

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**HEALTH POLICY**  
**Senator Bean, Chair**  
**Senator Sobel, Vice Chair**

**MEETING DATE:** Tuesday, November 17, 2015  
**TIME:** 1:00—3:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

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

| TAB | BILL NO. and INTRODUCER                       | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|---|--|----------------------------|
| 1   | <b>SB 108</b><br>Grimsley                     | Financial Arrangements Between Referring Health Care Providers and Providers of Health Care Services; Providing an exception to the prohibition against the referral by a health care provider of a patient for the provision of designated health services to an entity in which the provider has an investment interest; increasing the threshold of a qualifying corporation's asset valuation, etc.<br><br>HP 09/16/2015<br>HP 10/20/2015 Temporarily Postponed<br>HP 11/17/2015 Fav/CS<br>BI<br>FP  | Fav/CS<br>Yeas 7 Nays 0    |
| 2   | <b>SB 340</b><br>Latvala<br>(Identical H 337) | Vision Care Plans; Providing that a health insurer, a prepaid limited health service organization, and a health maintenance organization, respectively, may not require a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another vision network; providing that such insurers and organizations may not restrict a licensed ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories, etc.<br><br>BI 10/20/2015 Favorable<br>HP 11/17/2015 Favorable<br>RC | Favorable<br>Yeas 7 Nays 0 |
| 3   | <b>SB 414</b><br>Sobel                        | Use of a Tanning Facility by a Minor; Citing this act as the "Preventing Youth Skin Cancer Act"; prohibiting a minor of any age from using a tanning device at a tanning facility unless a health care provider prescribes use of the device to treat a medical condition and the tanning facility has on file a specified statement signed by the minor's parent or guardian and witnessed by the operator or proprietor of the tanning facility, etc.<br><br>HP 11/17/2015 Favorable<br>CJ<br>RC   | Favorable<br>Yeas 6 Nays 1 |

**COMMITTEE MEETING EXPANDED AGENDA**

Health Policy

Tuesday, November 17, 2015, 1:00—3:00 p.m.

---

| TAB | BILL NO. and INTRODUCER                     | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|---|--|----------------------------|
| 4   | <b>SB 460</b><br>Bradley<br>(Similar H 307) | Experimental Treatments for Terminal Conditions;<br>Revising the definition of the term “investigational<br>drug, biological product, or device”; providing for<br>eligible patients or their legal representatives to<br>purchase and possess cannabis for medical use;<br>authorizing certain licensed dispensing organizations<br>to manufacture, possess, sell, deliver, distribute,<br>dispense, and dispose of cannabis; exempting such<br>organizations from specified laws, etc.<br><br>HP 11/17/2015 Favorable<br>ACJ<br>FP | Favorable<br>Yeas 7 Nays 0 |
| 5   | <b>SB 542</b><br>Stargel<br>(Similar H 127) | Continuing Care Facilities; Providing financial<br>requirements for certain nursing homes to be<br>recognized as a Gold Seal Program facility, etc.<br><br>HP 11/17/2015 Fav/CS<br>CF<br>FP  | Fav/CS<br>Yeas 7 Nays 0    |
| 6   | <b>SB 572</b><br>Altman<br>(Similar H 325)  | Involuntary Examinations Under the Baker Act;<br>Authorizing physician assistants and advanced<br>registered nurse practitioners to execute a certificate<br>that finds that a person appears to meet the criteria<br>for involuntary examination under the Baker Act of<br>persons believed to have mental illness, etc.<br><br>HP 11/17/2015 Favorable<br>JU<br>AP   | Favorable<br>Yeas 7 Nays 0 |

---

Other Related Meeting Documents

---

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

**BILL:** CS/SB 108

**INTRODUCER:** Health Policy Committee and Senator Grimsley

**SUBJECT:** Financial Arrangements Between Referring Health Care Providers and Providers of Health Care Services

**DATE:** November 17, 2015      **REVISED:** \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Looke   | Stovall        | HP        | Fav/CS |
| 2. | _____   | _____          | BI        | _____  |
| 3. | _____   | _____          | FP        | _____  |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 108 amends s. 456.053, F.S., the Patient Self-Referral Act (Act), to allow physicians to refer patients for clinical laboratory services incidental to renal dialysis to providers in which the physician has an investment interest. Specifically, the bill:

- Allows all physicians to refer patients for clinical lab services incidental to renal dialysis to a provider in which the physician has an investment interest if the physician’s investment interest falls within an exception allowed for non-designated health services; and
- Allows nephrologists to refer patients for clinical lab services incidental to renal dialysis to a provider in which the nephrologist has an investment interest regardless of type of investment interest the nephrologist may have

The bill also makes technical and conforming changes including exempting investment interests in rural providers of such services from the definition of “investment interest” under the act. This change is made to conform with the removal of such services from the definition of “designated health services.”

The act takes effect upon becoming a law.

## II. Present Situation:

### The Patient Self-Referral Act of 1992

Section 456.053, F.S., entitled the “Patient Self-Referral Act of 1992” was enacted by the Legislature to safeguard the people of Florida from unnecessary and costly health care expenditures while providing guidance to health care providers on prohibited patient referrals.<sup>1</sup>

A health care provider to whom the Act applies is a physician licensed under ch. 458, 459, 460, or 461, F.S., or any health care provider licensed under ch. 463 or 466, F.S. Allopathic, osteopathic, chiropractic, and podiatric physicians, certified optometrists, and dentists are health care providers under the Act.

The Act has differing limitations and prohibitions on patient referrals depending on the type of health care service to be provided as follows:

- A health care provider may not refer a patient for the provision of designated health services<sup>2</sup> to an entity in which the health care provider is an investor<sup>3</sup> or has an investment interest.<sup>4,5</sup>
- A health care provider may not refer a patient for the provision of any other health care services or items (non-designated health services) to an entity in which the health care provider is an investor unless:<sup>6</sup>
  - For entities whose shares are publicly traded:
    - The provider’s investment interest is in registered securities purchased over a national exchange or over-the-counter market; and
    - The entity’s total assets at the end of the last fiscal quarter exceed \$50 million;
  - For entities whose shares are not publicly traded:
    - No more than 50 percent of the value of the investment interests are held by investors in a position to make referrals to the entity;
    - The terms of an investment interest offered to an investor are the same regardless of whether the investor is in a position to make referrals;

<sup>1</sup> Section 456.053(2), F.S.

<sup>2</sup> Section 456.053(3)(c), F.S., defines “designated health services” as clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.<sup>3</sup> Section 456.053(3)(l), F.S., defines “investor” as a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

<sup>3</sup> Section 456.053(3)(l), F.S., defines “investor” as a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

<sup>4</sup> Section 456.053(3)(k), F.S., defines “investment interest” to include an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instrument. Certain investment interests are excepted from the definition including an investment interest in a sole provider of health care services in a rural area; an investment interest in the form of certain notes, bonds, debentures, or other debt instruments that matured prior to Oct. 1, 1996; an investment interest in real property resulting in a landlord-tenant relationship between the entity and the referring healthcare provider unless the rent is determined by the volume of referrals; and an investment interest in an entity which owns or leases and operates a hospital or nursing home.

<sup>5</sup> Section 456.053(5)(a), F.S. Offices providing radiation therapy services are exempt from these requirements if they were in business before April 1, 1991. (*See* s. 456.053(5)(i), F.S.).

<sup>6</sup> Section 456.053(5)(b), F.S.

- The terms offered to an investor are not related to the previous or expected volume of referrals; and
- There is no requirement that an investor refer patients to the entity as a condition for becoming or remaining an investor.
- Entities accepting outside referrals for diagnostic imaging must meet additional conditions including conditions for the physician make-up of the solo or group practice as well as physician performance of diagnostic imaging services, conditions on billing practices, restrictions on contracting with outside providers, and conditions on reporting accepted outside referrals to the Agency for Health Care Administration (AHCA).<sup>7</sup>

A health care provider who has an investment interest in an entity to which he or she refers a patient must disclose such interest to the patient on a written form that details the patient's right to obtain the services elsewhere along with at least two alternative sources from which the patient could receive the services.<sup>8</sup>

A health care provider found to have violated the Act could be subject to one or more disciplinary actions or penalties including:

- A penalty of up to \$100,000 for each arrangement if a health care provider or other entity enters into an arrangement that has the principal purpose of assuring referrals between the provider and the entity.<sup>9</sup>
- Discipline by his or her appropriate board and hospitals are subject to penalties imposed by the AHCA.<sup>10</sup>
- Being charged with a first degree misdemeanor and subject to additional penalties and disciplinary action by his or her respective board if a health care provider fails to comply with the notice provisions of the Act and s. 456.052, F.S.<sup>11</sup>

A claim for payment for a service provided pursuant to a referral prohibited by the Act may not be made and any such payments received must be refunded. Additionally, any person who knows or should know that such a claim is prohibited and who presents or causes to be presented such a claim, is subject to a fine of up to \$15,000 per service to be imposed and collected by that person's regulatory board.<sup>12</sup>

### **The Federal Stark Law**

Generally similar to the Act, the federal Stark Law<sup>13</sup> (Stark) prohibits physicians from referring patients to receive designated health services that are payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies.<sup>14</sup> Under Stark, designated health services include:

<sup>7</sup> Section 456.053(4), F.S.

<sup>8</sup> Sections 456.053(5)(j) and 456.052, F.S.

<sup>9</sup> Section 456.053(5)(f), F.S.

<sup>10</sup> Section 456.053(5)(g), F.S.

<sup>11</sup> Section 456.052(3), F.S.

<sup>12</sup> Section 456.053(5)(c)-(e), F.S.

<sup>13</sup> 42 U.S.C. s. 1395nn.

<sup>14</sup> U.S. Dept. of Health & Human Services, Office of the Inspector General: *A Roadmap for New Physicians: Fraud and Abuse Laws*, available at <http://oig.hhs.gov/compliance/physician-education/01laws.asp>, (last visited Nov. 17, 2015).

- clinical laboratory services;
- physical therapy, occupational therapy, and outpatient speech-language pathology services;
- radiology and certain other imaging services;
- radiation therapy services and supplies;
- durable medical equipment and supplies;
- parenteral and enteral nutrients, equipment, and supplies;
- prosthetics, orthotics, and prosthetic devices and supplies;
- home health services;
- outpatient prescription drugs; and
- inpatient and outpatient hospital services.<sup>15</sup>

The Stark law is a strict liability statute, which means proof of specific intent to violate the law is not required. Stark prohibits the submission, or causing the submission, of claims in violation of the law's restrictions on referrals. Penalties for physicians who violate Stark include fines as well as exclusion from participation in the Federal health care programs.<sup>16</sup>

Exceptions to the Stark's self-referral prohibitions include:

- Exceptions for certain services including:
  - Most referrals of a patient for physician's services and in-office ancillary services provided by the same physician or another physician in the same group practice; and
  - Referrals for services furnished by an organization that has a contract with a health maintenance organization or a prepaid health plan.<sup>17</sup>
- Exceptions related to ownership or investment interests including:
  - Ownership of investment securities that are publically traded and held in a corporation with equity exceeding \$75 million on average during the previous three fiscal years and which were purchased on terms generally available to the public; and
  - Ownership of shares in an investment company if the company has total assets exceeding \$75 million on average during the previous three fiscal years.<sup>18</sup>
  - Ownership of certain hospitals including hospitals in Puerto Rico, in rural areas, and certain hospitals in which the referring physician is authorized to perform services.<sup>19</sup>
- Exceptions related to other compensation arrangements including:
  - The rental of office space or equipment with terms that are consistent with fair market value and without consideration of any past or future referrals made between the parties;
  - Bona fide employment relationships with remuneration that does not take into account the volume or value of referrals by the referring physician;
  - Personal services arrangements with terms that do not exceed fair market value and do not take into account the volume or value of any referrals or other business generated between the parties;

---

<sup>15</sup> 42 U.S.C. s. 1395nn(h)(6). When compared to Florida law, it can be seen that the list of designated health services under Stark includes the services listed as designated health services under the Act but also includes additional services not included in Florida law.

<sup>16</sup> See supra note 15.

<sup>17</sup> 42 U.S.C. s. 1395nn(b).

<sup>18</sup> 42 U.S.C. s. 1395nn(c).

<sup>19</sup> 42 U.S.C. s. 1395nn(d).

- Physician incentive plans if no specific payment is made to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity;
- Remuneration provided by a hospital to a physician that is unrelated to designated health services;
- Physician recruitment bonuses paid by a hospital that do not take into account the volume or value of referrals;
- Certain isolated transactions;
- Certain group practice arrangements made with hospitals that began before December 19, 1989; and
- Payments made by a physician for laboratory services or other items or services if paid at fair market value.<sup>20</sup>

### **Additional Restrictions on Agreements between Referring Health Care Providers and Providers of Health Care Services**

#### ***Federal and State Anti-Kickback Statutes***

Both Florida and Federal law include a prohibition on providing any sort of kickback for the referral of patients from a health care provider to a licensed facility. Section 395.0185, F.S., prohibits any person from paying a commission, bonus, kickback, or rebate or engaging in any form of split-fee arrangement with a physician, surgeon, organization, or person for patients referred to a licensed facility. The AHCA is required to enforce the provisions of the law and, if the violator is not licensed by the AHCA, the law authorizes the AHCA to impose a fine of up to \$1,000 nonetheless, and to recommend disciplinary action to the appropriate licensing board. Section 456.054, F.S., prohibits a health care provider or provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.<sup>21</sup>

Federal law also prohibits such payments for the referral of an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made under a Federal health care program.<sup>22</sup> Violating the federal anti-kickback statute makes the violator guilty of a felony which is punishable by a fine of up to \$25,000 or up to 5 years in prison. However, there are several exceptions to the federal statute including, but not limited to:

- Discounts properly disclosed and appropriately reflected in the costs claimed and charges made by the provider or entity;
- Payments between employers and employees for employment in the provision of covered items or services;
- Certain amounts paid to vendors;
- Waivers of co-insurance; and
- The waiver of any cost-sharing provisions by a pharmacy.

---

<sup>20</sup> 42 U.S.C. s. 1395nn(e).

<sup>21</sup> Violations of this section are considered patient brokering and are punishable as provided in s. 817.505, F.S., which can include criminal penalties (felony of the third degree) and other civil, administrative, or criminal penalties.

<sup>22</sup> 42 U.S.C. s. 1320a-7b(b)(2)(A).

### ***Anti-Trust Laws***

Additionally, both Florida and Federal law prohibit price-fixing and unfair trade practices which may be applicable to certain relationships between referring health care providers and providers of health care services. The Florida Deceptive and Unfair Trade Practices Act<sup>23</sup> generally prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of trade or commerce. Also, Federal anti-trust laws, including the Sherman Act, generally prohibit unreasonable restraints on fair trade created by contract, combination, or conspiracy.<sup>24</sup>

### **Clinical Laboratory Services Incidental to Renal Dialysis**

Renal dialysis is a treatment used to replace the work of failing kidneys. There are two types of dialysis, hemodialysis and peritoneal dialysis,<sup>25</sup> which both filter the body's blood to rid it of harmful wastes, extra salt, and water. Dialysis can be performed in a hospital, in a dialysis unit that is not part of a hospital, or at home. Although dialysis is expensive, Medicare pays 80 percent of the costs for most people.<sup>26</sup> Additionally, as of January 1, 2011, Medicare requires that all services associated with the renal dialysis be paid in a bundle payment with the dialysis, including laboratory services.<sup>27</sup> Currently such laboratory services fall under the definition of "designated health services" and a physician may not refer a patient for such services to a provider in which the physician has an investment interest without violating the Patient Self-Referral Act.<sup>28</sup> Laboratory services that typically are bundled with renal dialysis include a basic metabolic panel, an electrolyte panel, a renal function panel, and numerous others.<sup>29</sup>

### **III. Effect of Proposed Changes:**

CS/SB 108 amends s. 456.053, F.S., the Patient Self-Referral Act, to allow physicians to refer patients for clinical laboratory services incidental to renal dialysis to providers in which the physician has an investment interest. Specifically, the bill:

- Creates an exception to the definition of "designated health services"<sup>30</sup> for clinical laboratory services incidental to renal dialysis. This allows all physicians who refer patients for clinical lab services incidental to renal dialysis to refer such patients to a provider in which the physician has an investment interest if the investment interest falls within the exceptions allowed for non-designated health services;<sup>31</sup> and
- Exempts referrals of patients by a nephrologist for such services from the definition of "referral" which allows nephrologists to refer patients for clinical lab services incidental to

<sup>23</sup> Section 501.204, F.S.

<sup>24</sup> Federal Trade Commission, *The Antitrust Laws*, available at: <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws>, (last visited Nov. 17, 2015).

<sup>25</sup> For an explanation of the two types of dialysis, see <https://www.kidney.org/atoz/content/dialysisinfo>. (Last visited Nov. 17, 2015).

<sup>26</sup> Id.

<sup>27</sup> End Stage Renal Disease Prospective Payment System, p. 5, available at <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/End-Stage-Renal-Disease-Prospective-Payment-System-ICN905143.pdf> (last visited Nov. 17, 2015).

<sup>28</sup> See supra note 2.

<sup>29</sup> For a full list see <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Downloads/Consolidated-Billing-ESRD-PPS-2015-CR-9127.pdf> (Last visited Nov. 17, 2015).

<sup>30</sup> See supra note 2.

<sup>31</sup> These exceptions are discussed on page two of the analysis.



renal dialysis to a provider in which the nephrologist has an investment interest regardless of type of investment interest the nephrologist may have.

These referrals remain subject to the limitations placed on patient self-referral by the federal Stark Law.

The bill also makes technical and conforming changes including exempting investment interests in the sole provider of clinical laboratory services incidental to renal dialysis in a rural area from the definition of “investment interest” under the act. This change is made to conform with the removal of such services from the definition of “designated health services.”

The act takes effect upon becoming a 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:

CS/SB 108 may have a positive fiscal impact on prescribers and providers of clinical laboratory services incidental to renal dialysis who are currently restricted from referring patients, or accepting patient referrals, if an investment interest exists.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 456.053 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Health Policy on November 17, 2015:**

The CS amends SB 108 to replace the provisions of the original bill with new provisions allowing physicians to refer patients for clinical laboratory services incidental to renal dialysis to providers in which they have certain types of investment interests. These new provisions include:

- Creating an exception to the definition of “designated health services” for clinical laboratory services incidental to renal dialysis;
- Exempting referrals of patients by a nephrologist for such services from the definition of “referral”; and
- Exempting investment interests in rural providers of such services from the definition of “investment interest” under the act.

The CS/SB 108 also makes technical and conforming changes.

- B. **Amendments:**

None.



833398

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 11/13/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (c), (k), and (o) of subsection (3)  
of section 456.053, Florida Statutes, are amended to read:

456.053 Financial arrangements between referring health  
care providers and providers of health care services.—

(3) DEFINITIONS.—For the purpose of this section, the word,  
phrase, or term:



833398

11 (c) "Designated health services" means, ~~for purposes of~~  
12 ~~this section,~~ clinical laboratory services, other than clinical  
13 laboratory services incidental to renal dialysis, physical  
14 therapy services, comprehensive rehabilitative services,  
15 diagnostic-imaging services, and radiation therapy services.

16 (k) "Investment interest" means equities ~~an equity~~ or debt  
17 securities ~~security~~ issued by an entity, including, without  
18 limitation, shares of stock in a corporation, units or other  
19 interests in a partnership, bonds, debentures, notes, or other  
20 equity interests or debt instruments. The following investment  
21 interests are ~~shall be~~ excepted from this definition:

22 1. An investment interest in an entity that is the sole  
23 provider of designated health services or clinical laboratory  
24 services incidental to renal dialysis in a rural area. ~~†~~

25 2. An investment interest in notes, bonds, debentures, or  
26 other debt instruments issued by an entity that ~~which~~ provides  
27 designated health services, as an integral part of a plan by the  
28 ~~such~~ entity to acquire such investor's equity investment  
29 interest in the entity, provided that the interest rate is  
30 consistent with fair market value, and that the maturity date of  
31 the notes, bonds, debentures, or other debt instruments issued  
32 by the entity to the investor is not later than October 1, 1996.

33 3. An investment interest in real property which results  
34 ~~resulting~~ in a landlord-tenant relationship between the health  
35 care provider and the entity in which the equity interest is  
36 held, unless the rent is determined, in whole or in part, by the  
37 business volume or profitability of the tenant or exceeds fair  
38 market value. ~~† or~~

39 4. An investment interest in an entity that ~~which~~ owns or



833398

40 leases and operates a hospital licensed under chapter 395 or a  
41 nursing home facility licensed under chapter 400.

42 (o) "Referral" means any referral of a patient by a health  
43 care provider for health care services, including, without  
44 limitation, ~~÷~~

45 ~~1.~~ the forwarding of a patient by a health care provider to  
46 another health care provider or to an entity that ~~which~~ provides  
47 or supplies designated health services or any other health care  
48 item or service; or

49 ~~2.~~ the request or establishment of a plan of care by a  
50 health care provider, which includes the provision of designated  
51 health services or other health care items or services. An  
52 order, a recommendation, or a plan of care for the services or  
53 supplies listed in the following subparagraphs does ~~item or~~  
54 service.

55 ~~3.~~ ~~The following orders, recommendations, or plans of care~~  
56 ~~shall~~ not constitute a referral if it is issued or made by the a  
57 health care provider designated in the applicable subparagraph:

58 1.a. By a radiologist for Diagnostic-imaging services, if  
59 issued or made by a radiologist or

60 ~~b.~~ by a physician specializing in the provision of  
61 radiation therapy services for such diagnostic-imaging services.

62 2.c. By a medical oncologist for Drugs and solutions to be  
63 prepared and administered intravenously to a such oncologist's  
64 patient, and as well as for the supplies and equipment used in  
65 connection with the preparation and intravenous administration  
66 of such drugs and solutions, therewith to treat the such patient  
67 for cancer and related the complications, if issued or made by a  
68 medical oncologist thereof.



833398

69           ~~3.d. By a cardiologist for~~ Cardiac catheterization  
70 services, if issued or made by a cardiologist.

71           ~~4.e. By a pathologist for~~ Diagnostic clinical laboratory  
72 tests and pathological examination services, if issued or made  
73 by a pathologist and the tests or services are furnished by or  
74 under the supervision of the ~~such~~ pathologist pursuant to a  
75 consultation requested by another physician.

76           ~~5.f. All services and supplies for which an order,~~  
77 recommendation, or plan of care is issued or made by a health  
78 care provider who is the sole provider or member of a group  
79 practice for designated health services or other health care  
80 items or services that are prescribed or provided solely for  
81 such ~~referring~~ health care provider's or group practice's own  
82 patients, ~~and that are~~ provided or performed by or under the  
83 direct supervision of such ~~referring~~ health care provider or  
84 group practice. ~~;~~ ~~provided,~~ However, ~~that~~ effective July 1, 1999,  
85 a physician licensed under ~~pursuant to~~ chapter 458, chapter 459,  
86 chapter 460, or chapter 461 may refer a patient to a sole  
87 provider or group practice for diagnostic imaging services,  
88 excluding radiation therapy services, for which the sole  
89 provider or group practice billed both the technical and the  
90 professional fee for or on behalf of the patient, if the  
91 referring physician has no investment interest in the practice.  
92 The diagnostic imaging service referred to a group practice or  
93 sole provider must be a diagnostic imaging service normally  
94 provided within the scope of practice to the patients of the  
95 group practice or sole provider. The group practice or sole  
96 provider may accept no more than 15 percent of its ~~their~~  
97 patients receiving diagnostic imaging services from outside



833398

98 referrals, excluding radiation therapy services.

99 ~~6.g. By a health care provider for~~ Services provided at by  
100 an ambulatory surgical center licensed under chapter 395, or  
101 services related to sleep-related testing, if issued or made by  
102 any health care provider licensed in this state.

103 ~~7.h. By a urologist for~~ Lithotripsy services, if issued or  
104 made by a urologist.

105 ~~8.i. By a dentist for~~ Dental services performed by an  
106 employee of or a health care provider or an employee of a health  
107 care provider who is an independent contractor of a ~~with the~~  
108 dentist or group practice of which the dentist is a member, if  
109 issued or made by the dentist.

110 ~~9.j. By a physician for~~ Infusion therapy services for ~~to~~ a  
111 patient of a ~~that~~ physician or a member of the ~~that~~ physician's  
112 group practice, if issued or made by the physician.

113 ~~10.k. By a nephrologist for~~ Renal dialysis services,   
114 including clinical laboratory services incidental to renal  
115 dialysis, and supplies, if issued or made by a nephrologist  
116 except laboratory services.

117 ~~11.l. All services and supplies for which an order,~~  
118 recommendation, or plan of care is issued or made by a health  
119 care provider whose principal professional practice consists of  
120 treating patients in their private residences for services ~~to be~~  
121 rendered in such private residences, excluding ~~except for~~  
122 services rendered by a home health agency licensed under chapter  
123 400. For purposes of this subparagraph ~~sub-subparagraph~~, the  
124 term "private residences" includes patients' private homes,  
125 independent living centers, and assisted living facilities, but  
126 does not include skilled nursing facilities.



833398

127 ~~m. By a health care provider For Sleep-related testing.~~

128 Section 2. This act shall take effect July 1, 2016.

129

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

131 And the title is amended as follows:

132 Delete everything before the enacting clause

133 and insert:

134 A bill to be entitled

135 An act relating to financial arrangements between

136 referring health care providers and providers of

137 health care services; amending s. 456.053, F.S.;

138 exempting clinical laboratory services incidental to

139 renal dialysis from the definition of "designated

140 health services"; providing that the definition of

141 "investment interest" does not include investment

142 interests in an entity that is the sole provider of

143 clinical laboratory services incidental to renal

144 dialysis in a rural area; excluding orders,

145 recommendations, or plans of care by a nephrologist

146 for clinical laboratory services incidental to renal

147 dialysis from the definition of "referral"; providing

148 an effective date.





859122

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 11/17/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (c), (k), and (o) of subsection (3) of section 456.053, Florida Statutes, are amended to read:

456.053 Financial arrangements between referring health care providers and providers of health care services.—

(3) DEFINITIONS.—For the purpose of this section, the word, phrase, or term:



859122

11 (c) "Designated health services" means, ~~for purposes of~~  
12 ~~this section,~~ clinical laboratory services, other than clinical  
13 laboratory services incidental to renal dialysis, physical  
14 therapy services, comprehensive rehabilitative services,  
15 diagnostic-imaging services, and radiation therapy services.

16 (k) "Investment interest" means equities ~~an equity~~ or debt  
17 securities ~~security~~ issued by an entity, including, without  
18 limitation, shares of stock in a corporation, units or other  
19 interests in a partnership, bonds, debentures, notes, or other  
20 equity interests or debt instruments. The following investment  
21 interests are ~~shall be~~ excepted from this definition:

22 1. An investment interest in an entity that is the sole  
23 provider of designated health services or clinical laboratory  
24 services incidental to renal dialysis in a rural area. ~~†~~

25 2. An investment interest in notes, bonds, debentures, or  
26 other debt instruments issued by an entity that ~~which~~ provides  
27 designated health services, as an integral part of a plan by the  
28 ~~such~~ entity to acquire such investor's equity investment  
29 interest in the entity, provided that the interest rate is  
30 consistent with fair market value, and that the maturity date of  
31 the notes, bonds, debentures, or other debt instruments issued  
32 by the entity to the investor is not later than October 1, 1996.

33 3. An investment interest in real property which results  
34 ~~resulting~~ in a landlord-tenant relationship between the health  
35 care provider and the entity in which the equity interest is  
36 held, unless the rent is determined, in whole or in part, by the  
37 business volume or profitability of the tenant or exceeds fair  
38 market value. ~~† or~~

39 4. An investment interest in an entity that ~~which~~ owns or



859122

40 leases and operates a hospital licensed under chapter 395 or a  
41 nursing home facility licensed under chapter 400.

42 (o) "Referral" means any referral of a patient by a health  
43 care provider for health care services, including, without  
44 limitation:

45 1. The forwarding of a patient by a health care provider to  
46 another health care provider or to an entity which provides or  
47 supplies designated health services or any other health care  
48 item or service; or

49 2. The request or establishment of a plan of care by a  
50 health care provider, which includes the provision of designated  
51 health services or other health care item or service.

52 3. The following orders, recommendations, or plans of care  
53 shall not constitute a referral by a health care provider:

54 a. By a radiologist for diagnostic-imaging services.

55 b. By a physician specializing in the provision of  
56 radiation therapy services for such services.

57 c. By a medical oncologist for drugs and solutions to be  
58 prepared and administered intravenously to such oncologist's  
59 patient, as well as for the supplies and equipment used in  
60 connection therewith to treat such patient for cancer and the  
61 complications thereof.

62 d. By a cardiologist for cardiac catheterization services.

63 e. By a pathologist for diagnostic clinical laboratory  
64 tests and pathological examination services, if furnished by or  
65 under the supervision of such pathologist pursuant to a  
66 consultation requested by another physician.

67 f. By a health care provider who is the sole provider or  
68 member of a group practice for designated health services or



859122

69 other health care items or services that are prescribed or  
70 provided solely for such referring health care provider's or  
71 group practice's own patients, and that are provided or  
72 performed by or under the direct supervision of such referring  
73 health care provider or group practice; provided, however, that  
74 effective July 1, 1999, a physician licensed pursuant to chapter  
75 458, chapter 459, chapter 460, or chapter 461 may refer a  
76 patient to a sole provider or group practice for diagnostic  
77 imaging services, excluding radiation therapy services, for  
78 which the sole provider or group practice billed both the  
79 technical and the professional fee for or on behalf of the  
80 patient, if the referring physician has no investment interest  
81 in the practice. The diagnostic imaging service referred to a  
82 group practice or sole provider must be a diagnostic imaging  
83 service normally provided within the scope of practice to the  
84 patients of the group practice or sole provider. The group  
85 practice or sole provider may accept no more than 15 percent of  
86 their patients receiving diagnostic imaging services from  
87 outside referrals, excluding radiation therapy services.

88 g. By a health care provider for services provided by an  
89 ambulatory surgical center licensed under chapter 395.

90 h. By a urologist for lithotripsy services.

91 i. By a dentist for dental services performed by an  
92 employee of or health care provider who is an independent  
93 contractor with the dentist or group practice of which the  
94 dentist is a member.

95 j. By a physician for infusion therapy services to a  
96 patient of that physician or a member of that physician's group  
97 practice.



859122

98 k. By a nephrologist for renal dialysis services, and  
99 supplies, or clinical laboratory services incidental to renal  
100 dialysis ~~except laboratory services.~~

101 l. By a health care provider whose principal professional  
102 practice consists of treating patients in their private  
103 residences for services to be rendered in such private  
104 residences, except for services rendered by a home health agency  
105 licensed under chapter 400. For purposes of this sub-  
106 subparagraph, the term "private residences" includes patients'  
107 private homes, independent living centers, and assisted living  
108 facilities, but does not include skilled nursing facilities.

109 m. By a health care provider for sleep-related testing.

110 Section 2. This act shall take effect July 1, 2016.

111  
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Delete everything before the enacting clause  
115 and insert:

116 A bill to be entitled  
117 An act relating to financial arrangements between  
118 referring health care providers and providers of  
119 health care services; amending s. 456.053, F.S.;  
120 exempting clinical laboratory services incidental to  
121 renal dialysis from the definition of "designated  
122 health services"; providing that the definition of  
123 "investment interest" does not include investment  
124 interests in an entity that is the sole provider of  
125 clinical laboratory services incidental to renal  
126 dialysis in a rural area; excluding orders,



859122

127        recommendations, or plans of care by a nephrologist  
128        for clinical laboratory services incidental to renal  
129        dialysis from the definition of "referral"; providing  
130        an effective date.

By Senator Grimsley

21-00131-16

2016108\_\_

1 A bill to be entitled  
 2 An act relating to financial arrangements between  
 3 referring health care providers and providers of  
 4 health care services; amending s. 456.053, F.S.;  
 5 providing an exception to the prohibition against the  
 6 referral by a health care provider of a patient for  
 7 the provision of designated health services to an  
 8 entity in which the provider has an investment  
 9 interest; increasing the threshold of a qualifying  
 10 corporation's asset valuation; providing an effective  
 11 date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Subsection (5) of section 456.053, Florida  
 16 Statutes, is amended to read:  
 17 456.053 Financial arrangements between referring health  
 18 care providers and providers of health care services.—  
 19 (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as  
 20 provided in this section:  
 21 (a) A health care provider may not refer a patient for the  
 22 provision of designated health services to an entity in which  
 23 the health care provider is an investor or has an investment  
 24 interest unless the provider's investment interest is in  
 25 registered securities purchased on a national exchange or over-  
 26 the-counter market and issued by a publicly held corporation:  
 27 1. Whose shares are traded on a national exchange or over-  
 28 the-counter market;  
 29 2. Whose total assets at the end of the corporation's most

Page 1 of 6

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

21-00131-16

2016108\_\_

30 recent fiscal quarter exceeded \$75 million; and  
 31 3. Which does not loan funds or guarantee a loan to a  
 32 health care provider who is in a position to make referrals to  
 33 the corporation if the provider uses any part of such loan to  
 34 obtain the investment interest.  
 35  
 36 This paragraph may not be deemed to otherwise serve as a safe  
 37 harbor or contravene any other provision of state law  
 38 prohibiting or regulating referrals, kickbacks, rebates, or  
 39 patient brokering. A health care provider's investment interests  
 40 in registered securities of publicly held corporations must be  
 41 purchased on a national exchange or over-the-counter market  
 42 under normal terms and conditions without discount, incentive,  
 43 gifts, or future options.  
 44 (b) A health care provider may not refer a patient for the  
 45 provision of any other health care item or service to an entity  
 46 in which the health care provider is an investor unless:  
 47 1. The provider's investment interest is in registered  
 48 securities purchased on a national exchange or over-the-counter  
 49 market and issued by a publicly held corporation:  
 50 a. Whose shares are traded on a national exchange or on the  
 51 over-the-counter market; and  
 52 b. Whose total assets at the end of the corporation's most  
 53 recent fiscal quarter exceeded \$75 million ~~\$50 million~~; or  
 54 2. With respect to an entity other than a publicly held  
 55 corporation described in subparagraph 1., and a referring  
 56 provider's investment interest in such entity, each of the  
 57 following requirements are met:  
 58 a. No more than 50 percent of the value of the investment

Page 2 of 6

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

21-00131-16

2016108\_\_

59 interests are held by investors who are in a position to make  
60 referrals to the entity.

61 b. The terms under which an investment interest is offered  
62 to an investor who is in a position to make referrals to the  
63 entity are no different from the terms offered to investors who  
64 are not in a position to make such referrals.

65 c. The terms under which an investment interest is offered  
66 to an investor who is in a position to make referrals to the  
67 entity are not related to the previous or expected volume of  
68 referrals from that investor to the entity.

69 d. There is no requirement that an investor make referrals  
70 or be in a position to make referrals to the entity as a  
71 condition for becoming or remaining an investor.

72 3. With respect to either such entity or publicly held  
73 corporation:

74 a. The entity or corporation does not loan funds to or  
75 guarantee a loan for an investor who is in a position to make  
76 referrals to the entity or corporation if the investor uses any  
77 part of such loan to obtain the investment interest.

78 b. The amount distributed to an investor representing a  
79 return on the investment interest is directly proportional to  
80 the amount of the capital investment, including the fair market  
81 value of any preoperational services rendered, invested in the  
82 entity or corporation by that investor.

83 (c)~~4~~ Each board and, in the case of hospitals, the Agency  
84 for Health Care Administration, shall encourage the use by  
85 licensees of the declaratory statement procedure to determine  
86 the applicability of this section or any rule adopted pursuant  
87 to this section as it applies solely to the licensee. Boards

21-00131-16

2016108\_\_

88 shall submit to the Agency for Health Care Administration the  
89 name of any entity in which a provider investment interest has  
90 been approved pursuant to this section.

91 (d)~~(e)~~ A claim for payment may not ~~No claim for payment may~~  
92 be presented by an entity to any individual, third-party payor,  
93 or other entity for a service furnished pursuant to a referral  
94 prohibited under this section.

95 (e)~~(d)~~ If an entity collects any amount that was billed in  
96 violation of this section, the entity shall refund such amount  
97 on a timely basis to the payor or individual, whichever is  
98 applicable.

99 (f)~~(e)~~ Any person who ~~that~~ presents or causes to be  
100 presented a bill or a claim for service that such person knows  
101 or should know is for a service for which payment may not be  
102 made under paragraph (d) ~~(e)~~, or for which a refund has not been  
103 made under paragraph (e) ~~(d)~~, shall be subject to a civil  
104 penalty of not more than \$15,000 for each such service to be  
105 imposed and collected by the appropriate board.

106 (g)~~(f)~~ Any health care provider or other entity that enters  
107 into an arrangement or scheme, such as a cross-referral  
108 arrangement, which the physician or entity knows or should know  
109 has a principal purpose of assuring referrals by the physician  
110 to a particular entity which, if the physician directly made  
111 referrals to such entity, would be in violation of this section,  
112 shall be subject to a civil penalty of not more than \$100,000  
113 for each such circumvention arrangement or scheme to be imposed  
114 and collected by the appropriate board.

115 (h)~~(g)~~ A violation of this section by a health care  
116 provider shall constitute grounds for disciplinary action to be



21-00131-16

2016108\_\_

117 taken by the applicable board pursuant to s. 458.331(2), s.  
 118 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.  
 119 466.028(2). Any hospital licensed under chapter 395 found in  
 120 violation of this section shall be subject to s. 395.0185(2).

121 ~~(i)(b)~~ A Any hospital licensed under chapter 395 may not  
 122 discriminate ~~that discriminates~~ against or otherwise penalize  
 123 ~~penalizes~~ a health care provider for compliance with this  
 124 subsection act.

125 ~~(j)(i)~~ The provision of paragraph (a) does ~~shall~~ not apply  
 126 to referrals to the offices of radiation therapy centers managed  
 127 by an entity or subsidiary or general partner thereof, which  
 128 performed radiation therapy services at those same offices prior  
 129 to April 1, 1991, and does ~~shall~~ not apply ~~also~~ to referrals for  
 130 radiation therapy to be performed at no more than one additional  
 131 office of any entity qualifying for the foregoing exception  
 132 which, prior to February 1, 1992, had a binding purchase  
 133 contract on and a nonrefundable deposit paid for a linear  
 134 accelerator to be used at the additional office. The physical  
 135 site of the radiation treatment centers affected by this  
 136 provision may be relocated as a result of the following factors:  
 137 acts of God; fire; strike; accident; war; eminent domain actions  
 138 by any governmental body; or refusal by the lessor to renew a  
 139 lease. A relocation for the foregoing reasons is limited to  
 140 relocation of an existing facility to a replacement location  
 141 within the county of the existing facility upon written  
 142 notification to the Office of Licensure and Certification.

143 ~~(k)(j)~~ A health care provider who has an investment  
 144 interest in an entity to which he or she refers one or more  
 145 patients for the provision of designated health services in

Page 5 of 6

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

21-00131-16

2016108\_\_

146 compliance with ~~meets~~ the requirements of paragraph ~~paragraph~~  
 147 (a), paragraph (b), or paragraph (j) ~~and (i)~~ must disclose his  
 148 or her investment interest to his or her patients as provided in  
 149 s. 456.052.

150 Section 2. This act shall take effect July 1, 2016.

Page 6 of 6

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Aaron Bean, Chair  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** September 4, 2015

---

I respectfully request that **Senate Bill #108**, relating to Financial Arrangements Between Referring Health Care Providers and Providers of Health Care Services, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

---

Senator Denise Grimsley  
Florida Senate, District 21

cc: Sandra Stovall, Staff Director  
Celia Georgiades, Committee Administrative Assistant

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11.17.15  
Meeting Date

SB 108  
Bill Number (if applicable)

Topic Financial Arrangements w/ Referring Healthcare Providers Amendment Barcode (if applicable) 833398

Name Jessica Love

Job Title Government Consultant

Address PO Box 11189  
Street  
Tall, FL 32302  
City State Zip

Phone 850.577.9090

Email jessica.love@gray-robinson.com

Speaking:  For  Against  Information

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

Representing Laboratory Corporation of America

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15

Meeting Date

5A 108

Bill Number (if applicable)

Topic HEALTH CARE POLICY

Amendment Barcode (if applicable)

Name DOUG RUSSELL

Job Title

Address 9604 DEER VALLEY DR

Phone 850 445 0206

Street

TALL FL 32314

City

State

Zip

Email DRUSSELL@NATURALLY

can

Speaking:  For  Against  Information

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

Representing QUEST DIAGNOSTICS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/17/2015  
Meeting Date

SB108  
Bill Number (if applicable)

Topic SELF-REFERRAL / DIALYSIS SERVICES

Amendment Barcode (if applicable)

Name Bob Reynolds

Job Title Pres

Address P.O. Box 4369  
Street

Phone 850-422-0656

Tallahassee Florida 32315  
City State Zip

Email RRRASSOCIATES@gmail.com  
M&P

Speaking:  For  Against  Information

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

Representing SPECTRA LABORATORIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15

Meeting/Date

SB 108

Bill Number (if applicable)

Topic Dialysis Services

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title

Address 1535 Kilkarn Center Blvd

Phone 850-385-7805

Street

Tallahassee

FL

32309

City

State

Zip

Email nancy.stewart@nancyblackstewart.com

Speaking:  For  Against  Information

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

Representing Fresenius Medical Care North America

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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 340

INTRODUCER: Senator Latvala

SUBJECT: Vision Care Plans

DATE: November 5, 2015

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Johnson</u> | <u>Knudson</u> | <u>BI</u> | <b>Favorable</b> |
| 2. | <u>Lloyd</u>   | <u>Stovall</u> | <u>HP</u> | <b>Favorable</b> |
| 3. | _____          | _____          | <u>RC</u> | _____            |

---

**I. Summary:**

SB 340 prohibits an insurer, a prepaid limited health service organization (PLHSO), or a health maintenance organization (HMO) from requiring a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another insurer's, PLHSO's, or HMO's vision network, respectively. The bill would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network. Additionally, plans are prohibited from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical labs. The bill provides that this provision does not restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or labs.

The bill provides that a knowing violation of either of these provisions, as described above, constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S.

Under the bill, insurers, PLHSOs, and HMOs must update their online vision care network directory monthly to reflect currently participating providers in their respective network.

**II. Present Situation:**

**State Regulation of Insurance**

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

### ***Prepaid Limited Health Service Organizations Contracts***

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include ambulance, dental, vision, mental health, substance abuse, chiropractic, podiatric, and pharmaceutical. Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

### ***Health Maintenance Organization Provider Contracts***

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying payment of the member's benefits. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers.

### ***Prohibition against "All Products" Clauses in Health Care Provider Contracts***

Section 627.6474(1), F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, exclusive provider organization, or preferred provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group.

### ***Unfair Insurance Trade Practices***

Part IX of ch. 626, F.S., regulates practices relating to the business of insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and prohibits those activities. Section 626.9541(1)(d), F.S., provides that the following acts are an unfair insurance trade practice:

Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Section 626.9521, F.S., provides administrative fines and criminal penalties for violations under s. 626.9541, F.S. Generally, the potential fines under the Unfair Insurance Trade Practices Act includes an amount not greater than \$5,000 for each non-willful violation and not greater than \$40,000 for each willful violation. Such fines imposed against an insurer may not exceed an aggregate amount of \$20,000 for all non-willful violations arising out of the same action; or an aggregate amount of \$200,000 for all willful violations arising out of the same action. The fines may be imposed in addition to any other applicable penalty. Further, the OIR is authorized to issue cease and desist orders and suspend or revoke an entity's certificate of authority for engaging in an unfair insurance trade practice.<sup>1</sup>

---

<sup>1</sup> Section 626.9581, F.S.



### ***Credentialing***

Section 641.495(6), F.S., provides that each HMO must have a system for verification and examination of the credentials of each of its providers. If the organization has delegated the credentialing process to a contracted provider or entity, it must verify that the policies and procedures of the delegated provider or entity are consistent with the policies and procedures of the organization and there is evidence of oversight activities of the organization to determine that required standards are maintained. Preferred provider organizations also subject providers to credentialing.<sup>2</sup>

Credentialing is a process for the collection and verification of a provider's professional qualifications. The qualifications that are reviewed and verified include, but are not limited to, relevant training, licensure, certification or registration to practice in a health care field, experience, and academic background. A credentialing process is used by healthcare facilities as part of its process to allow practitioners to provide services at its facilities; health plans to allow providers to participate in its network (provider enrollment); medical groups when hiring new providers; and other healthcare entities that have a need to hire or otherwise engage providers.

### **State Group Insurance Program**

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance, administers the State Group Insurance Program. The program provides employee benefits under a cafeteria plan consistent with Section 125, Internal Revenue Code.<sup>3</sup> The Division of State Group Insurance offers a fully-insured vision insurance plan to eligible employees and their eligible dependents.

### **III. Effect of Proposed Changes:**

**Sections 1, 2, and 3** amend ss. 627.6474, 636.035, and 641.315, F.S., to prohibit an insurer, PLHSO, and HMO from requiring a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's, PLHSO's, or HMO's network, respectively. The bill would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network.

Further, the bill prohibits these plans from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical laboratories. This provision does not restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

---

<sup>2</sup> Agency for Health Care Administration, *Interpretative Guidelines for Initial Health Care Provider Certificate for Health Maintenance Organizations and Prepaid Health Clinics*, p. 49. (2010), [https://ahca.myflorida.com/MCHO/Health\\_Facility\\_Regulation/Commercial\\_Managed\\_Care/docs/CHMO/Initial-IGs-withProbesJune2010.pdf](https://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Commercial_Managed_Care/docs/CHMO/Initial-IGs-withProbesJune2010.pdf) (last visited: Nov. 5, 2015).

<sup>3</sup> 26 U.S.C. s. 125. A cafeteria plan is a plan maintained by an employer under which all participants are employees, and all participants may choose among two or more benefits consisting of cash and qualified benefits. A qualified benefit is any benefit, which with the application of 26 U.S.C. s. 125(a), is not includable in the gross income of the employee with certain exceptions.

Additionally, the bill provides that a knowing violation of either of these provisions described above constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S., which relates to any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Insurers, PLHSOs, or HMOs are also required to update their online vision care network directories monthly to reflect currently participating providers in their respective networks.

**Section 4** 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.

D. Other Constitutional Issues:

The general rule of law is that legislation applies prospectively and not retrospectively. In other words, this bill will not apply retroactively to impair the effectiveness of contracts already in existence on the date this legislation becomes effective. It will apply only to contracts signed on or after the effective date of the bill.

The State Constitution provides that “No... law impairing the obligation of contracts shall be passed.”<sup>4</sup> The Florida Supreme Court<sup>5</sup> has noted that “Virtually no degree of contract impairment has been tolerated in this state” and strongly favors the sanctity of contracts. Accordingly, contracts already in existence on the date this bill becomes effective will remain in effect between the parties to the contracts, regardless of the language in this bill. However, to avoid confusion, the Legislature may wish to expressly state in the bill that it does not apply to existing contracts.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

---

<sup>4</sup> FLA. CONST. art. I, s. 10.

<sup>5</sup> *Yamaha Part Distributors Inc., et al, v. Ehrman et al.*, 316 So. 2d 557, 559 (Fla 1975).

**B. Private Sector Impact:**

The bill provides that a licensed ophthalmologist, optometrist or optician contracting with an insurer, PLHSO, or HMO is not required to purchase materials and services from specific suppliers or optical labs. This would give the provider the ability to be competitive and responsive to local market conditions regarding the cost and quality of such materials and services provided to consumers. Currently, the approved lab lists of some vision plans can be limited and may require a provider to send all orders to a plan-owned lab in another city or state, which may result in delays for the consumer in receiving their eyeglasses. If such a lab is performing poorly, this can cause additional delays and frustrations for consumers.

Further, an insurer, PLHSO, or HMO could not require a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another plan's vision network.

Consumers will have online access to more timely and accurate network directories for vision care providers, which will assist them in evaluating plans or selecting network providers.

**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: 627.6474, 636.035, and 641.315.

**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 Latvala

20-00036A-16

2016340\_\_

1 A bill to be entitled  
 2 An act relating to vision care plans; amending ss.  
 3 627.6474, 636.035, and 641.315, F.S.; providing that a  
 4 health insurer, a prepaid limited health service  
 5 organization, and a health maintenance organization,  
 6 respectively, may not require a licensed  
 7 ophthalmologist or optometrist to join a network  
 8 solely for the purpose of credentialing the licensee  
 9 for another vision network; providing that such  
 10 insurers and organizations are not prevented by the  
 11 act from entering into a contract with another vision  
 12 care plan; providing that such insurers and  
 13 organizations may not restrict a licensed  
 14 ophthalmologist, optometrist, or optician to specific  
 15 suppliers of materials or optical laboratories;  
 16 providing that such insurers and organizations are not  
 17 restricted by the act in determining certain amounts  
 18 of coverage or reimbursement; requiring such insurers'  
 19 and organizations' online vision care network provider  
 20 directories to be updated monthly; providing that a  
 21 violation of certain prohibitions in the act  
 22 constitutes a specified unfair insurance trade  
 23 practice; providing an effective date.

24  
 25 Be It Enacted by the Legislature of the State of Florida:

26  
 27 Section 1. Subsection (3) is added to section 627.6474,  
 28 Florida Statutes, to read:  
 29 627.6474 Provider contracts.—

Page 1 of 4

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

20-00036A-16

2016340\_\_

30 (3) (a) A health insurer may not require an ophthalmologist  
 31 licensed pursuant to chapter 458 or chapter 459 or an  
 32 optometrist licensed pursuant to chapter 463 to join a network  
 33 solely for the purpose of credentialing the licensee for another  
 34 insurer's vision network. This paragraph does not prevent a  
 35 health insurer from entering into a contract with another  
 36 insurer's vision care plan to use the vision network.

37 (b) A health insurer may not restrict an ophthalmologist  
 38 licensed pursuant to chapter 458 or chapter 459, an optometrist  
 39 licensed pursuant to chapter 463, or an optician licensed  
 40 pursuant to part I of chapter 484 to specific suppliers of  
 41 materials or optical laboratories. This paragraph does not  
 42 restrict a health insurer in determining specific amounts of  
 43 coverage or reimbursement for the use of network or out-of-  
 44 network suppliers or laboratories.

45 (c) A health insurer's online vision care network provider  
 46 directory must be updated monthly to reflect the vision care  
 47 providers currently participating in the health insurer's  
 48 network.

49 (d) A knowing violation of paragraph (a) or paragraph (b)  
 50 constitutes an unfair insurance trade practice under s.  
 51 626.9541(1) (d).

52 Section 2. Subsection (14) is added to section 636.035,  
 53 Florida Statutes, to read:

54 636.035 Provider arrangements.—

55 (14) (a) A prepaid limited health service organization may  
 56 not require an ophthalmologist licensed pursuant to chapter 458  
 57 or chapter 459 or an optometrist licensed pursuant to chapter  
 58 463 to join a network solely for the purpose of credentialing

Page 2 of 4

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

20-00036A-16 2016340\_\_

59 the licensee for another organization's vision network. This  
 60 paragraph does not prevent such organization from entering into  
 61 a contract with another organization's vision care plan to use  
 62 the vision network.

63 (b) A prepaid limited health service organization may not  
 64 restrict an ophthalmologist licensed pursuant to chapter 458 or  
 65 chapter 459, an optometrist licensed pursuant to chapter 463, or  
 66 an optician licensed pursuant to part I of chapter 484 to  
 67 specific suppliers of materials or optical laboratories. This  
 68 paragraph does not restrict such organization in determining  
 69 specific amounts of coverage or reimbursement for the use of  
 70 network or out-of-network suppliers or laboratories.

71 (c) A prepaid limited health service organization's online  
 72 vision care network provider directory must be updated monthly  
 73 to reflect the vision care providers currently participating in  
 74 the organization's network.

75 (d) A knowing violation of paragraph (a) or paragraph (b)  
 76 constitutes an unfair insurance trade practice under s.  
 77 626.9541(1)(d).

78 Section 3. Subsection (12) is added to section 641.315,  
 79 Florida Statutes, to read:

80 641.315 Provider contracts.—

81 (12) (a) A health maintenance organization may not require  
 82 an ophthalmologist licensed pursuant to chapter 458 or chapter  
 83 459 or an optometrist licensed pursuant to chapter 463 to join a  
 84 network solely for the purpose of credentialing the licensee for  
 85 another organization's vision network. This paragraph does not  
 86 prevent such organization from entering into a contract with  
 87 another organization's vision care plan to use the vision

20-00036A-16 2016340\_\_

88 network.

89 (b) A health maintenance organization may not restrict an  
 90 ophthalmologist licensed pursuant to chapter 458 or chapter 459,  
 91 an optometrist licensed pursuant to chapter 463, or an optician  
 92 licensed pursuant to part I of chapter 484 to specific suppliers  
 93 of materials or optical laboratories. This paragraph does not  
 94 restrict such organization in determining specific amounts of  
 95 coverage or reimbursement for the use of network or out-of-  
 96 network suppliers or laboratories.

97 (c) A health maintenance organization's online vision care  
 98 network provider directory must be updated monthly to reflect  
 99 the vision care providers currently participating in the  
 100 organization's network.

101 (d) A knowing violation of paragraph (a) or paragraph (b)  
 102 constitutes an unfair insurance trade practice under s.  
 103 626.9541(1)(d).

104 Section 4. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA  
20th District

October 21, 2015

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

Dear Chairman Bean:

I respectfully request consideration of Senate Bill 340/Vision Insurance by the Senate Committee on Health Policy at your earliest convenience. The bill was successfully referred from the Senate Banking and Insurance Committee on October 20.

This bill will prohibit insurance companies from requiring a licensed ophthalmologist or optometrist to provide vision care services under specified circumstances or to purchase certain materials or services as a condition for participating as a provider.

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

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

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

REPLY TO:

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

Senate's Website: [www.flsenate.gov](http://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)

11/17/2015  
Meeting Date

340  
Bill Number (if applicable)

Topic VISION INSURANCE PLANS

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title

Address 120 S. MONROE ST.

Phone 850.443.4444

TALLAHASSEE, FL 32301  
City State Zip

Email david@rambalaw.com

Speaking:  For  Against  Information

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

Representing FLORIDA OPTOMETRIC ASSN.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15  
Meeting Date

SB 340  
Bill Number (if applicable)

Topic Vision Care

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title \_\_\_\_\_

Address 1535 Killbuck Center Blvd

Phone 850-385-7805

Tallahassee FL 32309  
City State Zip

Email nancy.stewart@nancyblackstewart.com

Speaking:  For  Against  Information

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

Representing Professional Opticians of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



**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 414

INTRODUCER: Senator Sobel

SUBJECT: Use of a Tanning Facility by a Minor

DATE: October 26, 2015

REVISED: \_\_\_\_\_

|    | ANALYST             | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------------|----------------|-----------|------------------|
| 1. | Rossitto-Van Winkle | Stovall        | HP        | <b>Favorable</b> |
| 2. | _____               | _____          | CJ        | _____            |
| 3. | _____               | _____          | RC        | _____            |

**I. Summary:**

SB 414 attempts to prevent skin cancer in minors by prohibiting tanning facilities from allowing minors to use the facilities' tanning devices unless prescribed by a health care provider to treat a medical condition. The bill also strengthens the parental consent requirements and requires a parent or guardian to accompany a minor who is younger than 14 years of age to the prescribed tanning sessions.

**II. Present Situation:**

**Ultraviolet Radiation Exposure Risks**

Skin cancer is the most common form of cancer. Basal cell and squamous cell carcinomas, two types of skin cancer, are successfully cured at high rates. However, melanoma, the third most common skin cancer, poses a greater threat, especially among minors. Approximately 65 to 90 percent of melanomas are caused by exposure to ultraviolet (UV) light. Persons with a history of one or more blistering sunburns during childhood or adolescence are two times more likely to develop melanoma than those who did not have such exposures. More than one half of a person's lifetime UV light exposure occurs during childhood and adolescence.<sup>1</sup> The American Cancer Society has estimated that there were 5,330 new cases of melanoma of the skin for the state of Florida in 2013.<sup>2</sup>

The U.S. Food and Drug Administration (FDA) is particularly concerned about children and teens being exposed to UV rays. Intermittent exposures to intense UV radiation leading to

---

<sup>1</sup> Centers for Disease Control and Prevention, *Guidelines for School Programs to Prevent Skin Cancer* (Apr. 26, 2002) available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5104a1.htm> (last visited Oct. 22, 2015).

<sup>2</sup> American Cancer Society, *Cancer Facts & Figures 2013*. Atlanta: American Cancer Society (2013) p.5, available at <http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-036845.pdf> (last visited Oct. 26, 2015).

sunburns, especially in childhood and teen years, increase the risk of melanoma, according to the National Cancer Institute (NCI).<sup>3</sup>

According to the Centers for Disease Control and Prevention (CDC), the best way to prevent skin cancer is to protect oneself from the sun by seeking shade, covering up skin exposed to the sun, wearing a wide brim hat, wearing sunglasses, and wearing sunscreen. The CDC recommends avoiding tanning beds and sunlamps because they emit UV rays that are as dangerous as those from the sun.<sup>4</sup>

“Young people may not think they are vulnerable to skin cancer,” says Kaczmarek. “They have difficulty thinking about their own mortality.” Yet of the more than 68,000 people in the United States who will learn they have melanoma this year, one out of eight will die from it, according to the NCI estimates. In addition, the American Academy of Dermatology reports that melanoma is the second most common cancer in women 20 to 29 years old.<sup>5</sup>

According to the 2011 *Youth Risk Behavior Surveillance System*,<sup>6</sup> the following proportions of youth report indoor tanning:<sup>7</sup>

- 13 percent of all high school students.
- 21 percent of high school girls.
- 32 percent of girls in grade 12.
- 29 percent of white high school girls.

### **Tanning Lamps, Booths, and Beds**

Tanning lamps, booths and beds are a popular method of maintaining a year-round tan, but their effects can be as dangerous as tanning outdoors. Like the sun, the lamps used in tanning booths and beds emit UV radiation. Experts argue that artificial tanning is less dangerous because the intensity of light and the time spent tanning are controlled. There is limited evidence to support this claim.

On the other hand, sunlamps may be more dangerous than the sun because they can be used at the same intensity every day of the year, something that is unlikely for the sun because of winter weather and cloud cover. They can also be more dangerous because people can expose their entire bodies at each session, which would be difficult to do outdoors.<sup>8</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> Centers for Disease Control and Prevention, What Can I Do to Reduce My Risk?, [http://www.cdc.gov/cancer/skin/basic\\_info/prevention.htm](http://www.cdc.gov/cancer/skin/basic_info/prevention.htm) (last visited Oct. 22, 2015).

<sup>5</sup> U.S. Food and Drug Administration, *Indoor Tanning: The Risks of Ultraviolet Rays*, (last updated January 21, 2015) available at <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm186687.htm>, (last visited Oct. 22, 2015).

<sup>6</sup> The Youth Risk Behavior Surveillance System within the CDC monitors six types of health-risk behaviors that contribute to the leading causes of death and disability among youth and adults, including: behaviors that contribute to unintentional injuries and violence; sexual behaviors that contribute to unintended pregnancy and sexually transmitted diseases, including HIV infection; alcohol and other drug use; tobacco use; unhealthy dietary behaviors; and inadequate physical activity.

<sup>7</sup> Centers for Disease Control, Skin Cancer, available at [http://www.cdc.gov/cancer/skin/basic\\_info/indoor\\_tanning.htm](http://www.cdc.gov/cancer/skin/basic_info/indoor_tanning.htm) (last visited Oct. 22, 2015).

<sup>8</sup> Cokkinides V, Weinstock M, Lazovich D, Ward E, Thun M., *Indoor tanning use among adolescents in the US, 1998 to 2004*. *Cancer*. 2009 Jan 1;115(1):190-8. Cokkinides and his associates compared two surveys from 1998 (N-1196) and 2004

Tanning beds, which specifically include multiple tanning lamps, are commonly used by children and teenagers in the U.S.<sup>9</sup> In 2011, the American Academy of Pediatrics (AAP), a group of 60,000 pediatricians, called for all US tanning salons to bar minors. With this new policy statement, the AAP was joined by other health groups such as the American Medical Association, the World Health Organization (WHO), the Academy of Dermatology, and The Skin Cancer Foundation in demanding a ban on indoor tanning for young people.<sup>10</sup>

### **State Regulation of Tanning Facilities**

Section 381.89, F.S., authorizes the Department of Health (DOH) to regulate tanning facilities providing access to tanning devices that emit electromagnetic radiation of wavelengths between 200 and 400 nanometers and are used for tanning the skin, including sunlamps, tanning booths, or tanning beds or any accompanying equipment. This statute does not apply to a tanning facility using only phototherapy devices that emit ultraviolet radiation which are used only by or under the direct supervision of a physician licensed under ch.458 or an osteopathic physician licensed under ch. 459.<sup>11</sup>

Currently, s. 381.89, F.S., requires that a minor's parent or legal guardian provide written consent for a minor to use a tanning device when a minor is under the age of 18. Minors 14 years of age or older may use a tanning device if the tanning facility has a statement on file signed by the minor's parent or legal guardian stating that the parent or legal guardian has read and understands the warnings provided by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use the provided protective eyewear. Minors under the age of 14 must be accompanied by a parent or legal guardian during each visit to a tanning facility.<sup>12</sup>

The DOH, through its local offices in the 67 counties licenses and inspects 1,668 indoor tanning facilities to ensure compliance with health and safety requirements of s. 381.89, F.S., and Rule Chapter 64E-17, Florida Administrative Code. The department staff review the customer records, including signed parental consent statements, to ensure the facilities are complying with the requirements for minors. Failure to comply with these requirements is a 2<sup>nd</sup> degree misdemeanor.

Tanning facilities are required to provide each customer a written warning that states:<sup>13</sup>

- Not wearing the provided eye protection can cause damage to the eyes;
- Overexposure causes burns;
- Repeated exposure can cause premature aging of the skin or skin cancer;

---

(N-1613) and found fairly consistent rates of usage in teenagers aged 11- 18 of 10% and 11% in the two surveys. Available at <http://www.ncbi.nlm.nih.gov/pubmed/19085965>.

<sup>9</sup> *Id.*

<sup>10</sup> The American Academy of Pediatrics, *Calls for Ban on Youth Tanning*, 2011, cited by The Skin Cancer Foundation news release, available at <http://www.skincancer.org/news/tanning/american-academy-of-pediatrics-calls-for-ban-on-youth-tanning>

<sup>11</sup> See s. 381.89(2), F.S.

<sup>12</sup> Section 381.89(7) and (8), F.S.

<sup>13</sup> Section 381.89(4)(a), F.S.

- Abnormal skin sensitivity or burning may be caused by certain foods, cosmetics, or medications, including, without limitation, tranquilizers, diuretics, antibiotics, high blood pressure medicines, or birth control pills;
- Any person who takes prescription or over-the-counter medication should consult a physician before using a tanning device; and
- The tanning facility's liability insurance information or a statement that the facility does not carry liability insurance for injuries caused by tanning devices.

Tanning facilities are also required to post a sign near each tanning device which states, in all caps, "Danger, Ultraviolet Radiation," with a list of detailed instructions.<sup>14</sup> Each time a customer uses a tanning device or executes or renews a contract, facilities must require the customer to sign a written statement acknowledging that he or she has read and understands the warnings and agrees to use protective eyewear.<sup>15</sup>

Tanning facilities must limit each customer to the maximum exposure time recommended by the manufacturer of the tanning device.<sup>16</sup> The DOH requires tanning facilities to limit customers to one tanning session within a 24-hour period.<sup>17</sup>

As of February 2014, at least 33 states and the District of Columbia regulate minors' use of tanning devices.<sup>18</sup> The policies that states have adopted vary, but generally include one or more of these limitations: age restrictions, parental accompaniment requirements, and parental written permission. Currently California, Illinois, Nevada, Texas, and Vermont ban the use of tanning beds for all minors under 18 years of age.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill prohibits tanning facilities from allowing minors to use tanning devices for any purpose other than for the treatment of a medical condition as prescribed by a health care provider. The minor's parent or legal guardian must give written consent that is witnessed by the tanning facility operator or proprietor, which includes the current elements of consent, as well as authorizing a specified number of sessions as prescribed by the minor's health care provider. The tanning sessions provided by the tanning facility may not exceed the number, frequency, or exposure time prescribed if less than otherwise allowed by law or rule of the DOH. If a minor, who is younger than 14 years of age, uses a tanning device, the parent or legal guardian must also accompany the minor during the prescribed tanning session.

The bill has an effective date of October 1, 2016.

---

<sup>14</sup> Section 381.89(4)(b), F.S.

<sup>15</sup> Section 381.89(6)(g), F.S.

<sup>16</sup> Section 381.89(6)(e), F.S.

<sup>17</sup> Rule 64E-17.002(2)(m), F.A.C.

<sup>18</sup> National Conference of State Legislatures, *Indoor Tanning Restrictions for Minors, A State-by-State Comparison*, <http://www.ncsl.org/research/health/indoor-tanning-restrictions.aspx> (last visited Oct. 22, 2015).

<sup>19</sup> *Id.*

**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:

Tanning facilities may incur a small cost to revise consent forms to comply with the new requirements.

Tanning facilities are likely to lose a portion of their business because the bill conditions a minor's use of a tanning facility on obtaining a written prescription for a related medical condition.

Parents may incur the cost of a pre-tanning health care provider visit to obtain a prescription for minors with a medical condition that was previously self-treated with a tanning device.

There is a potential to increase the sale and use of home tanning devices by minors and their parent or guardian and thus increase profits and income to the tanning device industry.

## C. Government Sector Impact:

The impact on DOH is indeterminate at this time. Longer inspections and additional enforcement actions are likely. Additional rulemaking or public education may be needed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term “health care provider” is not defined by the bill. The Legislature may wish to define or narrow the scope of the term if its intent is to capture practitioners who are most likely to prescribe UV light treatment for medical conditions.

**VIII. Statutes Affected:**

This bill substantially amends s. 381.89, Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By Senator Sobel

33-00263-16

2016414\_\_

1 A bill to be entitled  
 2 An act relating to the use of a tanning facility by a  
 3 minor; providing a short title; amending s. 381.89,  
 4 F.S.; prohibiting a minor of any age from using a  
 5 tanning device at a tanning facility unless a health  
 6 care provider prescribes use of the device to treat a  
 7 medical condition and the tanning facility has on file  
 8 a specified statement signed by the minor's parent or  
 9 guardian and witnessed by the operator or proprietor  
 10 of the tanning facility; prohibiting a tanning  
 11 facility from providing tanning sessions that exceed  
 12 the number, frequency, or exposure time prescribed by  
 13 the health care provider or authorized by law or  
 14 department rule, whichever is less; requiring a parent  
 15 or guardian to accompany a minor who is younger than  
 16 14 years of age during the prescribed tanning  
 17 sessions; conforming a cross-reference; making  
 18 technical changes; providing an effective date.  
 19  
 20 WHEREAS, frequent exposure to ultraviolet radiation through  
 21 the use of tanning devices increases the risk of developing skin  
 22 cancer, including melanoma, the deadliest form of skin cancer,  
 23 and  
 24 WHEREAS, the American Academy of Dermatology estimates that  
 25 nearly 2.3 million minors use tanning devices annually, and  
 26 WHEREAS, the United States Food and Drug Administration  
 27 warns that a minor's overexposure to ultraviolet radiation  
 28 during childhood greatly increases the chances of developing  
 29 skin cancer later in life, and

Page 1 of 4

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

33-00263-16

2016414\_\_

30 WHEREAS, the Legislature finds that it is in the public  
 31 interest to protect minors from the harmful effects of  
 32 ultraviolet radiation through the use of tanning devices by  
 33 restricting a minor's access to such devices unless authorized  
 34 by a health care provider, NOW, THEREFORE,  
 35  
 36 Be It Enacted by the Legislature of the State of Florida:  
 37  
 38 Section 1. This act may be cited as the "Preventing Youth  
 39 Skin Cancer Act."  
 40 Section 2. Present subsections (9) through (13) of section  
 41 381.89, Florida Statutes, are redesignated as subsections (8)  
 42 through (12), respectively, and present subsections (7), (8),  
 43 and (10) of that section are amended, to read:  
 44 381.89 Regulation of tanning facilities.—  
 45 (7) (a) A tanning facility may not allow a minor ~~between the~~  
 46 ages of 14 and 18 to use a tanning device unless:  
 47 1. The use of the tanning device is prescribed by a health  
 48 care provider to treat a medical condition; and  
 49 2. The tanning facility ~~it~~ has on file a statement signed  
 50 by the minor's parent or legal guardian and witnessed by the  
 51 operator or proprietor of the tanning facility stating that the  
 52 parent or legal guardian:  
 53 a. Has read and understands the warnings given by the  
 54 tanning facility;  
 55 b. Consents to the minor's use of a tanning device;~~and~~  
 56 c. Agrees that the minor will use the provided protective  
 57 eyewear; and-  
 58 d. Authorizes a specified number of tanning sessions for

Page 2 of 4

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

33-00263-16

2016414\_\_

59 the minor as prescribed by the minor's health care provider.

60 (b) The tanning sessions provided by a tanning facility may  
 61 not exceed the number, frequency, or exposure time prescribed by  
 62 the health care provider or authorized by this section or rules  
 63 of the department, whichever is less.

64 (c) The parent or legal guardian must accompany a minor who  
 65 is younger than 14 years of age during the prescribed tanning  
 66 sessions.

67 ~~(8) A minor under the age of 14 must be accompanied by a~~  
 68 ~~parent or legal guardian when using a tanning device.~~

69 ~~(9) (10) PENALTIES.—~~

70 (a) Each of the following acts constitutes a felony of the  
 71 third degree, punishable as provided in s. 775.082 or s.  
 72 775.083:

73 1. Owning or operating, or soliciting business as, a  
 74 tanning facility in this state without first procuring a license  
 75 from the department, unless specifically exempted by this  
 76 section.

77 2. Obtaining or attempting to obtain a license by means of  
 78 fraud, misrepresentation, or concealment.

79 (b) Each of the following acts constitutes a misdemeanor of  
 80 the second degree, punishable as provided in s. 775.082 or s.  
 81 775.083:

82 1. Failing to maintain the records required by this section  
 83 or knowingly making false entries in such records.

84 2. Failing to comply with subsection (7) ~~or subsection (8).~~

85 (c) The court may, in addition to other punishment provided  
 86 for, suspend or revoke the license of any licensee under this  
 87 section who has been found guilty of any violation listed in

33-00263-16

2016414\_\_

88 paragraph (a) or paragraph (b).

89 (d) ~~If in the event~~ the department or a ~~any~~ state attorney  
 90 ~~has shall have~~ probable cause to believe that a tanning facility  
 91 or other person has violated any provision of paragraph (a), an  
 92 action may be brought by the department or ~~any~~ state attorney to  
 93 enjoin such tanning facility or ~~any~~ person from continuing the  
 94 ~~such~~ violation, or engaging therein or doing any acts in  
 95 furtherance thereof, and for such other relief as ~~to~~ the court  
 96 determines ~~seems~~ appropriate.

97 Section 3. This act shall take effect October 1, 2016.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

## SENATOR ELEANOR SOBEL

33rd District

October 29, 2015

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

Dear Chair Bean,

This letter is to request that **SB 414**, relating to the **Use of a Tanning Facility by a Minor**, be placed on the agenda of the next scheduled meeting of the Committee on Health Policy. The proposed legislation would prevent children under the age of 18 from using tanning devices unless prescribed by a physician. Using indoor tanning beds before age 35 increases risk of developing melanoma -- the most deadly form of skin cancer -- by 75%, according to the Skin Cancer Foundation. In addition, Melanoma is the second most common form of cancer for 15- to 29-year-olds, and the No. 1 cancer for 25- to 29-year-olds.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel  
State Senator, 33rd District

Cc: Dee Alexander, Joseph Endicott, Meghan Tarsitano, Sandra Stovall, Celia Georgiades

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](http://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)

11/17/15  
Meeting Date

414  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title \_\_\_\_\_

Address 1000 Riverside Ave

Phone 904-355-1555

Street

Tax FL 32204

Email nulandlaw@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Society of Plastic Surgeons / American College of Derm 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/17/15  
Meeting Date

414  
Bill Number (if applicable)

Topic Use of tanning facility by minors

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr. E  
Street

Phone 850 224 6496

Tallahassee FL 32308  
City State Zip

Email MTHOMAS@fimedical.org

Speaking:  For  Against  Information

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

Representing Florida Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11-17-2015

Meeting Date

414

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

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)

11-17-2015

Meeting Date

SB 414

Bill Number (if applicable)

Topic Tanning facility legislation

Amendment Barcode (if applicable)

Name Joseph Levy

Job Title Scientific Advisor

Address 3101 Page Ave.

Phone 720-256-4480

Street

Jackson

City

MI

State

49203

Zip

Email Joe@smarttan.com

Speaking:  For  Against  Information

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

Representing American Suntanning 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.**

**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 460

INTRODUCER: Senators Bradley and Soto

SUBJECT: Experimental Treatments for Terminal Conditions

DATE: November 13, 2015

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Looke   | Stovall        | HP        | <b>Favorable</b> |
| 2. |         |                | ACJ       |                  |
| 3. |         |                | FP        |                  |

---

**I. Summary:**

SB 460 amends the Right to Try Act<sup>1</sup> to include cannabis that is sold and manufactured by an approved dispensing organization<sup>2</sup> in the definition of “investigational drug, biological product, or device.”

The bill exempts eligible patients<sup>3</sup> and their legal representatives from criminal penalties under ch. 893, F.S.,<sup>4</sup> as well as from any other section of law, but subject to the requirements in the bill, for the purchase and possession of cannabis for the patient’s medical use with the requirement that the cannabis must be obtained from an approved dispensing organization. The bill also exempts approved dispensing organizations, as well as their owners, managers, and employees from the requirements of the Compassionate Medical Cannabis Act of 2014;<sup>5</sup> from criminal penalties under ch. 893, F.S.;<sup>6</sup> from licensure and regulation under ch. 465, F.S.;<sup>7</sup> and from any other section of law, but subject to the requirements in the bill, for manufacturing, possessing, selling, delivering, distributing, dispensing, and lawfully disposing of cannabis.

The bill states that its provisions do not impair the license of an approved dispensing organization under s. 381.986, F.S., relating to the compassionate use of low-THC Cannabis.

---

<sup>1</sup> S. 499.0295, F.S.

<sup>2</sup> As defined in s. 381.986, F.S., compassionate use of low-THC cannabis.

<sup>3</sup> See the description of the Right to Try Act on pp. 7-8 for a definition of “eligible patient.”

<sup>4</sup> Ch. 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act. Specifically, the bill exempts patients from s. 893.13, F.S., related to unauthorized the sale, purchasing, manufacturing, and possessing of controlled substances; s. 893.135, F.S., related to trafficking in controlled substances; and s. 893.147, F.S., related to the use, manufacture, possession, and sale of drug paraphernalia.

<sup>5</sup> Ch. 2014-157, L.O.F., and more specifically s. 381.986, F.S.

<sup>6</sup> See supra n. 4.

<sup>7</sup> Ch. 465, F.S., is the Florida Pharmacy Act.

## II. Present Situation:

### Treatment of Marijuana in Florida

Florida law defines cannabis as “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,”<sup>8</sup> and places it, along with other sources of THC, on the list of Schedule I controlled substances.<sup>9</sup> The definition excludes “low-THC cannabis” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with that section.

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States. As a Schedule I controlled substance, possession and trafficking in cannabis carry criminal penalties that vary from a first degree misdemeanor<sup>10</sup> up to a first degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.<sup>11</sup> Paraphernalia<sup>12</sup> that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.<sup>13</sup>

### Medical Marijuana in Florida: the Compassionate Medical Cannabis Act of 2014

#### *Patient Treatment with Low-THC Cannabis*

The Compassionate Medical Cannabis Act of 2014<sup>14</sup> (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)<sup>15</sup> for the medical use<sup>16</sup> by patients suffering from cancer or a physical medical condition that chronically produces

---

<sup>8</sup> Section 893.02(3), F.S.

<sup>9</sup> Section 893.03(1)(c)7. and 37., F.S.

<sup>10</sup> This penalty is applicable to possession or delivery of less than 20 grams of cannabis. *See* s. 893.13(3) and (6)(b), F.S.

<sup>11</sup> Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first degree felony with a mandatory minimum sentence that varies from 3 to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. *See* s. 893.135(1)(a), F.S.

<sup>12</sup> This term is defined in s. 893.145, F.S.

<sup>13</sup> Section 893.147, F.S.

<sup>14</sup> *See* ch. 2014-157, L.O.F., and s. 381.986, F.S.

<sup>15</sup> The act defines “low-THC cannabis,” as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. *See* s. 381.986(1)(b), F.S. Eleven states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol): Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin. Twenty-three states, the District of Columbia, and Guam have laws that permit the use of marijuana for medicinal purposes. *See* *infra* note 24. *See* <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (Tables 1 and 2), (last visited on Nov. 13, 2015).

<sup>16</sup> Pursuant to s. 381.986(1)(c), F.S., “medical use” means administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient’s legal representative. Section 381.986(1)(e),

symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida licensed allopathic or osteopathic physician who has completed the required training<sup>17</sup> and has examined and is treating such a patient may order low-THC cannabis for that patient to treat such disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for that patient. In order to meet the requirements of the act all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician determines that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;<sup>18</sup>
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis;
- The physician submits the patient treatment plan quarterly to the UF College of Pharmacy for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician obtains the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.

The act creates exceptions to existing law to allow qualified patients<sup>19</sup> and their legal representatives to purchase, acquire, and possess low-THC cannabis (up to the amount ordered) for that patient's medical use, and to allow dispensing organizations (DO), and their owners, managers, and employees, to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.<sup>20</sup>

### ***Dispensing Organizations***

The act requires the DOH to approve five DOs with one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida and southwest Florida.<sup>21</sup> In order to be approved as a DO, an applicant must possess a certificate of registration issued by

---

F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

<sup>17</sup> Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.

<sup>18</sup> If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

<sup>19</sup> See s. 381.986(1)(d), F.S., which provides that a "qualified patient" is a Florida resident who has been added by a physician licensed under ch. 458, F.S., or ch. 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.

<sup>20</sup> See s. 381.986(7)(c), F.S.

<sup>21</sup> See s. 381.986(5)(b), F.S.



the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. Applicants are also required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis.
- The ability to secure the premises, resources, and personnel necessary to operate as a DO.
- The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.
- The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department;
- That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04, F.S; and
- The employment of a medical director, who must be a physician and have successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.<sup>22</sup>

Upon approval, a DO must post a \$5 million performance bond. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.<sup>23</sup> An approved DO must also maintain all approval criteria at all times.

Currently, there are no approved DOs. Beginning on July 7, 2014, the DOH held several rule workshops intended to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014. This proposed rule was challenged by multiple organizations involved in the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by the Administrative Law Judge on November 14, 2014. Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015. The new proposed rule was also challenged on, among other things, the DOH's statement of estimated regulatory costs (SERC) and the DOH's conclusion that the rule will not require legislative ratification. Hearings were held on April 23 and 24, 2015, and a final order was issued on May 27, 2015, which found the rule to be valid. Currently, the rules have taken effect as of June 17, 2015, and the DOH held an application period for DO approval which ended on July 8, 2015. The DOH received 28 applications for DO approval but has not approved any DOs at present.

### ***The Compassionate Use Registry***

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement. The registry must allow DOs to record the dispensation of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC

---

<sup>22</sup> Id.

<sup>23</sup> Id.

cannabis. DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed. The DOH has indicated that the registry is built and ready to move to the operational phase.<sup>24</sup>

### ***The Office of Compassionate Use and Research on Low-THC Cannabis***

The act requires the DOH to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act. The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies, by:

- Creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state.<sup>25</sup>
- Making any necessary application to the United States Food and Drug Administration or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and
- Entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients.<sup>26</sup>

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research; and
- Appropriating \$1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.

### **Medical Marijuana in Florida: The Necessity Defense**

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State*<sup>27</sup> where the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to

---

<sup>24</sup> Conversation with Jennifer Tschetter, Chief of Staff (DOH) (March 20, 2015).

<sup>25</sup> See s. 381.925, F.S.

<sup>26</sup> See s. 385.212, F.S.

<sup>27</sup> *Jenks v. State*, 582 So.2d 676 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991)

qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

### Medical Marijuana Laws in Other States

Currently, 23 states, the District of Columbia, and Guam<sup>28</sup> have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
  - Nearly every state that permits the use of marijuana for medicinal purposes has a list of applicable medical conditions, though the particular conditions vary from state to state. Most states also include a way to expand the list either by allowing a state agency or board to add medical conditions to the list or by including a “catch-all” phrase.<sup>29</sup> Most states require that the patient receive certification from at least one, but often two, physicians designating that the patient has a qualifying condition before the patient may be issued an identification card needed for the acquisition of medical marijuana.
- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
  - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow one or two caregivers and require that they be at least 21 years of age and, typically, cannot be the patient’s physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
- A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
- A registry of people who have been issued an identification card.
- A method for registered patients and caregivers to obtain medical marijuana.
  - There are two general methods by which patients can obtain medical marijuana. They must either self-cultivate the marijuana in their homes or the state allows specified marijuana points-of-sale or dispensaries. The regulations governing such dispensaries vary widely.
- General restrictions on where medical marijuana may be used.

---

<sup>28</sup> These states include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, New York, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. The New York legislation became effective July 5, 2014. Eleven states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited on Nov. 13, 2015).

<sup>29</sup> An example is California’s law that includes “any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.”

- Typically, medical marijuana may not be used in public places, such as parks and on buses, or in areas where there are more stringent restrictions placed on the use of drugs, such as in or around schools or in prisons.

Most states with low-THC cannabis laws similar to s. 381.986, F.S., specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Of the 11 states with such laws, only Florida allows the treatment of cancer with low-THC cannabis. Additionally, the definition of low-THC cannabis differs from state to state. Iowa has the highest THC level allowed in such states at 3 percent and most other states have the level of THC restricted to below 1 percent. CBD levels are generally required to be high with most states requiring at least 10 percent CBD.<sup>30</sup>

### **State Medical Marijuana Laws and Their Interaction with the Federal Government**

The Federal Controlled Substances Act lists Marijuana as a Schedule 1 drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a crime.<sup>31</sup> Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law if the federal government decides to enforce those laws.

In August 2013, the United States Justice Department (USDOJ) issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century."<sup>32</sup> This document details the federal government's current stance on low-level drug crimes and contains the following passage:

... the Attorney General is announcing a change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins.

In addition, the USDOJ published, on August 29, 2013, a memorandum with the subject "Guidance Regarding Marijuana Enforcement." This memorandum makes clear that the USDOJ considers small-scale marijuana use to be a state matter which states may choose to punish or not, and, while larger operations would fall into the purview of the USDOJ, those operations that adhere to state laws legalizing marijuana in conjunction with robust regulatory systems would be far less likely to come under federal scrutiny.<sup>33</sup> These announcements generally indicate the

---

<sup>30</sup> Supra note 28, table 2.

<sup>31</sup> The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd>. (last visited on Nov. 13, 2015).

<sup>32</sup> See <http://www.justice.gov/ag/smart-on-crime.pdf>. (last visited on Nov. 13, 2015).

<sup>33</sup> See USDOJ memo on "Guidance Regarding Marijuana Enforcement," (August 29, 2013) available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited on Nov. 13, 2015).

USDOJ's current unwillingness to prosecute such cases and its inclination to leave such prosecutions largely up to state authorities.

### **The Florida Right to Try Act**

Section 499.0295, F.S., creates the Right to Try Act which allows drug manufacturers to make investigational drugs, biological products, or devices<sup>34</sup> available to an eligible patient (with or without compensation). The Right to Try Act defines an "eligible patient" as a person who:

- Has a terminal condition<sup>35</sup> attested to by that patient's physician and confirmed by a second independent specialist physician;
- Has considered all other treatment options for that condition approved by the United States Food and Drug Administration (FDA);
- Has given written informed consent for the use of an investigational drug, biological product, or device which must include:
  - An explanation of the currently approved products and treatment for the patient's condition;
  - An attestation that the patient concurs with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient's life;
  - Identification of the specific investigational drug, biological product, or device the patient is seeking to use;
  - A realistic description of the most likely outcomes of using the investigational drug, biological product or device;
  - A statement that the patient's health plan or third-party administrator and physician are not obligated to pay for care or treatment consequent to the use of the investigational drug, biological product, or device unless required to do so by law or contract;
  - A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins such treatment and that hospice care may be reinstated once the treatment ends if the patient meets hospice eligibility requirements; and
  - A statement that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that the liability extends to the patient's estate unless otherwise stated in the contract; and
- Has documentation from his or her treating physician that the patient meets the above requirements.

The Right to Try Act also details how the eligible patient's use of the investigational drug, biological product, or device may impact certain third parties including stating that:

- A health plan, third party administrator, or governmental agency may, but is not required to, provide coverage for the costs of such treatment;

---

<sup>34</sup> "Investigational drug, biological product, or device" is defined as a drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

<sup>35</sup> "Terminal Condition" is defined as a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the United States Food and Drug Administration, and, without the administration of life-sustaining procedures, will result in death within 1 year after diagnosis if the condition runs its normal course.

- A hospital or health care facility is not required to provide new or additional services unless such services are approved by that hospital or health care facility;
- The patient's heirs are not liable for any outstanding debt related to the patient's use of such treatment if the patient dies while undergoing such treatment;
- A licensing board and a state entity responsible for Medicare certification may not revoke, fail to renew, suspend, or take other action against a physician's license based solely on the physician's recommendations to an eligible patient regarding access to treatment under the Right to Try Act;
- The Right to Try Act does not create a private cause of action:
  - Against the manufacturer of the investigational drug, biological product, or device;
  - Against a person or entity involved in the care of an eligible patient who is using the investigational drug, biological product, or device; or
  - For any harm to the patient that is the result of the use of the investigational drug, biological product, or device if the manufacturer or other person or entity complies in good faith with the terms of Right to Try Act and exercises reasonable care.

### III. Effect of Proposed Changes:

SB 460 amends the Right to Try Act<sup>36</sup> to include cannabis that is sold and manufactured by an approved dispensing organization<sup>37</sup> in the definition of "investigational drug, biological product, or device."

The bill exempts eligible patients<sup>38</sup> and their legal representatives from criminal penalties under ch. 893, F.S.,<sup>39</sup> as well as from any other section of law, but subject to the requirements in the bill, for the purchase and possession of cannabis for the patient's medical use with the requirement that the cannabis must be obtained from an approved dispensing organization. The bill also exempts approved dispensing organizations, as well as their owners, managers, and employees from the requirements of the Compassionate Medical Cannabis Act of 2014;<sup>40</sup> from criminal penalties under ch. 893, F.S.;<sup>41</sup> from licensure and regulation under ch. 465, F.S.;<sup>42</sup> and from any other section of law, but subject to the requirements in the bill, for manufacturing, possessing, selling, delivering, distributing, dispensing, and lawfully disposing of cannabis.

The bill states that its provisions do not impair the license of an approved dispensing organization under s. 381.986, F.S.

The provisions of the bill take effect on July 1, 2016.

---

<sup>36</sup> S. 499.0295, F.S.

<sup>37</sup> As defined in s. 381.986, F.S.

<sup>38</sup> See the description of the Right to Try Act on pp. 7-8 for a definition of "eligible patient."

<sup>39</sup> See supra n. 4.

<sup>40</sup> Ch. 2014-157, L.O.F., and more specifically s. 381.986, F.S.

<sup>41</sup> See supra n. 4.

<sup>42</sup> Ch. 465, F.S., is the Florida Pharmacy Act.

**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 460 may have a positive fiscal impact on approved dispensing organizations that may see new sales generated by an increased number of patients to whom they may sell medical cannabis.

## C. Government Sector Impact:

The state may see increased sales tax revenue from new sales of medical cannabis that may be generated under the provisions of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill is silent on the regulatory authority of the DOH to develop rules for oversight to regulate activities of dispensing organizations for activities that are authorized under this act. The regulatory framework created by the Compassionate Medical Cannabis Act under s. 381.986, F.S., may not be adequate to prevent or deter diversion of that cannabis that is authorized to be manufactured by this act.

Additionally, the act exempts dispensing organizations from licensing and regulation under ch. 465, F.S., relating to pharmacy, but does not specifically exempt the dispensing organizations from regulation under ch. 499, F.S., related to the manufacturing of drugs, devices, and cosmetics. Since the act makes changes in ch. 499, F.S., it may be advisable to also specifically exempt dispensing organizations from regulation under that chapter.

**VIII. Statutes Affected:**

This bill substantially amends section 499.0295 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

---

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

---



By Senator Bradley

7-00574A-16

2016460\_\_

A bill to be entitled

An act relating to experimental treatments for terminal conditions; amending s. 499.0295, F.S.; revising the definition of the term "investigational drug, biological product, or device"; providing for eligible patients or their legal representatives to purchase and possess cannabis for medical use; authorizing certain licensed dispensing organizations to manufacture, possess, sell, deliver, distribute, dispense, and dispose of cannabis; exempting such organizations from specified laws; defining terms; providing applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 499.0295, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

499.0295 Experimental treatments for terminal conditions.—

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

(b) "Investigational drug, biological product, or device" means:

1. A drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration; or

2. Cannabis that is manufactured and sold by an approved

Page 1 of 2

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

7-00574A-16

2016460\_\_

dispensing organization as defined in s. 381.986.

(10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an eligible patient and the eligible patient's legal representative may purchase and possess cannabis for the patient's medical use.

(b) An eligible patient and the eligible patient's legal representative may obtain cannabis only from an approved dispensing organization as defined in s. 381.986.

(c) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved dispensing organization as defined in s. 381.986 and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis.

(d) An approved dispensing organization as defined in s. 381.986 and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of cannabis. As used in this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(e) This section does not impair the license of an approved dispensing organization under s. 381.986.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Aaron Bean, Chair  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** October 23, 2015

---

I respectfully request that **Senate Bill # 460**, relating to Experimental Treatments for Terminal Conditions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11-17-2015

Meeting Date

460

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian P.H.S

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33905

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 460  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic RIGHT to TRY

Amendment Barcode (if applicable) \_\_\_\_\_

Name Louis Rotundo

Job Title \_\_\_\_\_

Address 302 Pinestraw Circle

Phone 407-699-9361

Altamonte Springs FL 32714  
City State Zip

Email LCR5002@aol.com

Speaking:  For  Against  Information

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

Representing FLA Medical Cannabis 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.

**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 542

**INTRODUCER:** Health Policy Committee and Senator Stargel

**SUBJECT:** Continuing Care Facilities

**DATE:** November 17, 2015      **REVISED:** \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Looke   | Stovall        | HP        | <b>Fav/CS</b> |
| 2. |         |                | CF        |               |
| 3. |         |                | FP        |               |

**I. Summary:**

CS/SB 542 allows a nursing home applicant for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial requirements for the program, rather than the nursing home on its own, if the nursing home is part of a:

- Continuing care retirement community (CCRC) that is not accredited; or
- A multifacility corporate entity that operates a combination of nursing homes, assisted living facilities (ALF), or independent living facilities (ILF).

**II. Present Situation:**

**The Nursing Home Gold Seal Program**

Section 400.235, F.S., creates the Nursing Home Gold Seal Program as an “award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period.”<sup>1</sup> The Gold Seal Program designation may be used in advertising for a facility that has received such designation. Currently, there are 26 Gold Seal Program facilities located throughout the state.<sup>2</sup>

A nursing home that has been in operation for at least 30 months may apply for the Gold Seal Program if it has the recommendation of the Agency for Health Care Administration (AHCA), a nursing facility industry organization, a consumer, the State Long-Term Care Ombudsman Program, or a member of the community where the nursing home is located. Only nursing homes with a quality of care ranking within the top 15 percent of facilities regionally, or top 10 percent

<sup>1</sup> Section 400.235(2), F.S.

<sup>2</sup> Out of a total of 683 licensed nursing homes. Florida Health Finder Search on Nov. 12, 2015. Excel sheet on file with Senate Committee on Health Policy staff.

of facilities statewide, and that have a five-star facility designation overall are considered.<sup>3</sup>

Applicants must also meet the following requirements:

- The nursing home may not have any class I or class II deficiencies<sup>4</sup> within the 30 months preceding the application for the program.
- Unless the nursing home is part of the same corporate entity as a licensed and accredited continuing care facility that meets liquid reserve requirements in s. 651.035, F.S., the nursing home must provide evidence of 30 months of financial soundness and stability including:<sup>5</sup>
  - Financial statements, a balance sheet, an income statement, and a statement of cash flow for three consecutive years immediately preceding the application;
  - A report from a Certified Public Accountant who has audited or reviewed such financial statements; and
  - At least two of the following requirements:
    - A positive assets to liabilities ratio;
    - A positive tangible net worth; or
    - A times interest earned ratio of 115 percent.
- The nursing home or its parent company may not have been the subject of bankruptcy proceedings in the preceding 30 months.
- The nursing home must participate in a consumer satisfaction process and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing home's facility, environment, services and care provided; staff's skills and interactions with residents; attention to resident's needs; and efforts to act on information gathered.
- The nursing home must provide evidence of the involvement of families and members of the community in the facility on a regular basis.
- The nursing home must have a stable workforce as evidenced by a low rate of turnover among certified nursing assistants (CNA) and licensed nurses within the preceding 30 months.
- The nursing home must provide evidence that verified complaints to the Long-Term Care Ombudsman Program have not resulted in citation within the preceding 30 months.
- The nursing home must provide targeted in-service training to meet the training needs identified by internal or external quality assurance efforts.
- A nursing home on conditional licensure may not qualify until the facility has operated for 30 months without a class I or class II deficiency and has undergone a regularly scheduled relicensure survey.

Gold Seal Program facilities are recommended to the Governor by the Governor's Panel on Excellence in Long-Term Care (Panel) which consists 13 members who are:

- Three appointees by the governor, one of whom must be a consumer advocate for senior citizens and the other two must have expertise in the fields of quality management, service delivery excellence, or public sector accountability;
- Three appointees by the Secretary of the Department of Elder Affairs (DOEA), which must include an active member of the nursing facility family and resident care council and a member of the University Consortium on Aging;

---

<sup>3</sup> Both the ranking and the five-star facility designation are determined by the AHCA, see Rule 59A-4.202, F.A.C.

<sup>4</sup> Class I and II deficiencies are defined in s. 408.813, F.S.

<sup>5</sup> Rule 59A-4.203, F.A.C.

- A representative of the State Long-Term Care Ombudsman Program;
- One appointee from the Florida Life Care Residents Association;
- One appointee by the State Surgeon General;
- Two appointees by the Secretary of the AHCA;
- One appointee from the Florida Association of Homes for the Aging; and
- One appointee from the Florida Health Care Association.

Members of the Panel may not have any ownership interest in a nursing facility and, if the member is employed by a nursing facility, that member may not review or vote on recommendations involving that facility or any facility under common ownership.

### **Continuing Care Facilities**

A continuing care facility, or CCRC, provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.<sup>6</sup> According to representatives, CCRCs generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.<sup>7</sup> Many also offer assisted living, memory support care, and other specialty care arrangements.<sup>8</sup> These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.<sup>9</sup> Continuing care facilities may offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.<sup>10</sup> In addition to the entrance fee, a CCRC generally charges residents monthly fees to cover costs related to health care and other aspects of community living.<sup>11</sup>

As of September 2014, there are 71 licensed CCRCs in Florida. CCRCs are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.<sup>12</sup>

Oversight responsibility of is shared between the AHCA and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide services to present and future residents. Accordingly, the OIR is given primary responsibility to authorize and monitor the operation of facilities and to determine

---

<sup>6</sup> Section 651.011, F.S.

<sup>7</sup> Jane E. Zarem, Editor, *Today's Continuing Care Retirement Community*, CCRC Task Force, p. 2, (July 2010), available at [http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying\\_for\\_Aging\\_Services/CCRCcharacteristics\\_7\\_2011.pdf](http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf) (last visited Nov. 12, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 651.057, F.S.

<sup>11</sup> American Association of Retired Persons, *About Continuing Care Retirement Communities*, available at [http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho\\_continuing\\_care\\_retirement\\_communities.html](http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html) (last visited Nov. 12, 2015).

<sup>12</sup> Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council*, (September 29, 2014) available at <http://www.floir.com/siteDocuments/CouncilPresentation.pdf> (last visited April 13, 2015).

facilities' financial status and the management capabilities of their managers and owners.<sup>13</sup> If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.<sup>14</sup> Currently, CCRCs must be accredited by the National Continuing Care Accreditation Commission in order to obtain a waiver of examination and reporting requirements.<sup>15</sup>

### **Assisted Living Facilities**

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>16</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>17</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>18</sup>

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>19</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.<sup>20</sup> If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.<sup>21</sup>

An ALF must have a standard license issued by the AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,<sup>22</sup> limited mental health services,<sup>23</sup> and extended congregate care services.<sup>24</sup>

### **Independent Living Communities**

Independent living communities are communities in which healthy seniors can live on their own but that do not offer assisted living or nursing services. Independent living communities do many times offer amenities such as transportation, security, yard maintenance, laundry service, group

---

<sup>13</sup> See ss. 651.021 and 651.023, F.S.

<sup>14</sup> Section 651.028, F.S.

<sup>15</sup> Rule 69O-193.055, F.A.C.

<sup>16</sup> Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>17</sup> Section 429.02(16), F.S.

<sup>18</sup> Section 429.02(1), F.S.

<sup>19</sup> For specific minimum standards see Fla. Admin. Code R 58A-5.0182.

<sup>20</sup> Section 429.26, F.S., and Fla. Admin. Code R 58A-5.0181.

<sup>21</sup> Section 429.28, F.S.

<sup>22</sup> Section 429.07(3)(c), F.S.

<sup>23</sup> Section 429.075, F.S.

<sup>24</sup> Section 429.07(3)(b), F.S.



meals, and social and cultural activities.<sup>25</sup> Currently, there are 203 independent living communities in Florida and the average monthly cost for living in such a community is \$2,587.<sup>26</sup>

### **III. Effect of Proposed Changes:**

CS/SB 542 allows a nursing home applicant for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial requirements for the program, rather than the nursing home on its own, if the nursing home is part of a CCRC that is not accredited or a multifacility corporate entity that operates a combination of nursing homes, ALFs, or ILFs.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

CS/SB 542 may have a positive fiscal impact on CCRCs that are not accredited and that have a nursing home component as well as corporate entities that operate multiple housing arrangements that wish to apply for the Nursing Home Gold Seal Program by removing the requirement that such CCRCs or corporate entities create new and additional financial documentation for its nursing home component.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

---

<sup>25</sup> See <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Nov. 18, 2015).

<sup>26</sup> According to the senior living search website, *A Place for Mom*, available at <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 18, 2015).

**VII. Related Issues:**

CS/SB 542 refers to multifacility corporate entities that operate a combination of nursing homes, assisted living facilities, or independent living facilities. Since both nursing homes and assisted living facilities are licensed by the state, using the term “independent living facility” may cause some confusion as independent living facilities are not licensed entities and the term is not defined. Additionally, the term independent living services has a separate meaning in ch. 413, F.S., related to services provided for people with severe disabilities.<sup>27</sup> It may be advisable to use a more specific term, such as senior independent living community or facility for independent living, or to describe the living arrangements intended to be covered in the bill in order to avoid any confusion.

**VIII. Statutes Affected:**

This bill substantially amends section 400.235 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Health Policy on November 17, 2015:**

The CS amends SB 542 to allow a nursing home applicant for the Nursing Home Gold Seal Program that is part of a multifacility corporate entity to submit a consolidated corporate financial statement to demonstrate financial soundness and stability rather than demonstrating that the nursing home meets those requirements separately.

- B. **Amendments:**

None.

---

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

---

---

<sup>27</sup> Section 413.20(12), F.S.



954408

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 11/17/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

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

**Senate Amendment**

Delete lines 21 - 31  
and insert:  
or audited by certified public accountants.

1. A nursing home that is part of the same corporate entity as a continuing care facility licensed under chapter 651 which meets the minimum liquid reserve requirements specified in s. 651.035 satisfies the financial soundness and stability requirement if such continuing care facility ~~and~~ is accredited



954408

11 by a recognized accrediting organization under s. 651.028 and  
12 rules of the Office of Insurance Regulation, ~~satisfies this~~  
13 ~~requirement~~ as long as the accreditation is not provisional; or  
14 if such continuing care facility demonstrates that it meets in  
15 its entirety the financial standards adopted by the agency.

16 2. A nursing home that is part of a multifacility corporate  
17 entity operating nursing homes, assisted living facilities, or  
18 independent living facilities or a combination thereof satisfies  
19 the financial soundness and stability requirement if the nursing  
20 home submits a consolidated corporate financial statement to the  
21 agency and demonstrates that the multifacility corporate entity  
22 in its entirety meets the financial standards adopted by the  
23 agency.

By Senator Stargel

15-00376A-16

2016542\_\_

1 A bill to be entitled  
2 An act relating to continuing care facilities;  
3 amending s. 400.235, F.S.; providing financial  
4 requirements for certain nursing homes to be  
5 recognized as a Gold Seal Program facility; providing  
6 an effective date.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. Paragraph (b) of subsection (5) of section  
11 400.235, Florida Statutes, is amended to read:

12 400.235 Nursing home quality and licensure status; Gold  
13 Seal Program.—

14 (5) Facilities must meet the following additional criteria  
15 for recognition as a Gold Seal Program facility:

16 (b) Evidence financial soundness and stability according to  
17 standards adopted by the agency in administrative rule. Such  
18 standards must include, but not be limited to, criteria for the  
19 use of financial statements that are prepared in accordance with  
20 generally accepted accounting principles and that are reviewed  
21 or audited by certified public accountants. A nursing home that  
22 is part of the same corporate entity as a continuing care  
23 facility licensed under chapter 651 which meets the minimum  
24 liquid reserve requirements specified in s. 651.035 satisfies  
25 this requirement if such continuing care facility:

26 1. ~~and~~ Is accredited by a recognized accrediting  
27 organization under s. 651.028 and rules of the Office of  
28 Insurance Regulation, ~~satisfies this requirement~~ as long as the  
29 accreditation is not provisional; or

Page 1 of 2

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

15-00376A-16

2016542\_\_

30 2. Demonstrates that the continuing care facility in its  
31 entirety meets the financial standards adopted by the agency.

32  
33 For purposes of this paragraph, facilities operated by a federal  
34 or state agency are deemed to be financially stable for purposes  
35 of applying for the Gold Seal.

36  
37 A facility assigned a conditional licensure status may not  
38 qualify for consideration for the Gold Seal Program until after  
39 it has operated for 30 months with no class I or class II  
40 deficiencies and has completed a regularly scheduled relicensure  
41 survey.

42 Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR KELLI STARGEL**  
15th District

October 26, 2015

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

Dear Chair Bean:

I respectfully request that SB 542, related to *Continuing Care Facilities*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

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

Kelli Stargel  
State Senator, District 15

Cc: Sandra Stovall/ Staff Director  
Celia Georgiades/ AA

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://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)

11/17/15  
Meeting Date

542  
Bill Number (if applicable)  
954408  
Amendment Barcode (if applicable)

Topic Relating to Continuing Care Facilities

Name Melody Arnold

Job Title Govt Affairs Mgr

Address 307 W Park Ave  
Street

Phone \_\_\_\_\_

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Health 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.**

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15  
Meeting Date

542  
Bill Number (if applicable)

Topic ARC Financial requirement

Amendment Barcode (if applicable)

Name ERWIN BODO

Job Title CONSULTANT

Address 1812 RIGGINS RD.

Phone 850-445-5668

Street

TALLAHASSEE FL

32308

Email EBODO@COMCAST.NET

City

State

Zip

Speaking:  For  Against  Information

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

Representing LEADING AGE FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/17/15

Meeting Date

82542

Bill Number (if applicable)

Topic Continuing Care Communities

Amendment Barcode (if applicable)

Name Susan Langston

Job Title VP of Advocacy

Address 1812 Riggs Rd

Phone 702-6318

Street

Tallahassee FL 32308

City

State

Zip

Email slangston@leadingageflorida.org

Speaking:  For  Against  Information

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

Representing Leading Age Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

BILL: SB 572

INTRODUCER: Senator Altman

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: November 13, 2015      REVISED: \_\_\_\_\_

|    | ANALYST             | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------------|----------------|-----------|------------------|
| 1. | Rossitto-Van Winkle | Stovall        | HP        | <b>Favorable</b> |
| 2. | _____               | _____          | JU        | _____            |
| 3. | _____               | _____          | AP        | _____            |

---

**I. Summary:**

SB 572 authorizes an Advanced Registered Nurse Practitioner (ARNP) and a Physician’s Assistant (PA) to execute a certificate that finds that a person appears to meet the criteria for an involuntary examination under The Baker Act for persons believed to have a mental illness.

**II. Present Situation:**

**The Florida Mental Health Act**

In 1971, the Florida Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.<sup>1</sup> Part I, of ch. 394, F.S., provides the authority and process for the voluntary, and involuntary, examination of persons with evidence of a mental illness; and the subsequent inpatient or outpatient placement of individuals for treatment.

An involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:<sup>2</sup>

- The person has refused a voluntary examination after explanation of the purpose of the exam, or is unable to determine for themselves that an examination is needed; and
- The person is likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.<sup>3</sup> A circuit court may enter an ex parte order stating a person meets the criteria for involuntary

---

<sup>1</sup> Section 1, ch. 71-131, Laws of Fla.

<sup>2</sup> Section 394.463(1), F.S.

<sup>3</sup> Section 394.463(2)(a), F.S.

examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination; and transport that person to the nearest receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for an involuntary examination, including in the certificate the observations upon which that conclusion is based:<sup>4,5</sup>

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under ch. 394, F.S.
- A psychiatric nurse who is an ARNP certified under s. 464.012, F.S., has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.<sup>6</sup>
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families (DCF) administers The Baker Act through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet the criteria under The Baker Act.<sup>7</sup>

A patient taken to a receiving facility must be examined by a physician, clinical psychologist, or psychiatric nurse. Upon the order of a physician, the patient may be given emergency treatment if it is determined that such treatment is necessary.<sup>8</sup> Subsequent to the examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities are designated by DCF and are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>9</sup>

To be released by a receiving facility, a patient must have documented approval from a psychiatrist, clinical psychologist, or a psychiatric nurse working within the framework of an establish protocol with a psychiatrist.<sup>10</sup> If the receiving facility is a hospital, the patient may also

---

<sup>4</sup> Section 394.463(2)(a), F.S.

<sup>5</sup> Section 394.455, F.S.

<sup>6</sup> Section 394.455(23), F.S.

<sup>7</sup> Section 394.455(26), F.S.

<sup>8</sup> Section 394.463(2)(f), F.S.

<sup>9</sup> Section 394.455 (32), F.S.

<sup>10</sup> Section 394.463(2)(f), F.S.

be released by an attending emergency department physician.<sup>11</sup> However, receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.<sup>12</sup>

***Advanced Registered Nurse Practitioner (ARNP)***

Currently an ARNP is not specifically listed as one of the enumerated healthcare providers authorized by s. 394.463(2)(a)3., F.S., to execute a certificate indicating that he or she has examined a person within the last 48 hours, and that the person appears to meet the criteria for an involuntary examination.

Part I, of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON). For an applicant to be eligible to be certified as an ARNP, the applicant must hold a current, active registered nursing license and meet one or more of the following requirements as determined by the BON:<sup>13</sup>

- Satisfactorily complete at least one year of a formal post-basic education program the primary purpose of which is to prepare nurses for advanced or specialized practice;<sup>14</sup>
- Hold a current national advanced practice certification from a board approved specialty board;
- Hold a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills;
- Submit proof to the board that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.

An ARNP applicant must also pass a criminal background screening, and pay applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

Section 464.003, F. S., lists three categories of ARNP: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>15</sup> All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.<sup>16</sup>

---

<sup>11</sup> Section 394.463(2)(g), F.S.

<sup>12</sup> Section 394.463(2)(f), F.S.

<sup>13</sup> Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C., which provides that applications for certification as an Advanced Registered Nurse Practitioner pursuant to Section 464.012(3), F.S., shall submit proof of current national advanced practice certification from an approved nursing specialty board.

<sup>14</sup> Section 464.0115(1), F.S., *Certification of clinical nurse specialists*, states that any nurse seeking certification as a clinical nurse specialist must apply to the department and submit proof that he or she holds a current license to practice professional nursing, a master's degree in a clinical nursing specialty, and either: (a) Proof of current certification in a specialty area as a clinical nurse specialist from a nationally recognized certifying body as determined by the board; or (b) Proof that he or she holds a master's degree in a specialty area for which there is no certification within the clinical nurse specialist role and specialty and proof of having completed 1,000 hours of clinical experience in the clinical specialty for which he or she is academically prepared, with a minimum of 500 hours of clinical practice after graduation. The applicant for certification as a clinical nurse specialist must submit an affidavit to the Board of Nursing affirming the required hours of clinical experience. Falsification of the affidavit constitutes grounds for discipline in accordance with s. 464.018(1)(f), F.S.

<sup>15</sup> Section 464.012(2), F.S.

<sup>16</sup> Section 464.012(3), F.S.

An ARNP may carry out treatments as specified in statute, including:<sup>17</sup>

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above, an ARNP may also perform other acts as authorized by statute and within his or her specialty.<sup>18</sup> Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems; and diagnose and make treatment recommendations.<sup>19</sup>

### ***Physician Assistant (PA)***

Physician Assistants (PAs), as defined in s. 458.347 (2)(e), F.S., and s. 459.022(2)(e), F.S., are also not currently listed as one of the enumerated healthcare providers authorized by s. 394.463(2)(a)3., F.S., to execute a certificate indicating that the PA has examined a person within the last 48 hours, and the person appears to meet the criteria for an involuntary examination.

Section 458.347, F.S., and Rule 64B-8, F.A.C., and s. 459.022, F.S., and Rule and 64B15, F.A.C., govern the licensure and regulation of PAs in Florida. The PA's are licensed by the DOH and are regulated by the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM), with recommendations to the BOM and the BOOM from the DOH Council on PAs.<sup>20</sup> A PA's licensure requirements are as follows:

- Is at least 18 years of age;
- Has graduated from an BOM or BOOM approved PA program or its equivalent, or meets standards approved by the board;
- Has satisfactorily passed a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);
- Has completed the DOH application form and remitted an application fee.

A PA must also pass a criminal background check. Renewal of PA licenses is biennial and contingent upon completion of certain continuing medical education requirements.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 494.455, F.S., to define, "advanced nurse registered nurse practitioner," (ARNP) and "physician assistant" (PA).

An ARNP is defined as, "a person licensed in the state to practice professional nursing and certified in advanced or specialized nursing as defined in s. 464.003, F.S."<sup>21</sup>

<sup>17</sup> *Id.*

<sup>18</sup> Section 464.012(4), F.S.

<sup>19</sup> Section 464.012(4)(c)5, F.S.

<sup>20</sup> Section 458.347(9), F.S.

<sup>21</sup> "Advanced or specialized nursing practice" as defined in s. 464.003(2), F.S., means, "in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the Board of Nursing (BON) which, by

A PA is defined as having the same meaning as defined in s. 458.347(2)(e), F.S.<sup>22</sup>

Section 2 amends s. 394.463(2), F.S., to authorize an ARNP or PA to execute a certificate for an involuntary examination of a person believed to meet the criteria for having a mental illness under The Baker Act. This adds the ARNP and the PA to the list of healthcare providers who can issue such a certificate for an involuntary examination. Under current s. 394.463(2)(a)3., F.S., only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may issue such a certificate to compel an involuntary examination under The Baker Act.

Sections 3 through 8, amend various sections of the Florida Statutes to conform cross references for the definitions s. 394.455, F.S.

The effective date of the bill is 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:**

None.

##### **B. Private Sector Impact:**

None.

---

virtue of post-basic specialized education, training, and experience, are appropriately performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the ARNP may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The ARNP may also perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee composed of members from the BON, BOM and State Surgeon General or his designee, under the supervision of an allopathic or osteopathic physician, or a dentist, within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance.

<sup>22</sup> PA as defined in s. 458.374(2)(e), F.S., means, “a person who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician.”

**C. Government Sector Impact:**

The bill could possibly increase the number of involuntary examinations that receiving facilities would be required to perform with more healthcare providers being able to issue certificates for involuntary examinations under The Baker Act. The number of additional examinations is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, 744.704

**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 Altman

16-00798-16

2016572\_\_

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate that finds that a person appears to meet the criteria for involuntary examination under the Baker Act of persons believed to have mental illness; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (21) of section 394.455, Florida Statutes, are redesignated as subsections (3) through (22), respectively, present subsections (22) through (38) of that section are redesignated as subsections (24) through (40), respectively, and new subsections (2) and (23) are added to that section, to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(2) “Advanced registered nurse practitioner” means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(23) “Physician assistant” has the same meaning as defined in s. 458.347(2)(e).

Page 1 of 6

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

16-00798-16

2016572\_\_

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient’s clinical record. A fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer

Page 2 of 6

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



16-00798-16

2016572\_\_

59 shall execute a written report detailing the circumstances under  
60 which the person was taken into custody, and the report shall be  
61 made a part of the patient's clinical record. Any receiving  
62 facility accepting the patient based on this report must send a  
63 copy of the report to the Agency for Health Care Administration  
64 on the next working day.

65 3. A physician, physician assistant, clinical psychologist,  
66 psychiatric nurse, mental health counselor, marriage and family  
67 therapist, ~~or~~ clinical social worker, or advanced registered  
68 nurse practitioner may execute a certificate stating that he or  
69 she has examined a person within the preceding 48 hours and  
70 finds that the person appears to meet the criteria for  
71 involuntary examination and stating the observations upon which  
72 that conclusion is based. If other less restrictive means are  
73 not available, such as voluntary appearance for outpatient  
74 evaluation, a law enforcement officer shall take the person  
75 named in the certificate into custody and deliver him or her to  
76 the nearest receiving facility for involuntary examination. The  
77 law enforcement officer shall execute a written report detailing  
78 the circumstances under which the person was taken into custody.  
79 The report and certificate shall be made a part of the patient's  
80 clinical record. Any receiving facility accepting the patient  
81 based on this certificate must send a copy of the certificate to  
82 the Agency for Health Care Administration on the next working  
83 day.

84 Section 3. Paragraph (a) of subsection (3) of section  
85 39.407, Florida Statutes, is amended to read:

86 39.407 Medical, psychiatric, and psychological examination  
87 and treatment of child; physical, mental, or substance abuse

Page 3 of 6

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

16-00798-16

2016572\_\_

88 examination of person with or requesting child custody.-

89 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.  
90 or paragraph (e), before the department provides psychotropic  
91 medications to a child in its custody, the prescribing physician  
92 shall attempt to obtain express and informed consent, as defined  
93 in s. 394.455(10) ~~s. 394.455(9)~~ and as described in s.  
94 394.459(3) (a), from the child's parent or legal guardian. The  
95 department must take steps necessary to facilitate the inclusion  
96 of the parent in the child's consultation with the physician.  
97 However, if the parental rights of the parent have been  
98 terminated, the parent's location or identity is unknown or  
99 cannot reasonably be ascertained, or the parent declines to give  
100 express and informed consent, the department may, after  
101 consultation with the prescribing physician, seek court  
102 authorization to provide the psychotropic medications to the  
103 child. Unless parental rights have been terminated and if it is  
104 possible to do so, the department shall continue to involve the  
105 parent in the decisionmaking process regarding the provision of  
106 psychotropic medications. If, at any time, a parent whose  
107 parental rights have not been terminated provides express and  
108 informed consent to the provision of a psychotropic medication,  
109 the requirements of this section that the department seek court  
110 authorization do not apply to that medication until such time as  
111 the parent no longer consents.

112 2. Any time the department seeks a medical evaluation to  
113 determine the need to initiate or continue a psychotropic  
114 medication for a child, the department must provide to the  
115 evaluating physician all pertinent medical information known to  
116 the department concerning that child.

Page 4 of 6

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

16-00798-16 2016572\_\_

117 Section 4. Paragraphs (a) and (c) of subsection (3) of  
 118 section 394.495, Florida Statutes, are amended to read:  
 119 394.495 Child and adolescent mental health system of care;  
 120 programs and services.—  
 121 (3) Assessments must be performed by:  
 122 (a) A professional as defined in s. 394.455(3), (5), (22),  
 123 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~;  
 124 (c) A person who is under the direct supervision of a  
 125 professional as defined in s. 394.455(3), (5), (22), (25), or  
 126 (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional  
 127 licensed under chapter 491.

128 Section 5. Subsection (5) of section 394.496, Florida  
 129 Statutes, is amended to read:  
 130 394.496 Service planning.—  
 131 (5) A professional as defined in s. 394.455(3), (5), (22),  
 132 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a  
 133 professional licensed under chapter 491 must be included among  
 134 those persons developing the services plan.

135 Section 6. Subsection (6) of section 394.9085, Florida  
 136 Statutes, is amended to read:  
 137 394.9085 Behavioral provider liability.—  
 138 (6) For purposes of this section, the terms “detoxification  
 139 services,” “addictions receiving facility,” and “receiving  
 140 facility” have the same meanings as those provided in ss.  
 141 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28) ~~394.455(26)~~,  
 142 respectively.

143 Section 7. Paragraph (b) of subsection (1) of section  
 144 409.972, Florida Statutes, is amended to read:  
 145 409.972 Mandatory and voluntary enrollment.—

16-00798-16 2016572\_\_

146 (1) The following Medicaid-eligible persons are exempt from  
 147 mandatory managed care enrollment required by s. 409.965, and  
 148 may voluntarily choose to participate in the managed medical  
 149 assistance program:  
 150 (b) Medicaid recipients residing in residential commitment  
 151 facilities operated through the Department of Juvenile Justice  
 152 or mental health treatment facilities as defined by s.  
 153 394.455(34) ~~s. 394.455(32)~~.

154 Section 8. Subsection (7) of section 744.704, Florida  
 155 Statutes, is amended to read:  
 156 744.704 Powers and duties.—  
 157 (7) A public guardian may ~~shall~~ not commit a ward to a  
 158 mental health treatment facility, as defined in s. 394.455(34)  
 159 ~~s. 394.455(32)~~, without an involuntary placement proceeding as  
 160 provided by law.

161 Section 9. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR THAD ALTMAN**

16th District

**COMMITTEES:**

Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Criminal Justice  
Environmental Preservation and Conservation

**SELECT COMMITTEE**

Indian River Lagoon and Lake Okeechobee

**JOINT COMMITTEE:**

Joint Administrative Procedures Committee

November 7, 2015

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

Dear Chairman Bean:

I respectfully request that SB 572, related to *Involuntary Examinations Under the Baker Act*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Sandra Stovall, Staff Director, 530 Knott Building  
Celia Geogiades, Committee Administrative Assistant

TA/dw

**REPLY TO:**

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://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)

11/17/2013

Meeting Date

572

Bill Number (if applicable)

Topic BAKER ACT

Amendment Barcode (if applicable)

Name VICTOR VAPOR

Job Title NURSE PRACTITIONER STUDENT

Address 12056 SCARSDALE DRIVE

Phone (904) 400-2960

Street

JACKSONVILLE FL 32246

Email victorvapor1@gmail.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing FLORIDA NURSE PRACTITIONER 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/2015

Meeting Date

572

Bill Number (if applicable)

Topic Baker ACT

Amendment Barcode (if applicable)

Name STAN Whittaker

Job Title Chairman

Address 6294 NW Torrey A pk Rd

Phone 800-545-8301

Street

Bristol

City

FL

State

32321

Zip

Email STANWhittaker@ad.com

Speaking:  For  Against  Information

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

Representing FLA Nurse practitioner 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/2015  
Meeting Date

572  
Bill Number (if applicable)

Topic Involuntary Exams Under the Baker Act

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address 101 College Ave.

Phone 813-624-5117

Street  
Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLA. Assoc of Nurse Practitioners

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/17/15  
Meeting Date

572  
Bill Number (if applicable)

Topic Baker Act

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 E. Park Ave  
Street

Phone (850) 766-5795

Tallahassee FL 323101  
City State Zip

Email Corinnemixon@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Academy of Physician Assistants

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15

Meeting Date

SB 572

Bill Number (if applicable)

Topic SB 572: Involuntary Examinations Under the Baker Act

Amendment Barcode (if applicable)

Name Berval Samson

Job Title Executive Director

Address

Street

Phone 305-968-4316

Email bervsamson1@yahoo.com

City

State

Zip

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

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

Representing Inter-Haitan Cooperation and Integration Foundation

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

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

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

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



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Rachelle Dominique

Job Title \_\_\_\_\_

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Inter-Haitan Cooperation and Integration Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Laurie Badette

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Manuella Thomas

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Winnie Baptiste

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Sharley Ferrier

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Rebecca Mathulin

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Sarah Ruben

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

Meeting Date

SB 572

Bill Number (if applicable)

Topic SB 572: Involuntary Examinations Under the Baker Act

Amendment Barcode (if applicable)

Name Angela Exilus

Job Title Nursing Student

Address

Street

Phone 305-968-4316

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 Rosette Poletti Institute of Nursing

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

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

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

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



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/17/15

*Meeting Date*

SB 572

*Bill Number (if applicable)*

Topic SB 572: Involuntary Examinations Under the Baker Act

*Amendment Barcode (if applicable)*

Name Celine Ciceoron

Job Title Nursing Student

Address \_\_\_\_\_

*Street*

Phone 305-968-4316

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Rosette Poletti Institute of Nursing

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)

11/17/15

Meeting Date

SB 572

Bill Number (if applicable)

Topic SB 572: Involuntary Examinations Under the Baker Act

Amendment Barcode (if applicable)

Name Daphne Durandis

Job Title Nursing Student

Address

Street

Phone 305-968-4316

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 Rosette Poletti Institute of Nursing

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

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

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture  
Appropriations  
Appropriations Subcommittee on  
Education  
Education Pre-K - 12  
Health Policy  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR BILL GALVANO

*Majority Leader*  
26th District

November 17, 2015

Senator Aaron Bean  
530 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Bean:

I am writing to request approval to be excused from the Committee on Health Policy meeting scheduled for today, November 17, 2015.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Bill Galvano

cc: Sandra Stovall  
Celia Georgiades

A large, stylized handwritten signature in cursive script, appearing to read "Garrett Richter".

### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Communications, Energy, and Public Utilities, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Health Policy  
Transportation

**JOINT COMMITTEES:**  
Joint Administrative Procedures Committee,  
*Alternating Chair*  
Joint Legislative Budget Commission

### SENATOR DENISE GRIMSLEY

*Deputy Majority Leader*  
21st District

November 10, 2015

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

Dear Chairman Bean:

I respectfully request to be excused from the Health Policy Committee meeting on Tuesday, November 17<sup>th</sup>, 2015 due to a previous commitment in the district.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley  
State Senate, District 21

cc: Sandra Stovall, Staff Director  
Celia Georgiades, Committee Administrative Assistant

A handwritten signature in cursive script that reads "Aaron Bean", with a horizontal line drawn through the signature and an "X" mark at the beginning of the line.

**REPLY TO:**

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Committee on Health Policy

Judge:

Started: 11/17/2015 1:07:19 PM

Ends: 11/17/2015 2:16:02 PM

Length: 01:08:44

1:07:18 PM Meeting called to order  
1:09:47 PM Quorum present  
1:10:49 PM SB 542- Presented by Sen Stargel "Gold Seal Program"  
1:12:12 PM Late filed Ammendment 954408 - Sen Garcia  
1:12:42 PM Ammendment explained by Sen Garcia  
1:14:33 PM Ammendment 954408 Adopted  
1:15:33 PM Bill as ammended - Public testimony  
1:15:50 PM Melody Arnold- FL healthcare Assoc- Waive in support  
1:15:55 PM Erwin Bodo- Leading age FL - Waive in support  
1:16:06 PM Susan Langston-Leading Age FL- Waive in support  
1:16:11 PM Brian Pitts- Justice 2 Jesus- Waive time for informational purposes  
1:16:57 PM Stargel closes on SB 542  
1:17:09 PM CS SB 542 Reported favorably  
1:18:00 PM SB 108- Presented by Chairman Garcia (in subsitution of Sen Grimsley)  
1:18:27 PM Strike-all Ammendment 833398- Presented by Sen Garcia  
1:19:20 PM Jessica Love- Lab Corp of America- Speaking against Strike-all Ammendment  
1:20:23 PM Strike all Ammendement adopted  
1:20:45 PM Bill as adopted ---public tesitmony  
1:20:52 PM Doug Russell- Quest Diagnostics- Speaking against bill  
1:21:30 PM Jessica Love- Lab Corp- waive time in opposition  
1:21:41 PM Bob Reynolds- Specta Laboratories- Speaking in support  
1:23:42 PM Nancy Stewart- Fresenius Medical Care North America- Waive in support  
1:25:42 PM CS SB 108- Reported favorably  
1:26:43 PM SB 572- Sen Altman Presented by Legislative aide  
1:27:34 PM Victor Vapor- FI Nurse Practioner Assoc- Waive in support  
1:28:36 PM Stan Whittaker- FL Nurse Practioner Assoc-Waive in support  
1:28:43 PM Chris Floyd- FL Assoc of Nurse Practioners- Waive in support  
1:28:46 PM Corinne Mixon- FL Academy of Physician Assitants- Waive in support  
1:28:58 PM Berval Samson- Inter Haitan Coop Fdtn- Waive in Support  
1:28:58 PM Rachele Dominique- Inter Haitan Coop Fdtn- Waive in Support  
1:29:44 PM Laurie Badette- Rosette Poletti Institue of Nursing Waive in Support  
1:29:44 PM Manuella Thomas- Rosette Poletti Institute of Nursing - Waive in support  
1:29:45 PM Winnie Baptiste-Rosette Poletti Institute of Nursing- Waive in support  
1:29:45 PM Shaley Ferrier- Rosette Poletti Institute of Nursing- Waive in support  
1:29:55 PM Rebecca Mathulin- Rosette Poletti Institute of Nursing- Waive in support  
1:30:00 PM Sarah Ruben- Rosette Poletti Institute of Nursing- Waive in support  
1:30:00 PM Angela Exilus Rosette Poletti Institute of Nursing- Waive in support  
1:30:00 PM Celine Ciceoron- Rosette Poletti Institute of Nursing- Waive in support  
1:30:00 PM Daphne Durandis- Rosette Poletti Institute of Nursing- Waive in support  
1:31:05 PM Brian Pitts- Justice 2 Jesus- Speaks for information  
1:36:19 PM Sponsor of SB 572- waive close  
1:36:23 PM SB 572 Reported Favorably  
1:36:37 PM SB 340 Sen Latvala- Presented by Gaetz  
1:39:24 PM Nancy Stewart- Professional Opticians of FL- Waive in support  
1:39:28 PM Dave Ramba- FL Optometric Assn- Waive in Support  
1:39:52 PM Latvala's Aide close on SB 340  
1:40:01 PM SB 340 Reported Favorably  
1:40:30 PM SB 414- Presented by Sen Sobel "Use of Tanning Facility by Minor"  
1:41:40 PM Chris Nuland- FL Society of Plastic Surgeons/ American College of Derm Surgery- Waive in support  
1:42:17 PM Joseph Levy- American Suntanning Assoc- Speaking against  
1:47:32 PM Mary Thomas- FL Medical Assoc- Waive in support  
1:48:31 PM Brian Pitts- Justice 2 Jesus- Waive in support

**1:52:30 PM** Sen Sobel closes on SB 414  
**1:55:11 PM** SB 414- Reported Favorably  
**1:56:14 PM** SB 460- Presented by Sen Bradley  
**2:08:59 PM** Louis Rotundo- FL Medical Cannabis Assoc- Waive in support  
**2:09:59 PM** Brian Pitts- Justice 2 Jesus- Information  
**2:13:32 PM** Sen Bradley close on SB 460  
**2:14:32 PM** SB 460- Reported Favorably  
**2:15:17 PM** Meeting adjourned