

**STORAGE NAME:** s1410.hcr

**DATE:** April 6, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE STANDARDS AND REGULATORY REFORM  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/SB 1410

**RELATING TO:** Rulemaking Authority with Respect to Health Care Professionals (RAB)

**SPONSOR(S):** Senator Brown-Waite

**COMPANION BILL(S):** N/A

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE STANDARDS AND REGULATORY REFORM
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

CS/SB 1410 requires health care service pool registrants to update information contained in their original registration applications and authorizes the department of Health to inspect health care service pool offices. It provides requirements for renewal and rulemaking authority.

The bill further provides for the department to designate approved treatment programs and to adopt rules that specify the manner in which the consultants work with the department on intervention requirements for evaluating and treating a professional.

Rulemaking authority is granted to the department to require dental laboratories to limit the types of equipment that can be located at the dental lab facility.

It requires persons who wish to practice midwifery be at least 21 years of age. It also establishes requirements for midwifery continuing education providers to demonstrate compliance with certain criteria established by rule of the department. The rules will be promulgated by the department relating to appropriate fees paid at the time of application to sit for the midwifery examination and requires midwives to maintain patient records and specifies the content of those records.

The bill provides an exemption for master social workers from continuing education for their first renewal and requires exam applications to be submitted at least 60 days prior to the exam.

The Department of Health indicates that there is no fiscal impact on state and local government, or the private sector in general.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 Legislative Session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provisions for periodic review of rules by agencies having rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had a wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

A new standard is provided in the revised APA in s. 120.536, F.S., which effectively overturns this line of cases and imposes a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary, but not enough by itself, for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of power and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the delegated rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the **Florida Administrative Code** (FAC). However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process, that of legislative review. The subsection provides:

“The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.”

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions of rules which the agency deems necessary, but which

currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to JAPC, there are 3,500-3,600 grants of rulemaking authority in the **Florida Statutes** falling roughly into two categories: (1) specific grants; and (2) general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority delegate rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is not apparent in the statute. The "character" of the referenced rules are a degree of specificity that is too narrow to be an articulation of the general agency mission or the purpose of the enabling legislation so as to fall within the Legislature's grant of general rulemaking authority.

Chapter 96-403, Laws of Florida, transferred the regulation of various health care professions from the Agency for Health Care Administration and the Department of Business and Professional Regulation to the Department of Health by a type two transfer, effective July 1, 1997. Section 20.06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. Unless otherwise provided by law, the administrative rules of any agency or department involved in a type two transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

On July 1, 1997, the regulation of health care services pools transferred from the Department of Business and Professional Regulation to the Department of Health. Pursuant to s. 402.48, F.S., each person who operates a health care services pool must register with the Department of Health. The Department of Business and Professional Regulation has adopted administrative rules specifying procedures for the registration and inspection of health care services pools (61E6-1.007(5) and 61E6-1.0011, F.A.C.); for the enforcement of penalties against health care services pools (61E6-1.013, F.A.C.); and for the imposition of minimum standards for the operation of a health care services pool, including procedures for record keeping and personnel (61E6-1.015, 61E6-1.017, 61E6-1.018, F.A.C.). The Department of Health has not adopted its own administrative rules for health care services pools and continues to rely on existing rules adopted by the Department of Business and Professional Regulation.

The impaired practitioner treatment program was created to help rehabilitate various health care practitioners under the Department of Health. By entering and successfully completing the impaired practitioner treatment program, a health care practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is impairment. Section 455.707, F.S., authorizes the department to designate approved treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee. Under s. 455.707, F.S., the department is authorized to contract with an impaired practitioner consultant who acts as a liaison between the impaired practitioner, the department, and treatment providers. The Agency for Health Care Administration has adopted administrative rules that specify the manner in which the consultant works with the agency to implement the impaired practitioner treatment program and provide requirements for the consultant and

agency's role in the intervention, evaluation, treatment, continued care, and monitoring of professionals by approved treatment providers under the program (49HH-10.002, 59HH-10.003, 59HH-10.004, Florida Administrative Code). The department has not adopted its own administrative rules for the impaired practitioner treatment program and continues to rely on existing rules adopted by the agency.

Chapter 466, F.S., provides for the regulation of the practice of dentistry by the Board of Dentistry under the Department of Health and the regulation of dental laboratories by the department. Section 466.036, F.S., authorizes the department to obtain information from dental laboratory registrants that it deems necessary to carry out its regulatory duties. The department may require periodic inspections of all dental laboratories operating in Florida. Such inspections must include, but not be limited to, inspection of sanitary conditions and facilities on the premiss. The agency has adopted an administrative rule that authorizes the inspection of equipment and supplies of dental laboratories (59CC-1.001(4), F.A.C., and later transferred to 64B27-1.-1(4), F.A.C., under the department).

Chapter 467, F.S., provides for the regulation of the practice of midwifery by the department. Section 467.006, F.S., provides licensure requirements for the practice of midwifery. The agency has adopted an administrative rule that imposed a minimum age requirement of 21 years for midwifery licensure applicants (59DD-2.001(2)(a), F.A.C., and later transferred to 64B24-2.001(2)(a), F.A.C., under the department).

Section 467.012, F.S., provides midwifery licensure renewal requirements and authorizes the department to adopt administrative rules prescribing continuing education requirements. The agency has adopted administrative rules specifying requirements for midwifery continuing education, including the performance of pro bono services for indigents, documentation of continuing education hours, and criteria for providers of midwifery continuing education programs (59DD-6.005, 59DD-6.006, 59DD-6.003(2) & (3), and 59DD-6.004, F.A.C., and later transferred to 64B24-6.005, 64B24-6.006, 64B24-6.003(2) & (3), and 64B24-6.004, F.A.C.)

Section 467.013, F.S., specifies procedures for a licensed midwife to have his or her license placed in an inactive status upon payment of a fee. The agency has adopted an administrative rule specifying procedures to implement s. 467.013, F.S., relating to inactive status and reactivation of a midwifery license (59DD-5.002(2), (3), & (4), 59DD-5.003, F.A.C., and later transferred to 64B24-5.002(2), (3), & (4), 64B24-5.003, F.A.C., under the department).

Section 467.0135, F.S., authorizes the department to establish fees within specified statutory caps for midwifery licensure application, examination, initial licensure, renewal of licensure, licensure by endorsement, inactive status, delinquent status, and reactivation of an inactive license. The agency has adopted an administrative rule relating to the collection of fees (59DD-3.001, F.A.C., and later transferred to 64B24-5.002, F.A.C., under the department). In addition to 64B24-3.001, F.A.C., several administrative rules have been adopted by the agency and transferred to the department specifying fees: 64B24-3.002, F.A.C., application (\$200); 64B24-3.003, F.A.C., examination (\$500); 64B24-3.004, F.A.C., endorsement (\$250); 64B24-3.005, F.A.C., initial license (\$150); 64B24-3.006, F.A.C., temporary certificate (\$50); 64B24-3.007, F.A.C., active biennial renewal (\$250); 64B24-3.008, F.A.C., delinquent (\$75); 64B24-3.009, F.A.C., reactivation(\$500); 64B24-3010, F.A.C., inactive status (\$100); 64B24-

**STORAGE NAME:** s1410.hcr

**DATE:** April 6, 1998

**PAGE 5**

3.011, F.A.C., duplicate license (\$25); 64B24-3.012, F.A.C., certification of public record (\$25); 64B24-3.013, F.A.C., continuing education provider (\$250); 64B24-3.014, F.A.C., unlicensed activity (\$5); 64B24-3.015, F.A.C., change of status (\$75); and 64B24-3.016, F.A.C., inactive renewal (\$100).

Section 467.019, F.S., requires midwives to submit completed birth certificates to the local registrar of vital statistics and to report maternal deaths, newborn deaths, and stillbirths to the medical examiner. The agency has adopted an administrative rule for midwifery patient records (59DD-7.014, F.A.C., and later transferred to 64B24-7.014, F.A.C. under the department).

Section 491.007, F.S., specifies procedures and fees for the renewal of clinical social work, marriage and family therapy, and mental health licenses and intern registration, and certification of persons qualifying for the designation of certified master social work.

Section 491.0145, F.S., provides requirements for the department to certify an applicant for the designation of certified master social worker. The applicant must have received a doctoral or master's degree in social work; and have had at least 3 years of experience and pass an examination required by the department. The agency has adopted administrative rules for implementing s. 491.0145, FS., relating to the certification of master social workers, including application forms and requirements, experience requirements, and renewal of the certification (59FF-28.012(4), 59FF-28.013, and 59FF-28.014(2), F.A.C., and later transferred to 64B25-28.012(4), 64B25-28.013, and 64B25-28.014(2), F.A.C., under the department).

**B. EFFECT OF PROPOSED CHANGES:**

Grants the Department of Health rulemaking authority to inspect health care services pool registrants; impose health care services pool registration requirements currently specified by rule, including registration renewal requirements; impose minimum standards for the operation of health care services pools, including standards for administration, record keeping, and personnel; impose disciplinary sanctions on health care services pools for failure to comply with applicable regulations, including administrative rules adopted by the department.

Grants the department rulemaking authority with regard to treatment programs for impaired health care practitioners, to specify the manner in which the consultant works with the department on intervention, requirements for evaluating and treating a professional, and requirements for the continued care and monitoring of a professional by the consultant at a department-approved treatment provider.

With regard to dental laboratories, grants the department specific rulemaking authority to establish requirements for dental laboratory equipment and supplies. The department must specify dental equipment and supplies that are not permitted in a registered dental laboratory. The department's authority to inspect dental laboratories is expanded to include the inspection of dental laboratory equipment and supplies.

Requires midwifery applicants to be at least 21 years of age.

Requires midwifery continuing education providers to apply for approval from the department and to meet specified criteria. The department is authorized to extend continuing education credit to midwives for the performance of pro bono service. The department's authority to discipline a midwife for failure to maintain appropriate documentation is limited to documentation for continuing education, patient records, and pro bono service.

Requires midwifery licensure fees to be paid to the department at the time of application in accordance with rules adopted by the department.

Authorizes the department to adopt administrative rules to require midwives to keep a records of each patient served which must be kept on file for a minimum of 5 years following the date of the last entry in the records. The department is authorized to adopt rules to provide for the maintenance of patient records of a deceased midwife or a midwife who terminates or relocates a private practice. As prescribed by department rule, a midwife who terminates a private practice or relocates the private practice outside the local telephone directory service area of their current practice must provide notice to all patients. Within 90 days after the death of a midwife, the estate or agent must place all patient records of the deceased midwife in the care of another midwife who is licensed in Florida, who must ensure that each patient of the deceased midwife is notified in writing.

Relating to license renewal of clinical social workers, marriage and family therapists, and mental health counselors, exempts a certified master social worker from the continuing education requirements for the first renewal of the certificate.

Requires the completed application of a certified master social worker to be received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled examination. The department is granted specific rulemaking authority to define the education and experience requirements for certification as a certified master social worker.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A



(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Sections 402.48, 455.707, 466.036, 467.006, 467.012, 467.013, 467.0135, 467.019, and 491.007, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1.** Amends s. 402.48(2), (4), and (9), relating to health care services pools, to grant or make more specific the Department of Health rulemaking authority to: inspect health care services pool registrants; impose health care services pool registration renewal requirements; impose minimum standards for the operation of health care services pools, including standards for administration, recordkeeping, and personnel; impose disciplinary sanctions on health care services pools for failure to comply with applicable regulations, including administrative rules adopted by the department.

**Section 2.** Amends s. 455.707(1), F.S., relating to treatment programs for impaired health care practitioners, to grant rulemaking authority to the Department of Health to specify the manner in which the consultant works with the department on intervention, requirements for evaluating and treating a professional, and requirements for the continued care and monitoring of a professional by the consultants at a department-approved treatment provider.

**Section 3.** Amends s. 466.036, F.S., relating to dental laboratories, to give the Department of Health specific rulemaking authority to establish requirements for dental laboratory equipment and supplies. The department must specify dental equipment and supplies that are not permitted in a registered dental laboratory. The department's authority to inspect dental laboratories is expanded to include the inspection of dental laboratory equipment and supplies.

**Section 4.** Amends s. 467.006(1), F.S., relating to midwifery licensure requirements, to require any applicant to be at least 21 years of age.

**Section 5.** Amends s. 467.012, F.S., relating to midwifery licensure renewal requirements, to require midwifery continuing education providers to apply for approval from the Department of Health and to meet specified criteria. Midwifery continuing education providers are required to maintain records and to certify or document the participation of midwives who completed the continuing education program and authorizes the department to audit or monitor continuing education programs. Midwives are required to affirm that they have the applicable number of continuing education hours for the reporting period as specified by the department. Alternate mechanisms are specified for midwives licensed in another state to meet continuing education requirements. The department is authorized to extend continuing education credit to midwives for the performance of pro bono services. The department's authority to discipline a midwife for failure to maintain appropriate documentation is limited to documentation for continuing education, patient records, and pro bono service.

**Section 6.** Amends s. 467.013, F.S., relating to midwifery inactive status, to specify procedures and fees for the renewal and reactivation of an inactive license, including continuing education requirements.

**Section 7.** Amends s. 467.0135, F.S., relating to midwifery licensure fees, to require the appropriate fee to be paid to the Department of Health at the time of application in accordance with rules adopted by the department.

**Section 8.** Amends s. 467.019(4), (5), (6), and (7), F.S., relating to midwifery records and reports, to authorize the Department of Health to adopt administrative rules to require midwives to keep a record of each patient served which must be kept on file for a minimum of 5 years following the date of the last entry in the records. The department is authorized to adopt rules to provide for the maintenance of patient records of a deceased midwife who terminates or relocates a private practice. A midwife who terminates a private practice or relocates the private practice outside the local telephone directory service area of their current practice must provide notice to all patients as prescribed by department rule. Within 90 days after the death of a midwife, the estate or agent must place all patient records of the deceased midwife in the care of another midwife who is licensed in Florida who must ensure that each patient of the deceased midwife is notified in writing.

**Section 9.** Amends s. 491.007(2), F.S., relating to license renewal of clinical social workers, marriage and family therapists, and mental health counselors, to exempt a certified master social worker from the continuing education requirements for the first renewal of the certificate.

**Section 10.** Amends s. 491.0145(1) and (3), F.S., relating to requirements to become a certified master social worker, to require the completed application to be received by the Department of Health at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled examination. The department is granted specific rulemaking authority to define the education and experience requirements for certification as a certified master social worker.

**Section 11.** Provides for an effective date of July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**STORAGE NAME:** s1410.hcr

**DATE:** April 6, 1998

**PAGE 12**

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

**STORAGE NAME:** s1410.hcr

**DATE:** April 6, 1998

**PAGE 13**

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS AND REGULATORY REFORM:

Prepared by:

Legislative Research Director:

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TERRI L. PADDON

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ROBERT W. COGGINS