STORAGE NAME: h1867.hcc.doc
DATE: April 19, 2001

HOUSE OF REPRESENTATIVES

COUNCIL FOR HEALTHY COMMUNITIES ANALYSIS

BILL #: HB 1867 (PCB HR 01-02)

RELATING TO: Health Care Practitioner Regulation/Medical Quality Assurance Trust Fund

SPONSOR(S): Committee on Health Regulation, Representative Farkas and others

TIED BILL(S): None.

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

(1) HEALTH REGULATION YEAS 8 NAYS 3
(2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

This bill addresses the impending deficit of the Medical Quality Assurance Trust Fund, the issues raised and recommendations made by the Auditor General in its November report, the issues and recommendations made by the Senate Committee on Fiscal Policy Interim Report, and other fiscal issues.

Preliminary estimates by the Department of Health and the Agency for Health Care Administration suggest that the provisions of this bill will reduce expenses and prevent the Medical Quality Assurance Trust Fund from entering into a deficit as projected. Moreover, any savings realized can be passed on to licensed health care practitioners in the form of reduced fees.

Therefore, this bill will have positive impact on the state as well as the private sector.

On April 18, 2001, the Council for Healthy Communities adopted a strike-everything amendment. The amendment is traveling with the bill. For an explanation of the amendment, please see the Amendments section of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes [x]	No []	N/A []
3.	Individual Freedom	Yes []	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:

Within the last year, the Department of Health has discovered that the Medical Quality Assurance Trust Fund (MQATF) does not have the large surplus that was believed to be there. Several recent studies have shown that much of the surplus has been spent on the Practitioner Profiling Program, passed by the Legislature in 1997, and the Practitioner Credentialing Program, passed by the Legislature in 1998. Another large expense was the purchase of the computer system, known as PRAES, necessary to carry out the profiling and credentialing programs.

The Auditor General released a report in November of 2000 specifying the findings of and recommendations resulting from an operational audit conducted of the Department of Health, Division of Medical Quality Assurance (MQA). The report, entitled Medical Quality Assurance Operational Audit Report Number 01-063, contained eight specific findings. The findings included:

1. A more proactive approach by Division personnel in analyzing and reporting the financial condition of the MQATF would provide the Legislature, health care boards, and Department management information needed to properly monitor the financial viability of the Fund.
2. Reevaluating the Department's methods of allocating indirect costs may more accurately identify costs associated with regulating each of the health care professions.
3. Changing licensure renewal cycles would alleviate significant fluctuations in workload and operating revenues.
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 MQA or Department functions.
5. Enhancing Division oversight of its contracted service provider would help ensure controls are in place and operating effectively to safeguard license fee receipts.
6. Improving controls over access to the PRAES would help ensure the integrity of system processing and data.
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.
8. Analyzing the feasibility of maintaining the entire MQA 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's Report also included two recommendations for legislative change or clarification. The two recommendations relating to the Legislature are:

1. The Legislature should authorize a study to determine the feasibility of maintaining the entire MQA function, including enforcement, within one Department.
2. The Department should seek legislative clarification as to the applicability of Section 216.346, Florida Statutes, 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% of the total cost to be paid under the agreement.

The Overall Conclusion of the Auditor General's Report states:

> During the past seven years, the MQA function has undergone transfers among three different agencies. During the course of these transfers, administrative support and data systems that supported the MQA function have been progressively replaced. These changes have come at a cost not only in increased expenditures, but an inability to proactively assess and address certain issues.
>
> Several of the issues noted in this report may be contributing to the declining financial condition of the MQATF. As noted above, the MQATF cash balance has declined 33% over the past two fiscal years. Should the revenue and expenditure patterns of the past two years continue, the MQATF may eventually fail to support the MQA function. Department management should aggressively address these issues and take necessary corrective actions to ensure the ongoing viability of the State's MQA Program.

In addition to the Auditor General's Report, the Florida Senate Committee on Fiscal Policy completed an interim study relating to the MQATF. The November 2000 Interim Project Report 2001-016, entitled "Analysis of the Medical Quality Assurance Trust Fund Fee Schedules and Cash Balances," found that a total of $60.9 million was spent from the MQATF during FY 1999-2000. Of that amount, $31.7 million was spent on testing, licensure, legal, impaired practitioner, credentialing, profiling, and other expenses incurred by the Division of Medical Quality Assurance. Another $15.9 million was spent by the Agency for Health Care Administration on enforcement related activities pursuant to an interagency agreement with the department. The General Revenue service charge amounted to $3.6 million of licensure fees being transferred from the MQATF into General Revenue. Expenses relating to computer systems and information management totaled $2.1 million. The remaining $7.6 million was attributed to other activities such as fingerprinting and background screening costs, which are paid from the MQATF to other state agencies.

The Senate Interim Project Report Recommendations section states, "Since revenues have been fairly consistent, 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 MQATF from the General Revenue service charge, which will allow the revenue to remain with the program and fund program operations.

The following chart lists the various professions within the Division of Medical Quality Assurance, the number of active licensees, whether the profession is currently in a deficit or the fiscal year in which it is projected to be in a deficit, what the current renewal fee is for an active licensee, whether the fee is at the statutory maximum, when the fee was last changed, and what the statutory cap is for renewals. The information relating to numbers of active licensees, current and projected deficits, and the dates of the last change in the fees set by rule was provided by the Department of Health.

Professions	# Active	Current Deficit?	Projected Deficit in FY	Current Renewal Fee	Fee At Max?	Last Change in Fee by Rule	Statutory Fee Cap-Renewals
Acupuncturist	984	No		$ 400	No	Increased in 1987	$ 505
ARNP	8,000	No		$ 105	Yes		$ 105
Athletic Trainers	728	No		$ 130	No	Established in 1995	$ 205
Chiropractic Physician	4,573	Yes	current	$ 505	Yes	Increased in 2001	$ 505
Clinical Lab Directors	200	Yes	current	$ 155	Yes	Increased in 1998	$ 155
Clinical Lab Pers.	12,994	Yes	current	$ 55	No	Increased in 1998	$ 205
CSW,MFT,MHC	15,929	Yes	current	$ 250	No	Increased in 2000	$ 255
Dental Hygienist	8,863	No	00-01	$ 90	No	Increased in 1992	$ 305
Dental Laboratories	999	No		$ 100	No	Decreased in 1992	$ 305
Dentist	10,503	No	00-01	$ 200	No	Decreased in 1996	$ 305
Dietetics & Nutrition	3,171	No	02-03	$ 50	No	Increased in 1992	$ 505
Electrology	523	Yes	current	$ 105	Yes	Increased in 1993	$ 105
Electrolysis Facility	304	Yes	current	$ 105	Yes	Increased in 1993	$ 105
Hearing Aid Specialist	860	Yes	current	$ 380	No	Increased in 1991	$ 605
Massage Est.	4,462	No		$ 100	No	Increased in 1988	$ 150
Massage Therapist	20,185	No		$ 100	No	Increased in 1988	$ 205
Medical Doctor	43,771	No	02-03	$ 355	No	Increased in 1989	$ 505
Medical Physicists	349	No	01-02	$ 150	No	Increased in 1999	$ 505
Midwifery	87	Yes	current	$ 505	Yes	Increased in 1999	$ 505
Naturopath	8	Yes	current	$ 250	No	Increased in 1992	$ 1,005
Nursing	229,884	No		60	No Cap	Increased in 1994	No Cap
Nursing Home Admin	1,684	Yes	current	$ 235	No Cap	Increased in 1990	No Cap
Occupational Therapy	6,434	No		$ 55	No	Increased in 1989	Cost = $995
Optical Establishment	853	No		$ -	No renewal	No renewal	$ -
Opticianry	3,332	No		$ 205	No	Decreased in 1998	$ 355
Optometrist	2,802	No	01-02	$ 305	Yes	Increased in 1994	$ 305
Optometry Branch Ofc	497	No	01-02	$ 100	Yes	Increased in 1995	$ 100
Orthotics & Prosthetics	466	Yes	current	$ 105	No	Increased in 1999	$ 505
Osteopathic Physician	3,807	No		$ 405	No	Increased in 1989	$ 505
Pharmacies	6,239	No	02-03	$ 250	No	Increased in 2000	$ 250

Pharmacist	22,844	No	02-03	$	250	No	Increased in 2001	$	255
Physical Therapy	13,924	No		$	60	No	Increased in 1990	$	205
Physician Assistants	2,477	No	00-01	$	205	No	Increased in 1998	$	505
Podiatric Physician	1,488	Yes	current	$	355	Yes	Increased in 1996	$	355
Psychologist	3,209	No	00-01	$	305	No	Increased in 1996	$	505
Respiratory Therapy	9,907	Yes	current	$	115	No	Increased in 2000	$	205
School Psychology	517	Yes	current	$	105	No	Increased in 1991	$	505
Sp Lang Path, Audio	5,152	No		$	125	No	Increased in 1991	$	505

C. EFFECT OF PROPOSED CHANGES:

The bill specifically adopts findings 1, 2, 4, 5, and 8 of the Auditor General's Report, as listed herein. The bill also specifically adopts the recommendations of the Auditor General's Report relating to necessary legislative changes. Furthermore, this bill requires a follow-up audit by the Auditor General to ensure that the department is implementing all of the recommendations from that report. It requires an OPPAGA study to determine if the enforcement component is doing the best job possible and if not, whether it could be done better by being part of the Department of Health. The bill also requires department contracts to ensure that no more than 5% of the total cost of the contract is paid for indirect costs, in order to provide the clarification suggested by the Auditor General. Furthermore, it exempts the MQATF from paying the General Revenue service charge for two fiscal years in order to ensure the financial integrity of the MQATF.

Because the current fee structure and fee caps provided in statute may not be sufficient to cover the expenses of the MQATF, as stated in the aforementioned reports, this bill provides a new fee structure. The fee structure provides that like-professions would pay like-fees, rather than the existing fee structure that is dissimilar even among professionals likely to earn the same salary and whom have similar levels of college or post-graduate degrees. In order to ensure fairness between the differing levels of practitioners, the authority to determine the specific fees are transferred. Instead of the boards determining the fees in consultation with the department, this bill provides for the department to set the fees in consultation with the boards. It requires the department to lower fees if a surplus cash balance exists. It allows interested parties to challenge the rules setting fees to ensure that proper methodologies are being used in setting fees. It prevents the department from setting fees at a level that would be a barrier to licensure as a health care practitioner.

This bill eliminates costly post-renewal audits of continuing education hours as well as the costly disciplinary process that results, by making practitioners prove that all required continuing education hours were obtained prior to renewal. It requires the department to implement an online continuing education tracking system in conjunction with the online renewal process that is currently underway. It eliminates costly and time-consuming state-developed exams when national exams are available. This not only saves the state money, but also will allow the practitioner to more readily become licensed in more than one state. It also requires laws and rules examinations to be administered electronically, which should expedite the process for licensure applicants.

It saves money through the use of technology by limiting costly face-to-face board meetings to only those where there are licensure denial hearings, serious disciplinary hearings, or controversial rule hearings. This will save travel costs, as well as making the prosecutors and board staff more efficient because time won't be spent traveling. The bill also eliminates duplicative, and sometimes conflicting, language contained in the various practice acts and instead provides a cross-reference to the grounds for discipline and penalties provided in chapter 456, F.S., which applies to all licensed health care practitioners. It clarifies the disciplinary process, sets a maximum penalty for

administrative fines, and requires costs to be assessed against practitioners found guilty of violating the law. This will increase revenues as well as serve as a deterrent for other licensees.

It requires more information to be made available to practitioners online to help better educate them and the public. It deletes obsolete language and conforms cross-references.

D. SECTION-BY-SECTION ANALYSIS:

Please see Effect of Proposed Changes section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

Estimates from the Department of Health indicate that this bill will result in an increased net gain to the MQATF for the first year of between $17 Million and $25 Million and approximately $22.6 Million annually thereafter. Therefore, the provisions of this bill will result in a net gain of millions of dollars annually for the Medical Quality Assurance Trust Fund which will prevent it from entering into a deficit.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county 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:

If the fee caps are removed from the statutes, the Legislature needs to provide specific and stringent guidelines to ensure that the department does not have unbridled and unlimited discretion to raise fees. This issue has been addressed in the legislative intent and direction portions of the bill, as well as the provision requiring a second audit by the Auditor General.

B. RULE-MAKING AUTHORITY:

The department will have the authority to set fees by rule, if the bill passes without amendment. All substantive rules affecting the practice of each profession will still remain with the regulatory boards.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 18, 2001, the Council for Healthy Communities unanimously adopted a strike-everything amendment offered by Representative Farkas. Due to time considerations, the amendment is traveling with the bill. The amendment contains most of the cost-saving measures adopted by the Committee on Health Regulation, as discussed in this analysis, with the exceptions noted below.

The most significant difference between the original bill and the strike-everything amendment is that the amendment restores the fee caps and returns fee rulemaking authority to the regulatory boards, as is provided under current law. Additionally, the strike-everything amendment removes the 2-year exemption from the General Revenue surcharge, restoring current law. Furthermore, the amendment makes necessary technical changes and corrects drafting errors.

In addition, the amendment removes a provision in the original bill that would have clarified an issue pointed out by the Auditor General Report relating to the contract between the Department of Health and the Agency for Health Care Administration. The Auditor General noted that the department was paying the agency more than 5% in indirect costs contrary to the provisions of chapter 216, F.S. The Auditor General recommended that Legislative clarification be sought. However, the agency believes that chapter 216, F.S., does not apply to interagency contracts and wants all of its indirect costs associated with the employees providing services to the department to be paid by the department. The department wants a cap on the amount of indirect costs that it must pay to the agency so that there will be accountability and incentive for keeping expenses to a minimum. Since no agreement has been reached, the amendment removes this issue from the bill which will require the two executive branch agencies to work out an agreement without legislative intervention.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:	Staff Director:
Wendy Smith Hansen, Senior Attorney	Lucretia Shaw Collins

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:	Council Director:
Wendy Smith Hansen, Senior Attorney	Mary Pat Moore