The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH REGULATION
Senator Garcia, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, February 22, 2011
TIME: 9:00 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Altman, Bennett, Diaz de la Portilla, Fasano, Gaetz, Gardiner, Jones, Latvala, Norman, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 168** Evers (Similar H 13, S 82, S 130, Compare H 167)	Onsite Sewage Treatment and Disposal Systems; Deletes legislative intent relating to onsite sewage treatment and disposal systems. Eliminates provisions directing the Department of Health to create and administer a statewide septic tank evaluation program. Eliminates procedures and criteria for the evaluation program. Eliminates provisions authorizing the department to collect an evaluation report fee. Eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule, etc. HR 02/22/2011 EP BC	
2	**CS/SB 244** Transportation / Bennett (Similar H 177)	Motor Vehicles/Highway Safety Act; Provides legislative intent relating to road rage and aggressive careless driving. Requires an operator of a motor vehicle to yield the left lane when being overtaken on a multilane highway. Specifies the allocation of moneys received from the increased fine imposed for aggressive careless driving. Requires the HSMV to provide information about the Highway Safety Act in driver's license educational materials, etc. TR 02/07/2011 Fav/CS HR 02/22/2011 BC	
3	**SB 398** Jones (Identical H 633)	Chiropractic Medicine; Revises the requirements for obtaining a chiropractic medicine faculty certificate. Requires a person to register as a chiropractic assistant if he or she renders therapeutic services or administers therapeutic agents related to a chiropractic physician's treatment of a patient. Authorizes the spouse or adult children of a deceased chiropractic physician to hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractic physician's ownership interests under certain conditions, etc. HR 02/22/2011 BC RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4		Status report from the Agency for Health Care Administration on the implementation of the fraud and abuse provisions in SB 1986 (2009)	
5		Discussion of a Proposed Committee Bill to streamline the rule-making process.	

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 Health Regulation Committee

BILL:	SB 168
INTRODUCER:	Senators Evers and Gaetz
SUBJECT:	Onsite Sewage Treatment
DATE:	February 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Pre-meeting**
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program. The bill also repeals a grant program, which was enacted to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with the inspection, pumping, repairing, or replacing of such systems. Additionally, the fees to be assessed by DOH to support the onsite sewage treatment and disposal evaluation program and the grant program are repealed in the bill.

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 381.0066.

This bill repeals section 381.00656, of the Florida Statutes.

II. Present Situation:

Nutrient Management in Florida's Water Bodies

With over 50,000 miles of rivers and streams, 7,800 lakes, and 4,000 square miles of estuaries, Florida has an abundance of surface waters that are used for a variety of purposes by the people who live and work in the state, by those who are visiting, and by the fish and wildlife that depend on these waters.[1]

[1] Florida Department of Environmental Protection, *Surface Water Quality Standards*, last updated on February 9, 2011, available at http://www.dep.state.fl.us/water/wqssp/surface.htm (Last visited on February 18, 2011).

The Federal Clean Water Act[2] is the basis for state water quality standards programs. The federal regulatory requirements governing these programs are published in 40 CFR 131, the Water Quality Standards Regulation. States are responsible for reviewing, establishing, and revising water quality standards. Florida's surface water quality standards system is published in Chapter 62-302 and Rule 62-302.530 of the Florida Administrative Code (F.A.C.). The components of this system include: classifications; criteria, including site specific criteria; an anti-degradation policy; and special protection of certain waters.[3]

The Florida Department of Environmental Protection (DEP) has initiated rulemaking to adopt quantitative nutrient water quality standards to facilitate the assessment of designated use attainment for its waters and to provide a better means to protect state waters from the adverse effects of nutrient pollution. The addition of excess nutrients, often associated with human alterations to watersheds, including leaking septic tanks,[4] can negatively impact water body health and interfere with designated uses of waters. Impacts include noxious tastes and odors in drinking water, algal blooms and excessive aquatic weeds in swimming and boating waters, and altering the natural community of flora and fauna.[5]

The DEP plans to develop numeric criteria for phosphorus and nitrogen and possibly for their response variables, recognizing the differences in Florida's hydrology and geology, the nutrient levels of the state's waters, and the variability in ecosystem response to nutrient concentrations. The DEP's preferred approach is to develop cause and affect relationships between nutrients and valued ecological attributes and to establish nutrient criteria that ensure that the designated uses of Florida's waters are maintained.[6]

Florida currently uses a narrative nutrient standard to guide the management and protection of its waters. Rule 62-302.530, F.A.C., states, "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna." The narrative criteria also states that, for all waters of the state, "the discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter [Chapter 62-302, F.A.C.]. Man-induced nutrient enrichment (total nitrogen or total phosphorus) shall be considered degradation in relation to the provisions of Rules 62-302.300, 62-302.700, and 62-4.242, F.A.C."

The DEP has relied on this narrative for many years because nutrients are unlike any other "pollutant" regulated by the Federal Clean Water Act. Most water quality criteria are based on a

[2] 33 U.S.C. 1251 *et seq.*
[3] *Supra* fn. 1.
[4] Septic systems are designed to treat wastewater by separating solids from liquids and then draining the liquid into the ground. Sewage flows into the tank where settling and bacterial decomposition of larger particles takes place, while treated liquid filters into the soil. When system failures occur, untreated wastewater and sewage can be introduced into groundwater or nearby streams and water bodies. Source: *Pollution Prevention Fact Sheet: Septic System Controls*, available at http://www.stormwatercenter.net/Pollution_Prevention_Factsheets/SepticSystemControls.htm (Last visited on February 18, 2010).
[5] Florida Department of Environmental Protection, *Development of Numeric Nutrient Criteria for Florida's Waters*, last updated on November 15, 2010, available at http://www.dep.state.fl.us/water/wqssp/nutrients/ (Last visited on February 18, 2011).
[6] *Id.*

toxicity threshold, evidenced by a dose-response relationship, where higher concentrations can be demonstrated to be harmful, and acceptable concentrations can be established at a level below which adverse responses are seen. In contrast, nutrients are not only naturally present in aquatic systems, they are necessary for the proper functioning of life.[7]

The DEP has been actively working with the U.S. Environmental Protection Agency (EPA) on the development of numeric nutrient criteria. The DEP submitted its initial Draft Numeric Nutrient Criteria Development Plan to the EPA in May 2002, and received mutual agreement on the Numeric Nutrient Criteria Development Plan from EPA in July 2004. The DEP revised its plan in September 2007 to more accurately reflect its evolved strategy and technical approach, and received mutual agreement on the 2007 revisions from the EPA.[8]

The Florida Wildlife Federation filed a lawsuit in 2008 seeking to require the EPA to promulgate numeric nutrient water quality standards for Florida waters. The EPA settled the lawsuit and entered into a consent decree with the Florida Wildlife Federation. After EPA's analyses of the facts in Florida, and discussions with the DEP on January 14, 2009, the EPA made a determination that numeric nutrient criteria in Florida were necessary to meet the requirements of the Federal Clean Water Act. The EPA determined that Florida's existing narrative criteria on nutrients in water was insufficient to ensure protection of the State's water bodies. The determination recognized that, despite Florida's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient pollution remains a significant challenge in Florida and is likely to worsen with continued population growth and land-use changes. The January 14, 2009, EPA determination stated the EPA's intent to propose numeric nutrient standards for lakes and flowing waters in Florida within 12 months of the determination, and for estuaries and coastal waters, within 24 months of the determination.[9]

On November 14, 2010, EPA Administrator Lisa P. Jackson signed Final "Water Quality Standards for the State of Florida's Lakes and Flowing Waters." The final standards set numeric limits, or criteria, on the amount of nutrient pollution allowed in Florida's lakes, rivers, streams and springs. The final action seeks to improve water quality, protect public health, aquatic life and the long term recreational uses of Florida's waters, which are a critical part of Florida's economy. The rule will take effect on March 6, 2012 except for the site-specific alternative criteria (SSAC) provision, which is effective February 4, 2011. The EPA extended the effective date for the rule for 15 months to allow cities, towns, businesses and other stakeholders as well as the State of Florida a full opportunity to review the standards and develop flexible strategies for implementation.[10] The State of Florida is currently challenging the EPA standards in a lawsuit asking for declaratory and injunctive relief.[11]

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[7] *Id.*
[8] *Id.*
[9] U.S. Environmental Protection Agency, *Water Quality Standards for the State of Florida's Lakes and Flowing Waters*, January 2010, available at http://water.epa.gov/lawsregs/rulesregs/florida_factsheet.cfm (Last visited on February 18, 2011).
[10] *Id.*
[11] *State v. U.S. Environmental Protection Agency*, Case No. 3:10-cv-00503-RV-MD, U.S. District Court, Northern District of Florida, available at http://myfloridalegal.com/webfiles.nsf/WF/CRUE-8BWPPD/$file/epacompliant.pdf (Last visited on February 18, 2011).

There are several entities in Florida that research Florida's water quality or provide funding for such research. The Florida Water Pollution Control Financing Corporation (Corporation) is a nonprofit public-benefit corporation that was created in 2001, to finance or refinance water pollution control activities.[12] The corporation's purpose is to issue bonds that increase the capacity of the State Revolving Fund to provide low-interest loans to local governments. Additionally, the University of Florida Water Institute (Institute) brings together talent from throughout the University of Florida to address complex water issues through innovative interdisciplinary research, education, and public outreach programs.[13] The Institute's vision is to create interdisciplinary teams, comprised of leading water researchers, educators, and students to develop scientific breakthroughs; engineer creative solutions for water problems; recommend policy and legal solutions for complex issues; and pioneer educational programs that are renowned for addressing state, national, and global water resource problems.[14]

Florida Senate Select Committee on Florida's Inland Waters

On October 7, 2009, Senate President Jeff Atwater created the Florida Senate Select Committee on Florida's Inland Waters. The task set before the committee was to travel the state and listen and learn from constituents. To that end, six meetings were scheduled around the state.[15]

In conjunction with the public hearings, the members of the committee and staff were invited on several site visits. Each site visited exemplified a unique challenge for Florida's water resources, from agricultural best-management practices to saltwater intrusion.[16]

At the end of the hearings, the select committee unanimously adopted a final report containing 13 recommendations, including the recommendation that the Legislature should consider the creation of regional management entities to effectuate a septic tank inspection and maintenance program and that counties and municipalities should have authority over the regional management entities.[17]

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.[18]

[12] Chapter 2000-271, L.O.F.
[13] University of Florida Water Institute, *About*, last updated on December 15, 2010, available at http://waterinstitute.ufl.edu/about/index.html (Last visited on February 18, 2011).
[14] *Id.*
[15] Florida Senate Select Committee on Florida's Inland Waters, *Report on the Florida Senate Select Committee on Florida's Inland Waters*, Meeting Packet, March 11, 2010, available at http://waterinstitute.ufl.edu/symposium2010/downloads/FloridaSelectCommitteeonInlandWaterssummary.pdf (Last visited on February 18, 2011).
[16] *Id.*
[17] *Id.*
[18] Section 381.006, F.S. (2010).

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[19]

The DOH estimates there are approximately 2.6 million septic tanks in use statewide.[20] The DOH's Bureau of Onsite Sewage develops statewide rules and provides training and standardization for County Health Department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (septic tanks) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal systems contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.[21]

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.[22] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (Report).[23] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection.

The Report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the Report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and by today's standards and may be under-designed. The DOH's statistics indicate that approximately 2 million septic tanks are 20 years or older, which is the average lifespan of a septic tank in Florida.[24] Because repairs of onsite systems were not regulated until 1987, many

[19] Section 381.0065(2)(j), F.S. (2010).
[20] Florida Department of Health, *Onsite Sewage Treatment and Disposal Systems Installed in Florida*, available at http://www.myfloridaeh.com/ostds/statistics/newInstallations.pdf (Last visited on February 18, 2011).
[21] Department of Health Bureau of Onsite Sewage, *Description*, available at http://www.myfloridaeh.com/ostds/OSTDSdescription.html (Last visited on February 18, 2011).
[22] Chapter 2008-152, L.O.F.
[23] Florida Department of Health, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (Last visited on February 18, 2011).
[24] Department of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (Last visited on February 18, 2011). *See also* Department of Health, Bureau of Onsite Sewage, *What's New?*, available at

systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida's pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.[25]

Chapter 2010-205, Laws of Florida
In 2010, the Legislature enacted CS/CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[26] The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

This law also establishes a grant program under s. 381.00656, F.S., for owners of septic tanks earning less than or equal to133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or system replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grant funds.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect, but no more than $5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

III. Effect of Proposed Changes:

SB 168 effectively repeals the sections of ch. 2010-205, Laws of Florida, relating to the onsite sewage treatment and disposal system (septic tank) evaluation program.

Section 1 amends s. 381.0056, F.S., by repealing legislative intent that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public and legislative intent to have the DOH administer an evaluation program to ensure proper operational condition of the State's onsite sewage treatment and disposal system and identify any failures of that system.

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http://www.doh.state.fl.us/environment/ostds/New.htm (Last visited on February 18, 2011).
[25] *Id.*
[26] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

This section also repeals the state-wide onsite sewage treatment and disposal system evaluation program, including the DOH's authority to administer, implement, and enforce the requirements of the program. Repealed provisions of the program also include the following program requirements:

- Owners of an onsite sewage treatment and disposal system, except those required to obtain an operating permit, must have the system evaluated at least once every 5 years to assess the functionality of the system or any failure within the system. However, those owners with documentation of a new installation, repair, or modification of their system within the last 5 years are exempt from the pump-out requirement, if such systems are determined not to be a public health nuisance.
- Evaluation procedures must be documented and include a tank and drainfield evaluation, a written assessment of the system's condition, and a disclosure statement if required by the DOH.
- Minimum separation standards from the bottom of the drainfield to the wettest season water table elevation for systems installed prior to January 1, 1983, and for systems installed on or after January 1, 1983.
- Owners are responsible for paying the cost of any system pump-out, repair, or replacement.
- Septic tank contractor professional requirements that must be met for an evaluation to be performed under the program.
- The payment of evaluation report fees to the DOH at the time the evaluation report is submitted.
- The DOH must provide a minimum 60 days' notice to owners that their systems must be evaluated.

Section 2 amends s. 381.0066, F.S., to repeal a fee of not less than $15 or more than $30 to be used to fund the onsite sewage treatment and disposal system evaluation program, including a fee up to $5 to be used toward the grant program under s. 381.00656, F.S.

This section also repeals the requirement that the State's Surgeon General, after consultation with the Revenue Estimating Conference, determine a revenue neutral fee for the services provided under the onsite sewage treatment and disposal system evaluation program.

Section 3 repeals s. 381.00656, F.S., which in effect abolishes the grant program for low-income owners of onsite sewage treatment and disposal systems, which need inspecting, pumping, repairing or replacing. Included in this repeal, are provisions that authorized the DOH to prioritize applications according to certain criteria and adopt rules establishing the grant application and award process.

Section 4 provides that the bill will take effect upon becoming a law.

Other Potential Implications:
If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.

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:

Owners of onsite sewage treatment and disposal systems will no longer have to pay to have their systems evaluated every 5 years, which would include the $30 inspection fee and any cost for pump-outs, repairs, or replacements of the system.

C. Government Sector Impact:

The DOH estimates that elimination of the evaluation program and attendant fee will cost the DOH a projected $3.12 million in revenue the first year. Projected revenue would have offset projected costs to the DOH to administer the program.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

[27] Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 130 (2011)*, December 10, 2010. A copy of this analysis is on file with the Florida Senate Health Regulation Committee.

B. Amendments:

None.

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 Health Regulation Committee

BILL:	CS/SB 244
INTRODUCER:	Transportation Committee and Senator Bennett
SUBJECT:	Motor Vehicles/Highway Safety Act
DATE:	February 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Fav/CS**
2.	Fernandez/O'Callaghan	Stovall	HR	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill, known as the "Highway Safety Act," declares the Legislature's finding that road rage and aggressive driving are a growing threat to the public's health, safety, and welfare and the Legislature's intent to reduce road rage and aggressive careless driving, minimize crashes, and promote the orderly free flow of traffic in Florida.

The bill:

- Directs the Department of Highway Safety and Motor Vehicles (DHSMV) to provide information about this act in driver's license educational materials;
- Prohibits a driver from continuing to operate a vehicle in the left lane of a multi-lane highway when the driver knows, or should reasonably know, he or she is being overtaken (and establishes exceptions to this prohibition);
- Increases from two or more to three, the number of driving infractions committed simultaneously in order to qualify as aggressive careless driving;
- Includes failure to yield to overtaking vehicles to the infractions considered acts of aggressive careless driving;
- Establishes penalties for aggressive careless driving; and

- Provides for the distribution of money received from increased fines associated with penalties, including financial support of trauma centers and emergency medical services organizations throughout Florida.

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.083, 316.1923, and 318.19.

The bill creates two undesignated sections of Florida Law.

Section 316.650, F.S, is reenacted for the purpose of incorporating amendments made by this act.

II. Present Situation:

Road Rage and Aggressive Driving

According to the National Highway Traffic Safety Administration (NHTSA), "aggressive driving" comprises following too closely, driving at excessive speeds, weaving through traffic, running stoplights and signs, and other forms of negligent or inconsiderate driving.[1] Occasionally, aggressive driving transforms into confrontation, physical assault, and even murder. A study on road deaths and injuries shows that:

> road death and injury rates are the result, to a considerable extent, of the expression of aggressive behavior. . . Those societies with the greatest amount of violence and aggression in their structure will show this by externalizing some of this violence in the form of dangerous and aggressive driving. . . [2]

"Road Rage" is the label that has emerged to describe the angry and violent behaviors at the extreme of the aggressive driving continuum. A literature review commissioned by the American Automobile Association (AAA) Foundation for Traffic Safety defines road rage as:

> an incident in which an angry or impatient motorist or passenger intentionally injures or kills another motorist, passenger, or pedestrian, or attempts or threatens to injure or kill another motorist, passenger, or pedestrian.[3]

[1]National Highway Traffic Safety Administration, *Aggressive Driving Enforcement: Evaluations of Two Demonstration Programs* (Mar. 2004) (DOT HS 809 707), available at: http://www.nhtsa.dot.gov/people/injury/research/AggDrivingEnf/images/AggresDrvngEnforce-5.0.pdf (last visited February 1, 2011).
[2] Whitlock, F.A., *Death on the Road: A Study in Social Violence*. London (Tavistock Publications 1971).
[3] Daniel B. Rathbone and Jorg C. Huckabee, AAA Foundation for Traffic Safety, *Controlling Road Rage: A Literature Review and Pilot Study* (June 1999), available at: http://www.aaafoundation.org/resources/index.cfm?button=roadrage (last visited February 1, 2011).

The willful intent to injure other individuals or to cause damage, although directed at a specific target, presents an immediate danger to all in the vicinity of those engaged in acts of road rage. There are numerous accounts in which road rage incidents inadvertently involve drivers or pedestrians not targeted in the incident.

Aggressive driving maneuvers, such as tailgating and speeding, can also be seen as the result of the driving environment, and they are also connected with the issue of congestion.[4] Studies show most incidents happen between the hours of four and six o'clock in the evening, times in which traffic congestion is more than likely a factor or the primary cause of an accident. In addition, there is strong evidence correlating the number of lane change maneuvers to accidents, and speed to accidents. Some researchers have theorized the root cause of these aggressive behaviors is passive-aggressive driving, i.e., the failure to move to the right from a left lane of a multi-lane highway when being overtaken by faster traffic. The theory contends that because slower moving traffic often refuses to yield to vehicles wishing to pass, those faster moving vehicles resort to aggressive driving such as "bobbing and weaving" from lane to lane.

On most roads, drivers are made relatively equal by the prescribed limits of the law regardless of individual differences in capability and status. The vast majority of cars are fully capable of exceeding 70 mph, yet all cars are directed by law to adhere to the same upper and lower limits. Drivers must adhere to the limitations placed on their speed and movement, prescribed directly (by speed limits, or variations in the number of lanes available) and indirectly (by congestion). For this reason, it is easier for the driver to ascribe frustration at being impeded by an ambiguous source, especially if there is no logical reason for the obstruction (to the impeded driver).[5] This is an example of the possible escalating frustration, which may transform from driving aggressively into an instance of road rage.

Current Florida law in relation to "driving on right side of roadway" requires vehicles moving at a lesser rate of speed to drive in the right hand lane as soon as it is reasonable to proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.[6] Violations of this law are noncriminal offenses. However, enforcement of these provisions has been minimal.

Another important distinction is that aggressive driving is considered a traffic violation, while road rage results in criminal offense(s). Currently nine states have laws pertaining to aggressive driving as described above (including Florida). Most, if not all acts under the umbrella of what is considered road rage, are labeled criminal offenses with applicable punishments. Road rage, if not accompanied by some other type of violation, is not considered a punishable crime in any existing statute. Some crimes considered to be an act of road rage if carried out while driving include: *Criminal Damage; Using Threatening, Abusive, or Insulting Words or Behavior* (thereby causing fear or provocation)*; Wounding with Intent; Common Assault; Assault with a Deadly Weapon; Murder; Manslaughter; and Vehicular Homicide.*

[4]Dominic Connell and Matthew Joint, *Driver Aggression,* Road Safety Unit Group Public Policy (November 1996), available at: http://www.aaafoundation.org/resources/index.cfm?button=agdrtext#Driver%20Aggression (last visited February 1, 2011).
[5] *Id.*
[6] Section 316.081(1), (2), and (3), F.S.

Florida Aggressive Driving Laws

Section 316.1923, F.S., describes, "aggressive careless driving" as committing two or more of the following acts simultaneously or in succession:

- Exceeding the posted speed as defined in s. 322.27(3)(d)5.b., F.S;
- Unsafely or improperly changing lanes as defined in s. 316.085, F.S.;
- Following another vehicle too closely as defined in s. 316.0895(1), F.S.;
- Failing to yield the right-of-way as defined in ss. 316.079, 316.0815, or 316.123, F.S.;
- Improperly passing as defined in ss. 316.083, 316.084, or 316.085, F.S.; or
- Violating traffic control and signal devices as defined in ss. 316.074 and 316.075, F.S.

These violations carry separate penalties for each offense. Section 316.1923, F.S., does not, however, provide for any penalties to be administered for the act of aggressive driving itself. Law enforcement officers, by law are to check off a box, which is included on a ticket or an accident report form, when the officer believes the traffic violation or crash was due to aggressive careless driving. This information is recorded and used by DHSMV.

Current law provides that drivers overtaking other drivers must use the proper signal, and those being overtaken must yield the right of way to the overtaking vehicle. In addition, vehicles being overtaken may not increase speed until the attempted pass is complete or it is reasonably safe to do so.[7] Some of the infractions may require a mandatory court hearing.[8]

Trauma Centers, Emergency Medical Services/Funding from Traffic Violations

Trauma centers are governed by ch. 395, part II, F.S. A trauma center is defined as "a type of hospital that provides trauma surgeons, neurosurgeons and other surgical and non-surgical specialists and medical personnel, equipment and facilities for immediate or follow-up treatment for severely injured patients, 24 hours-a-day, 7-days-a-week."[9] Florida currently has 22 trauma centers. There are seven Level I Centers, thirteen Level II Centers (four of which are also Pediatric Centers), and two centers specializing solely in pediatrics. "Florida is divided into 19 trauma service areas to facilitate planning for system development."[10]

Trauma centers have been defined in s. 395.4001, F.S. as follows:

A Level I trauma center:

- Has formal research and education programs for the enhancement of trauma care; is verified by the department to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the Department of Health (department) to operate as a Level I trauma center.
- Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities.

[7] Section 316.083, F.S.
[8] Section 318.19, F.S.
[9] The Department of Health, Division of Emergency Medical Operations website, *Office of Trauma*, located at: < http://www.doh.state.fl.us/demo/trauma/center.htm> (Last visited on February 16, 2011).
[10] Comm. On Appropriations, Fla. Senate, *Review of Trauma Care Planning and Funding in Florida* (Interim Project Report 2004-108)(Nov. 2003).

- Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.

A Level II trauma center:

- Is verified by the department to be in substantial compliance with Level II trauma center standards and has been approved by the department to operate as a Level II trauma center.
- Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities.
- Participates in an inclusive system of trauma care.

A Pediatric trauma center is defined as a hospital that is verified by the department to be in substantial compliance with pediatric trauma center standards as established by rule of the department and has been approved by the department to operate as a pediatric trauma center. "Pediatric trauma centers are required to participate in collaborative research and conduct education programs for the enhancement of pediatric trauma care."[11]

Emergency Medical Services are defined in s. 401.107, F.S., as the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state. "Florida's trauma system helps to ensure that emergency medical services providers provide pre-hospital care and transport of injured residents and visitors to the nearest trauma center."[12]

Florida law provides for the distribution of fines from various traffic violations to be deposited into the department's Administrative Trust Fund and the department's Emergency Medical Services Trust Fund to support trauma centers and emergency medical services according to various allocation methodologies.[13]

III. Effect of Proposed Changes:

Section 1. Creates the "Highway Safety Act."

Section 2. Provides findings and expresses the legislative intent of the Highway Safety Act to reduce road rage and aggressive careless driving, reduce the incidence of drivers' interfering with the movement of traffic, minimize crashes, and promote the orderly, free flow of traffic on the roads and highways of Florida.

Section 3. Amends s. 316.003, F.S., which defines terms used in the "Florid Uniform Traffic Control Law," by defining the term "road rage" to mean:

> The act of a driver or passenger to intentionally or unintentionally, due to a loss of emotional control, injure or kill another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian.

[11] The Department of Health, Division of Emergency Medical Operations website, *Office of Trauma*, located at: <http://www.doh.state.fl.us/demo/trauma/center.htm> (Last visited on February 16, 2011).
[12] *Id.*
[13] *See* for example ss. 318.14, 318.18, 318.21, 395.4065, and 401.113, F.S.

Section 4. Amends s. 316.083, F.S., to provide that on roads, streets, or highways having two or more lanes that allow movement in the same direction, a driver may not continue to operate a motor vehicle in the furthermost left-hand lane if the driver knows, or reasonably should know, that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed.

The bill provides that this prohibition does not apply to a driver operating a motor vehicle in the furthermost left-hand lane if:

- The driver is driving the legal speed limit and is not impeding the flow of traffic in the furthermost left-hand lane;
- The driver is in the process of overtaking a slower motor vehicle in the adjacent right-hand lane for the purpose of passing the slower moving vehicle so that the driver may move to the adjacent right-hand lane;
- Conditions make the flow of traffic substantially the same in all lanes or preclude the driver from moving to the adjacent right-hand lane;
- The driver's movement to the adjacent right-hand lane could endanger the driver or other drivers;
- The driver is directed by a law enforcement officer, road sign, or road crew to remain in the furthermost left-hand lane; or
- The driver is preparing to make a left turn.

A driver simultaneously violating these provisions and the provisions of s. 316.183, F.S. (relating to Unlawful Speed) shall receive a uniform noncriminal traffic citation for the unlawful speed violation.

Section 5. Amends s. 316.1923, F.S., by adding "failing to yield to overtaking vehicles" to the list of offenses that constitute aggressive careless driving. In addition, the number of acts performed simultaneously, or in succession, constituting aggressive careless driving is increased from two or more to three or more.

The bill provides that any person convicted of aggressive careless driving is to be cited for a moving violation and punished as provided in ch. 318, F.S., and by the accumulation of points as provided in s. 322.27, F.S., for each act of aggressive careless driving. Under ss. 322.27(3)(d)7. and 8., F.S., a driver will accumulate 3 points for this moving violation or 4 points if it results in a crash.

In addition to any fine or points administered as specified, a person convicted of aggressive careless driving must also pay:

- Upon a first conviction, a fine of $100.
- Upon a second or subsequent "conviction," a fine of not less than $250 but not more than $500 and be subject to a mandatory hearing under s. 318.19, F.S.

The moneys collected from the increased fine are to be remitted by the clerk of court to the Department of Revenue (DOR) for deposit into the department's Administrative Trust Fund. The department is required to transfer $200,000 in the first year and $50,000 in the second and third years after this bill takes effect into the Highway Safety Operating Trust Fund to offset the cost

of providing educational materials related to the act. The remaining funds deposited into the department's Administrative Trust Fund under this act, are to be allocated as follows:

- Twenty-five percent is to be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services;
- Twenty-five percent is to be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the department's Trauma Registry;
- Twenty-five percent is to be transferred to the Emergency Medical Services Trust Fund and used by the department for making matching grants to emergency medical services organizations as defined in s. 401.107(4), F.S.; and
- Twenty-five percent is to be transferred to the Emergency Medical Services Trust Fund and made available to rural emergency medical services as defined in s. 401.107(5), F.S., and must be used solely to improve and expand prehospital emergency medical services in Florida. Additionally, these moneys may be used for the improvement, expansion, or continuation of services provided.

Section 6. Amends s. 318.19, F.S., to include second or subsequent violations of s. 316.1923(1), F.S., (Aggressive Careless Driving) in the list of infractions requiring a mandatory court hearing.

Section 7. Requires DHSMV to provide information about the Highway Safety Act in all newly printed driver's license educational materials after October 1, 2011.

Section 8. Reenacts s. 316.650, F.S., for the purpose of incorporating the amendments made by this act.

Section 9. Establishes an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of aggressive careless driving are to pay $100 in addition to all fines associated with each individual violation. Upon a second or subsequent conviction, violators will have to pay a fine of no less than $250 and no more than $500 in addition to any other fines associated with each individual violation.

C. Government Sector Impact:

According to the DHSMV, 40 hours of programming would be required to include "aggressive careless driving" as a moving violation for the purpose of assessing points specified in s. 322.27, F.S. This would be absorbed in the DHSMV's normal course of work without the need for an additional appropriation.[14] The department recommends revising the effective date to October 1, 2011, to allow for the programmatic updates to be implemented.

The bill provides that $200,000 will be transferred to the DHSMV General Revenue Fund in the first year and $50,000 for the 2 subsequent years to fund the cost of developing educational materials related to this bill. Additional fine revenue collected will be distributed to the DOH Administrative Trust Fund for use by certain trauma centers and emergency medical services organizations, of which the total amount is indeterminate.

VI. Technical Deficiencies:

Section 5 of the bill adds a new subsection (3) to s. 316.1923, F.S., which requires additional fines for a person convicted of aggressive careless driving. This may contravene s. 318.121, F.S., which prohibits any general law from adding fines to the civil traffic penalties assessed in ch. 318, F.S.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on February 7, 2011:
The CS clarified that the clerk of the court is to remit funds collected from fines accruing

[14] Department of Highway Safety and Motor Vehicles, *agency Bill Analysis: SB 244,* 6 (Dec. 17, 2010).

from this act to the Department of Revenue (DOR). DOR will then deposit $200,000 (in year 1) and $50,000 (in years 2 and 3) into the Highway Safety Operating Trust Fund

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Health Regulation (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete lines 103 - 138
and insert:
Section 6. Subsection (22) is added to section 318.18, Florida Statutes, to read:
318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:
(22) In addition to any penalties or points imposed under subsection s. 316.1923, a person convicted of aggressive careless driving shall also pay:

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(a) Upon a first violation, a fine of $100.

(b) Upon a second or subsequent conviction, a fine of not less than $250 but not more than $500 and be subject to a mandatory hearing under s. 318.19.

The clerk of the court shall remit the moneys collected from the increased fine imposed by this subsection to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund. Of the funds deposited into the Department of Health Administrative Trust Fund, $200,000 in the first year after this act takes effect, and $50,000 in the second and third years, shall be transferred into the Highway Safety Operating Trust Fund to offset the cost of providing educational materials related to this act. Funds deposited into the Department of Health Administrative Trust Fund under this subsection shall be allocated as follows:

1. Twenty-five percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Twenty-five percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

3. Twenty-five percent shall be transferred to the Emergency Medical Services Trust Fund and used by the department for making matching grants to emergency medical services organizations as defined in s. 401.107.

4. Twenty-five percent shall be transferred to the Emergency Medical Services Trust Fund and made available to

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rural emergency medical services as defined in s. 401.107, and shall be used solely to improve and expand prehospital emergency medical services in this state. Additionally, these moneys may be used for the improvement, expansion, or continuation of services provided.

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

And the title is amended as follows:

Between lines 12 and 13

insert:

amending s. 318.18, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Health Regulation (Bennett) recommended the following:

Senate Amendment

Delete line 178

and insert:

Section 9. This act shall take effect October 1, 2011.

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 Health Regulation Committee

BILL:	SB 398
INTRODUCER:	Senator Jones
SUBJECT:	Chiropractic Medicine
DATE:	February 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	**Pre-meeting**
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill makes several amendments to Florida Statutes relating to the regulation of chiropractic medicine. The bill expands eligibility for obtaining a chiropractic medicine faculty certificate. The bill specifies that chiropractic continuing education courses that pertain to a specific company brand, product line, or service may not be approved. The bill requires that the indirect supervision of a certified chiropractic physician's assistant (CCPA) must take place only at the supervising physician address of record. The bill redefines the curriculum for the CCPA program by removing the requirement that the program must cover a period of 24 months. The bill requires that registered chiropractic assistants (RCAs) who perform therapeutic services or administer therapeutic agents must register with the Board of Chiropractic Medicine (Board) and provides authority for the Board to assess a fee for the Board's approval of an RCA's supervising chiropractic physician or group of supervising chiropractic physicians. The bill also expands and revises the exceptions to proprietorship and control of a chiropractic practice by persons other than licensed chiropractic physicians.

This bill substantially amends the following sections of the Florida Statutes: 460.4062, 460.408, 460.4165, 460.4166, 460.4167.

II. Present Situation:

Chiropractic Medicine Faculty Certificates

The Department of Health (DOH) is authorized to issue a chiropractic medicine faculty certificate to individuals who meet certain criteria specified in the Florida Statutes. A chiropractic medicine faculty certificate authorizes the certificate holder to practice chiropractic medicine only in conjunction with his or her faculty position at a university or college and its

affiliated clinics that are registered with the Board as sites at which holders of chiropractic medicine faculty certificates will be practicing. The DOH is authorized to issue a chiropractic medicine faculty certificate without examination to an individual who demonstrates to the Board of Chiropractic Medicine (Board) that he or she, among other requirements, has accepted a full-time faculty appointment to teach chiropractic medicine at a publicly-funded state university or college or at a college of chiropractic located in Florida and accredited by the Council on Chiropractic Education, and who provides a certification from the dean of the appointing college acknowledging the appointment.[1] There is no such provision for researchers or part-time faculty in the requirements for obtaining a chiropractic medicine faculty certificate, a medical faculty certificate, or an osteopathic faculty certificate.

Continuing Chiropractic Education

The Board requires licensed chiropractors to periodically demonstrate their professional competence as a condition of license renewal by completing up to 40 hours of continuing education. Florida Statutes indicate that the Board shall approve continuing education courses that build upon the basic courses required for the practice of chiropractic medicine.[2] To receive Board approval, a continuing education course must meet a number of criteria specified in rule, including the requirement for the course to be offered for the purpose of keeping the licensee apprised of advancements and new developments in areas such as general or spinal anatomy; physiology; general or neuro-muscular diagnosis; X-ray technique or interpretation; chemistry; pathology; microbiology; public health; principles or practice of chiropractic; risk management; laboratory diagnosis; nutrition; physiotherapy; phlebotomy; acupuncture; proprietary drug administration; AIDS; and law relating to the practice of chiropractic, the Board, and the regulatory agency under which the Board operates.[3]

Supervision of Certified Chiropractic Physician's Assistants

A CCPA may perform chiropractic services in the specialty area or areas for which he or she is trained or experienced when such services are rendered under the supervision of a licensed chiropractic physician or group of chiropractic physicians certified by the Board, under certain requirements and parameters.

"Direct supervision" is defined as responsible supervision and requires, except in case of an emergency, the physical presence of the licensed chiropractic physician on the premises for consultation and direction. "Indirect supervision" means responsible supervision and control by the supervising chiropractic physician and requires the "easy availability" or physical presence of the licensed chiropractic physician for consultation and direction of the actions of the CCPA. "Easy availability" means the supervising chiropractic physician must be in a location to enable him or her to be physically present with the CCPA within at least 30 minutes and must be available to the CCPA when needed for consultation and advice either in person or by communication devices such as telephone, two-way radio, medical beeper, or other electronic means.[4]

[1] *See* s. 460.4062(1), F.S.
[2] *See* s. 460.408(1)(b), F.S.
[3] *See* s. 64B2-13.004, F.A.C.
[4] *See* s. 64B2-18.001(8)-(9), F.A.C.

Under current law, indirect supervision of a CCPA is authorized if the indirect supervision occurs at the address of record or any place of practice of a chiropractic physician to whom he or she is assigned.[5] Indirect supervision is not authorized for CCPAs performing services at a health care clinic licensed under part X of ch. 400, F.S.[6]

Education and Training of Certified Chiropractic Physician's Assistants
The DOH is directed under current law to issue certificates of approval for education and training programs for CCPAs which meet Board standards. Any basic program curriculum certified by the Board must cover a period of 24 months and consist of at least 200 didactic classroom hours during the 24 months.[7]

Registered Chiropractic Assistants
An RCA assists in all aspects of chiropractic medical practice under the direct supervision and responsibility of a chiropractic physician or CCPA. An RCA assists with patient care management, executes administrative and clinical procedures, and often performs managerial and supervisory functions, all of which may include performing clinical procedures such as preparing patients for the chiropractic physician's care, taking vital signs, and observing and reporting patients' signs or symptoms; administering basic first aid; assisting with patient examinations or treatments other than manipulations or adjustments; operating office equipment; collecting routine laboratory specimens, administering nutritional supplements, and performing office procedures required by the chiropractic physician or the CCPA.

RCAs may be registered by the Board for a biennial fee not to exceed $25, but Board registration is not mandatory.[8] In state fiscal year 2009-10, the DOH received 907 applications for voluntary RCA registration.[9]

Proprietorship and Control by Persons Other Than Licensed Chiropractic Physicians
Generally only a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic physicians, or by a chiropractic physician and the spouse, parent, child, or sibling of that chiropractic physician, may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services. However, s. 460.4167, F.S., provides for a number of exceptions, which include medical doctors, osteopaths, hospitals, and state-licensed insurers, among others. No exception exists for the surviving spouse, parent, child, or sibling of a deceased chiropractic physician or for a health maintenance organization or prepaid health clinic regulated under ch. 641, F.S., to employ or engage a chiropractic physician.[10]

Current law also prohibits persons who are not chiropractic physicians, entities not wholly owned by one or more chiropractic physicians, and entities not wholly owned by chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician, from employing

[5] Department of Health, *Bill Analysis, Economic Statement and Fiscal Note, SB 398,* January 27, 2011, p. 3, on file with the Committee on Health Regulation.
[6] *See* s. 460.4165(14), F.S.
[7] *See* s. 460.4165(5), F.S.
[8] *See* s. 460.4166, F.S.
[9] Supra, note 5, p. 7.
[10] *See* s. 460.4167(1), F.S.

or entering into a contract with a chiropractic physician and thereby exercising control over patient records, decisions relating to office personnel and hours of practice, and policies relating to pricing, credit, refunds, warranties, and advertising. No exceptions to this prohibition are contained in current law.[11]

Sunrise Act

The Sunrise Act, codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following: (1) that substantial risk of harm to the public is a risk of no regulation, which is recognizable and not remote; (2) that the skill and training the profession requires are specialized and readily measurable; (3) that other forms of regulation do not or cannot adequately protect the public; and (4) that the overall cost-effectiveness and economic impact of the proposed regulation is favorable. The Sunrise Act requires proponents of regulation of a previously unregulated profession to provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference, information concerning the effect of proposed legislation to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation.

III. Effect of Proposed Changes:

Section 1 amends s. 460.4062, F.S., relating to chiropractic medicine faculty certificates, to authorize the DOH to issue a faculty certificate to a person who performs research or has accepted a part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university, college, or a chiropractic college in Florida, assuming the person meets other statutory requirements for faculty certification.

Section 2 amends s. 460.408, F.S., relating to continuing chiropractic education, to prohibit the Board from approving continuing education courses consisting of instruction in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services as contact classroom hours of continuing education.

Section 3 amends s. 460.4165, F.S., relating to certified chiropractic physician's assistants, to limit the venues at which CCPAs are allowed to perform chiropractic services under the indirect supervision of a chiropractic physician by removing the chiropractor's place of practice as an authorized venue. A CCPA may continue to perform chiropractic service under indirect supervision at the supervising chiropractor's address of record unless the address or record is a health clinic licensed under part X of ch. 400, F.S.

The bill removes the requirement that education and training programs for CCPAs must cover a period of 24 months.

Section 4 amends s. 460.4166, F.S., relating to registered chiropractic assistants, to create a mandatory RCA registration process, effective April 1, 2012, for a person who performs therapeutic services or administers therapeutic agents related to the chiropractic physician's

[11] *See* s. 460.4167(4), F.S.

treatment of a patient, unless the person is otherwise certified or licensed to perform those functions.

For those required to register, the bill requires that an initial RCA application be submitted within 30 days after employment and, upon the Board's approval of the application, the registration's effective date applies retroactively to the date of employment. The bill exempts persons who exclusively perform non-therapeutic services from having to register as RCAs but allows for their continued voluntary registration.

The bill requires an RCA, within 30 days after a change of employment, to notify the Board of the new place of employment and the name of the chiropractic physician or group of chiropractic physicians under whose supervision the RCA performs chiropractics services.

The bill requires that a chiropractic physician or group of chiropractic physicians under whose supervision an RCA performs chiropractic services be approved by the Board, and if an RCA performs those duties under the direct supervision of a CCPA, that the CCPA's supervising chiropractor or group of chiropractors be approved by the Board for RCA registration. The bill requires that if an RCA changes employment, the supervising chiropractor or group of chiropractors at the new place of employment must be approved by the Board. The bill requires that upon approval of the supervising chiropractor or group of chiropractors, the effective date of the approval applies retroactively to the date of employment. However, the bill does not specify a time frame within which the supervising chiropractor(s) must submit the application for approval.

The bill requires the Board to assess a fee for approval of a supervising chiropractic physician or group of chiropractic physicians of $75 or less.

The bill requires the Board to prescribe, by rule, application forms for the initial registration of an RCA, the Board's approval of a supervising chiropractic physician or group of chiropractic physicians, and the RCA's notice of change of employment.

Section 5 amends s. 460.4167, F.S., relating to proprietorship by persons other than licensed chiropractic physicians, to recognize other entities such as limited liability companies, limited partnerships, professional associations, and trusts, as authorized proprietorships that may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services.

More specifically, the bill creates or revises the following exceptions to the requirement that no person other than a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more licensed chiropractic physicians, or by a licensed chiropractic physician and the spouse, parent, child, or sibling of that chiropractic physician, may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services:

- A limited liability company, limited partnership, any person, professional association, or any other entity that is wholly owned by:
    - A licensed chiropractic physician and the spouse or surviving spouse, parent, child, or sibling of the chiropractic physician; or

  - A trust whose trustees are licensed chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician;
- A limited liability company, limited partnership, professional association, or any other entity wholly owned by a licensed chiropractor or chiropractors, a licensed medical doctor or medical doctors, a licensed osteopath or osteopaths, or a licensed podiatrist or podiatrists;
- An entity that is wholly owned, directly or indirectly, by a licensed or registered hospital or other entity licensed or registered under ch. 395, F.S.;
- An entity that is wholly owned and operated by an organization that is exempt from federal taxation under s. 501(c)(3) or (4) of the Internal Revenue Code;
- A health care clinic licensed under part X of ch. 400, F.S. that provides chiropractic services by a licensed chiropractic physician; and
- A health maintenance organization or prepaid health clinic regulated under ch. 641, F.S.

Upon the death of chiropractic physician who wholly owns a sole proprietorship, group practice, partnership, corporation, limited liability company, limited partnership, any person, professional association, or any other entity, with his or her spouse, parent, child, or sibling, and that wholly-owned entity employs a licensed chiropractic physician or engages a chiropractor as an independent contractor to provide chiropractic services, the bill allows the deceased chiropractic physician's surviving spouse or adult children to hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractic physician's ownership interests for so long as the surviving spouse or adult children remain the sole proprietor of the chiropractic practice.

The bill also grants authority to an authorized employer of a chiropractic physician to exercise control over:
- The patient records of the employed chiropractor;
- Policies and decisions relating to pricing, credit, refunds, warranties, and advertising; and
- Decisions relating to office personnel and hours of practice.

Section 6 provides that the bill takes effect July 1, 2011.

Other Potential Implications:
The DOH advises that the mandatory regulation of RCAs may enable chiropractic physicians to seek third-party reimbursements for therapeutic services or the administration of therapeutic agents by RCAs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires the Board to assess a fee for approval of an RCA's supervising chiropractic physician or group of chiropractic physicians, not to exceed $75.

B. Private Sector Impact:

The $75 fee will be paid by supervising chiropractors, groups of supervising chiropractors, and/or RCAs in the private sector. The DOH expects that the fee will be paid 907 times per year in each of the first two years of implementation, amounting to a $68,025 per year fiscal impact on the private sector due to the approval fee. The DOH also expects the bill to result in $4,535 in unlicensed activity fees paid by the private sector in each of the first two years of implementation. Those two fees combined amount to an estimated fiscal impact on the private sector of $72,560 per year.

C. Government Sector Impact:

The DOH expects the bill to result in $6,975 in department expenditures for application processing in each of the first 2 years of implementation.

The DOH advises that after CCPAs are no longer authorized to perform services with indirect supervision anywhere other than the address of record of their supervising chiropractors, Section 3 of the bill would affect the department's enforcement branch if complaints are filed against CCPAs who continue to perform services at a place of practice other than their supervising chiropractor's address of record, the fiscal impact of which is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 4 of the bill could be construed to require the Board to approve supervising chiropractic physicians for RCAs with no latitude for non-approval.

Section 4 of the bill allows persons subject to mandatory RCA registration to continue registering under the existing voluntary registration process through March 31, 2012, until mandatory registration takes effect on April 1, 2012.

Section 4 of the bill allows the existing voluntary RCA registration process to continue for persons who wish to become registered RCAs but who are not subject to mandatory RCA

registration. The extent to which a voluntary registration will be differentiated from a mandatory registration is unclear.

Section 4 of the bill does not require a time frame for the submission of the application for the Board's approval of the supervising chiropractic physician or group of chiropractic physicians. Without such a time frame, the requirement for the Board's approval of the supervising chiropractic physicians could be unenforceable.

Section 4 of the bill requires mandatory registration as an RCA to perform therapeutic services, effective April 1, 2012. The bill requires a person who is required to register to submit a new initial application within 30 days after employment or change of employment, and the new mandatory registration applies retroactively to the date of employment. The grace period of 30 days after employment to submit the registration application could conflict with s. 456.065, F.S., which provides for civil and criminal penalties for the unlicensed practice of a profession. Under the bill, unlicensed practice for 30 days of employment is acceptable if the registration is applied for no later than the end of the 30 days. If the Board disapproves of an RCA application, then retroactivity will not apply and the applicant may be prosecuted for unlicensed practice. It could take 120 days for the RCA application to be processed and the applicant could be working without registration during that time period.

It is unclear whether the mandatory registration of RCAs under Section 4 of the bill has met or is subject to the requirements of the Sunrise Act under s. 11.62, F.S.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. .

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. .

. .

The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 75 - 81
and insert:
Section 2. Paragraphs (a) and (b) of subsection (1) of section 460.408, Florida Statutes, are amended to read:
460.408 Continuing chiropractic education.—
(1) The board shall require licensees to periodically demonstrate their professional competence as a condition of renewal of a license by completing up to 40 contact classroom hours of continuing education.
(a) Continuing education courses sponsored by chiropractic

767432

colleges whose graduates are eligible for examination under any provision of this chapter may ~~shall~~ be approved upon review by the board if all other requirements of board rules setting forth criteria for course approval are met.

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

And the title is amended as follows:

Delete line 5

and insert:

amending s. 460.408, F.S.; authorizing the Board of Chiropractic Medicine to approve continuing education courses sponsored by chiropractic colleges under certain circumstances; prohibiting the Board of

Update on the Implementation of 2009 Senate Bill 1986: Relating to Medicaid Fraud and Abuse Prevention

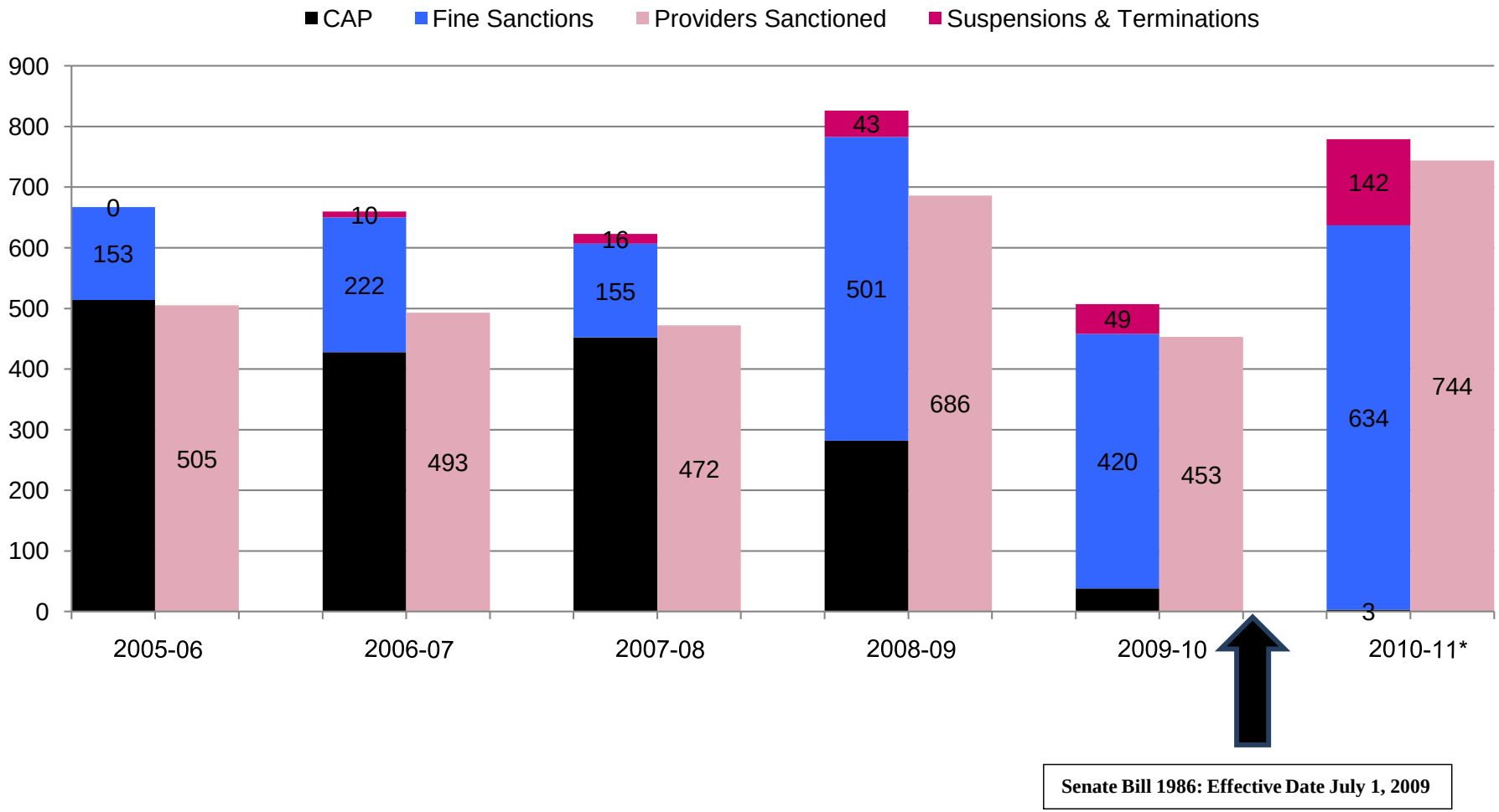
Elizabeth Dudek
Interim Secretary
Agency for Health Care Administration

Presented to the Senate Health Regulation Committee

February 22, 2011

Enhanced MPI Activity: Sanctions

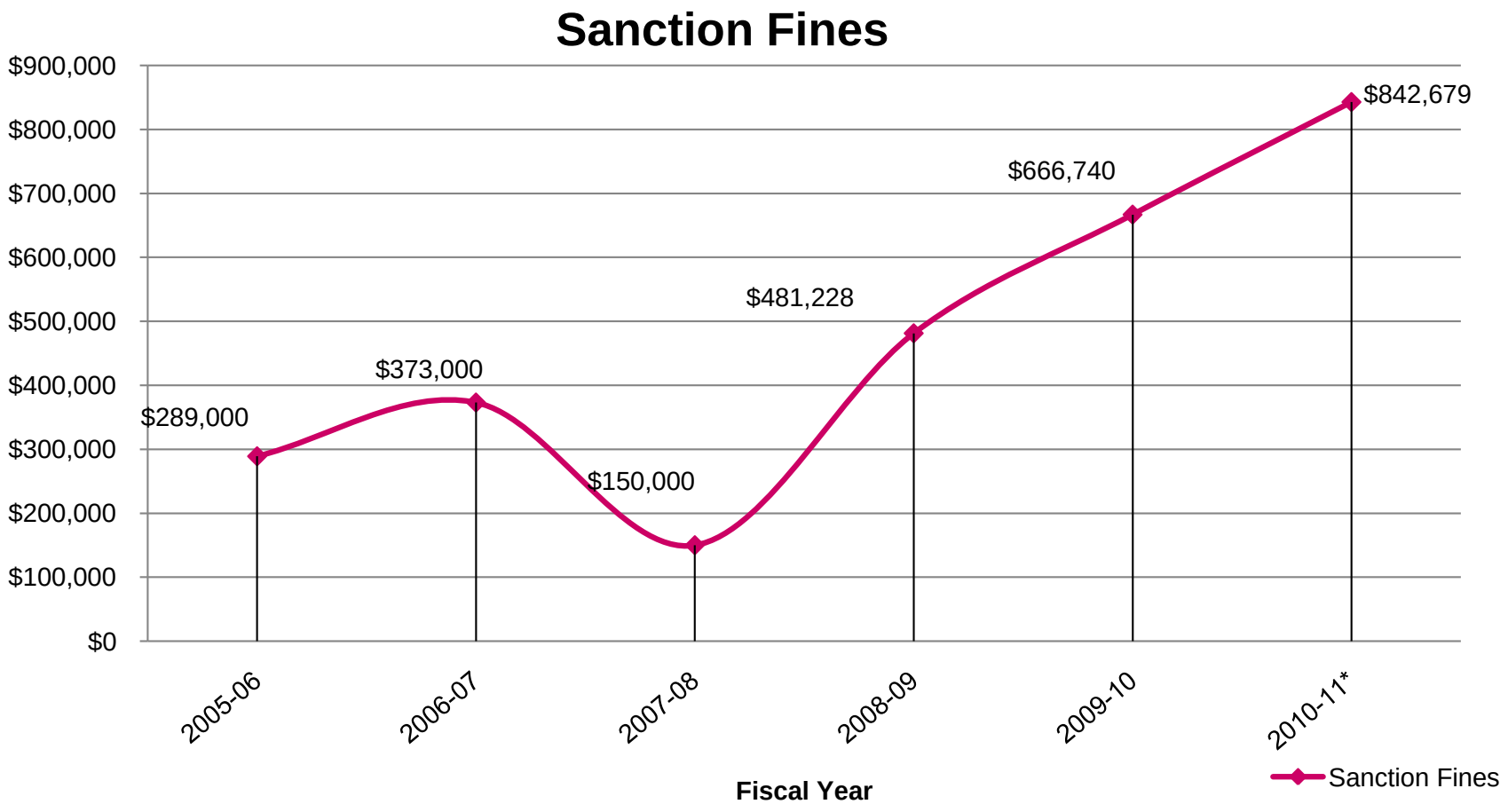
Sanctions by Type



**Projected amount based on data collected July 1, 2010 – January 31, 2011*

Note: Actual fine amount for FY 2010-11 YTD is $491,56Senate Bill 1986: Effective Date July 1, 2009
3

Enhanced MPI Activity: Sanctions



**Projected amount based on data collected July 1, 2010 – January 31, 2011*

Note: Actual fine amount for FY 2010-11 YTD is $491,563

Fine Information for FY 06-07 through FY 10-11 (ytd 1-31-2011) by Provider Type and Amount

		FY 06-07		FY 07-08		FY 08-09		FY 09-10		FY 10-11
ADVANCE NURSE PRACTITIONER	7	$ 6,500.00	1	$ 500.00	3	$ 2,500.00	2	$ 3,000.00		
AMBULANCE	10	$ 8,500.00	2	$ 2,000.00	7	$ 6,000.00	1	$ 32.40		
AMBULATORY SURGERY CENTER	1	$ 1,000.00					1	$ 2,000.00		
ASSISTIVE CARE SERVICES	17		1	$ 500.00	166	$ 39,023.55	17	$ 42,500.00	8	$ 16,000.00
BIRTHING CENTER			1	$ 500.00	3	$ 1,500.00	2	$ 10,000.00		
COMMUNITY ALCOHOL, DRUG, MH	1	$ 500.00	1	$ 500.00					1	$ 1,000.00
COUNTY HEALTH DPT			3	$ 1,500.00						
DENTIST	3	$ 4,000.00			3	$ 3,500.00	1	$ 1,000.00	1	$ 1,000.00
DIALYSIS CENTER	2	$ 2,000.00								
FQHC					1	$ 500.00				
GENERAL HOSPITAL	9	$ 9,000.00	34	$ 17,500.00	14	$ 10,000.00	10	$ 5,136.74	9	$ 916.64
H & C BASED SERVICES	10	$ 15,000.00	2	$ 1,500.00	15	$ 15,500.00	68	$ 76,639.75	158	$ 143,177.68
HOME HEALTH AGENCY	1	$ 1,000.00	7	$ 7,500.00	8	$ 13,000.00	41	$ 35,045.84	5	$ 7,000.00
HOSPICE					14	$ 5,093.72	39	$ 18,814.43	2	$ 1,000.00
LICENSED MIDWIFE					3	$ 1,500.00	1	$ 1,000.00		
MEDICAL SUPPLIES/DURABLE MED	6	$ 6,500.00			6	$ 9,000.00	18	$ 15,480.97	7	$ 25,689.29
NON-EMERGENCY TRANSPORTATION	1	$ 3,000.00								
NURSING HOME	19	$ 10,000.00	1	$ 1,000.00	103	$ 88,644.16	17	$ 31,241.12	102	$ 21,960.20
OPTOMETRIST	1	$ 3,500.00			1	$ 2,500.00	1	$ 3,000.00		
PHARMACY	39	$ 163,573.73	27	$ 76,360.56	37	$ 141,960.40	36	$ 122,432.51	28	$ 151,768.57
PHYSICIAN (DO)	2	$ 2,500.00	4	$ 2,000.00	2	$ 2,000.00	2	$ 1,500.00	2	$ 5,500.00
PHYSICIAN (MD)	104	$ 124,500.00	71	$ 38,500.00	119	$ 131,005.76	157	$ 286,916.56	44	$ 101,051.09
PODIATRIST	1	$ 5,000.00							1	$ 5,500.00
RURAL HEALTH CLINIC	1	$ 1,500.00			1	$ 1,500.00				
SKILLED NURSING UNIT					1	$ 500.00				
THERAPIST	4	$ 5,500.00			5	$ 6,000.00	5	$ 8,000.00	2	$ 10,000.00
TOTALS	**222**	**FY 2006-2007 $373,073.73**	**155**	**FY 2007-2008 $149,860.56**	**512**	**FY 2008-2009 $481,227.59**	**419**	**FY 2009-2010 $663,740.32**	**370**	**FY 2010-2011 $491,563.47**

Enhanced MPI Activity: Suspensions By Provider Type

Provider Type	SFY 2006-2007	SFY 2007-2008	SFY 2008-2009	SFY 2009-2010	SFY 2010-2011
ADVANCE NURSE PRACTITIONER				1	
ASSISTIVE CARE SERVICES			3		5
H & C BASED SERVICES	3	2	13	3	15
HOME HEALTH AGENCY					3
MEDICAL SUPPLIES/DURABLE MED	3				
MENTAL HEALTH PRACTITIONER					4
NURSING HOME				2	
OPTOMETRIST					1
PHARMACY				1	1
PHYSICIAN (MD)	4	1	11	5	18
PHYSICIAN ASSISTANT		3			1
THERAPIST			3		11
TOTAL BY YEAR	**10**	**6**	**30**	**12**	**59**

Enhanced MPI Activity:
Terminations with Cause - By Provider Type

Provider Type	SFY 2006-2007	SFY 2007-2008	SFY 2008-2009	SFY 2009-2010	SFY 2010-2011
ADVANCE NURSE PRACTITIONER					1
ASSISTIVE CARE SERVICES				1	1
BIRTHING CENTER				1	
DENTIST					
H & C BASED SERVICES		4	2	13	9
HOME HEALTH AGENCY				1	1
LICENSED MIDWIFE				1	
MEDICAL SUPPLIES/DURABLE MED		2	2	1	
PHARMACY					3
PHYSICIAN (DO)			1		
PHYSICIAN (MD)			6	6	4
RURAL HEALTH CLINIC					1
TAPE INTERMEDIARY			1		
THERAPIST		4	1	11	4
TOTAL BY YEAR	**0**	**10**	**13**	**37**	**24**

Enhanced MPI Activity:
Terminations without Cause - By Provider Type

Provider Type	SFY 2006-2007	SFY 2007-2008	SFY 2008-2009	SFY 2009-2010	SFY 2010-2011
ADVANCE NURSE PRACTITIONER	2				
ASSISTIVE CARE SERVICES	7	4	2		
AUDIOLOGIST/SPEECH PATHOLOGIST	1				
CHIROPRACTOR	4		3		
DENTIST	2	1			1
EIS PROFESSIONAL					1
H & C BASED SERVICES	47	23	24	10	19
HEARING AID SPECIALIST		2			
HOME HEALTH AGENCY	11	7	6	3	9
INDEPENDENT LABORATORY	1				
MEDICAL SUPPLIES/DURABLE MED	35	4	1	1	
MENTAL HEALTH PRACTITIONER	1				
PHARMACY	11	3	1		1
PHYSICIAN (DO)	5			1	
PHYSICIAN (MD)	55	4	14		3
PODIATRIST		1			
SOCIAL WORKER/CASE MANAGER	1			1	
TAPE INTERMEDIARY	2				
THERAPIST	9		2	2	5
TOTAL BY YEAR	**194**	**49**	**53**	**18**	**39**

Enhanced MPI Activities

MPI Collected Overpayments (Millions)					
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11*
Collected by MPI	$19.5	$15.4	$15.7	$17.9	$31.2
Assisted Claims Adjustments	$15	$12.8	$34.6	$40.6	$9.6
Total	$34.5	$28.2	$50.3	$58.5	$40.8

**Amount based on data collected July 1, 2010 – January 31, 2011. Projected total to exceed $75 million.*

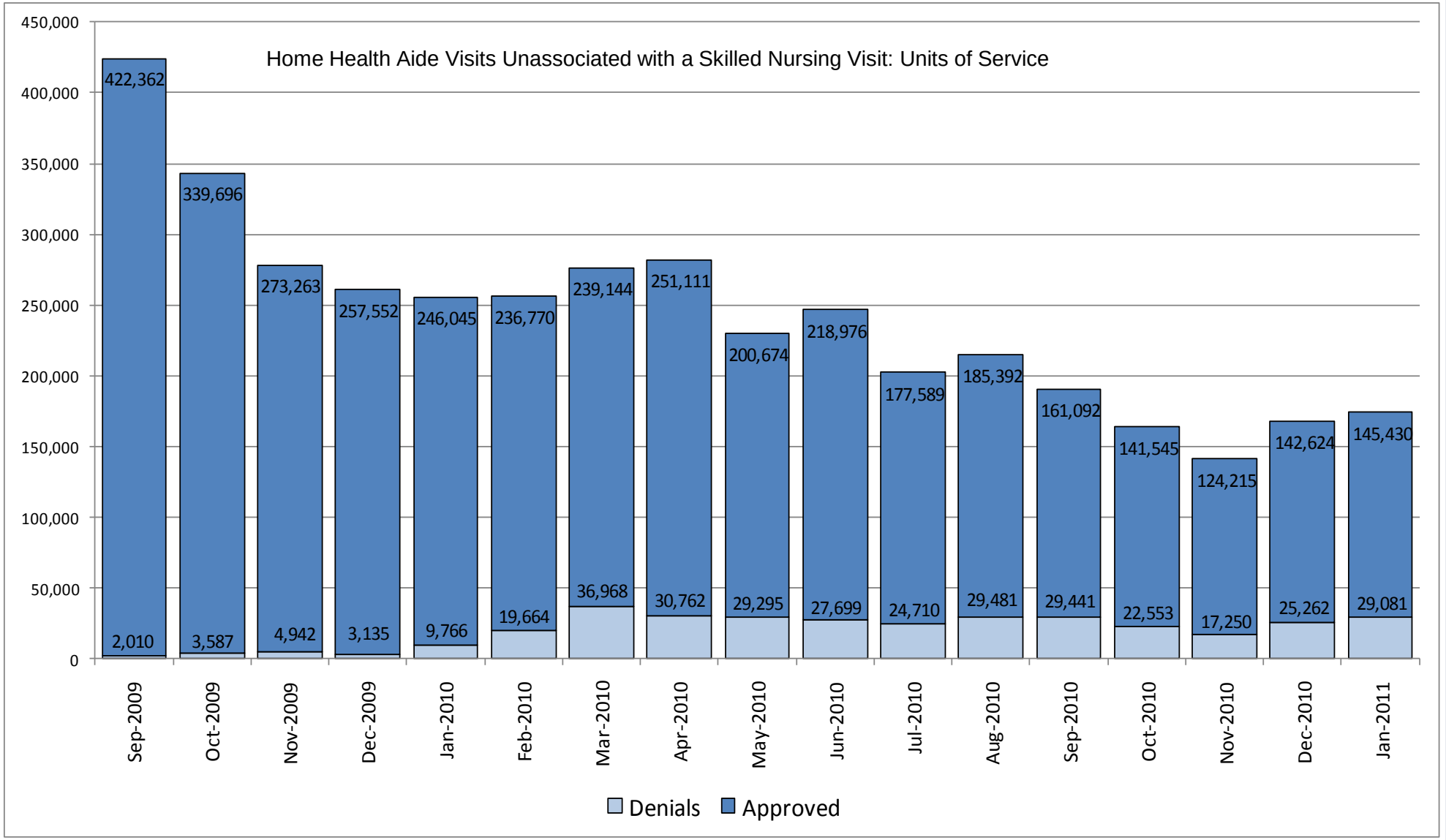
MPI Identified Overpayments (Millions)				
FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11***
$ 19,973,393	$ 15,628,918	$ 15,625,437	$ 18,800,058	$ 29,583,539

**Amount based on data collected July 1, 2010 – January 31, 2011*

SB 1986 Pilot Projects

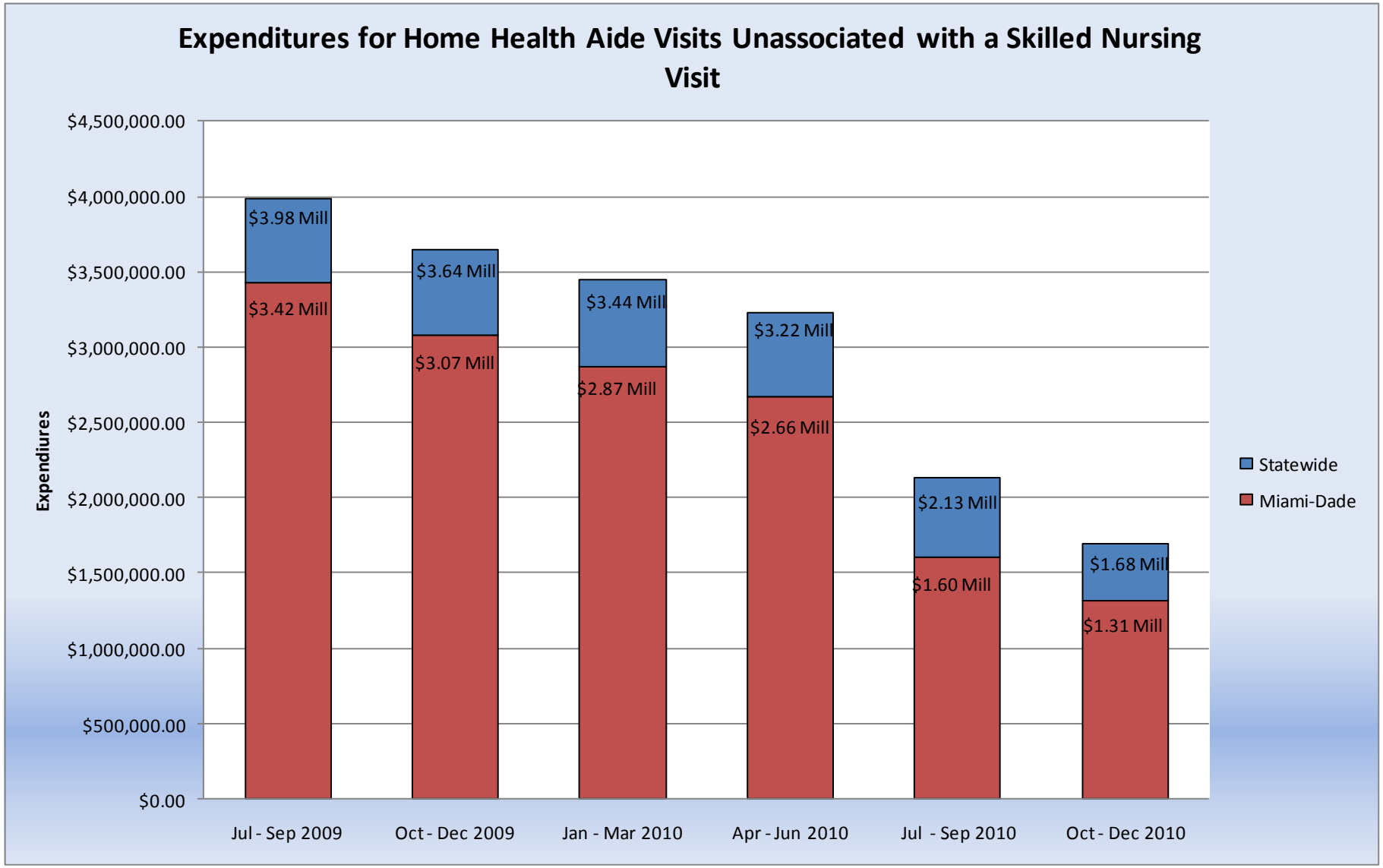
- SB 1986 directed the Agency to implement two pilot projects in Miami-Dade County:
  - Telephonic Home Health Services Delivery Monitoring and Verification
  - Comprehensive Care Management (CCM) Pilot
- Both projects are implemented, fully operational and have impacted utilization of and expenditures relating to Medicaid home health services.

Statewide Impact on Home Health Utilization and Claims



Data in chart above represents units of service

Expenditures for Home Health Aide Visits Unassociated with a Skilled Nursing Visit:

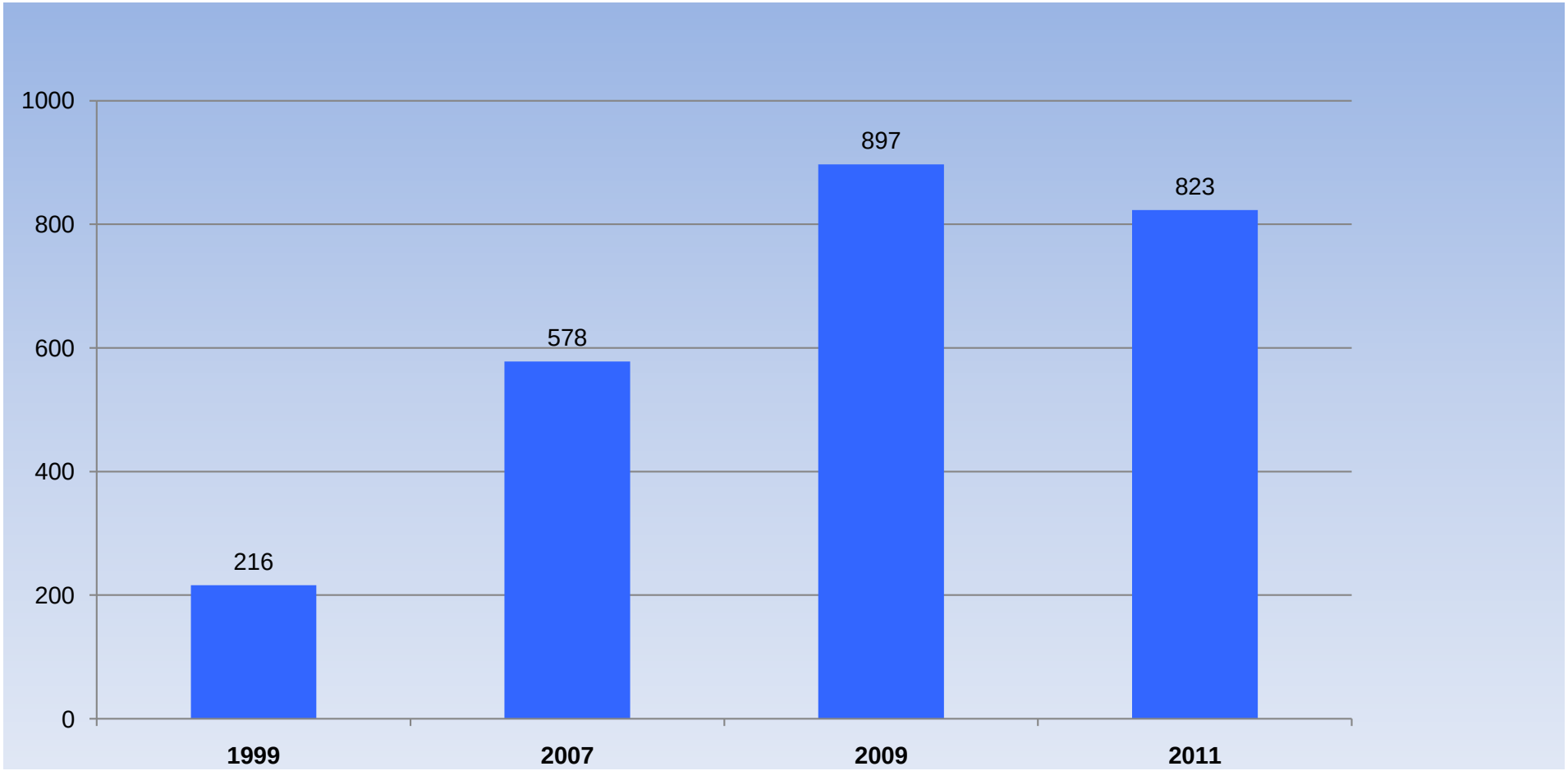


Statewide Expenditures for Home Health Aide Visits Unassociated with a Skilled Nursing Visit: Before and After SB 1986

Home Health Licensure: Fines and Fees in 2010

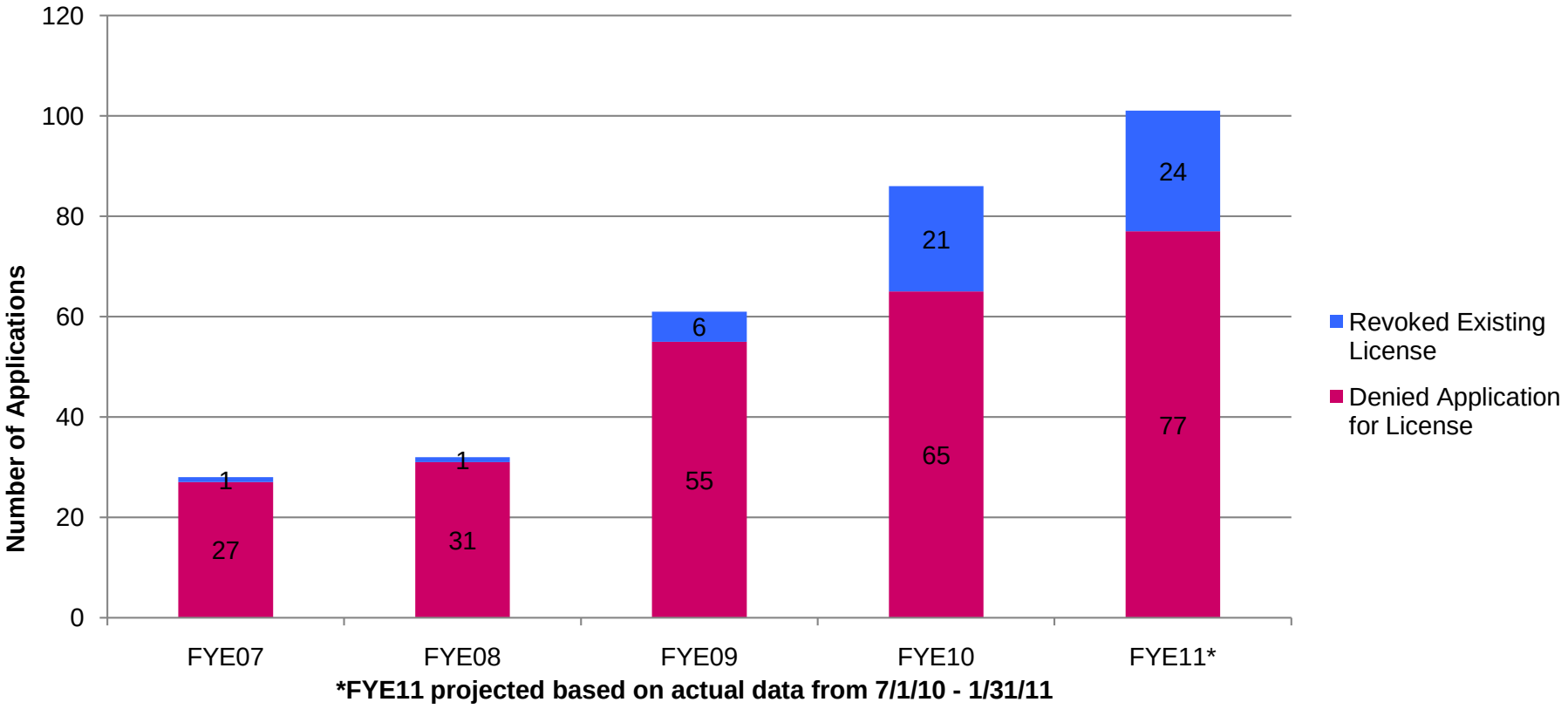
- For calendar year 2010, the Agency issued 1,014 final orders against home health agencies resulting in total fines of $3,165,145.
- 164 administrative actions (notice of intent to deny, notice of intent to deem application incomplete, no director of nursing, license revocation) resulting in $102,945.
- 150 late fee actions resulting in $61,175.
- 574 non-reporting fines (quarterly reports) resulting in $2,635,500.
- 124 survey deficiency cases (requests for sanctions issued by the field offices based on survey findings) resulting in $365,525

SB 1986: Impact on Licensure of Home Health Agencies: Licensed Home Health Agencies in Miami-Dade County



April 2009: 2,260 licensed HHAs
February 2011: 2,322 licensed HHAs

Home Health Licenses Denied and Revoked



*FYE11 projected based on actual data from 7/1/10 - 1/31/11

Impact of New Financial Review Requirements

	Home Health	Home Medical Equipment	Health Care Clinic
Licensure Applications Received	191	187	510
Percent That Failed Financial Reviews	33.0%	5.3%	14.1%

AHCA
FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

Questions?

A bill to be entitled

An act relating to rulemaking; providing Legislative intent to expedite the rulemaking process within the Department of Health and the Agency for Health Care Administration and encourage timely participation in the rulemaking process; amending s. 120.525, F.S.; authorizing the Department of Health or the Agency for Health Care Administration to meet the requirement to notice public meetings, hearings, and workshops, by prominent display of such notices on its website; amending s. 120.54,F.S.; requiring the Department of Health and the Agency for Health Care Administration to submit a report to the Governor and Legislature if a proposed rule does not become effective within 1 year after the effective date of an act requiring implementation of the act by the rule; requiring the Department of Health or Agency for Health Care Administration to provide certain notices by publication on its website; requiring the Department of State to maintain copies of certain notices for public inspection; exempting the Department of Health or Agency for Health Care Administration from having to conduct public workshops throughout the state; authorizing the Department of Health or Agency for Health Care Administration to schedule a workshop within a certain time after publication of the workshop on its website if the public has access to a toll-free conference call telephone number to attend the workshop; authorizing the Department of Health or

Agency for Health Care Administration agency head designee to approve of the agency's proposed rule; authorizing the Department of Health or Agency for Health Care Administration to include in its notice of proposed rulemaking a short sentence summarizing the conclusion reached in the agency's statement of the estimated regulatory costs; authorizing the Department of Health or Agency for Health Care Administration to e-mail notices to individuals requesting such notice; authorizing the Department of Health or Agency for Health Care Administration to provide the Administrative Procedures Committee with an electronic link to obtain certain required documents; prohibiting the Department of Health or Agency for Health Care Administration from suspending rulemaking proceedings to convene a substantial interest hearing; authorizing a rule to be modified or withdrawn after it has been adopted, but before it becomes effective, in response to the Legislature during the rule ratification process; authorizing the deputy secretary of the Department of Health or Agency for Health Care Administration to approve of the filing of certain documents with the Department of State; amending s. 120.541, F.S.; authorizing the Department of Health or Agency for Health Care Administration to base a statement of estimated regulatory costs on good faith cost estimates using subject matter experts instead of hiring economic experts; amending s. 120.56, F.S.; requiring an agency to proceed with all other steps in

the rulemaking process after a petition for administrative determination has been filed; limiting a person's authority to challenge a rule proposed by the Department of Health or Agency for Health Care Administration; providing an effective date.

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

Section 1. It is the intent of the Legislature to expedite the rulemaking process within the Department of Health and the Agency for Health Care Administration by requiring a date certain for rules to become effective and authorizing the use of websites to meet the publication requirements under the Florida Administrative Procedure Act, which the Legislature finds is essential to provide timely and necessary health care services to Florida residents. In addition, it is the intent of the Legislature to encourage early and timely participation in the rulemaking process by prohibiting challenges to rules proposed by the Department of Health or the Agency for Health Care if the person challenging the proposed rule has not participated in the rulemaking process.

Section 2. Subsection (1) of section 120.525, Florida Statutes, is amended to read:

120.525 Meetings, hearings, and workshops.—

(1) Except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly and on the agency’s website not less than 7 days before the event. The Department of Health or the Agency for Health Care

Administration are not required to provide such notice by publication in the Florida Administrative Weekly, but shall provide such notice by prominent display on its website. The notice shall include a statement of the general subject matter to be considered.

Section 3. Paragraph (b) of subsection (1), paragraphs (a) and (c) of subsection (2), subsection (3), paragraph (a) of subsection (4), and paragraph (a) of subsection (6), of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise. If the Department of Health or the Agency for Health Care Administration proposes a rule that has not become effective within 1 year after the effective date of the act requiring implementation of the act by rule for any reason other than the Legislature's refusal to ratify the rule under s. 120.541(3), the Department of Health or the Agency for Health Care Administration must submit a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 30 days after this missed deadline. The report must identify the number and dates of workshops and hearings that have been conducted; explain why the rule has not become effective within one year after the

effective date of the act requiring implementation by the rule, any protests to the rule, or any other relevant information regarding the lack of timeliness of the rule's adoption; and recommend any legislative changes that might be appropriate.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Weekly before providing notice of a proposed rule as required by paragraph (3)(a). However, the Department of Health or the Agency for Health Care Administration shall meet this notice requirement by prominent display of such notice on its website. The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(c) An agency may hold public workshops for purposes of rule development. An agency, other than the Department of Health or the Agency for Health Care Administration, must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the

explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Weekly not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop. However, the Department of Health or the Agency for Health Care Administration may schedule a workshop 7 days after notice of a rule development workshop is prominently displayed on its website. If the Department of Health or the Agency for Health Care Administration schedules a workshop within 7 days after such notice, the Department of Health or the Agency for Health Care Administration must provide the public access to the workshop via a toll-free conference call telephone number.

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, or for the Department of Health or Agency for Health Care Administration upon approval of the agency head or designee, shall give notice of its intended action, setting

forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's, or for the Department of Health or Agency for Health Care Administration a short sentence summarizing the conclusion reached in the, statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), and a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice. The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place or website where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to the intended action, except the Department of Health or the Agency for Health Care Administration shall provide such notice by prominent display on its website, but not less than 28 days prior to the intended action. The notice must remain on the website until the rule becomes effective or is withdrawn. At the time of such notice, the Department of Health or Agency for

Health Care Administration must provide the Department of State with an electronic link to the website where the notice will be displayed. The Department of State is required to maintain a copy of the notice displayed on the website and make the notice available for public inspection. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The Department of Health or the Agency for Health Care Administration may satisfy this requirement via e-mail. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1. The Department of Health or Agency for Health Care Administration may provide the committee with an electronic link to access copies of such documents, instead of providing the committee with hard copies.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking

proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. The Department of Health or the Agency for Health Care Administration may not suspend the rulemaking proceeding to convene a substantial interest hearing under s. 120.569.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The Department of Health or Agency

for Health Care Administration may provide a copy such notice via e-mail, instead of by certified mail or by actual delivery. The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. Except, the Department of Health or the Agency for Health Care Administration must prominently display the notice of change on its website at least 21 days prior to filing the rule for adoption and such notice shall remain on the website until the rule is either adopted or withdrawn. At the time of such notice, the Department of Health or Agency for Health Care Administration must provide the Department of State with an electronic link to the website where the notice will be displayed. The Department of State is required to maintain a copy of the notice displayed on the website and make the notice available for public inspection. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the effective date, a rule may be modified or withdrawn only in response to the Legislature during the rule ratification process or to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered.

4. The agency shall give notice of its decision to withdraw

or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published or shall give such notice by prominent display of the notice on its website, if the original notice of rulemaking was provided on the agency's website; ~~,~~ shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph; ~~,~~ and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. For the Department of Health or Agency for Health Care Administration, a deputy secretary may approve the filing of such documents with the Department of State. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a),

until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly. The Department of Health or Agency for Health Care Administration shall provide such notice by prominent display of the notice on its website.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones

adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Weekly and provided to the committee along with any material incorporated by reference in the rules. The agency's findings of immediate

danger, necessity, and procedural fairness shall be judicially reviewable.

(6) ADOPTION OF FEDERAL STANDARDS.—Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Weekly at least 21 days prior to filing the rule with the Department of State. Except, the Department of Health or the Agency for Health Care Administration shall prominently display a notice of intent to adopt a rule pursuant to this subsection on its website at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.

Section 4. Subsection (2) of section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(2) For the Department of Health or the Agency for Health

Care Administration, a statement of estimated regulatory costs is based on the agency's good faith cost estimates from the application of common sense and logic to the readily available or obtainable facts on hand. The Department of Health or the Agency for Health Care Administration is not required to use or hire an economic expert, but the involved subject matter experts are to use their best judgment under the circumstances. A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing

and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

Section 5. Subsection (2) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 44 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed

rule or provision of a proposed rule declared invalid shall not be adopted. After a petition for administrative determination has been filed, the agency must ~~may~~ proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(c) When any substantially affected person seeks determination of the invalidity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

(d) For the purpose of this subsection only, a person may challenge a rule proposed by the Department of Health or the Agency for Health Care Administration only if the person is a substantially affected person and if the person can provide documentary evidence that he or she has attended at least one hearing or workshop, provided written comments or concerns to the Department of Health or the Agency for Health Care Administration during the rulemaking process, or the Department of Health or the Agency for Health Care Administration determines that the person has participated in the rulemaking process prior to the date of the rule challenge.

Section 6. This act shall take effect July 1, 2011.

The Florida Administrative Weekly (F.A.W.) is published every Friday. For a document to be published on Friday, it must be submitted by noon on Wednesday the week prior to publication.

Notice of Proposed Rule Development

(Agency has 180 days to draft and propose rule if directed by statute to implement an act)

Executive Order No. 11-01

(Suspended all rulemaking for all agencies under the direction of the Governor and established the Office of Fiscal Accountability and Regulatory Reform to review rules prior to promulgation)

Rule Development Workshop

(If workshop is requested by affected person, Agency must give 14 days notice in F.A.W. of workshop)

Notice of Proposed Rulemaking

(May be published a week after Notice of Proposed Rule Development in F.A.W. Agency must allow 21 days from notice in F.A.W. for affected persons to request a hearing and must be published 28 days prior to rule adoption)

Notice of Proposed Rulemaking

(Generally published 2-3 weeks after Notice of Proposed Rule Development to allow for workshop notice)

Rule challenge within 21 days of notice. 90 day rule adoption deadline extended for 45 days after DOAH hearing.

Proposed Rule Sent to J.A.P.C.

(Must be sent to J.A.P.C. at least 21 days before rule adopted)

Notice of Change

(Agency may file Notice of Change if received comment by J.A.P.C. Deadline for adopting rule after Notice of Change is 45 days after such notice is published in F.A.W. The Notice of Change must be published in the F.A.W. at least 21 days prior to filing the rule for adoption)

Statement of Estimated Regulatory Costs

(Required if affected person povides alternative within 21 days of Notice of Proposed Rule , if rule affects small businesses, or if rule regulatory costs exceed $200,000 in aggregate within 1 year of adoption. Rule may not be filed for adoption until 21 days after SERC made available)

Request for a Hearing on the Proposed Rule

(Agency must allow for 21 days from notice of Proposed Rulemaking in F.A.W. for an affected person to request a hearing. Agency must give 7 days notice in the F.A.W. and on its website before hearing takes place. Rule may not be filed for adoption until 14 days after the final public hearing.)

Rule Adopted

(Must be adopted within 90 days of Notice of Proposed Rule, but must give at least 28 days of such notice. Rule effective 20 days after filing with Dept. of State unless the rule specifies otherwise)

Rule challenge within 20 days of Notice of Change. 90 day rule adoption deadline extended for 45 days after DOAH hearing.

J.A.P.C. Letter

(Agency may toll rulemaking process to address J.A.P.C. concerns until J.A.P.C. notifies agency its review is complete)

Rule challenge must be made within 44 days of the SERC being made available to the public.

Rule challenge within 10 days of final hearing. 90 day rule adoption deadline extended for 45 days after DOAH hearing.

Rule Adopted

(effective 20 days after filed with Dept. of State, unless the rules specifies otherwise)

Potential Time Savings if Administrative Rulemaking Notices are Published via Agency Websites

Days Before Published in Florida Administrative Weekly (F.A.W.)	Days Before Published on Website	Potential Time Saved
Notice of Proposed Rule Development		
9 Days	1 Day	8 Days
Rule Development Workshop Notice		
9 Days	1 Day	8 Days
Notice of Proposed Rulemaking		
9 Days	1 Day	8 Days
Hearing Notice		
9 Days	1Day	8 Days
Notice of Change		
9 Days	1 Day	8 Days
TOTALS		
45 Days	**5 Days**	**40 Days**

*More time may be saved if there are multiple workshops, hearings, or notices of change or if the publication of the F.A.W. were to fall on a holiday, requiring an earlier submission or resulting in a longer publishing date.

**The Rule Development Workshop Notice, Hearing Notice, or Notice of Change is not always necessary or required during the rulemaking process.