

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1558

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Saunders

SUBJECT: Health Care

DATE: April 18, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Peters</u>	<u>Belcher</u>	<u>AHS</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill provides legislative intent and findings with respect to the Medical Quality Assurance Trust Fund (MQATF) and the Medical Quality Assurance function administered by the Department of Health. The Auditor General is required to complete a follow-up audit of the MQATF and to issue a report to the Legislature; the Office of Program Policy Analysis and Government Accountability must complete a study on the feasibility of maintaining the Medical Quality Assurance function within a single department and to issue a report to the Legislature; and the Department of Health must reimburse the Agency for Health Care Administration for the agency's actual and direct costs and the agency's appropriate share of indirect and infrastructure costs applicable to the contract to provide disciplinary investigation and prosecution for licensed health care professionals, subject to appropriated funds. The department's rulemaking authority for professions it regulates is expanded to specify the expiration dates of licenses and the process for tracking compliance with continuing education requirements, financial responsibility requirements, and any other conditions of renewal established in statute or in rule. For professions under the Department of Health's jurisdiction, the examination fee must include all costs to develop, validate, administer, and defend the examination and the examination fee is defined as an amount certain to cover all administrative costs plus the actual per-applicant cost of the examination.

Additionally, the bill: provides legislative intent and requires the boards to set fees in consultation with the Department of Health every two years for the professions regulated by the Division of Medical Quality Assurance; requires board chairpersons to annually review the department's long-range plan and proposed fee schedules and make recommendations for statutory changes; provides that, if the cash balance of the trust fund at the end of any fiscal year exceeds the total appropriation for regulation of the health care professions in the prior fiscal year, the boards, in consultation with the department may lower the fees; requires each board or

the department, if there is no board, to set a fee, not to exceed \$250, for approval of continuing education providers and a biennial renewal fee; specifies how the continuing education provider fees are to be used; requires the department to implement an electronic continuing education tracking system, for which electronic renewals are implemented, and requires continuing education providers to provide information on course attendance to the department; requires the department to provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession on or before October 1 of each year; revises and streamlines the penalties that each board and the department may impose on licensed health care professionals; repeals s. 458.31151, F.S., which provided limits on fees for a special examination for foreign licensed physicians; and transfers the Board of Nursing from Jacksonville to Tallahassee, effective July 1, 2003.

This bill substantially amends the following sections of the Florida Statutes: 456.004, 456.025, 457.107, 483.807, 456.011, 456.013, 456.017, 456.035, 456.073, 456.081, 456.072, 456.079, 457.109, 458.320, 458.331, 459.0085, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 466.037, 467.203, 468.1295, 468.1755, 468.217, 468.365, 468.518, 468.719, 468.811, 478.52, 480.046, 483.825, 483.901, 484.014, 484.056, 486.125, 490.009, 491.009, 456.074, and 464.005.

The bill repeals ss. 458.31151 and 483.827, F.S., and creates four undesignated sections of law.

## **II. Present Situation:**

The Department of Health regulates various health professions and administers various public health programs.

### ***General Regulatory Provisions***

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the Department of Health. Section 456.001, F.S., defines “health care practitioner” to mean any person licensed under ch. 457, F.S., (acupuncture), ch. 458, F.S., (medicine), ch. 459, F.S., (osteopathic medicine), ch. 460, F.S., (chiropractic medicine), ch. 461, F.S., (podiatric medicine), ch. 462, F.S., (naturopathic medicine), ch. 463, F.S., (optometry), ch. 464, F.S., (nursing), ch. 465, F.S., (pharmacy), ch. 466, F.S., (dentistry and dental hygiene), ch. 467, F.S., (midwifery), Parts I, II, III, IV, V, X, XIII, or XIV of ch. 468, F.S., (speech-language pathology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthotics), ch. 478, F.S., (electrology or electrolysis), ch. 480, F.S., (massage therapy), parts III or IV of ch. 483, F.S., (clinical laboratory personnel or medical physics), ch. 484, F.S., (opticianry and hearing aid specialists), ch. 486, F.S., (physical therapy), ch. 490, F.S., (psychology), and ch. 491, F.S., (psychotherapy).

### ***Medical Quality Assurance Trust Fund***

Section 20.435(1)(d), F.S., establishes the Medical Quality Assurance Trust Fund to be credited with revenue related to the licensing of health care practitioners. Section 456.025(5), F.S., requires that all licensure fees, fines, or costs awarded to the agency by a court be paid into the

trust fund. Section 456.065(3), F.S., requires that the trust fund also be credited with revenues received from the department's unlicensed activity efforts. Funds in the trust fund are to be used for the purpose of providing administrative support for the regulation of health care practitioners and for such other purposes as may be appropriate in accordance with legislative appropriation. Any balance in the trust fund at the end of any fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund.

### ***Licensure Fees, Receipts and Dispositions***

Section 456.025(1), F.S., requires each board to determine, by rule, licensure fees within statutory fee caps based upon long-range estimates from the Department of Health. Each board is responsible for ensuring that the licensure fees set out are adequate to cover all anticipated costs in order to maintain a reasonable cash balance. If a board does not take sufficient action within one year after notification from the department that license fees are projected to be inadequate, the department must set licensure fees within the caps on behalf of the board in order to cover anticipated costs and to maintain required cash balances. The department must include recommended fee cap increases in its annual report to the Legislature.

Section 456.025 specifies legislative intent that no regulated profession operate with a negative cash balance. The department is authorized to advance funds to a profession with a negative cash balance for a period not to exceed two consecutive years, however, the profession must pay interest. Section 456.025(3), F.S., provides that each board, or the department if there is no board, may collect a one-time fee from each active and voluntary inactive licensee in an amount necessary to eliminate a cash deficit, or if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions as required; however, no more than one assessment may be made in any four-year period without specific legislative authorization.

Section 456.025(5), F.S., requires the department to maintain separate accounts in the trust fund for each profession and to charge direct expenses as well as proportionately allocate indirect expenses to each profession. Documentation to support allocated expenses must be maintained and the department must provide this information to the boards upon request. The department must provide each board with an annual report of revenue and direct and allocated expenses related to the operation of that profession. Boards are required to use these reports and the long-range plan to determine the amount of license fees. A condensed management report of this information, with recommendations from the department, is to be included in the annual report submitted to the Legislature. Additionally condensed quarterly management reports are to be provided to each board.

### ***Long-range Policy Planning***

Section 456.005, F.S., requires the department and the boards to develop and implement a long-range policy planning and monitoring process to include recommendations specific to each profession. The process includes estimates of revenues, expenditures, cash balances, and performance statistics for each profession over a five year period. The department must monitor compliance with the plan, with input from the boards, and provide annual reports to the Governor and the Legislature by November 1 annually. As part of the review process the department must evaluate specific criteria such as cost effectiveness, the need for continued

regulation, adequacy of consumer protection, consistency between practice acts, adequacy of enforcement of unlicensed activity and include conclusions and recommendations. The department must provide concise management reports to the boards quarterly.

In addition to the general regulatory provisions, each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession.

***Analysis of the Medical Quality Assurance Trust Fund Fee Schedules and Cash Balances (Interim Project Report 2001-016)***

The Senate Committee on Fiscal Policy completed a report, entitled “Analysis of the Medical Quality Assurance Trust Fund Fee Schedules and Cash Balances” (Interim Project Report 2001-016) as part of a Senate committee interim project. The report notes that revenues have been fairly constant, expenditures have increased, and the long-range planning process has not been effective, the following recommendations are provided:

1. The department should comply with current statutory requirements to implement a long-range policy planning and monitoring process and submit the required plan to the Governor and Legislature by November 1 of each year.
2. The department should prepare the five-year estimate of revenues, expenditures and cash balances as soon as possible after the close of the fiscal year so that this information can be included in the long-range planning process and be reviewed by the boards so that fees can be adjusted accordingly.
3. The department should include in the annual report recommendations on the adequacy of existing fees and statutory changes to facilitate cost-effective operations.
4. The department needs to review the cost allocation methodology for allocating indirect costs.
5. The department needs to continue to review the entire regulatory process, including enforcement, to determine the overall cost effectiveness and if certain regulatory functions should be privatized.
6. The Legislature should consider using state funds to subsidize fees for those professions which will never generate sufficient fee revenue to support operations.
7. The Legislature should consider exempting the Medical Quality Assurance Trust Fund from the General Revenue service charge which will allow the revenue to remain with the program and fund program operations.

***Auditor General Report No. 01-063***

The Auditor General performed an operational audit of the Department of Health's Division of Medical Quality Assurance (Report No. 01-063) in November 2000. The report made the following findings and recommendations:

Finding No. 1: A more proactive approach by division personnel in analyzing and reporting the financial condition of the Medical Quality Assurance Trust Fund would provide the Legislature, health care boards, and the Department of Health management information needed to properly monitor the financial viability of the Fund.

Finding No. 2: Reevaluating the department's methods of allocating indirect costs may more accurately identify costs associated with regulating each of the health care professions.

Finding No. 3: Changing license renewal cycles would alleviate significant fluctuations in workload and operating revenues.

Finding No. 4: Completely transferring to the contracted service provider the responsibilities for the receiving and processing of all fees could free up Division staff for other Medical Quality Assurance Division or department functions.

Finding No. 5: Enhancing Division oversight of its contracted service provider would help ensure controls are in place and operating effectively to safeguard license fee receipts.

Finding No. 6: Improving controls over access to the Practitioner Regulatory Application Enforcement System (PRAES) would help ensure the integrity of system processing and data.

Finding No. 7: To ensure the timely resolution of complaints against health care professionals, the Legislature should clarify section 456.073, Florida Statutes, to include the overall total number of allowable days from receipt of a complaint to a determination of probable cause.

Finding No. 8: Analyzing the feasibility of maintaining the entire Medical Quality Assurance function within one department could provide information needed to determine the operating structure that is in the best interest of the state.

The Auditor General Report No. 01-063 recommends that:

The Legislature authorize a study to determine the feasibility of maintaining the entire Medical Quality Assurance function, including enforcement, within one department. Even if it is determined that it is in the best interest of the state to continue to keep these functions separate, such a study could identify additional inefficiencies and corrective alternatives.

The department seek legislative clarification as to the applicability of s. 215.346, F.S., to its contract with the Agency for Health Care Administration, and if appropriate, renegotiate the agreement to establish a maximum amount of indirect cost not to exceed 5 percent of the total cost to be paid under the agreement.

The department consult with the Agency for Health Care Administration and the Attorney General's Office and take coordinated actions to limit attendance to only those legal representatives necessary to the successful conduct of Medical Quality Assurance meetings.

### ***Examination Questions and Answers***

Section 456.014, F.S., provides that all information required by the department of any licensure applicant shall be public record except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1), F.S., and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. The department must establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers.<sup>1</sup> Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under ch. 120, F.S.

Section 456.017(2), F.S., requires the Department of Health to provide procedures for applicants who fail an examination developed by the department or a contract vendor to review their examination questions, answers, papers, grades, and grading key. The applicants must bear the actual cost for the department to provide the examination review pursuant to s. 456.017(2), F.S. An applicant may waive in writing the confidentiality of the applicant's grades. Section 456.017(4), F.S., provides an exemption to the Public Meetings Law for meetings of any member of the department or any board held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions. Any public records such as tape recordings, minutes, or notes, generated during or as result of such proceeding are confidential and exempt from requirements of the Public Records Law. However, the se exemptions shall not affect the right of any person to review an examination as provided in s. 456.017(2), F.S.

### ***Disciplinary Procedures***

Section 456.073, F.S., sets forth procedures the Department of Health must follow in order to conduct disciplinary proceedings against practitioners under its jurisdiction. The department, for the boards under its jurisdiction, must investigate all written complaints filed with it that are legally sufficient. Complaints are legally sufficient if they contain facts, which, if true, show that a licensee has violated any applicable regulations governing the licensee's profession or

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<sup>1</sup> Rule 64B-1.013, Florida Administrative Code, specifies procedures to allow a candidate who has taken and failed a department-developed examination or an examination developed for the department by a professional testing entity the right to review the examination questions, answers, papers, grades and grading keys. Review of national examinations must be conducted in accordance with national examination security guidelines.

occupation. Even if the original complainant withdraws or otherwise indicates a desire that the complaint not be investigated or prosecuted to its completion, the department at its discretion may continue its investigation of the complaint. The department may investigate anonymous, written complaints or complaints filed by confidential informants if the complaints are legally sufficient and the department has reason to believe after a preliminary inquiry that the alleged violations are true. If the department has reasonable cause to believe that a licensee has violated any applicable regulations governing the licensee's profession, the department may initiate an investigation on its own.

When investigations of licensees within the department's jurisdiction are determined to be complete and legally sufficient, the department is required to prepare, and submit to a probable cause panel of the appropriate board if there is a board, an investigative report along with a recommendation of the department regarding the existence of probable cause. A board has discretion over whether to delegate the responsibility of determining probable cause to the department or to retain the responsibility to do so by appointing a probable cause panel for the board. The determination as to whether probable cause exists must be made by majority vote of a probable cause panel of the appropriate board, or by the department if there is no board or if the board has delegated the probable cause determination to the department.

The subject of the complaint must be notified regarding the department's investigation of alleged violations that may subject the licensee to disciplinary action. When the department investigates a complaint, it must provide the subject of the complaint or her or his attorney a copy of the complaint or document that resulted in the initiation of the investigation. Within 20 days after the service of the complaint, the subject of the complaint may submit a written response to the information contained in the complaint. The department may conduct an investigation without notification to the subject if the act under investigation is a criminal offense. If the department's secretary or her or his designee and the chair of its probable cause panel agree, in writing, that notification to the subject of the investigation would be detrimental to the investigation, then the department may withhold notification of the subject.

If the subject of the complaint makes a written request and agrees to maintain the confidentiality of the information, the subject may review the department's complete investigative file. The licensee may respond within 20 days of the licensee's review of the investigative file to information in the file before it is considered by the probable cause panel. Complaints and information obtained by the department during its investigations are exempt from the public records law until 10 days after probable cause has been found to exist by the probable cause panel or the department, or until the subject of the investigation waives confidentiality. If no probable cause is found to exist, the complaints and information remain confidential in perpetuity.

When the department presents its recommendations regarding the existence of probable cause to the probable cause panel of the appropriate board, the panel may find that probable cause exists or does not exist, or it may find that additional investigative information is necessary in order to make its findings regarding probable cause. Probable cause proceedings are exempt from the noticing requirements of ch. 120, F.S. After the panel convenes and receives the department's final investigative report, the panel may make additional requests for investigative information. Section 456.073(4), F.S., specifies time limits within which the probable cause panel may

request additional investigative information from the department and within which the probable cause panel must make a determination regarding the existence of probable cause. Within 30 days of receiving the final investigative report, the department or the appropriate probable cause panel must make a determination regarding the existence of probable cause. The secretary of the department may grant an extension of the 15-day and 30-day time limits outlined in s. 456.073(4), F.S. If the panel does not issue a letter of guidance or find probable cause within the 30-day time limit as extended, the department must make a determination regarding the existence of probable cause within 10 days after the time limit has elapsed.

Instead of making a finding of probable cause, the probable cause panel may issue a letter of guidance to the subject of a disciplinary complaint. Letters of guidance do not constitute discipline. If the panel finds that probable cause exists, it must direct the department to file a formal administrative complaint against the licensee under the provisions of ch. 120, F.S. The department has the option of not prosecuting the complaint if it finds that probable cause has been improvidently found by the probable cause panel. In the event the department does not prosecute the complaint on the grounds that probable cause was improvidently found, it must refer the complaint back to the board that then may independently prosecute the complaint. The department must report to the appropriate board any investigation or disciplinary proceeding not before the Division of Administrative Hearings under ch. 120, F.S., or otherwise not completed within 1 year of the filing of the complaint. The appropriate probable cause panel then has the option to retain independent legal counsel, employ investigators, and continue the investigation, as it deems necessary.

When an administrative complaint is filed against a subject based on an alleged disciplinary violation, the subject of the complaint is informed of her or his right to request an informal hearing if there are no disputed issues of material fact, or a formal hearing if there are disputed issues of material fact or the subject disputes the allegations of the complaint. The subject may waive her or his rights to object to the allegations of the complaint, which allows the department to proceed with the prosecution of the case without the licensee's involvement. Once the administrative complaint has been filed, the licensee has 21 days to respond to the department. If the subject of the complaint and the department do not agree in writing that there are no disputed issues of material fact, s. 456.073(5), F.S., requires a formal hearing before a hearing officer of the Division of Administrative Hearings under ch. 120, F.S. The hearing provides a forum for the licensee to dispute the allegations of the administrative complaint. At any point before an administrative hearing is held the licensee and the department may reach a settlement. The settlement is prepared by the prosecuting attorney and sent to the appropriate board. The board may accept, reject, or modify the settlement offer. If accepted, the board may issue a final order to dispose of the complaint. If rejected or modified by the board, the licensee and department may renegotiate a settlement or the licensee may request a formal hearing. If a hearing is held, the hearing officer makes findings of fact and conclusions of law that are placed in a recommended order. The licensee and the department's prosecuting attorney may file exceptions to the hearing officer's findings of facts. The boards resolve the exceptions to the hearing officer's findings of facts when they issue a final order for the disciplinary action.

The boards within the Department of Health have the status of an agency for certain administrative actions, including licensee discipline. A board may issue an order imposing discipline on any licensee under its jurisdiction as authorized by the profession's practice act and



the provisions of ch. 456, F.S. Typically, boards are authorized to impose the following disciplinary penalties against licensees: refusal to certify, or to certify with restrictions, an application for a license; suspension or permanent revocation of a license; restriction of practice or license; imposition of an administrative fine for each count or separate offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a specified period of time and subject to specified conditions; or corrective action. The department contracts with the Agency for Health Care Administration to investigate and prosecute disciplinary complaints.

### ***Contracts between State Agencies; Restriction on Overhead or Other Indirect Costs***

Section 216.346, F.S., provides that in any contract between state agencies, including any contract involving the State University System or the Florida Community College System, the agency receiving the contract or grant moneys shall charge no more than 5 percent of the total cost of the contract or grant for overhead or indirect costs or any other costs not required for the payment of direct costs.

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

**Section 1.** Provides legislative intent that the Medical Quality Assurance Trust Fund should be administered in a fiscally responsible manner and that DOH reduce expenses wherever possible to ensure that the cost of regulation is reasonable and fair and does not serve as a barrier to licensure in Florida.

Further the Legislature adopts the following findings of the Auditor General's Medical Quality Assurance Operational Audit Report Number 01-063: Finding No. 1: A more proactive approach by Division personnel in analyzing and reporting the financial condition of the Medical Quality Assurance Trust Fund would provide the Legislature, health care boards, and the Department of Health management information needed to properly monitor the financial viability of the Fund; Finding No. 2: Reevaluating the department's methods of allocating indirect costs may more accurately identify costs associated with regulating each of the health care professions; Finding No. 4: Completely transferring to the contracted service provider the responsibilities for the receiving and processing of all fees could free up Division staff for other Medical Quality Assurance Division or department functions; Finding No. 5: Enhancing Division oversight of its contracted service provider would help ensure controls are in place and operating effectively to safeguard license fee receipts; and Finding No. 8: Analyzing the feasibility of maintaining the entire Medical Quality Assurance function within one department could provide information needed to determine the operating structure that is in the best interest of the State. The Legislature adopts the recommendations of the Auditor General Report Number 01-063 that: provide for a study to determine the feasibility of maintaining the entire Medical Quality Assurance function, including enforcement, within one department; require DOH to seek legislative clarification as to the applicability of s. 215.346, F.S., to its contract with the Agency for Health Care Administration, and if appropriate, renegotiate the agreement to establish a maximum amount of indirect cost not to exceed 5 percent of the total cost to be paid under the agreement; and require the department to consult with the Agency for Health Care Administration and the Attorney General's Office and take coordinated actions to limit attendance to only those legal representatives necessary for Medical Quality Assurance meetings.

In addition the Legislature adopts five of the recommendations of the Florida Senate Committee on Fiscal Policy Interim Project Report 2001-016. The Legislature adopts: Recommendation No.1: The Department of Health should comply with current statutory requirements to implement a long-range policy planning and monitoring process and submit the required plan to the Governor and Legislature by November 1 of each year; Recommendation No. 2: The Department of Health should prepare the five-year estimate of revenues, expenditures and cash balances as soon as possible after the close of the fiscal year so that this information can be included in the long-range planning process and be reviewed by the boards so that fees can be adjusted accordingly; Recommendation No. 4: The Department of Health needs to review the cost allocation methodology for allocating indirect costs; Recommendation No. 5: The Department of Health needs to continue to review the entire regulatory process, including enforcement, to determine the overall cost effectiveness and if certain regulatory functions should be privatized; and Recommendation No. 7: The Legislature should consider exempting the Medical Quality Assurance Trust Fund from the General Revenue service charge, which will allow the revenue to remain with the program and fund program operations.

**Section 2.** Requires the Auditor General to conduct a follow-up audit to its Medical Quality Assurance Operational Audit to determine if DOH has implemented the recommendations of the report. The Auditor General is required to complete the follow-up audit and issue a report no later than January 31, 2002.

**Section 3.** Requires the Office of Program Policy Analysis and Government Accountability to study the feasibility of maintaining the entire Medical Quality Assurance function, including enforcement, within a single department. The study must be completed and a report issued no later than November 30, 2001.

**Section 4.** Provides that the contract between DOH and the Agency for Health Care Administration pursuant to s. 20.43(3), F.S., is not subject to the provisions of s. 216.346, F.S. The bill requires DOH to reimburse the Agency for Health Care Administration for the agency's actual and direct costs and the agency's appropriate share of indirect and infrastructure costs applicable to the contract, subject to appropriated funds.

**Section 5.** Amends s. 456.004, relating to the powers and duties of the Department of Health for professions under its jurisdiction, to require the rules establishing procedures for renewal of licenses of the health care professions regulated by the department to specify the expiration dates of licenses, and the process for tracking compliance with continuing education requirements, financial responsibility requirements, and any other conditions of renewal established in statute or in rule.

Section 456.004, F.S., is further amended to require the Department of Health to set examination fees to include all costs to develop, validate, administer, and defend the examination. The examination fee must be set at an amount certain to cover all administrative costs plus the actual per-applicant cost of the examination.

**Section 6.** Amends s. 456.025, F.S., relating to fees, to provide legislative intent and to require the boards to set fees in consultation with the Department of Health every 2 years for the professions regulated by the Division of Medical Quality Assurance. The rulemaking authority is

eliminated for each board to determine the amount of license fees for the profession it regulates, although each board remains responsible for determining the license fees for the profession it regulates based upon long-range estimates of the department. The chairpersons of the boards and councils listed in s. 20.043(3)(g), F.S., must meet annually at the division headquarters to review the long-range policy plan required by s. 456.005, F.S., and proposed fee schedules. The chairpersons, upon approval by the board, must make recommendations for any necessary statutory changes relating to fees and fee caps. The recommendations must be compiled by the Department of Health and be included in the annual report to the Legislature required by s. 456.026, F.S., and be included in the long-range policy plan required by s. 456.005, F.S. The bill provides that, if the cash balance of the trust fund at the end of any fiscal year exceeds the total appropriation for regulation of the health care professions in the prior fiscal year, the boards, in consultation with the department may lower the fees.

Each board or the department, if there is no board, must, by rule, set a fee, not to exceed \$250, for approval of continuing education providers and a biennial renewal fee. The bill specifies how the continuing education provider fees are to be used. The bill requires the department to implement an electronic continuing education tracking system, for which electronic renewals are implemented, and requires continuing education providers to provide information on course attendance to the department. The department is given rulemaking authority to specify the form and procedures by which the information must be submitted. A provision that exempted continuing education courses or providers approved under ch. 465, F.S., from the \$250 fee requirement is deleted.

The department is required to provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession on or before October 1 of each year.

**Section 7.** Amends s. 457.107, F.S., relating to the practice of acupuncture, to provide that the department renew a license upon receipt of the renewal application and the required fee set by the board by rule, not to exceed \$500.

**Section 8.** Repeals s. 458.31151, F.S., which provided limits on fees for a special examination for foreign licensed physicians.

**Section 9.** Amends s. 483.807, F.S., relating to clinical laboratory personnel, to expand rulemaking authority for the Board of Clinical Laboratory Personnel to set fees for registration and a laboratory training program application.

**Section 10.** Amends s. 456.011, F.S., to require each professional board within the Department of Health to comply with the provisions of chapter 456, F.S. The boards are required to meet through teleconferencing or other technological means, except under certain specified circumstances or unless approved in advance by the director of the Division of Medical Quality Assurance. The section specifies that telephone conference calls that last less than 4 hours may not be considered as “other business involving the board” for purposes of reimbursing probable cause panel members.

**Section 11.** Amends s. 456.013, F.S., to require the department to charge an initial license fee as determined by rule of the department and to delete authority for boards to adopt the fee by rule.

**Section 12.** Amends s. 456.017, F.S., to require the department of health to assess examination fees to cover the actual cost to include validation and defense of required examinations. The section is amended to require the use of national examinations no later than December 31, 2002. After that date, neither the department nor any board may administer a state-developed written examination. Examinations may be administered electronically if adequate security measures are used. The section authorizes the use of state-developed practical or clinical examinations under certain circumstances. The department is required to provide scores of state-developed examinations to candidates electronically using an identification number and the department must post the aggregate scores on the department's website without identifying the names of the candidates. The department is authorized to share an examination item bank with a national testing entity under specified circumstances. Applicants for examination or reexamination using an examination in a language other than English must pay the full cost of the examination prior to the examination being administered.

**Section 13.** Amends s. 456.035, F.S., to permit licensees to notify the department of the licensee's current mailing address and place of practice electronically, but it will be the responsibility of the licensee to ensure that the notification was received by the department.

**Sections 14.** Amends s. 456.073, F.S., relating to disciplinary proceedings, to revise the procedures for discipline of licensed health care practitioners to require the department to not recommend a letter of guidance in lieu of a finding of probable cause if the subject has already been issued a letter of guidance for a related offense. The department must establish a plan to expedite rather than reduce any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint.

The subject of a disciplinary complaint's right to review or otherwise inspect an investigative file regarding the complaint is limited to after the investigation is complete and after a recommendation by the department to find probable cause has occurred and only after a written request to review the file by the subject or the subject's attorney.

The subject of a disciplinary complaint may file a written response to the information in an investigative file within 20 days of the "mailing by the department" of an unspecified document.

**Section 15.** Amends s. 456.081, F.S., to authorize the department and the boards to publish a summary of final orders resulting in disciplinary action.

**Section 16.** Amends s. 456.072, F.S., relating to disciplinary action by the Department of Health for those professions without a board, to modify the penalty of restriction of practice or license by adding specific types of restrictions, such as restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare; and to add the following types of penalties: a letter of concern, refund of fees billed and collected from a patient or third party on behalf of a patient, and remedial education.

In addition to any other the discipline imposed for a violation of any practice act, the board or department when there is no board *must* assess costs related to the investigation and prosecution of the disciplinary case.

**Section 17.** Amends s. 456.079, F.S., to specify that a specific finding of mitigating or aggravating circumstances must be in the *final order* in order to allow a board to impose a penalty other than that provided for in the disciplinary guidelines.

**Section 18.** Amends s. 457.109, F.S., relating to acupuncture disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 to \$10,000 for each separate count or offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 19.** Amends s. 458.320, F.S., relating to financial responsibility requirements for specified health care practitioners, to make a technical change in a provision that specifies that any deceptive, untrue, or fraudulent representation by the licensee with respect to any provision of this section must result in permanent disqualification from any exemption to mandated financial responsibility and shall constitute grounds for discipline *under* rather than as specified in s. 458.331, F.S., relating to the discipline of medical physicians and physician assistants.

**Section 20.** Amends s. 458.331, F.S., relating to medical physician and physician assistant disciplinary actions, to delete the board's authority to assess administrative fines and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 21.** Amends s. 459.0085, F.S., relating to financial responsibility requirements for specified health care practitioners, to make a technical change in a provision that specifies that any deceptive, untrue, or fraudulent representation by the licensee with respect to any provision of this section must result in permanent disqualification from any exemption to mandated financial responsibility and shall constitute grounds for discipline *under* rather than as specified in s. 459.015, F.S., relating to the discipline of osteopathic physicians and physician assistants.

**Section 22.** Amends s. 459.015, F.S., relating to osteopathic physician and physician assistant disciplinary actions, to delete the board's authority to assess administrative fines and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 23.** Amends s. 460.413, F.S., relating to chiropractic physician disciplinary actions, to delete the board's authority to assess administrative fines and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of

licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 24.** Amends s. 461.013, F.S., relating to podiatric physician disciplinary actions, to delete the board's authority to assess administrative fines and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 25.** Amends s. 462.14, F.S., relating to naturopathic physician disciplinary actions, to expand the department's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 26.** Amends s. 463.016, F.S., relating to optometry disciplinary actions, to expand the board's authority to assess administrative fines from \$5,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 27.** Amends s. 464.018, F.S., relating to nursing disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 28.** Amends s. 465.016, F.S., relating to pharmacy disciplinary actions, to expand the board's authority to assess administrative fines from \$5,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 29.** Amends s. 466.028, F.S., relating to dentistry disciplinary actions, to expand the board's authority to assess administrative fines from \$3,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 30.** Amends s. 466.037, F.S., relating to dental laboratories, to expand the Department of Health's authority to assess administrative fines against dental laboratories from \$500 up to \$10,000 for each count or separate offense.

**Section 31.** Amends s. 467.203, F.S., relating to midwifery disciplinary actions, to expand the Department of Health's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto. The violation of the practice act or rule of the Department of Health, or any lawful order no longer requires that it be done willfully or repeatedly in order for a midwife to be subject to discipline.

**Section 32.** Amends s. 468.1295, F.S., relating to speech-language pathology and audiology disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 33.** Amends s. 468.1755, F.S., relating to nursing home administration disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 34.** Amends s. 468.217, F.S., relating to occupational therapy disciplinary actions, to expand the board's authority to assess administrative fines up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 35.** Amends s. 468.365, F.S., relating to respiratory therapy disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 36.** Amends s. 468.518, F.S., relating to dietetics and nutrition practice disciplinary actions, to expand the Board of Medicine's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 37.** Amends s. 468.719, F.S., relating to athletic trainers disciplinary actions, to expand the board's authority to assess administrative fines up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified

penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 38.** Amends s. 468.811, F.S., relating to orthotics, prosthetics, and pedorthics disciplinary actions, to expand the board's authority to assess administrative fines up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 39.** Amends s. 478.52, F.S., relating to electrolysis or electrology disciplinary actions, to expand the Board of Medicine's authority to assess administrative fines from \$5,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 40.** Amends s. 480.046, F.S., relating to massage therapy disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 for each count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 41.** Amends s. 483.825, F.S., relating to clinical laboratory personnel disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 per count or separate offense to \$10,000 and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto. The section provides additional criteria for the Board of Clinical Laboratory Personnel to consider when taking disciplinary action against a licensee that is comparable to the criteria currently in s. 483.827, F.S., that is being repealed by this bill.

**Section 42.** Repeals s. 483.827, F.S., relating to the Board of Clinical Laboratory Personnel's authority to deny, suspend, revoke, annul or limit the renewal of a license or impose an administrative fine up to \$500 per violation against licensees.

**Section 43.** Amends s. 483.901, F.S., relating to medical physicists disciplinary actions, to limit the Department of Health's authority to assess administrative fines to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.



**Section 44.** Amends s. 484.014, F.S., relating to opticianry disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 45.** Amends s. 484.056, F.S., relating to hearing aid specialist or hearing aid establishment disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 46.** Amends s. 486.125, F.S., relating to physical therapy disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 47.** Amends s. 490.009, F.S., relating to psychology or school psychology disciplinary actions, to expand the board's authority over psychologists and the Department of Health's authority over school psychologists to assess administrative fines from \$5,000 up to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 48.** Amends s. 491.009, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling disciplinary actions, to expand the board's authority to assess administrative fines from \$1,000 up to \$10,000 per count or separate offense and revise the penalties currently specified in the practice act and to limit specified penalties for violations to the denial of licensure or imposing of any of the penalties specified in s. 456.072(2), F.S.; and to add the violation of any provision of the practice act or ch. 456, F.S., or any rules adopted thereto.

**Section 49.** Amends s. 456.074, F.S., relating to the Department of Health's authority to issue an emergency order suspending the license of a medical physician, physician assistant, osteopathic physician, chiropractic physician, podiatric physician, naturopath, optometrist, nurse, certified nursing assistant, pharmacist, dentist, dental hygienist, hearing aid specialist, or optician who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to specified felonies, to include any felony enumerated under ch. 817, F.S., relating to fraudulent practices.

**Section 50.** Amends s. 464.005, relating to nursing, to require the Board of Nursing to maintain its official headquarters in Tallahassee, effective July 1, 2003.

**Section 51.** Except as otherwise provided in the bill, the effective date of the bill is July 1, 2001.

**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 Art. VII, s. 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 Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

Disciplined licensed health care practitioners under the Department of Health's jurisdiction will incur all assessed costs related to the investigation and prosecution of the case.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Section 4 provides an exemption of 216.346, F.S. related to actual and direct costs and indirect costs for the contract between the Department of Health and the Agency for Health Care Administration. The estimated expenditures in FY 2001-02 (based on FY 1999-2000 costs) are \$1,417,205 above the 5 percent cap.

Section 6 provides for the Boards in consultation with the Department to set fees every two years and that the fees be adequate to cover all anticipated costs and to maintain a reasonable cash balance. The Department has set renewal fees to cover the total estimated expenditures of \$59,299,192 and all other fees will provide for the reasonable cash balance. The additional fees are estimated at \$18,065,270 annually. Total revenues would be the sum of the two or \$77,364,462 in FY 2001-02.

Section 6 (6) requires development costs associated with using the current Medical Quality Assurance licensing system and expanding the system to meet the proposed enhancements as submitted by the Division of Information Technology. The Department has estimated these costs to be \$1,536,000 in FY 2001-02.

Section 10 requires using teleconferencing for board meetings. The cost related to this is indeterminate. The Department states that teleconferencing may be more expensive based on a recent analysis of six board meetings.

Section 12 provides for increased revenues of \$751,241 by eliminating the fee cap for exams. The Department also states that there are cost savings of \$91,567 that will be achieved by the use of available national examinations in FY 2001-02.

Section 50 provides for the relocation of the Board of Nursing office from Jacksonville to Tallahassee. The Department does not estimate any cost for relocating in FY 2001-02 but does reflect a cost of \$173,531 in FY 2002-03.

In summary, based on the changes in the bill, the Department estimates a net change in revenue in the MQATF of \$15,954,873 for FY 2001-02 and \$17,163,742 for FY 2002-03.

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

None.

#### **VII. Related Issues:**

Section 12 of the bill amends s. 456.017, F.S., to require the Department of Health to assess examination fees to cover the actual cost of the examination, including validation and defense of required examinations. This appears to be in conflict with the provisions of several practice acts that provide a specific examination fee as set by board rule.

Under the bill, on page 24, lines 2 to 3, the subject of a disciplinary complaint's right to file a written response to the information in an investigative file is revised to require a response within 20 days of the "mailing by the department." It is unclear whether the "mailing" refers to the subject's review of the file or the department's notification of the subject.

The bill revises s. 456.073 (4), F.S., to require the Department of Health and the boards to *assess* costs related to the investigation and prosecution of the disciplinary case. It is unclear whether the boards may do so to the extent the individual practice acts do not conform to the general grant of authority as revised in s. 456.073(4), F.S. Applicable case law has characterized disciplinary proceedings as quasi-penal. "Disciplinary proceedings against physicians are governed by statute, and the rule is clear that where statutes authorizing revocation of a license to engage in the practice of a profession are invoked, the provisions of the statutes must be strictly construed and strictly followed, because the statute is penal in nature." *Farzad v. Department of Professional Regulation*, 443 s.2d 373 at 374 (Fla. 1<sup>st</sup> DCA 1983).

The requirement for the department and boards to assess investigation and prosecution costs in all disciplinary cases may encourage more parties to seek a formal hearing before a hearing officer at the Division of Administrative Hearings which may be more costly than an informal hearing before a board. Further, there is no requirement for an administrative hearing officer to assess such costs as part of the recommended order of discipline. It may encourage prevailing parties to seek claims under s. 57.111, F.S. Under s. 57.111, F.S., small business parties may be

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granted an award of attorney's fees and costs unless the agency's actions were substantially justified or special circumstances exist that would make the award unjust.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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