

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 18, 1998 Revised: _____

Subject: Rulemaking Authority; Health Care Professionals

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Health to adopt rules and to provide additional requirements regarding: the regulation of health care services pools; the implementation of the impaired practitioner treatment program; the inspection and use of equipment and supplies by registered dental laboratories; the regulation of licensed midwives, including a minimum age requirement, the completion of pro bono services to fulfill continuing education, the imposition of licensure fees, and the imposition of recordkeeping standards; and the certification requirements of certified master social workers.

This bill substantially amends the following sections of the Florida Statutes: 402.48, 455.707, 466.036, 467.006, 467.012, 467.013, 467.0135, 467.019, 491.007, and 491.0145.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with 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 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 powers 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* (F.A.C.). However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2) 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 the identified 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 3500-3600 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 of 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 section 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 recordkeeping 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 of Health to designate approved treatment providers for the programs for impaired practitioners and to set forth the appropriate criteria for treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee. Under section 455.707, F.S., the Department of Health is authorized to contract with an impaired practitioner consultant who acts a liaison between the impaired practitioner, the department, and treatment providers. The Agency for Health Care Administration has adopted various 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 (59HH-10.002, 59HH-10.003, 59HH-10.004, Florida Administrative Code). The Department of Health has not adopted its own administrative rules for the impaired practitioner treatment program and continues to rely on existing rules adopted by the Agency for Health Care Administration.

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 of Health 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 premises. The Agency for Health Care Administration 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 64B27-1.001(4), F.A.C., under the Department of Health).

Chapter 467, F.S., provides for the regulation of the practice of midwifery by the Department of Health. Section 467.006, F.S., provides licensure requirements for the practice of midwifery. The Agency for Health Care Administration 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 of Health).

Section 467.012, F.S., provides midwifery licensure renewal requirements and authorizes the Department of Health to adopt administrative rules prescribing continuing education requirements. The Agency for Health Care Administration 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 for Health Care Administration has adopted an administrative rule specifying procedures to implement section 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 of Health).

Section 467.0135, F.S., authorizes the Department of Health 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 for Health Care Administration 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 of Health). In addition to 64B24-3.001, F.A.C., several administrative rules have been adopted by the Agency for Health Care Administration and transferred to the Department of Health 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); 64B24-3.010, F.A.C., inactive status (\$100); 64B24-3.011,

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 still-births to the medical examiner. The Agency for Health Care Administration 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 of Health).

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, certified master social worker.

Section 491.0145, F.S., provides requirements for the Department of Health 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; have had at least 3 years of experience and pass an examination required by the department. The Agency for Health Care Administration has adopted administrative rules for implementing section 491.0145, F.S., 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 of Health).

III. Effect of Proposed Changes:

Section 1. Amends section 402.48, F.S., 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 requirements currently specified by rule, including 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 of Health.

Section 2. Amends section 455.707, 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 in 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.

Section 3. Amends section 466.036, F.S., relating to dental laboratories, to give the Department of Health specific rulemaking authority to establish requirements for the 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 section 467.006, F.S., relating to midwifery licensure requirements, to require any applicant to be at least 21 years of age.

Section 5. Amends section 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 of Health 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 of Health is authorized to extend continuing education credit to midwives for the performance of pro bono services. The Department of Health'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 section 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 section 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 section 467.019, 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 of Health 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. 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 section 491.007, 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 section 491.0145, 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 of Health is granted specific rulemaking authority to define the education and experience requirements for certification as a certified master social worker.

Section 11. The bill provides an effective date of July 1, 1998.

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, Subsections 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill authorizes the Department of Health to adopt administrative rules for midwifery licensure fees. Under section 467.0135, F.S., the Agency for Health Care Administration 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 of Health). In addition to 64B24-3.001, F.A.C., several administrative rules have been adopted by the Agency for Health Care Administration and transferred to the Department of Health 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); 64B24-3.010, F.A.C., inactive status (\$100); 64B24-3.011, 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).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health has indicated that this bill will not require a decrease or increase in its resources or budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.