
INTRODUCER:	Health Policy Committee and Senator Clemens
SUBJECT:	Music Therapists
DATE:	April 8, 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 1310 creates a new profession of Music Therapists in part XVII of ch. 468, F.S. Music therapists will be regulated by the Division of Medical Quality Assurance (MQA) within the Department of Health. The bill establishes licensure requirements for music therapists and specifies duties that music therapists must perform in the practice of music therapy. After January 1, 2017, an individual who is not licensed as a music therapist may not use the title of "music therapist" and may not practice music therapy, with certain exceptions. The bill requires biennial renewal of a music therapist license and authorizes the MQA to conduct investigations into alleged licensure violations and impose sanctions.

The bill creates a Music Therapy Advisory Committee within the MQA to provide the MQA director with assistance in carrying out the duties pursuant to the bill. Members of the advisory committee must be familiar with the practice of music therapy and serve, at the will of the director, without compensation for 4-year terms. The bill authorizes the MQA to adopt rules to implement and administer part XVII of ch. 468, F.S.

II. Present Situation:

The Sunrise Act and Sunrise Questionnaire

The Sunrise Act (the act), codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The Legislative intent in the act provides that:

- No profession or occupation be subject to regulation unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the state's police power be exercised only to the extent necessary for that purpose; and
- No profession or occupation be regulated in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the services to the public.

The Legislature must review all legislation proposing regulation of a previously unregulated profession or occupation and make a determination for regulation based on consideration of the following:

- 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 the proponents of legislation for the regulation of a profession or occupation to provide specific information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees of reference.[1] This required information is traditionally compiled in a "Sunrise Questionnaire."

Music Therapists[2]

Currently, music therapists are not regulated in Florida. The primary proponent seeking regulation of music therapists in Florida is the Florida Music Therapy State Task Force (task force). The task force has completed a Sunrise Questionnaire to provide information concerning the proposed regulation of a currently unregulated profession.

[1] See s. 11.62(4)(a)-(m), F.S.

[2] Information in this portion of this Bill Analysis is from the Florida Senate Sunrise Questionnaire completed by the Florida Music Therapy State Task Force (on file with the Senate Committee on Health Policy).

"Music therapy" is defined by the task force to mean "the clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program." Music therapist serve clinical populations ranging in age from neonates in a hospital's neonatal intensive care unit (NICU) to older adults in hospice care. Music therapy services are provided in a variety of clinical settings, including:

- Psychiatric hospitals;
- Rehabilitative facilities;
- Medical hospitals;
- Outpatient clinics;
- Day care treatment centers;
- Agencies serving persons with developmental disabilities;
- Community mental health centers;
- Drug and alcohol programs;
- Senior centers;
- Nursing homes;
- Hospice programs;
- Correctional facilities;
- Halfway houses;
- Schools; and
- Private practice.

According to the task forces, in some settings, such as certain school districts, the absence of licensure prevents access to music therapy services.

The task force estimates that there are 253 Music Therapists-Board Certified, four Registered Music Therapists, and four Certified Music Therapists in Florida.[3]

Music therapy degree programs are offered at approximately 73 colleges and universities in the United States. These programs are accredited by the American Music Therapy Association (AMTA). To become a music therapist, a student must earn a bachelor's degree or higher in music therapy from an AMTA-approved college or university. These programs require academic coursework and 1,200 hours of clinical training, including an approved supervised internship. An internship may be approved by the academic institution, the AMTA, or by both. Qualified supervision of clinical training is required and coordinated or verified by the academic institution. Internship supervisors must meet minimum requirements outlined by the AMTA Education and Clinical Training Standards.[4]

[3] The number of music therapists in Florida is based on information provided by the Certification Board for Music Therapists and the National Music Therapy Registry.

[4] A music therapy internship supervisor must have a clinical practice in music therapy (either private or institutional) and demonstrate the following: all professional level competencies; effectiveness as a music therapy clinician in at least one area of practice; general understanding of the supervisory needs of internship students, and established skills in supervision. *See* AMTA, *Standards for Education and Clinical Training*, "6.2 Clinical Supervisors," *available at* http://www.musictherapy.org/members/edctstan/ (last visited Apr. 2, 2015).

Currently in Florida, Florida State University (FSU) and the University of Miami (UM) have the only accredited music therapy programs. FSU and UM both offer Bachelor's, Master's, and Doctoral degrees in Music Therapy. FSU graduates approximately 35 - 40 students annually and UM graduates 10 - 12 students annually. Additionally, Florida Gulf Coast University is developing a music therapy program and is in the accreditation process.

National Certification of Music Therapists

There are two national organizations that recognize the music therapy profession: the AMTA and the Certification Board for Music Therapists (CBMT). The CBMT is the only organization that credentials music therapists nationally. The professional credential for a Music Therapist-Board Certified (MT-BC) is granted by the CBMT to individuals who have successfully completed an AMTA-approved academic and clinical training program and have passed a written objective national examination.

Currently, the majority of music therapist hold the MT-BC credential. Other credentials that a music therapist may have are: Registered Music Therapist (RMT), Certified Music Therapist (CMT), or Advanced Certified Music Therapist (ACMT). The RMT, CMT, and ACMT credentials were granted prior to 1998 and will expire in 2020.[5]

Regulation of Music Therapists in Other States

Since 1998, Wisconsin has provided a State Registry for Music Therapists through the Wisconsin Department of Regulation and Licensing. This is a title protection act that prohibits the use of the title Wisconsin Music Therapist – Registered (WMTR) unless a music therapist is registered with the state of Wisconsin. Wisconsin does not license state music therapists, and registration is voluntary.[6]

Music therapists were first licensed in the states of North Dakota and Nevada in 2011, followed by Georgia in 2012. North Dakota created a music therapy license through a newly created Board of Integrative Health; Nevada created a music therapy license through the Nevada State Board of Health; and in Georgia, the music therapy license is overseen by the Secretary of State and utilizes an ad hoc volunteer Advisory Council.

In 2014, Utah established a Music Therapy State Certification designation for board certified music therapists that is granted by Utah's Division of Occupational and Professional Licensing; and Rhode Island created a music therapy registry that is administered by the Rhode Island Department of Health.

Health Care Practitioners in Florida

The Department of Health (DOH) is responsible for the licensure of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for each profession or occupation, ch. 456, F.S., provides the general regulatory provisions for health care

[5] American Music Therapy Association, *Therapeutic Music Services At-A-Glance*, Ver. 14.1 (Feb. 2014), available at http://www.musictherapy.org/assets/1/7/TxMusicServicesAtAGlance_14.pdf (last visited Apr. 6, 2015).
[6] *See* Wisconsin Chapter for Music Therapy, *Wisconsin Music Therapy Registry* (2015), *available at* http://musictherapywisconsin.org/about-us/wmtr/ (last visited Apr. 2, 2015).

professions within the Division of Medical Quality Assurance in the DOH. Section 456.001, F.S., defines "health care practitioner" as any person licensed under chapters 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy), F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.

Additionally, the miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 20.43, F.S., to include music therapists as a profession established within the Division of Medical Quality Assurance (MQA) in the DOH.

Section 2 creates part XVII of chapter 468, F.S., which is entitled "Music Therapists."

Section 3 creates s. 468.851, F.S., to provide the purpose of the legislation, which states that "the Legislature finds that the practice of music therapy should be subject to regulation to ensure the highest degree of professional conduct and to guarantee the availability of music therapy services provided by qualified professionals. This part is intended to protect the public from the harmful conduct of unqualified music therapists."

Section 4 creates s. 468.852, F.S., to provide the following definitions related to music therapists:

- "Advisory committee" means the Music Therapy Advisory Committee.
- "Board-certified music therapist" means an individual who has completed the education and clinical training requirements established by the AMTA and who holds current board certification from the CBMT.
- "Division" means the MQA within the DOH.
- "Director" means the director of the division.
- "Music therapist" means a person licensed to practice music therapy pursuant to part XVII of ch. 468, F.S.
- "Music therapy" means the clinical and evidence-based use of music interventions by a board-certified music therapist to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship. The term "music therapy" does not include the diagnosis or assessment of any physical, mental, or communication disorder.

Section 5 creates s. 468.853, F.S., to create a Music Therapy Advisory Committee within the MQA. The advisory committee shall consist of five members who have been appointed by the director of the MQA. Members of the advisory committee must be persons familiar with the

practice of music therapy and must provide the director with expertise and assistance in carrying out the duties pursuant to part XVII of ch. 468, F.S. Members of the advisory committee serve without compensation for 4-year terms and may serve consecutive terms at the will of the director.

The bill provides that advisory committee members must meet at least annually or otherwise as called by the director. The director must consult with the advisory committee before setting or changing required fees for music therapists. The advisory committee must provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least annually. The advisory committee may facilitate the development of materials that the director may utilize to educate the public concerning:

- Music therapist licensure;
- The benefits of music therapy; and
- Use of music by individuals and within facilities or institutional settings.

The advisory committee may also facilitate statewide dissemination of information between music therapists, the AMTA or any successor organization, and the director.

The bill authorizes the MQA to adopt rules to implement and administer part XVII of ch. 468, F.S. The director must consult with the advisory committee before adopting or revising rules related to music therapists.

Section 6 creates s. 468.854, F.S., to establish licensure and practice requirements for music therapists. Beginning January 1, 2017, an individual must be licensed as a music therapist to practice musical therapy in this state or to use the title "music therapist," with certain exceptions for a person who does not hold himself or herself out as a music therapist. These exceptions include:

- A person who is licensed, certified, or regulated to practice a profession or occupation in Florida who uses music, incidental to the practice of his or her profession or occupation;
- A person practicing his or her profession pursuant to a national certification;
- A student practicing music therapy as a part of an accredited music therapy program; or
- A person practicing music therapy under the supervision of a licensed music therapist.

A music therapist must:

- Collaborate with a client's primary care provider before providing music therapy services to a client for an identified clinical or developmental need;
- Collaborate with the client's treatment team, as applicable;
- Assess a client to determine if music therapy is indicated;
- Develop an individualized treatment plan based upon the results of the assessment;
- Implement a treatment plan that is consistent with other services being provided to the client;
- Document the client's response to music therapy and the treatment plan, noting needed modifications or whether discontinuation is appropriate;
- Minimize barriers to the delivery of music therapy services;
- Collaborate with and educate the client and the family or other appropriate persons regarding the client's needs which are being addressed in music therapy and how music therapy treatment addresses those needs; and

- Use research, reasoning, and problem-solving skills to determine appropriate actions in the context of each specific clinical setting.

The bill provides that a music therapist may accept referrals for music therapy services from medical, developmental, mental health, or education professionals, family members, clients, or other caregivers.

Section 7 creates s. 468.855, F.S., to specify requirements for the issuance of licenses to music therapists. The division shall issue a music therapist license to an applicant upon completion and submission of an application form, applicable fees, and evidence satisfactory to the division that the applicant:

- Is at least 18 years of age;
- Holds a bachelor's degree or higher in music therapy, or its equivalent, from a program approved by the AMTA or any successor organization within an accredited college or university;
- Successfully completed a minimum of 1,200 hours of clinical training, with at least 180 hours in pre-internship experiences and at least 900 hours in internship experiences, provided that the internship is approved by an academic institution or the AMTA or any successor organization;
- Is in good standing based on a review of the applicant's music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant; and
- Provides proof of passing the examination for board certification offered by the CBMT or any successor organization, or provides proof of being transitioned into board certification and provides proof that the applicant is currently a board-certified music therapist.

The division shall also issue a music therapy license to an applicant who completes and submits an application, applicable fees, and evidence satisfactory to the division that the applicant is licensed and in good standing as a music therapist in another jurisdiction where the qualifications are equal to or greater than those required in Florida.

The division must waive the examination requirement until January 1, 2020, for an applicant who is currently designated as a RMT, CMT, or ACMT and is in good standing with the National Music Therapy Registry.

Fees collected by the division for music therapist license applications must be deposited into the Medical Quality Assurance Trust Fund.

Section 8 creates s. 468.856, F.S., to provide requirements for biennial licensure renewal. A license must be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of part XVII of ch. 468, F.S., at the time of application for renewal. To renew a license, the licensee must provide:

- Proof of maintenance of status as a board-certified music therapist; and
- Proof of completion of a minimum of 40 hours of continuing education in a program approved by the CBMT or any successor organization and any other continuing education requirements established by the division.

Failure to renew a license results in forfeiture of the license. Licenses that have been forfeited may be restored within 1 year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within 1 year of expiration will result in the automatic termination of the license. The division may require an individual with a terminated license to reapply for licensure as a new applicant.

The division may place an active license on inactive status upon written request of the licensee, subject to an inactive status fee established by the division. The licensee may continue on inactive status for a period up to 2 years. An inactive license may be reactivated at any time by making a written request to the division and by fulfilling requirements established by the division.

A music therapist licensee must inform the division of any changes to his or her address.

Section 9 creates s. 468.857, F.S., to establish disciplinary grounds and actions. The bill lists the following acts as violations of part XVII of ch. 468, F.S.:

- Falsification of information submitted for licensure or failure to maintain status as a board-certified music therapist.
- Failure to pay fees when due.
- Failure to provide requested information in a timely manner.
- Conviction of a felony.
- Conviction of any crime that reflects an inability to practice music therapy with due regard for the health and safety of clients and patients, or with due regard for the truth in filing claims with Medicare, Medicaid, or any third-party payor.
- Inability or failure to practice music therapy with reasonable skill and consistent with the welfare of clients and patients.
- Any related disciplinary action by another jurisdiction.

The division may conduct investigations into alleged violations and impose one or more of the following sanctions:

- Suspension.
- Revocation.
- Denial.
- Refusal to renew a license.
- Probation with conditions.
- Reprimand.
- A fine of at least $100, but no more than $1,000, for each violation.

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

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:

Music therapists will be required to pay fees associated with licensure; however, SB 1310 does not specify fee amounts or maximum amounts for the fees authorized in the bill.

B. Private Sector Impact:

Music therapists are required to pay an initial licensure fee as well as biennial renewal fees. Other potential fees relate to inactive status, renewal and restoration, or reapplication. The fee amounts will be determined by the director of the MQA in consultation with the Music Therapy Advisory Committee.

C. Government Sector Impact:

The DOH reports that it will experience an indeterminate increase in revenues based on music therapist license application fees. The DOH will also incur a recurring increase in workload and costs associated with the regulation of music therapists and educating the public concerning music therapy and licensure.

VI. Technical Deficiencies:

The Music Therapy Advisory Committee is to consist of persons familiar with the practice of music therapy. However, the bill does not describe what constitutes familiarity with the practice of music therapy with respect to two members of the committee. Also, one of the members of the committee is to be a health care provider who is not a music therapist. However, the term "health care provider" is not defined. Chapter 456, F.S., which is applicable to all professions regulated by the DOH and MQA, defines the term "health care practitioner." That term might provide more clarity.

VII. Related Issues:

The bill does not amend ch. 456, F.S., regarding health care practitioners, to include music therapists as "health care practitioners."

Music therapists will be required to pay fees associated with licensure; however, the bill does not specify fee amounts or maximum amounts for the fees authorized in the bill. This might create an opportunity to challenge the rule setting fees.

In the bill, s. 468.854(3)(i), F.S., requires a music therapist to collaborate with and educate various persons regarding the needs of the client which are being addressed in music therapy. This language is seemingly broad and does not reference compliance with the federal HIPAA privacy regulations.

VIII. Statutes Affected:

This bill substantially amends section 20.43 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 468.851, 468.852, 468.853, 468.854, 468.855, 468.856, and 468.857.

IX. Additional Information:

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

CS by Health Policy on April 7, 2015:
The Committee Substitute authorizes the MQA to adopt rules to implement part XVII of ch. 468, F.S. The director of MQA is required to consult with the Music Therapy Advisory Committee before adopting or revising rules related to music therapists. The CS changes the date after which an individual must be licensed as a music therapist in order to use the title "music therapist" to January 1, 2017. The effective date is changed from July 1, 2015 to July 1, 2016.

B. Amendments:

None.

433304

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 154 - 157

and insert:

(6) The director must consult with the advisory committee before adopting or revising rules pursuant to this section.

(7) The division may adopt rules to implement and administer this part.

Section 6. Section 468.854, Florida Statutes, is created to read:

433304

468.854 Licensure requirements.—

(1) After January 1, 2017, an individual who is not

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

And the title is amended as follows:

Between lines 10 and 11

insert:

requiring the director to consult with the advisory committee before adopting or revising rules;

authorizing the division to adopt rules;

381902

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 343
and insert:
Section 10. This act shall take effect July 1, 2016.

By Senator Clemens

27-00646-15 20151310__

A bill to be entitled

An act relating to music therapists; amending s. 20.43, F.S.; establishing the music therapist profession within the Division of Medical Quality Assurance; creating part XVII of ch. 468, F.S., entitled "Music Therapists"; creating s. 468.851, F.S.; providing legislative intent; creating s. 468.852, F.S.; defining terms; creating s. 468.853, F.S.; creating the Music Therapy Advisory Committee; providing for membership and terms of members; creating s. 468.854, F.S.; establishing requirements for licensure as a music therapist; creating s. 468.855, F.S.; providing application requirements; exempting certain applicants from the examination requirement; requiring certain fees to be deposited into the Medical Quality Assurance Trust Fund; creating s. 468.856, F.S.; establishing a licensure renewal process; creating s. 468.857, F.S.; providing for disciplinary grounds and actions; authorizing investigations by the division for allegations of misconduct; providing an effective date.

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

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

1. The Board of Acupuncture, created under chapter 457.

2. The Board of Medicine, created under chapter 458.

3. The Board of Osteopathic Medicine, created under chapter 459.

4. The Board of Chiropractic Medicine, created under chapter 460.

5. The Board of Podiatric Medicine, created under chapter 461.

6. Naturopathy, as provided under chapter 462.

7. The Board of Optometry, created under chapter 463.

8. The Board of Nursing, created under part I of chapter 464.

9. Nursing assistants, as provided under part II of chapter 464.

10. The Board of Pharmacy, created under chapter 465.

11. The Board of Dentistry, created under chapter 466.

12. Midwifery, as provided under chapter 467.

13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

14. The Board of Nursing Home Administrators, created under part II of chapter 468.

15. The Board of Occupational Therapy, created under part III of chapter 468.

16. Respiratory therapy, as provided under part V of chapter 468.

17. Dietetics and nutrition practice, as provided under part X of chapter 468.

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

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

20. Music therapists, as provided under part XVII of chapter 468.

21.~~20.~~ Electrolysis, as provided under chapter 478.

22.~~21.~~ The Board of Massage Therapy, created under chapter 480.

23.~~22.~~ The Board of Clinical Laboratory Personnel, created under part III of chapter 483.

24.~~23.~~ Medical physicists, as provided under part IV of chapter 483.

25.~~24.~~ The Board of Opticianry, created under part I of chapter 484.

26.~~25.~~ The Board of Hearing Aid Specialists, created under part II of chapter 484.

27.~~26.~~ The Board of Physical Therapy Practice, created under chapter 486.

28.~~27.~~ The Board of Psychology, created under chapter 490.

29.~~28.~~ School psychologists, as provided under chapter 490.

30.~~29.~~ The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

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

Section 2. Part XVII of chapter 468, Florida Statutes,

consisting of ss. 468.851-468.857, Florida Statutes, is created and entitled "Music Therapists."

Section 3. Section 468.851, Florida Statutes, is created to read:

468.851 Purpose.—The Legislature finds that the practice of music therapy should be subject to regulation to ensure the highest degree of professional conduct and to guarantee the availability of music therapy services provided by qualified professionals. This part is intended to protect the public from the harmful conduct of unqualified music therapists.

Section 4. Section 468.852, Florida Statutes, is created to read:

468.852 Definitions.—As used in this part, the term:

(1) "Advisory committee" means the Music Therapy Advisory Committee.

(2) "Board-certified music therapist" means an individual who has completed the education and clinical training requirements established by the American Music Therapy Association and who holds current board certification from the Certification Board for Music Therapists.

(3) "Division" means the Division of Medical Quality Assurance within the Department of Health.

(4) "Director" means the director of the division.

(5) "Music therapist" means a person licensed to practice music therapy pursuant to this part.

(6) "Music therapy" means the clinical and evidence-based use of music interventions by a board-certified music therapist to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship. The term does

not include the diagnosis or assessment of any physical, mental, or communication disorder.

Section 5. Section 468.853, Florida Statutes, is created to read:

468.853 Music Therapy Advisory Committee.—

(1) There is created within the division a Music Therapy Advisory Committee, which shall consist of five members.

(a) The director of the division shall appoint all members of the advisory committee to serve 4-year terms. The advisory committee shall consist of persons familiar with the practice of music therapy and provide the director with expertise and assistance in carrying out his or her duties pursuant to this part. The director shall appoint three members who practice as music therapists in this state; one member who is a licensed health care provider and is not a music therapist; and one member who is a layperson.

(b) Members serve without compensation.

(c) Members may serve consecutive terms at the will of the director. Any vacancy shall be filled in the same manner as the regular appointment.

(2) The advisory committee shall meet at least annually or as otherwise called by the director.

(3) The director shall consult with the advisory committee before setting or changing fees required under this part.

(4) The advisory committee shall provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least annually.

(5) The advisory committee may facilitate:

(a) The development of materials that the director may

utilize to educate the public concerning music therapist licensure, the benefits of music therapy, and use of music therapy by individuals and within facilities or institutional settings.

(b) Statewide dissemination of information between music therapists, the American Music Therapy Association or any successor organization, the Certification Board for Music Therapists or any successor organization, and the director.

Section 6. Section 468.854, Florida Statutes, is created to read:

468.854 Licensure requirements.—

(1) After January 1, 2016, an individual who is not licensed as a music therapist may not use the title "music therapist" or a similar title and may not practice music therapy. Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of any of the following:

(a) Any individual licensed, certified, or regulated under the laws of this state in another profession or occupation, or personnel supervised by a licensed professional in this state, performing work, including the use of music, incidental to the practice of his or her licensed, certified, or regulated profession or occupation, if that individual does not represent himself or herself as a music therapist.

(b) Any individual whose training and national certification attests to the individual's preparation and ability to practice his or her certified profession or occupation, if that individual does not represent himself or herself as a music therapist.

(c) Any practice of music therapy as an integral part of a program of study for students enrolled in an accredited music therapy program, if that student does not represent himself or herself as a music therapist.

(d) Any individual who practices music therapy under the supervision of a licensed music therapist, if that individual does not represent himself or herself as a music therapist.

(2) A music therapist may accept referrals for music therapy services from medical, developmental, mental health, or education professionals, family members, clients, or other caregivers.

(3) A music therapist must:

(a) Before providing music therapy services to a client for an identified clinical or developmental need, collaborate, as applicable, with the primary care provider to review the client's diagnosis, treatment needs, and treatment plan;

(b) During the provision of music therapy services to a client, collaborate, as applicable, with the client's treatment team;

(c) Conduct a music therapy assessment of a client to determine if treatment is indicated and, if treatment is indicated, the licensee must collect systematic, comprehensive, and accurate information to determine the appropriateness and type of music therapy services to provide for the client;

(d) Develop an individualized music therapy treatment plan for the client that is based upon the results of the music therapy assessment. Such treatment plan must include individualized goals and objectives that focus on the assessed needs and strengths of the client and must specify music therapy

approaches and interventions to be used to address these goals and objectives;

(e) Implement an individualized music therapy treatment plan that is consistent with any other developmental, rehabilitative, habilitative, medical, mental health, preventive, wellness care, or educational services being provided to the client;

(f) Evaluate the client's response to music therapy and the music therapy treatment plan, documenting change and progress and suggesting modifications, as appropriate;

(g) Develop a plan for determining whether music therapy services continue to be needed. In making this determination the music therapist shall collaborate with the client, the client's physician or other provider of health care or education to the client and family members of the client, and any other appropriate person upon whom the client relies for support;

(h) Minimize any barriers to ensure that the client receives music therapy services in the least restrictive environment;

(i) Collaborate with and educate the client and the family, the caregiver of the client, or any other appropriate person regarding the needs of the client which are being addressed in music therapy and the manner in which the music therapy treatment addresses those needs; and

(j) Use appropriate knowledge and skills to inform practice, including the use of research, reasoning, and problem-solving skills to determine appropriate actions in the context of each specific clinical setting.

Section 7. Section 468.855, Florida Statutes, is created to

read:

468.855 Issuance of licenses.—

(1) The division shall issue a music therapist license to an applicant upon completion and submission of an application upon a form and in such manner as the division prescribes, accompanied by applicable fees, and evidence satisfactory to the division that:

(a) The applicant is at least 18 years of age;

(b) The applicant holds a bachelor's degree or higher in music therapy, or its equivalent, from a program approved by the American Music Therapy Association or any successor organization within an accredited college or university;

(c) The applicant successfully completed a minimum of 1,200 hours of clinical training, with at least 180 hours in pre-internship experiences and at least 900 hours in internship experiences, provided that the internship is approved by an academic institution, the American Music Therapy Association or any successor organization, or both;

(d) The applicant is in good standing based on a review of the applicant's music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant; and

(e) The applicant provides proof of passing the examination for board certification offered by the Certification Board for Music Therapists or any successor organization or provides proof of being transitioned into board certification, and provides proof that the applicant is currently a board-certified music therapist.

(2) The division shall issue a license to an applicant for a music therapy license when the applicant completes and submits an application upon a form and in such manner as the division prescribes, accompanied by applicable fees and evidence satisfactory to the division that the applicant is licensed and in good standing as a music therapist in another jurisdiction where the qualifications required are equal to or greater than those required in this part at the date of application.

(3) The division shall waive the examination requirement until January 1, 2020, for an applicant who is designated as a registered music therapist, certified music therapist, or advanced certified music therapist and is in good standing with the national music therapy registry.

(4) Fees collected pursuant to this part shall be deposited into the Medical Quality Assurance Trust Fund as provided under s. 456.025.

Section 8. Section 468.856, Florida Statutes, is created to read:

468.856 Licensure renewal.—

(1) Every license issued under this part must be renewed biennially. A license shall be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of this part at the time of application for renewal.

(2) To renew a license the licensee must provide:

(a) Proof of maintenance of status as a board-certified music therapist; and

(b) Proof of completion of a minimum of 40 hours of continuing education in a program approved by the Certification Board of Music Therapists or any successor organization and any

other continuing education requirements established by the division.

(3) A licensee shall inform the division of any changes to his or her address.

(4) Failure to renew a license results in forfeiture of the license. Licenses that have been forfeited may be restored within 1 year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within 1 year of the date of its expiration results in the automatic termination of the license, and the division may require the individual to reapply for licensure as a new applicant.

(5) Upon the written request of a licensee, the division may place an active license on inactive status, subject to an inactive status fee established by the division. The licensee, upon request and payment of the inactive license fee, may continue on inactive status for a period up to 2 years. An inactive license may be reactivated at any time by making a written request to the division and by fulfilling requirements established by the division.

Section 9. Section 468.857, Florida Statutes, is created to read:

468.857 Disciplinary grounds and actions.—

(1) The following acts constitute violations of this part:

(a) Falsification of information submitted for licensure or failure to maintain status as a board-certified music therapist.

(b) Failure to pay fees when due.

(c) Failure to provide requested information in a timely manner.

(d) Conviction of a felony.

(e) Conviction of any crime that reflects an inability to practice music therapy with due regard for the health and safety of clients and patients, or with due regard for the truth in filing claims with Medicare, Medicaid, or any third-party payor.

(f) Inability or failure to practice music therapy with reasonable skill and consistent with the welfare of clients and patients, including, but not limited to, negligence in the practice of music therapy; intoxication; incapacity; and abuse of or engaging in sexual contact with a client or patient.

(g) Any related disciplinary action by another jurisdiction.

(2) The division may conduct investigations into alleged violations of this section.

(3) The division may impose one or more of the following sanctions for a violation of this part:

(a) Suspension.

(b) Revocation.

(c) Denial.

(d) Refusal to renew a license.

(e) Probation with conditions.

(f) Reprimand.

(g) A fine of at least $100, but no more than $1,000, for each violation.

Section 10. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS
27th District

March 19, 2015

Senator Aaron Bean, Chair
Committee on Health Policy
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bean:

I respectfully request that SB 1310 – Music Therapists be added to the agenda for the next Committee on Health Policy meeting.

SB1310 provides licenses to board-certified music therapists in Florida to increase access to qualified music therapy services for Florida residents and limits the potential for harm to the public by ensuring music therapy can only be offered by licensed therapists.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:
☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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)

4/7/15
Meeting Date

SB1310
Bill Number (if applicable)

Topic Music Therapy

Amendment Barcode (if applicable)

Name Sharon Graham

Job Title Music Therapist - Board Certified (MT-BC)

Address 8629 Alexandra Arbor Ln
Street

Phone

Temple Terrace FL 33637
City *State* *Zip*

Email Sharon@MusicTherapyFL.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Music Therapists

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

SB 1310
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Music therapy licensure

Name Michelle Pellito

Job Title Board-certified music therapist

Address 445 Appleyard Dr A2-5 *Street*

Phone (850) 628-1353

Tallahassee *City* FL *State* 32304 *Zip*

Email michellerjs@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Music Therapy State Task Force

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

SB1310
Bill Number (if applicable)

Topic MUSIC THERAPISTS

Amendment Barcode (if applicable)

Name JAMES E. RILEY

Job Title ADJUNCT PROFESSOR

Address 606 E PARK #4
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone (305) 304-4497

Email jriley@fsu.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL MUSIC THERAPY TASK FORCE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15
Meeting Date

SB 1310
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Music Therapy

Name Nelida Bagley and Jose Pequeño

Job Title Caregiver (Mother) / Staff Sargeant U.S. Marine Corps/Army, Retired

Address 5295 Shasta Daisy Place
Street

Land O' Lakes FL
City *State* *Zip*

Phone (603) 728-8248

Email nel49_1@hotmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Consumers of Music Therapy

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic Music Therapists

Amendment Barcode (if applicable)

Name Theresa Bulger

Job Title Lobbyist

Address 253 Hayden
Street

Tallahassee
City State Zip

Phone 9048809063

Email

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

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

Representing Florida Coalition Spoken Language

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.

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

S-001 (10/14/14)

AMERICAN MUSIC THERAPY ASSOCIATION

CBMT CERTIFICATION BOARD FOR MUSIC THERAPISTS

SCOPE OF MUSIC THERAPY PRACTICE

2015

Preamble

The scope of music therapy practice defines the range of responsibilities of a fully qualified music therapy professional with requisite education, clinical training, and board certification. Such practice also is governed by requirements for continuing education, professional responsibility and accountability. This document is designed for music therapists, clients, families, health and education professionals and facilities, state and federal legislators and agency officials, private and public payers, and the general public.

Statement of Purpose

The purpose of this document is to define the scope of music therapy practice by:

1. Outlining the knowledge, skills, abilities, and experience for qualified clinicians to practice safely, effectively and ethically, applying established standards of clinical practice and performing functions without risk of harm to the public;
2. Defining the potential for harm by individuals without formalized music therapy training and credentials; and
3. Describing the education, clinical training, board certification, and continuing education requirements for music therapists.

Definition of Music Therapy and Music Therapist

Music therapy is defined as the clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. A music therapist is an individual who has completed the education and clinical training requirements established by the American Music Therapy Association (AMTA) and who holds current board certification from The Certification Board for Music Therapists (CBMT).

Assumptions

The scope of music therapy practice is based on the values of non-maleficence, beneficence, ethical practice; professional integrity, respect, excellence; and diversity. The following assumptions are the foundation for this document:

- **Public Protection.** The public is entitled to have access to qualified music therapists who practice competently, safely, and ethically.
- **Requisite Training and Skill Sets.** The scope of music therapy practice includes professional and advanced competencies. The music therapist only provides services within the scope of practice that reflect his/her level of competence. The music therapy profession is not defined by a single music intervention or experience, but rather a continuum of skills sets (simple to complex) that make the profession unique.
- **Evidence-Based Practice.** A music therapist's clinical practice is guided by the integration of the best available research evidence, the client's needs, values, and preferences, and the expertise of the clinician.
- **Overlap in Services.** Music therapists recognize that in order for clients to benefit from an integrated, holistic treatment approach, there will be some overlap in services provided by multiple professions. We acknowledge that other professionals may use music, as appropriate, as long as they are working within their scope.
- **Professional Collaboration.** A competent music therapist will make referrals to other providers (music therapists and non-music therapists) when faced with issues or situations beyond the original clinician's own practice competence, or where greater competence or specialty care is determined as necessary or helpful to the client's condition.
- **Client-Centered Care.** A music therapist is respectful of, and responsive to the needs, values, and preferences of the client and the family. The music therapist involves the client in the treatment planning process, when appropriate.

Music Therapy Practice

Music therapy means the clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. Music therapists develop music therapy treatment plans specific to the needs and strengths of the client who may be seen individually or in groups. Music therapy treatment plans are individualized for each client. The

goals, objectives, and potential strategies of the music therapy services are appropriate for the client and setting. The music therapy interventions may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, singing, music performance, learning through music, music combined with other arts, music-assisted relaxation, music-based patient education, electronic music technology, adapted music intervention, and movement to music. Music therapy clinical practice may be in developmental, rehabilitative, habilitative, medical, mental health, preventive, wellness care, or educational areas. Standards of practice in music therapy include:

- Accepting referrals for music therapy services from medical, developmental, mental health, and education professionals; family members; clients; caregivers; or others involved and authorized with provision of client services. Before providing music therapy services to a client for an identified clinical or developmental need, the music therapist collaborates, as applicable, with the primary care provider(s) to review the client's diagnosis, treatment needs, and treatment plan. During the provision of music therapy services to a client, the music therapist collaborates, as applicable, with the client's treatment team;
- Conducting a music therapy assessment of a client to determine if treatment is indicated. If treatment is indicated, the music therapist collects systematic, comprehensive, and accurate information to determine the appropriateness and type of music therapy services to provide for the client;
- Developing an individualized music therapy treatment plan for the client that is based upon the results of the music therapy assessment. The music therapy treatment plan includes individualized goals and objectives that focus on the assessed needs and strengths of the client and specify music therapy approaches and interventions to be used to address these goals and objectives;
- Implementing an individualized music therapy treatment plan that is consistent with any other developmental, rehabilitative, habilitative, medical, mental health, preventive, wellness care, or educational services being provided to the client;
- Evaluating the client's response to music therapy and the music therapy treatment plan, documenting change and progress, and suggesting modifications, as appropriate;
- Developing a plan for determining when the provision of music therapy services is no longer needed in collaboration with the client, physician, or other provider of health care or education of the client, family members of the client, and any other appropriate person upon whom the client relies for support;
- Minimizing any barriers to ensure that the client receives music therapy services in the least restrictive environment;
- Collaborating with and educating the client and the family, caregiver of the client, or any other appropriate person regarding the needs of the client that are being addressed in music therapy and the manner in which the music therapy treatment addresses those needs; and
- Utilizing appropriate knowledge and skills to inform practice including use of research, reasoning, and problem solving skills to determine appropriate actions in the context of each specific clinical setting.

Music therapists are members of an interdisciplinary team of healthcare, education, and other professionals who work collaboratively to address the needs of clients while protecting client confidentiality and privacy. Music therapists function as independent clinicians within the context of the interdisciplinary team, supporting the treatment goals and co-treating with physicians, nurses, rehabilitative specialists, neurologists, psychologists, psychiatrists, social workers, counselors, behavioral health specialists, physical therapists, occupational therapists, speech-language pathologists, audiologists, educators, clinical case managers, patients, caregivers, and more.

Music therapy-specific assessment, treatment planning, and implementation consider diagnosis and history, are performed in a manner congruent with the client's level of functioning, and address client needs across multiple domains.

Potential for Harm

Music therapists are trained to independently analyze client non-verbal, verbal, psychological, and physiological responses to music and non-music stimuli in order to be clinically effective and refrain from contra-indicated practices. The music therapist implements ongoing evaluation of client responses and adapts the intervention accordingly to protect the client from negative outcomes.

Music therapists use their knowledge, skills, training and experience to facilitate therapeutic, goal oriented music-based interactions that are meaningful and supportive to the function and health of their clients. These components of clinical practice continue to evolve with advances in basic science, translational research, and therapeutic implementation. Music therapists, therefore, participate in continued education to remain competent, know their limitations in professional practice, and recognize when it is appropriate to seek assistance, advice, or consultation, or refer the client to another therapist or professional. In addition, music therapists practice safely and ethically as defined by the AMTA Code of Ethics, AMTA Standards of Clinical Practice, CBMT Code of Professional Practice, CBMT Board Certification Domains, and other applicable state and federal laws. Both AMTA and CBMT have mechanisms by which music therapists who are in violation of safe and ethical practice are investigated.

The use of live music interventions demands that the therapist not only possess the knowledge and skills of a trained therapist, but also the unique skill set of a trained musician in order to manipulate the music therapy intervention to fit clients' needs. Given the diversity of diagnoses with which music therapists work and the practice settings in which they work independently, clinical training and experience are necessary. Individuals attempting to provide music therapy treatment interventions without formalized music therapy training and credentials may pose risks to clients.

To protect the public from threats of harm in clinical practice, music therapists comply with safety standards and competencies such as, but not limited to:

- Recognize and respond to situations in which there are clear and present dangers to a client and/or others.
- Recognize the potential harm of music experiences and use them with care.
- Recognize the potential harm of verbal and physical interventions during music experiences and use them with care.
- Observe infection control protocols (e.g., universal precautions, disinfecting instruments).

- Recognize the client populations and health conditions for which music experiences are contraindicated.
- Comply with safety protocols with regard to transport and physical support of clients.

Definition of Governing Bodies

AMTA's mission is to advance public awareness of the benefits of music therapy and increase access to quality music therapy services in a rapidly changing world. AMTA strives to improve and advance the use of music, in both its breadth and quality, in clinical, educational, and community settings for the betterment of the public health and welfare. The Association serves as the primary organization for the advancement of education, clinical practice, research, and ethical standards in the music therapy profession.

AMTA is committed to:

- Promoting quality clinical treatment and ethical practices regarding the use of music to restore, maintain, and improve the health of all persons.
- Establishing and maintaining education and clinical training standards for persons seeking to be credentialed music therapists.
- Educating the public about music therapy.
- Supporting music therapy research.

The mission of the CBMT is to ensure a standard of excellence in the development, implementation, and promotion of an accredited certification program for safe and competent music therapy practice. CBMT is an independent, non-profit, certifying agency fully accredited by the National Commission for Certifying Agencies (NCCA). This accreditation serves as the means by which CBMT strives to maintain the highest standards possible in the construction and administration of its national examination and recertification programs, ultimately designed to reflect current music therapy practice for the benefit of the consumer.

CBMT is committed to:

- Maintaining the highest possible standards, as established by the Institute for Credentialing Excellence (ICE) and NCCA, for its national certification and recertification programs.
- Maintaining standards for eligibility to sit for the National Examination: Candidates must have completed academic and clinical training requirements established by AMTA.
- Defining and assessing the body of knowledge that represents safe and competent practice in the profession of music therapy and issuing the credential of Music Therapist-Board Certified (MT-BC) to individuals that demonstrate the required level of competence.
- Advocating for recognition of the MT-BC credential and for access to safe and competent practice.
- Maintaining certification and recertification requirements that reflect current practice in the profession of music therapy.
- Providing leadership in music therapy credentialing.

The unique roles of AMTA (education and clinical training) and CBMT (credentialing and continuing education) ensure that the distinct, but related, components of the profession are maintained. This scope of music therapy practice document acknowledges the separate but complementary contributions of AMTA and CBMT in developing and maintaining professional music therapists and evidence-based practices in the profession.

Education and Clinical Training Requirements

A qualified music therapist:

- Must have graduated with a bachelor's degree (or its equivalent) or higher from a music therapy degree program approved by the American Music Therapy Association (AMTA); and
- Must have successfully completed a minimum of 1,200 hours of supervised clinical work through pre-internship training at the AMTA-approved degree program, and internship training through AMTA–approved National Roster or University Affiliated internship programs, or an equivalent.

Upon successful completion of the AMTA academic and clinical training requirements or its international equivalent, an individual is eligible to sit for the national board certification exam administered by the Certification Board for Music Therapists (CBMT).

Board Certification Requirements

The Music Therapist – Board Certified (MT-BC) credential is granted by the Certification Board for Music Therapists (CBMT) to music therapists who have demonstrated the knowledge, skills, and abilities for competence in the current practice of music therapy. The purpose of board certification in music therapy is to provide an objective national standard that can be used as a measure of professionalism and competence by interested agencies, groups, and individuals. The MT-BC credential may also be required to meet state laws and regulations. Any person representing him or herself as a board certified music therapist must hold the MT-BC credential awarded by CBMT, an independent, nonprofit corporation fully accredited by the National Commission for Certifying Agencies (NCCA).

The board certified music therapist credential, MT-BC, is awarded by the CBMT to an individual upon successful completion of an academic and clinical training program approved by the American Music Therapy Association (or an international equivalent) and successful completion of an objective written examination demonstrating current competency in the profession of music therapy. The CBMT administers this examination, which is based on a nationwide music therapy practice analysis that is reviewed and updated every five years to reflect current clinical practice. Both the practice analysis and the examination are psychometrically sound and developed using guidelines issued by the Equal Employment Opportunity Commission, and the American Psychological Association's standards for test validation.

Once board certified, a music therapist must adhere to the CBMT Code of Professional Practice and recertify every five years through either a program of continuing education or re-examination.

By establishing and maintaining the certification program, CBMT is in compliance with NCCA guidelines and standards that require certifying agencies to: 1) have a plan for periodic recertification, and 2) provide evidence that the recertification program is designed to measure or enhance the continuing competence of the individual.

The CBMT recertification program provides music therapists with guidelines for remaining current with safe and competent practice and enhancing their knowledge in the profession of music therapy.

The recertification program contributes to the professional development of the board certified music therapist through a program of continuing education, professional development, and professional service opportunities. All three recertification categories are reflective of the Practice Analysis Study and relevant to the knowledge, skills and abilities required of the board certified music therapist. Documentation guidelines in the three categories require applying learning outcomes to music therapy practice and relating them to the CBMT Board Certification Domains. Integrating and applying new knowledge with current practice, developing enhanced skills in delivery of services to clients, and enhancing a board certified music therapist's overall abilities are direct outcomes of the recertification program. To support CBMT's commitment of ensuring the competence of the board certified music therapist and protecting the public, certification must be renewed every five years with the accrual of 100 recertification credits.

NCCA accreditation demonstrates that CBMT and its credentialing program undergo review to demonstrate compliance with certification standards set by an impartial, objective commission whose primary focus is competency assurance and protection of the consumer. The program provides valuable information for music therapists, employers, government agencies, payers, courts and professional organizations. By participating in the CBMT Recertification Program, board certified music therapists promote continuing competence and the safe and effective clinical practice of music therapy.

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Publication 1/8/2015

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Cost Effectiveness of Music Therapy in Research

1. Romo, R. & Gifford, L. (2007). A Cost-benefit analysis of music therapy in a home hospice. *Nursing Economics,* 25(6), 353-358.

    a. In this small study, the total cost per patients in music therapy was $10,659 and $13,643 for standard care patients, resulting in a cost savings of $2,984. The music therapy program cost $3,615, yielding a cost benefit ratio of 0.83. When using cost per patient day, the cost benefit ratio is 0.95.

    b. The hospice administrator viewed using an MT-BC as a strong point and critical to the program's success, a view supported in the literature.

    c. Evidence exists that MT may improve risk management for the hospice. Agitation and restlessness are leading causes of patient falls and staff injuries (Sung & Chang, 2005; van Doorn et al., 2003); consequently, one can argue that MT may reduce the number of falls and injuries.

    d. 70% of respondents agreed or strongly agreed that the MT program increased their job satisfaction, and 80% of the respondents felt that knowing that hospice paid for the MT program increased their commitment to the agency.

2. Standley, J. & Walworth, D. D. (2005). Cost/Benefit Analysis of the Total Program, in J. Standley (Ed.), *Medical Music Therapy*, 33-40. Silver Spring, MD: American Music Therapy Association.

    a. For the total expenditure of $57,600, the Florida State University affiliated music therapy/Arts in Medicine protocol in the Tallahassee Memorial Hospital reveal a total outlay for two partners of $17,247, or 70.1% of total savings.

3. Walworth, D. D. (2005). Procedural-support music therapy in the healthcare setting: a cost-effectiveness analysis. *Journal of Pediatric Nursing,* 20(4), 276-84.

    a. The application of music therapy had 100% success rate of eliminating the need for sedation for pediatric patients receiving EEG, and 80.7% success rate for pediatric CT scan without sedation, and a 94.1% success rate for all other procedures.

    b. The cost analysis resulted in that the total cost per patient with music therapy was $13.21 and $87.45 for patients without music therapy, which results in a net savings of $74.24 (85%).

    c. The project resulted in saving 184 RN-hours for other duties, which addresses the concern of a nationwide shortage on RNs.

Music Therapy in Florida

Fact Sheet 2015

Number of Sessions:

Over **36,000** music therapy sessions (individual and group) were conducted in Florida in the past year.

Many more people who could benefit from music therapy do not have access to services due to lack of state recognition and reimbursement for services from third party sources.

Populations Served:

Music therapists in Florida work with clients of all ages, including premature infants, infants, children, pre-teens, teens, young adults, adults, mature adults, and seniors.

Florida MTs-BC serve these clients in 450 different facilities, such as child development centers, schools, group homes, long-term care facilities, general medical and rehabilitation hospitals, hospices, behavioral and mental health agencies, and private practices.

Board certified music therapists may work under professional titles other than "Music Therapist," depending on the facility that employs them. Examples include "Creative Arts Therapist," "Expressive Therapist," and "Rehabilitation Therapist." Regardless of the difference in job titles, the services that music therapists provide are one of a kind due to their extensive training and knowledge of evidence-based practices developed through decades of research.

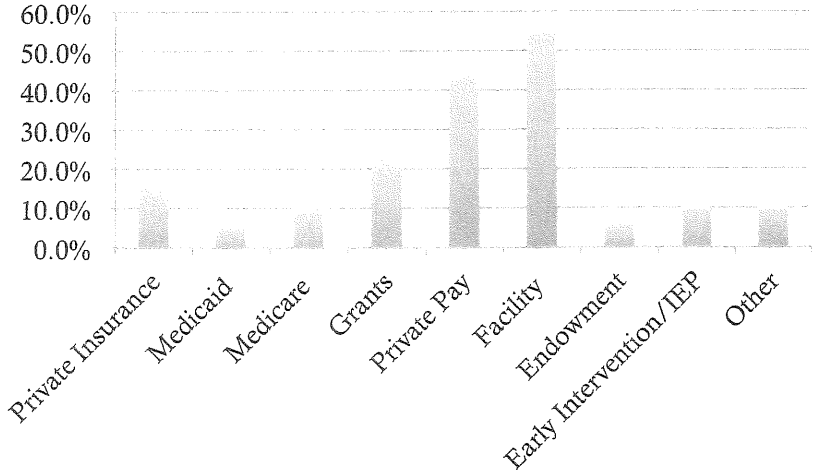
What is Music Therapy?

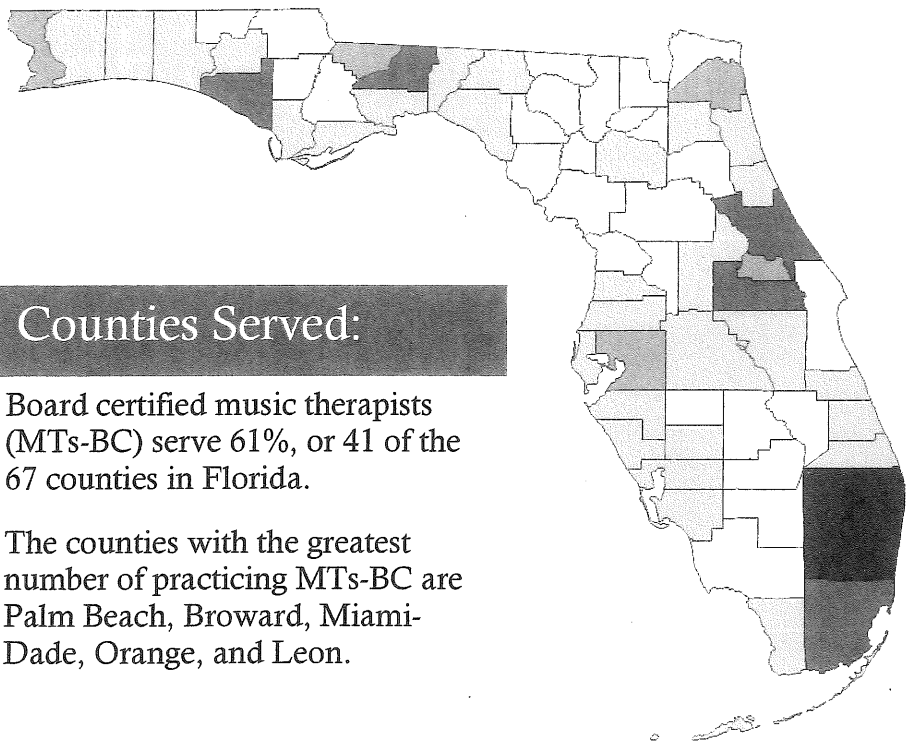
"Music Therapy is the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program (American Music Therapy Association, 2015).

Snap Shot of Florida Music Therapists:

- According to the Certification Board for Music Therapists (CBMT), approximately **257** board-certified music therapists currently live in the state of Florida.
- The number of Music Therapists-Board Certified (MTs-BC) in Florida continues to rise. Of the current MTs-BC in Florida, 73% started their careers within the last 10 years.
- The majority of MTs-BC in the state of Florida have earned a graduate degree.

- MTs-BC in Florida are full-time employed (68.4%), self-employed (26.3%), or part-time employed (14%).
- These positions are funded in many different ways.





Counties Served:

Board certified music therapists (MTs-BC) serve 61%, or 41 of the 67 counties in Florida.

The counties with the greatest number of practicing MTs-BC are Palm Beach, Broward, Miami-Dade, Orange, and Leon.

More about Music Therapy:

- Music therapy is an allied health field, and the National Commission for Certifying Agencies (NCAA) has accredited the credential of music therapist-board certified (MT-BC) since 1986.
- Approximately 75 universities across the U.S. offer degree programs in music therapy, offering bachelor's, master's, and doctoral degrees.
- **Because music is processed throughout the brain, it is a very powerful tool that must be used with the utmost care.**

Volunteers and untrained musicians currently offer music to our most vulnerable residents (in Neonatal Intensive Care, hospitals, hospices, to people with traumatic brain injury, and children with disabilities).

This misrepresentation and unregulated practice places the public at greater risk of harm.

Training Available in Florida:

Degree Programs

The Florida State University offers nationally approved bachelor's, master's, and doctoral level training programs. For more information see http://www.music.fsu.edu/Areas-of-Study/Music-Therapy

The University of Miami offers nationally approved bachelor's, master's, and doctoral level training programs. For more information see http://www.music.miami.edu/programs/med/med.html

Clinical Internships

Currently, Florida offers 14 National Roster Internship Sites for music therapy training. Additionally, a number of university-affiliated internships have also been established.

Board certified music therapists (MTs-BC) are educated and clinically trained to administer effective interventions and to document plans of care and clinical outcomes.

Independent Board Certification:

Board-certified music therapists (MT-BCs) are certified through an entity independent from the field's membership organization. The Certification Board for Music Therapists (CBMT) grants the accredited credential, MT-BC, when one has completed a college degree in music therapy, 1,200 hours of clinical internship approved by the American Music Therapy Association (AMTA), and passed the national board certification exam. CBMT regulates a scope of practice, codes of professional practice and ethics, and oversees MT-BC compliance & a recertification every 5 years.

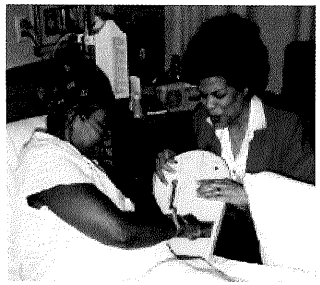
As members of a respected allied health profession, board certified music therapists of Florida, along with the American Music Therapy Association (AMTA) and the Certification Board for Music Therapists (CBMT), strongly recommend that "music therapy" become a protected title through our state. State regulation will help ensure the safety of Florida residents and increase access to quality music therapy services.

Find Out More:

http://www.musictherapy.org
http://www.cbmt.org
flmusictherapytf@gmail.com

What is Music Therapy?

Music therapy is a well-established health profession consisting of clinical and evidence-based uses of music interventions to accomplish individualized goals. After assessing clients' strengths and needs, Board-Certified Music Therapists design sessions specifically tailored to individuals. Research in music therapy supports the effectiveness of interventions that target cognitive, physical, social, emotional, behavioral, and/or communication needs.



Music Therapists Help Individuals With:

- ✳ Alzheimer's Disease and Dementia
- ✳ Autism and Developmental Disabilities
- ✳ Brain Injuries, Parkinson's, and Stroke
- ✳ Cancer
- ✳ End of Life Issues
- ✳ Learning Disabilities
- ✳ Mental Health Concerns
- ✳ Pain and Chronic Illness
- ✳ Physical Disabilities
- ✳ Sensory Impairments
- ✳ Substance Abuse

For more information on specific initiatives, on music therapy, or on board certification, contact:

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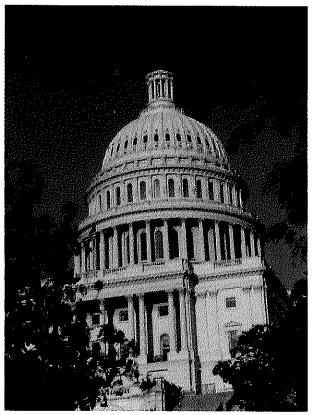
dregister@cbmt.org



MUSIC THERAPY

AMTA & CBMT

Working Together to Increase Access to Quality Music Therapy Services

What is CBMT?

The Certification Board for Music Therapists (CBMT) is a certifying agency and non-profit 501(c)(6) corporation fully accredited by the National Commission for Certifying Agencies. Established in 1983, its role is to create a Scope of Practice representing competent practice in the profession of music therapy and to administer a credentialing program to evaluate initial and continuing competence. CBMT is committed to ensuring public protection by administering disciplinary action as outlined in the CBMT Code of Professional Practice, if necessary.

CBMT

THE CERTIFICATION BOARD FOR MUSIC THERAPISTS

AZ music therapists thank Senator Al Melvin for sponsoring SB1376 on music therapy services and persons with disabilities.

AMTA & CBMT Working Together

The American Music Therapy Association (AMTA) and the Certification Board for Music Therapists (CBMT) collaborate on a national initiative designed to achieve state recognition of the music therapy profession and the MT-BC credential required for competent practice by:

- *Educating the public about music therapy*
- *Recommending accurate language for legislation and regulations*
- *Assisting local legislators and communities with insuring access to quality music therapy services*
- *Protecting the rights of Board-Certified Music Therapists to practice*

There are over 30 states with task forces that are working on this national initiative.

What is AMTA?

The American Music Therapy Association (AMTA) is a non-profit 501(c)(3) educational organization established in 1950 to advance music therapy education, training, professional standards, and research. AMTA's mission is to advance public knowledge of music therapy benefits and increase access to quality music therapy services. AMTA provides technical support to consumers and professionals and represents the profession to federal and state legislators and agencies. Members of AMTA adhere to a Code of Ethics and Standards of Clinical Practice in their delivery of music therapy services.

AMERICAN MUSIC THERAPY ASSOCIATION

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Policy Committee **Judge:**

Started: 4/7/2015 1:35:56 PM
Ends: 4/7/2015 2:46:17 PM Length: 01:10:22

1:36:03 PM Chair, Sen. Bean
1:36:13 PM Roll Call
1:36:16 PM Quorum Present
1:36:35 PM Chair
1:37:26 PM TAB 1: Senate Confirmation Hearing
1:37:33 PM Dr. John Armstrong, State Surgeon General, FL Dept. of Health
1:38:06 PM Opening Comments
1:38:49 PM Chair
1:39:02 PM John Armstrong
1:40:44 PM Chair
1:40:48 PM Questions
1:40:50 PM Sen. Joyner
1:41:01 PM John Armstrong responds
1:41:34 PM Sen. Joyner follow-up
1:41:40 PM John Armstrong responds
1:42:45 PM Sen. Joyner follow-up
1:42:51 PM John Armstrong responds
1:44:20 PM Sen. Joyner follow-up
1:44:24 PM John Armstrong responds
1:46:03 PM Sen. Joyner follow-up
1:46:07 PM John Armstrong responds
1:46:51 PM Chair
1:46:51 PM Sen. Joyner
1:47:14 PM Sen. Gaetz
1:48:19 PM John Armstrong responds
1:49:48 PM Sen. Gaetz follow-up
1:49:52 PM John Armstrong responds
1:50:59 PM Sen. Gaetz follow-up
1:51:03 PM John Armstrong responds
1:51:36 PM Chair
1:51:38 PM Sen. Braynon
1:52:05 PM John Armstrong responds
1:52:56 PM Sen. Braynon follow-up
1:53:06 PM John Armstrong responds
1:53:34 PM Sen. Braynon follow-up
1:53:40 PM John Armstrong responds
1:54:04 PM Sen. Braynon follow-up
1:54:19 PM John Armstrong responds
1:54:42 PM Sen. Braynon follow-up
1:54:46 PM John Armstrong responds
1:55:11 PM Sen. Braynon follow-up
1:55:16 PM Chair
1:55:33 PM John Armstrong responds
1:56:01 PM Sen. Sobel, Vice Chair
1:56:08 PM John Armstrong responds
1:57:37 PM Vice Chair follow-up
1:58:05 PM John Armstrong responds
1:58:47 PM Chair
1:58:58 PM Sen. Joyner
1:59:08 PM John Armstrong responds
2:01:22 PM Sen. Joyner folllow-up
2:03:24 PM John Armstrong responds

2:05:28 PM Sen. Galvano
2:05:34 PM Sen. Galvano moves to TP Senate Confirmation Hearing
2:05:44 PM Senate Confirmation Hearing is TP
2:06:09 PM TAB 7: SB 1310 by Clemens; Music Therapists
2:06:16 PM Sen. Clemens
2:07:31 PM Chair
2:07:32 PM AM 433304
2:07:42 PM Sen. Clemens
2:07:57 PM Chair
2:08:09 PM Sen. Joyner
2:08:27 PM Sen. Clemens responds
2:08:44 PM Chair
2:08:48 PM AM 433304 is adopted
2:08:56 PM AM 381902
2:09:14 PM AM 381902 is adopted
2:09:22 PM On bill as amended
2:09:26 PM Public Testimony
2:09:29 PM Sharon Graham, Music Therapist-Board Certified (MT-BC), Representing FL Music Therapists, speaks in favor of bill
2:12:38 PM Chair
2:13:11 PM Nelida Bagley (Mother and Caregiver) and Jose Pequeno (Staff Sargeant, US Marine Corps/Army, Retired), Representing Consumers of Music Therapy, speaks in favor of bill
2:15:45 PM Chair
2:16:32 PM Nelida Bagley
2:16:40 PM Chair
2:16:42 PM Nelida Bagley responds
2:17:14 PM Chair
2:17:31 PM Theresa Bulger, Lobbyist, Representing Florida Coalition, waives in su[pport
2:17:37 PM Michelle Pellito, Board Certified Music Therapist, Representing FL Music Therapy State Task Force, waives in support
2:17:45 PM James E. Riley, Adjunct Professor, Representing FL Music Therapy Task Force, waives in support
2:17:57 PM Chair
2:18:15 PM Sen. Clemens
2:18:34 PM Chair
2:18:37 PM Roll Call on CS for SB 1310
2:18:47 PM CS for SB 1310 reported favorably
2:19:13 PM TAB 3: SPB 7084 by HP; Quality Health Care Services
2:20:07 PM Explained By Staff
2:23:00 PM Chair
2:23:05 PM Questions
2:23:07 PM Sen. Joyner
2:23:18 PM Chair
2:23:49 PM Staff responds
2:24:48 PM Chair
2:24:52 PM Public Testimony
2:24:57 PM Chris Ruland, Representing Florida Chapter, American College of Physicians, and FL Society of Plastic Surgeons, speaks in favor of bill
2:25:48 PM Layne Smith, Director, State Governmental Relations, Mayo Clinic, waives in support
2:25:57 PM Phillis Oeters, VP Govt. Relations, waives in support
2:26:07 PM Tim Nungesser, Legislative Director, National Federation of Independent Business, speaks in favor of bill
2:27:38 PM Patty Holland, Governmental Relations Liaison, Representing Medical Tourism Association, speaks on bill
2:29:51 PM Alisa Lapolt, Lobbyist, Representing FL Association of Free and Charitable Clincis and the Florida Nurses Association, waives in support
2:30:40 PM Sen. Joyner
2:31:22 PM Sen. Gaetz moves for SPB 7084 to be submitted as a committee bill
2:31:33 PM Roll Call
2:31:35 PM SPB 7084 reported as a committee bill
2:31:59 PM TAB 5: SB 438 by Sobel; Palliative Care
2:33:03 PM Chair
2:33:15 PM Public Testimony
2:33:17 PM Stephen R. Winn, Executive Director, FL Osteopathic Medical Association, waives in support

2:33:23 PM Chris Ruland, FL Chapter, American College of Physicians, waives in support
2:33:26 PM Layne Smith, Director, State Governmental Relations, Mayo Clinic, waives in support
2:33:32 PM Melanie Brown, FL Hospice and Palliative Care Association, waives in support
2:33:37 PM David Francis, Governmental Relations Director, American Heart Association, waives in support
2:33:42 PM Laura Cantwell, AARP, waives in support
2:33:48 PM Heather Youmans, Director, Govt. Relations, American Cancer Society-Cancer Action Network, speaks on bill
2:34:26 PM Chair
2:34:39 PM Roll Call on SB 438
2:34:45 PM SB 438 reported favorably
2:34:59 PM TAB 6: SB 790 by Sobel; Hair Restoration or Transplant
2:35:20 PM AM 831586
2:36:09 PM Chair
2:36:20 PM Public Testimony
2:36:24 PM Chris Ruland, FL Society of Plastic Surgeons, waives in support
2:36:39 PM AM 831586 is adopted
2:36:52 PM On bill as amended
2:36:57 PM Roll Call on CS for SB 790
2:37:23 PM CS for SB 790 reported favorably
2:37:41 PM TAB 2: CS/SB 1224 by JU, Joyner; Health Care Representatives
2:38:04 PM Chair
2:38:05 PM Public Testimony
2:38:09 PM Martha Edenfield, Representing The Real Property, Probate and Trust Law Section of the Florida Bar, waives in support
2:38:36 PM Roll Call on CS for SB 1224
2:38:50 PM CS for SB 1224 reported favorably
2:39:04 PM Sen. Joyner
2:39:51 PM TAB 4: SB 710 by Grimsley; Physical Therapy Practice
2:40:06 PM AM 873230
2:41:03 PM Chair
2:41:06 PM AM to AM 418508
2:41:23 PM Questions
2:41:26 PM Sen. Joyner
2:41:32 PM Sen. Grimsley responds
2:43:03 PM Chair
2:43:25 PM AM to AM 418508 is adopted
2:43:42 PM Am 873230
2:43:56 PM AM 873230 is adopted
2:44:06 PM On bill as amended
2:44:10 PM Public Testimony
2:44:16 PM Kathy Swanick, President of the FL Physical Therapy Association, waives in support
2:44:23 PM Larry Gonzalez, General Counsel, FL Society of Health-System Pharmacists, waives in support
2:44:47 PM Debate
2:44:57 PM Sen. Joyner
2:45:12 PM Chair
2:45:15 PM Roll Call on CS for SB 710
2:45:24 PM CS for SB 710 reported favorably
2:46:07 PM Leader Galvano moves to adjourn