STORAGE NAME: h2169a.hhs
DATE: April 11, 2000

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS

BILL #: HB 2169 (PCB HCL 00-09)

RELATING TO: Florida Commission on Excellence in Health Care

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Fasano

TIED BILL(S): None

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

(1) HEALTH CARE LICENSING & REGULATION YEAS 13 NAYS 0
(2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 7 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

This bill creates the Florida Commission on Excellence in Health Care to facilitate the development of a comprehensive statewide strategy for improving health care delivery systems through meaningful reporting standards, data collection and review, and quality measurement. The Commission will also study whether the current practitioner and facility regulatory systems are effective in promoting patient safety and to what extent the current malpractice and disciplinary systems benefit the health care consumer once an error is detected. In total, there are twenty specific tasks assigned to the Commission. A report to the Legislature is due no later than February 1, 2001.

The Commission will be jointly chaired by the Secretary of the Department of Health and the Executive Director of the Agency for Health Care Administration. Membership on the Commission includes representatives from all facets of health care, including the regulatory boards and agencies, health care practitioner trade associations, health facility trade organizations, risk management organizations, health care lawyer organizations, managed care organizations and the insurance industry including both health and professional liability insurance, consumer advocacy organizations, and the Legislature. The Commission will be staffed by employees of the Department of Health and the Agency for Health Care Administration. The Commission is terminated June 1, 2001.

Although travel and related expenses of most of the members will be paid by the sponsoring organizations, the expenses for the consumer advocates and members appointed by the government will be borne by the state. There is an appropriation of $91,000 included in the bill to cover the costs of travel, consultants if necessary, and document reproduction and dissemination.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes [x]	No []	N/A [x]
4.	Personal Responsibility	Yes [x]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

State Regulatory Oversight of Health Care and Related Insurance Carriers:

The Department of Health was created in 1996 to promote and protect the health of all residents and visitors in the state through organized state and community efforts as provided in s. 20.43, F.S. The duties and responsibilities delegated to the department by the Legislature include: disease and disability prevention; health program design; study of disease causes and formulation of preventive strategies; development of working associations with all agencies and organizations involved in health and health care delivery; analyze trends in the evolution of health systems and identify and promote the use of innovative, cost-effective health delivery systems; serve as the statewide repository of all aggregate data accumulated by state agencies related to health care, analyze that data, and provide issue periodic reports and policy statements; require that all aggregate data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; biennially publish and annually update a state health plan that assesses current health programs, systems, and costs; make projections of future problems and opportunities; and recommend changes needed in the health care system to improve the public health.

As set forth in s. 20.43, F.S., the Department of Health and its 26 boards and councils are charged with regulating health care practitioners who provide health care services to the people of Florida in accordance with chapters 455-491, F.S., as necessary for the preservation of the health, safety, and welfare of the public. The department also regulates emergency medical service providers pursuant to chapter 401, F.S., such as paramedics and emergency medical technicians.

Moreover, the Department of Health is responsible for the state's public health system pursuant to chapter 381, F.S., which includes comprehensive planning, data collection, technical support, and health resource development functions such as state laboratory and pharmacy services, the state vital statistics system, the State Center for Health Statistics, emergency medical services coordination and support, and recruitment, retention, and development of preventive and primary health care professionals and managers.

The Agency for Health Care Administration was created in 1992 and regulates health care facilities and managed care organizations which provide delivery mechanisms for health care in Florida in accordance with chapters 395, 401, 627, 636, and 641, F.S. Section 20.42, F.S., sets forth the organizational structure of the agency and lists the responsibilities of each division, two of which will be affected by this bill. The Division of Health Quality Assurance is responsible for the licensure and inspection of health facilities. The Division of Health Policy and Cost Control is responsible for health policy, the State Center for Health Statistics, the development of The Florida Health Plan, certificate of need, state and local health planning pursuant to s. 408.033, F.S., and research and analysis.

Thus, the Department of Health and the Agency for Health Care Administration have overlapping duties with regard to setting health policy, researching and analyzing data, and maintaining the State Center for Health Statistics. The department and agency also work closely together with respect to the licensure and regulation of health care practitioners. Although the statutory responsibility to license and discipline practitioners has been delegated to the Department of Health by the Legislature, the Legislature has also provided in s. 20.43(3), F.S., that the "department may contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate." Despite the permissive language used in s. 20.43(3), F.S., the funding for the complaint, investigative, and prosecutorial services is appropriated directly to the agency, instead of being appropriate to the department, in an amount of approximately $18 million per fiscal year.

Managed care organizations, indemnity insurers, and medical malpractice professional liability insurance are regulated by the Department of Insurance. There is overlap between the Department of Insurance and the Agency for Health Care Administration with regard to managed care organizations. Chapter 641, F.S., relates to health care services programs. Part I of this chapter, consisting of ss. 641.17-641.3923, F.S., is the "Health Maintenance Organization Act," under which the Department of Insurance regulates the business aspects of HMOs. The Department of Insurance issues a certificate of authority to do business in Florida if the organization applying meets the requirements of s. 641.22, F.S. Specifically, the department reviews the financial and business aspects of HMOs such as actuarial soundness, minimum surplus, insurance and reinsurance, and blanket fidelity bond requirements, as well as managerial aspects of HMOs such as non-discriminatory practices and subscriber grievance procedures.

As a condition of receiving a certificate of authority to do business from the Department of Insurance, an HMO must receive a health care provider certificate from the Agency for Health Care Administration. Part III of chapter 641, F.S., consisting of ss. 641.47-641.75, F.S., authorizes the Agency for Health Care Administration to regulate HMO quality of care by issuing health care provider certificates to HMOs which meet certain requirements. Any entity that is issued a health care provider certificate under part III of chapter 641 and that is otherwise in compliance with the certificate of authority to do business provisions under part I may enter into contracts in Florida to provide an agreed-upon set of comprehensive health care services to subscribers in exchange for a prepaid per capita sum or prepaid aggregate fixed sum.

Insurance carriers are regulated by the Department of Insurance in accordance with chapters 624-651, F.S. Medical malpractice is a tort and is governed by the provisions of chapter 766, F.S.

Private Sector Oversight of Health Care:

The professional trade organizations provide ethical standards and goals, and in some instances, resolve conflicts or grievances against their members. For example, the American Medical Association established a Code of Ethics at its first official meeting in 1847 and then in 1996 also added Ethics Standards. The mission of these ethics standards is to promote patient care and the betterment of public health by optimizing ethics in medicine. Other affected health care associations have similar procedures and standards for their members.

The professional associations also are equipped to communicate with members through journals, newsletters, magazines, and other means of communication on a wide scale which is a key component of educating practitioners and providers of changes to statutes, rules, advances in technology, and standards of practice. The practice changes recommended by the Commission would need recognition and acceptance by, and the support of, the affected organizations in order to become implemented on a broad scale.

Recent Developments and Call for Study:

Recent national reports estimate that between 44,000 and 98,000 patients die each year as the result of errors in hospitals. The cost to the nation is estimated to be between $17 billion and $29 billion. Many of these errors could be prevented if the health care delivery system focused on error reduction and instituted quality improvement procedures on a broad scale. However, most efforts to improve the health care system have been fragmented or implemented on a limited scale.

Over the past decade, Florida's health care delivery system has made tremendous strides toward addressing the critical issues of access, quality, and cost containment. Floridians are living longer, healthier lives than ever before. However, the state's health care delivery system is under enormous strain, made evident by the number of documented adverse incidents. The human cost of these adverse incidents is significant and may be avoidable. No single practitioner, provider, or organization is at fault for these adverse incidents. Practitioners and other persons involved in the delivery of health care are human beings and human beings tend to make mistakes, especially while under time pressures and other constraints. Therefore, attempting to place blame on any particular component of the health care industry is pointless and destructive. Rather than reducing errors, a system of blame and punishment causes or encourages a system of nondisclosure. The current disciplinary and malpractice systems in Florida are blame and punishment systems which discourage early error detection, discourage admission of fault, and discourage sharing errors and corrective action plans with the entire industry.

The Department of Health and the Agency for Health Care Administration have proposed the formation of a Florida Commission on Excellence in Health Care to serve as the catalyst for the development of a comprehensive statewide strategy for health care delivery process improvement, quality measurement, data collection, and reporting standards. This commission, as envisioned by the department and agency, would consist of key stakeholders in health care, including consumers, health care practitioners and providers, health plans, professional associations, health care regulatory and policy-making bodies, and legislators. The commission would be funded by the Legislature to cover expenses associated with consumer member travel, travel expenses for staff and appointees of the department and agency, meeting costs, consultants, and document production and dissemination. It was anticipated that $100,000 will be necessary to cover the costs of this commission. Costs of the remaining commission members would be paid by the member or

the member's sponsoring organization. Employees of the Department of Health and the Agency for Health Care Administration would provide staff expertise relating to meeting planning, research, policy and data analysis, legal issues, and regulatory implementation.

The department and agency recommended that the purpose of the commission should be to study errors in health care, practitioner and provider continuing competency, effectiveness of alternative treatments and services, technology and information systems, and quality of care in all practice settings. The commission would study national reports of medical errors, including but not limited to the Institute of Medicine's report, *To Err is Human: Building a Safer Health System.* The commission would also study our current disciplinary and medical malpractice systems and evaluate alternative systems for reimbursing the injured patient. The commission would be required to provide a report to the Legislature no later than February 1, 2001.

C. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Commission on Excellence in Health Care based on the proposal by the Department of Health and the Agency for Health Care Administration to facilitate the development of a comprehensive statewide strategy for improving health care delivery systems through meaningful reporting standards, data collection and review, and quality measurement. The Commission will also study whether the current practitioner and facility regulatory systems are effective in promoting patient safety and whether the current malpractice and disciplinary systems benefit the health care consumer once an error is detected. In total, there are twenty specific tasks assigned to the Commission. A report to the Legislature is due no later than February 1, 2001.

The Commission will be jointly chaired by the Secretary of the Department of Health and the Executive Director of the Agency for Health Care Administration. Membership on the Commission includes representatives from all facets of health care, including the regulatory boards and agencies, health care practitioner trade associations, health facility trade organizations, managed care organizations, risk management organizations, health care lawyer organizations, professional liability insurance industry, consumer advocacy organizations, and the Legislature. The Commission will be staffed by employees of the Department of Health and the Agency for Health Care Administration. The Commission is terminated June 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the Florida Commission on Excellence in Health Care. Provides findings and intent, definitions, duties and responsibilities, membership, organization, meeting procedures, staffing, and evidentiary prohibitions.

Section 2. Appropriates $91,000 in nonrecurring general revenue from the General Revenue Fund to the Department of Health to cover the costs of the Commission relating to travel, consultants, and reproduction and dissemination of documents.

Section 3. Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The costs of travel for the consumer members, staff, and members appointed by the department or agency, consultant fees and travel, and document reproduction and dissemination are anticipated to be less than $100,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Travel and related expenses of most of the members will be paid by the sponsoring organizations.

D. FISCAL COMMENTS:

An eventual cost savings to the public and private sectors may be realized in the form of decreased medical expenses associated with treating the patient's injury caused by the medical error and decreased malpractice insurance premiums. Travel and related expenses of most of the members will be paid by the sponsoring organizations

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a county or municipality to expend funds or to take any 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 revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2000, the Committee on Health and Human Services Appropriations approved four amendments to HB 2169 as follows:

- Amendment #1 adds representatives of the Florida Chiropractic Association and the Florida Podiatric Medical Association to the list of members for the Commission.
- Amendment #2 adds a representative of The Florida Society of Ambulatory Surgical Centers to the list of members for the Commission.
- Amendment #3 adds representatives of the Florida Statutory Teaching Hospital Council, Inc., and the Florida Statutory Rural Hospital Council to the list of members for the Commission.
- Amendment #4 adds a representative of a Florida medical school to the Commission.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:	Staff Director:
Wendy Smith Hansen	Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

Prepared by:	Staff Director:
Lynn Dixon	Lynn Dixon