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 2158

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.	Munroe	Wilson	HC	Favorable/CS
2.			ED	
3.			AED	
4.			AP	
5.				
6.				

I. Summary:

The bill incorporates many of the recommendations of the Florida Commission on Excellence in Health Care that was established to facilitate the development of a comprehensive statewide strategy for improving the health care delivery system. The bill: exempts licensed health care practitioners in hospitals and ambulatory surgical centers from the required annual 1 hour of risk management and risk prevention education, but requires all health care practitioners to complete a 2-hour department or board-approved course relating to the prevention of medical errors as part of licensure; requires risk management programs in hospitals and ambulatory surgical centers to implement measures to minimize surgical mistakes; requires the Agency for Health Care Administration to publish certain information regarding adverse incident reports and malpractice claims on its website; requires risk managers to report every allegation of sexual misconduct by a licensed health care practitioner to the Department of Health; creates a privilege against civil liability for any licensed risk manager or facility with regard to information furnished under ch. 395, F.S., unless it involved bad faith or malice; makes it unlawful to interfere with a risk manager in the performance of his or her reporting obligations; revises the composition of the Health Care Risk Manager Advisory Council; specifies additional grounds for discipline related to medical errors and penalties for licensed health care practitioners; requires the Department of Health to notify the patient named in a complaint regarding the status of disciplinary investigations and authorizes the complainant to receive the department's expert report; specifies additional disciplinary violations which boards may subject to resolution by the issuance of a citation; provides for emergency suspension of a health care licensee for fraud; provides requirements for pharmacy technicians; and makes nursing home administrators subject to discipline for failing to implement an ongoing quality-assurance program.

The bill revises requirements for the annual hospital assessment to fund public medical assistance and requires the Department of Health and the Agency for Health Care Administration

to conduct a review of all statutorily imposed reporting requirements for heath care providers and report to the Legislature by November 1, 2001.

The bill revises the Department of Health's credentialing program for health care practitioners to provide intent that the department and all entities and practitioners work cooperatively to ensure the integrity and accuracy of the program and to revise definitions. The bill provides that healthcare entities and credentials verification organizations may rely upon any data that has been primary-source verified by the department or its designee to meet primary-source verification requirements of national accrediting organizations.

This bill amends requirements for the Nursing Student Loan Forgiveness Program to include public schools as employing institutions whose nurse employees are eligible to receive loan repayment under the program. The bill extends an exemption to public schools, family practice teaching hospitals, and specialty children's hospitals from the requirement to match loan forgiveness funding for those nurses employed by those entities. The bill creates a priority listing, by employer, for the disbursement of funds from the Nursing Student Loan Forgiveness Trust Fund, if insufficient funding prevents the grant of all eligible applicants' requests for awards. The bill transfers, by a type two transfer, the Nursing Student Loan Forgiveness Program from the Department of Education to the Department of Health.

The Nursing Scholarship Program requirements are also amended to include nursing homes, hospitals, public schools, university colleges of nursing, and community college nursing programs in the list of places where scholarship recipients can complete their service obligation. The bill expands the eligibility for the Nursing Scholarship Program to include scholarship applicants who are enrolled as full-time or part-time students in the upper division of an approved nursing program leading to the award of a graduate degree that qualifies the recipient for a nursing faculty position.

The bill revises nursing licensing procedures to allow the Board of Nursing to determine the equivalency of other nursing programs to an approved nursing program for applicants to meet the licensure by examination requirements. The bill requires nursing licensure by endorsement applicants to submit to a national criminal history check in addition to the state criminal history check currently required. The department must develop an electronic applicant notification process for endorsement applicants and must issue a license within 30 days after the completion of all required data collection and verification. The application and processing fee is eliminated for persons applying for retired volunteer nurse certificates. The Board of Nursing is transferred from Jacksonville to Tallahassee, effective July 1, 2003. The bill creates the Florida Center for Nursing to address issues of supply and demand for nursing, including recruitment, retention, and utilization of nurse workforce resources.

The bill requires the Office of Program Policy Analysis and Governmental Accountability to study the feasibility of maintaining the entire Medical Quality Assurance function within one department.

The bill authorizes boards or the Department of Health to appoint a health care practitioner who agrees to serve as custodian of medical records in the event of the death or incapacity of a practitioner, or the abandonment of the records.

The bill revises provisions governing prohibited referrals to clinical laboratories.

The bill makes additional regulatory changes for the practice of dentistry, respiratory therapy, hearing aid specialists, speech-language pathology and audiology, radiation therapy, massage, psychology, opticianry, pharmacy, and psychotherapy.

This bill substantially amends the following sections of the Florida Statutes: 395.0197, 395.10972, 395.701, 456.013, 456.063, 456.072, 456.073, 456.077, 456.074, 456.081, 458.331, 459.015, 465.019, 465.0196, 468.1755, 468.1695, 468.1735, 484.056, 766.101, 440.105, 626.989, 766.1115, 456.047, 240.4075, 240.4076, 464.005, 464.008, 464.009, 464.0205, 456.031, 456.033, 627.419, 468.302, 468.352, 468.355, 468.357, 468.358, 468.359, 468.1155, 468.1215, 480.033, 484.0445, 484.045, 490.012, 490.014, 491.012, 456.057, 499.012, 484.002, 484.006, 484.012, 484.013, 484.015, 921.0022, and 483.245.

The bill creates six undesignated sections of law.

II. Present Situation:

Florida Commission on Excellence in Health Care

Last year, the Legislature created the Florida Commission on Excellence in Health Care to facilitate the development of a comprehensive statewide strategy for improving the health care delivery system through meaningful reporting standards, data collection and review, and quality measurement. The Legislature directed the commission to:

- Identify existing data sources that evaluate the quality of care in Florida and collect, analyze, and evaluate this data.
- Establish guidelines for data sharing and coordination.
- Identify core sets of quality measures for standardized reporting by appropriate components of the health care continuum.
- Recommend a framework for quality measurement and outcome reporting.
- Develop quality measures that enhance and improve the ability to evaluate and improve care.
- Make recommendations regarding research and development needed to advance quality measurement and reporting.
- Evaluate regulatory issues relating to the pharmacy profession and recommend changes necessary to optimize patient safety.
- Facilitate open discussion of a process to ensure that comparative information on health care quality is valid, reliable, comprehensive, understandable, and widely available in the public domain.

- Sponsor public hearings to share information and expertise, identify "best practices," and recommend methods to promote their acceptance.

- Evaluate current regulatory programs to determine what changes, if any, need to be made to facilitate patient safety.

- Review public and private health care purchasing systems to determine if there are sufficient mandates and incentives to facilitate continuous improvement in patient safety.

- Analyze how effective existing regulatory systems are in ensuring continuous competence and knowledge of effective safety practices.

- Develop a framework for organizations that license, accredit, or credential health care practitioners and health care providers to more quickly and effectively identify unsafe practitioners and providers and to take action necessary to remove the unsafe practitioner or provider from practice or operation until such time as the practitioner or provider has proven safe to practice or operate.

- Recommend procedures for development of a curriculum on patient safety and methods of incorporating such curriculum into training, licensure, and certification requirements.

- Develop a framework for regulatory bodies to disseminate information on patient safety to health care practitioners, health care providers, and consumers through conferences, journal articles and editorials, newsletters, publications, and Internet websites.

- Recommend procedures to incorporate recognized patient safety considerations into practice guidelines and into standards related to the introduction and diffusion of new technologies, therapies, and drugs.

- Recommend a framework for development of community-based collaborative initiatives for error reporting and analysis and implementation of patient safety improvements.

- Evaluate the role of advertising in promoting or adversely affecting patient safety.

- Evaluate and make recommendations regarding the need for licensure of additional persons who participate in the delivery of health care to Floridians, including, but not limited to, surgical technologists and pharmacy technicians.

- Evaluate the benefits and problems of the current disciplinary systems and make recommendations regarding alternatives and improvements.

The Legislature directed that a report be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 2001. The report contained a summary of the commission's recommendations. Further information can be found at myflorida.com@doh.state.fl.us. Copies of the Report are available on line at http://www.floridahealthstat.com.

Internal Risk Management

Chapter 395, F.S., governs the licensure of hospitals and ambulatory surgical centers. As a licensure requirement, each hospital and ambulatory surgical center must, at a minimum, under s. 395.0197, F.S., establish an internal risk management program. Such a program is considered to be part of what is known as the quality assurance process that hospitals and ambulatory surgical centers use in their daily operations to ensure that adverse incidents, service-related accidents, and patient dissatisfaction are conscientiously examined on a continuous basis. An internal risk management program must provide for: 1) the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents causing injury to patients; 2) the development of appropriate measures to minimize the risk of injuries and adverse incidents to patients; 3) the analysis of patient grievances that relate to patient care and the quality of medical services; and 4) the development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents and employees of the licensed facility to report adverse incidents.

The responsibility for the internal risk management program is with the governing board. The board is required to hire a licensed risk manager to implement and oversee the program. Risk managers are exempted from liability and legal action for activities they undertake in implementing an internal risk management program that is in conformity with law so long as they are not intentionally fraudulent in their conduct.

Each hospital and ambulatory surgical center must report within 15 working days certain specified adverse or untoward incidents that occur in the facility or that arise from health care prior to admission to the facility. These reports are not available to the public, except that a health care professional against whom probable cause of violation of the law has been established, upon written request, may obtain the records on which the determination of probable cause was made.

The internal risk manager of each licensed facility must: investigate every allegation of sexual misconduct that is made against a member of the facility's personnel who has direct patient contact, when the allegation is that the sexual misconduct occurred at the facility or on the grounds of the facility; report every allegation of sexual misconduct to the administrator of the licensed facility; and notify the family or guardian of the victim, if a minor, that an allegation of sexual misconduct has been made and that an investigation is being conducted. Any person who, with malice or with intent to discredit or harm a licensed facility or any person, makes a false allegation of sexual misconduct against a member of a licensed facility's personnel is guilty of second degree misdemeanor punishable by jail time up to 60 days and a fine up to $500.

The Agency for Health Care Administration, in consultation with the Department of Insurance, is delegated authority to adopt rules that govern the establishment of internal risk management programs. As specified under s. 395.0197, F.S., each licensed facility must submit an annual report to the agency summarizing the incident reports filed in the facility that year. The agency is required to publish an annual report containing certain specified data that summarizes the information in the various annual reports and serious incident reports submitted by the licensed facilities throughout that year. Any facility that violates the reporting requirements is subject to a

maximum $5,000 administrative penalty assessable by the Agency for Health Care Administration.

Section 395.10972, F.S., specifies requirements for the Health Care Risk Manager Advisory Council to advise the Agency for Health Care Administration on matters pertaining to health care risk managers. The Secretary of the agency may appoint a five-member advisory council that includes: two active health care risk managers, one active hospital administrator, one employee of an insurer or self-insurer of medical malpractice coverage and one consumer.

Public Medical Assistance Trust Fund Assessments

Part IV of chapter 395, F.S., consisting of ss. 395.701 and 395.7015, F.S., relates to the Public Medical Assistance Trust Fund (PMATF) which is created in s. 409.918, F.S. Revenues collected from assessments on the specified health care providers under Part IV of chapter 395, F.S., are used to fund Medicaid-reimbursed hospital inpatient services. Through use of such trust fund moneys, the State is able to avoid use of general revenue to pay for Medicaid services provided to medically indigent State residents.

Section 395.701, F.S., was originally enacted in 1984 to impose an assessment of 1.5 percent against the annual net operating revenue of each state-licensed hospital. The funds generated through the assessment were to be used to expand Medicaid coverage and equalize the financial burden of indigent health care among hospitals. Assessments are deposited into the PMATF. There are approximately 256 hospitals subject to the PMATF assessment, according to AHCA.

General Health Care Practitioner 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 pedorthtics), 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).

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

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.

Pharmacy

Chapter 465, F.S., governs the practice of pharmacy. Under s. 465.019, F.S., all institutional pharmacies must be under the professional supervision of a consultant pharmacist, and the compounding and dispensing of medicinal drugs must be done only by a licensed pharmacist. All pharmacies must hold a permit from the Department of Health. Section 465.0196, F.S., specifies requirements for the issuance of a special permit to pharmacies that are not a community pharmacy, institutional pharmacy, or nuclear pharmacy as defined under the chapter. A special pharmacy is defined to include every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined.

Nursing Home Administration

Part II, ch. 468, F.S., provides for the regulation of nursing home administration. The part provides grounds for which a nursing home administrator may be subject to discipline by the Board of Nursing Home Administrators.

Nursing Student Loan Forgiveness Program

Section 240.4075, Florida Statutes, establishes the Nursing Student Loan Forgiveness Program within the Department of Education. The program was established to increase employment and retention of registered nurses and licensed practical nurses in nursing homes and hospitals in the State and in State-operated medical and health care facilities, birth centers, federally sponsored community health centers and teaching hospitals. The program provides financial assistance to eligible nurses by repaying loans obtained by the licensed nurse to pay for a postsecondary nursing education. To be eligible for repayment of a loan, a candidate must have graduated from an accredited or approved nursing program and have received a Florida license as a licensed practical nurse or registered nurse, or certification as an advanced registered nurse practitioner. The program only covers repayment of loans to pay the costs of tuition, books, and living expenses for a total that may not exceed $4,000 for each year of education. To receive funds under the program, the candidate must show proof of employment in designated facilities in the State. Loan principal payments must be made by the Department of Education directly to the federal or state programs, or the commercial lending institutions holding the loan. The loan principal and accrued interest is retired on the following schedule: twenty-five percent of the loan principal and accrued interest shall be retired after the first year; fifty percent is retired after the second year; seventy-five percent is retired after the third year; and the remaining loan principal and accrued interest after the fourth year.

The program is funded from a $5 licensing fee collected from each nurse upon initial licensure and license renewal. Revenues collected from the fee must be deposited into the Nursing Student Loan Forgiveness Trust Fund and used to fund both the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program. The trust fund is administered by the Department of Education and the Comptroller authorizes expenditures from the trust fund upon receipt of vouchers approved by the Department of Education.

Any funds that are used for loan forgiveness for nurses employed by hospitals, birth centers, and nursing homes must be matched on a dollar-for-dollar basis by contributions from the employing institutions. Employing institutions that are state-operated medical and health care facilities, county health departments, federally sponsored community health centers, or statutory teaching hospitals are exempt from the requirement to match loan forgiveness funding for those nurses employed by those entities. Any money collected from the private health care industry and other private sources, as matching funds must be deposited into the trust fund. Any balance in the trust fund at the end of any fiscal year must remain and be available for the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program. All moneys in the Nursing Student Loan Forgiveness Trust Fund must be invested and interest income accruing to that portion of the trust fund not matched must increase the total funds available for loan forgiveness and scholarships. The Department of Education is authorized to recover its costs for administering both the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program from the trust fund. The Department of Education may adopt rules necessary to implement the Nursing Student Loan Forgiveness Program.

The Office of Health Professional Recruitment within the Department of Health initially administered the Nursing Student Loan Forgiveness Program. The program was transferred to the Department of Education on July 1, 1998. According to officials at the Department of Education, there were no employing entities that were required to give a dollar for dollar match of scholarship funds during the period from 1994-2000.

The following table identifies the number of nurses funded, the average amount of an award, and total program disbursements for FY 95-96 through FY 99-00.

Year	Number of Nurses Funded	Average Award Amount	Total Disbursements
1995-1996	95	$1,301	$123,569
1996-1997	58	$1,791	$103,853
1997-1998	81	$2,251	$182,364
1998-1999	90	$2,025	$182,269
1999-2000	80	$2,709	$216,730

Source: Department of Education

Nursing Scholarship Program

Section 240.4076, F.S., establishes the Nursing Scholarship Program that gives financial assistance to applicants who are enrolled as full-time or part-time students in the upper division of an approved nursing program leading to a baccalaureate or any advanced registered nurse practitioner degree or are enrolled as a full-time or part-time student in an approved program

leading to an associate degree in nursing or a diploma in nursing. A scholarship may be awarded for no more than 2 years, in an amount no greater than $8,000 per year. Registered nurses who are pursuing an advanced registered nurse practitioner degree may receive up to $12,000 per year. Beginning July 1, 1998, these amounts are adjusted by the amount of any increase or decrease in the consumer price index for urban consumers, published by the United States Department of Commerce.

Scholarship payments are transmitted to the recipient after the Department of Education has received documentation that the recipient is enrolled in an approved nursing school. For each full year of scholarship assistance received, the recipient must agree to work 12 months at a health facility in a medically under-served area approved by the Florida Department of Education. Scholarship recipients who attend school on a part-time basis must have their employment service obligation prorated in proportion to the amount of scholarship payments received. Health care facilities where scholarship recipients may fulfill the service obligation include state-operated medical or health care facilities, county health departments, federally sponsored community health centers, or statutory teaching hospitals. The Department of Education must develop a formula to prorate payments to scholarship recipients so that payments do not exceed the maximum amount per academic year.

The Nursing Scholarship Program has penalties for recipients who default on their education or service requirements. Any recipient who does not complete an appropriate program of studies or who does not become licensed must repay the Department of Education the entire amount of the scholarship plus 18 percent interest accruing from the date of the scholarship payment. Any recipient who does not accept employment as a nurse at an approved health care facility or who does not complete 12 months of approved employment for each year of scholarship assistance received must repay the Department of Education an amount equal to two times the entire amount of the scholarship plus interest accruing from the date of the scholarship payment at the maximum allowable interest rate permitted by law. Repayment must be made within 1 year of notice that the recipient is in default. The Department of Education must adopt rules to implement the Nursing Scholarship Program, including rules to address extraordinary circumstances that may cause a recipient to default on his or her agreement.

On July 1, 1998, the Nursing Scholarship Program was transferred from the Department of Health to the Department of Education.

The following table identifies the number of nurses receiving scholarships, the average amount of the scholarship and total program disbursements for FY 95-96 through FY 99-00.

Year	Number of Nurses Funded	Average Award Amount	Total Disbursements
1995-1996	8	$10,500	$84,000
1996-1997	1	$6,000	$6,000
1997-1998	2	$12,000	$24,000
1998-1999	1	$3,000	$3,000
1999-2000	0	$0	$0

Source: Department of Education

Type-two Transfers

Section 20.06, F.S., provides methods of reorganizing the executive branch of government. A type two transfer under s. 20.06, F.S., is defined to mean the transfer of a program, activity, or function and all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds from one agency to another.

Office of Health Professional Recruitment

The Office of Health Professional Recruitment within the Department of Health is charged both with identifying medically under-served areas throughout Florida and with administering several programs to improve access to primary care by alleviating health professional shortages. This office administers a federally funded cooperative agreement with the United States Public Health Service, which assists in recommending placement of the health care professionals participating in the program, and the Area Health Education Center Network, which recruits students from under-served, remote, rural and inner-city communities into primary health care professional training programs. The office also recommends health professional placement to work in medically under-served areas and state programs primarily through the National Health Service Corps Program, recommends placement of foreign physicians under the J-1 Visa Waiver Program, and gathers data for recommending areas for designation by the federal government as health professional shortage areas.

Family Practice Teaching Hospitals

Section 395.805, F.S., defines a family practice teaching hospital to mean a freestanding, community-based hospital licensed under chapter 395, F.S., that offers a 3-year family practice residency program accredited through the Residency Review Committee of the Accreditation Council of Graduate Medical Education or the Council on Post-doctoral Training of the American Osteopathic Association.

Standardized Credentialing for Health Care Practitioners

Section 456.047, F.S., provides requirements for a standardized credentialing program for certain health care practitioners regulated by the Department of Health. The program provides a mechanism for standardized credentialing of medical physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, and advanced registered nurse practitioners. The section provides legislative intent that a credentials collection program be established to provide that, once a health care practitioner's core credentials data are collected, they need not be collected again, except for corrections, updates, and modifications thereto. The section provides definitions for "core credentials data" as any current name, any former name, and any alias, any professional education, professional education, professional training, licensure, current Drug Enforcement Administration certification, social security number, specialty board certification, Education Commission for Foreign Medical Graduates certification, and hospital or other institutional affiliations, evidence of professional liability coverage or evidence of financial responsibility, history of claims, suits, judgments, or settlements, final disciplinary action, and Medicare or Medicaid sanctions. "Hospital or other institutional affiliations" means each hospital

or other institution for which the health care practitioner or applicant has provided medical services. Submission of such information under this section must include, for each hospital or other institution, the staff status of the health care practitioner or applicant at that hospital or institution, and the dates of affiliation with that hospital or institution.

Under the standardized credentials verification program, the Department of Health must maintain a complete, current file of core credentials data on each health care practitioner, which shall include all updates provided in accordance with the practitioner profiling requirements.

Nursing

Part I, ch. 464, F.S., provides for the regulation of nursing practice by the Board of Nursing within the Department of Health. The part provides licensure requirements for licensed practical nurses and registered nurses and certification requirements for advanced registered nurse practitioners. The part requires any institution wishing to conduct an approved nursing program in Florida to apply to the department and to show compliance with the requirements of the part and any applicable administrative rules adopted by the Board of Nursing.[1] The part requires professional or practical nursing licensure applicants to graduate from an approved nursing program as a prerequisite to being allowed to sit for the nursing licensure examination.

The part does not authorize the Board of Nursing to approve out-of-state nursing programs. The part does not specifically set forth the board's authority to approve the equivalency of a nursing program located out of the state for purposes of credentialing licensure by examination applicants who have attended out-of-state nursing programs. Part I of ch. 464, F.S., as written does not distinguish between in-state and out-of-state nursing schools and therefore requires all out-of-state schools to apply for approval pursuant to s. 464.019, F.S., in order for their graduates to be eligible to take Florida's licensing examination.

Under s. 464.008, F.S., persons applying for nursing licensure by examination must complete an application, pay the application and examination fees, provide sufficient information for a statewide criminal records correspondence check through the Florida Department of Law Enforcement, be in good mental and physical health, hold a high school diploma or the equivalent, have completed the requirements for graduation from an approved nursing program, and have the ability to communicate in the English language. Each applicant who has not committed any acts which would disqualify him or her from licensure under s. 464.018, F.S., and who passes the examination and provides proof of graduation from an approved nursing program is eligible for licensure as a registered professional nurse or a licensed practical nurse. According to the Board of Nursing staff, applicants who have attended nursing programs located outside the state must submit an official transcript from the applicant's program or equivalent documentation that specifically sets forth all courses successfully completed, the date of the applicant's graduation, and the degree, certificate or diploma awarded.

A nurse who holds a valid license to practice practical or professional nursing in another state whose requirements were substantially equivalent to or more stringent than those in Florida or who meets qualifications for licensure in s. 464.008, F.S., and has successfully completed a

[1] Section 464.019, Florida Statutes.

examination that is substantially equivalent to or more stringent than the examination required in Florida is eligible for licensure by endorsement. The department may not issue a license by endorsement to an applicant who is under investigation in another state for an act that would constitute a violation of the nursing practice act until the investigation is complete.

Section 464.022, F.S., provides exceptions to requirements for nursing licensure. Under s. 464.022(8), F.S., any nurse currently licensed in another state may perform nursing services in Florida for a period of 60 days after furnishing to the employer satisfactory evidence of current licensure in another state and having submitted proper application and fees to the Board of Nursing for licensure before employment. The board may extend this time for administrative purposes when necessary.

Section 464.0205, F.S., provides requirements to allow any retired practical or registered nurse desiring to serve indigent, underserved, or critical need populations in Florida to apply to the Department of Health for a retired volunteer certificate. Applicants must pay a $25 processing fee and must provide verification that he or she had been licensed to practice nursing in any jurisdiction in the United States for at least 10 years, had retired or plans to retire, and intends to practice nursing in accordance with the limitations of the retired nurse volunteer certificate. The applicant must show proof of meeting the requirements for nursing licensure by examination or licensure by endorsement.

Florida Bright Futures Scholarship Program

Sections 240.40201-240.40204, F.S., provide requirements for the Florida Bright Futures Scholarship Program. Students eligible for an initial award under the program must apply by April 1 of the last semester before high school graduation. A student is eligible to accept an initial award for 3 years following high school graduation and to accept a renewal award for 7 years following high school graduation.

Domestic Violence Continuing Education

Section 456.031, Florida Statutes, provides continuing education requirements on domestic violence for health care professionals licensed or certified under chapter 458, F.S. (medical practice), chapter 459, F.S. (osteopathic medicine), chapter 464, F.S. (nursing), chapter 466, F.S. (dentistry and dental hygiene), chapter 467, F.S. (midwifery), chapter 490, F.S. (psychological services), and chapter 491, F.S. (psychology, clinical social work, marriage and family therapy and mental health counseling). The appropriate board must require professionals under its jurisdiction to complete a 1-hour continuing education course approved by the board on domestic violence as a part of the professional's relicensure or recertification every 2 years.

Each licensee or certificate holder must submit confirmation of having completed such course, on a form provided by the board when submitting fees for each renewal. A professional is subject to discipline for failure to comply with the requirements to complete the required domestic violence course. As a condition of granting a license, applicants for initial licensure must complete a course on domestic violence or its equivalent or show good cause for not completing the requirement and then be allowed 6 months to do so. The board may approve additional equivalent courses that may be used to satisfy the domestic violence course

requirements. Any person holding two or more licenses must be permitted to show proof of having taken one board-approved course on domestic violence.

The domestic violence continuing education requirement in s. 456.031, F.S., was amended to provide a health care professional the option of completing an end-of-life care and palliative health care course in lieu of a domestic violence course for licensure and licensure renewal, if the health care professional has completed a domestic violence course in the immediately preceding 2 years.

AIDS/HIV Continuing Education

Section 456.033, F.S., provides continuing education requirements on human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) for health care professionals licensed or certified under chapter 457, F.S. (acupuncture), chapter 458, F.S. (medical practice), chapter 459, F.S. (osteopathic medicine), chapter 464, F.S. (nursing), chapter 465, F.S., (pharmacy), chapter 466, F.S. (dentistry and dental hygiene), parts II, III, V, and X of chapter 468, F.S. (nursing home administration, occupational therapy, respiratory therapy, and dietetics and nutrition practice), and chapter 486, F.S. (physical therapy). The appropriate board must require professionals under its jurisdiction to complete a 1-hour continuing education course approved by the board on AIDS/HIV as a part of the professional's relicensure or recertification every 2 years.

Each licensee or certificate holder must submit confirmation of having completed such course, on a form provided by the board when submitting fees for each renewal. A professional is subject to discipline for failure to comply with the requirements to complete the required AIDS/HIV course. As a condition of granting a license, applicants for initial licensure must complete a course on AIDS/HIV or show good cause for not completing the requirement and then be allowed 6 months to do so. The board may approve additional equivalent courses that may be used to satisfy the AIDS/HIV course requirements. Any person holding two or more licenses must be permitted to show proof of having taken one board-approved course on AIDS/HIV.

The AIDS/HIV continuing education requirement in s. 456.033, F.S., was amended to provide a health care professional the option of completing an end-of-life care and palliative health care course in lieu of an AIDS/HIV course for licensure and licensure renewal, if the health care professional has completed an AIDS/HIV course in the immediately preceding 2 years.

Dentistry/Continuing Education

Chapter 466, F.S., governs the practice of dentistry and dental hygiene. The Board of Dentistry has adopted administrative rules specifying continuing education requirements for dentists and dental hygienists.[2] Dentists must complete 30 hours of continuing professional education during each license renewal every 2 years. Of the required 30 hours of continuing education, 1 hour must be in domestic violence training and 2 hours in ethics and jurisprudence. Dental hygienists must complete 24 hours of continuing professional education during each license renewal every

[2] Rule 64B5-12.013, Florida Administrative Code

2 years. In addition to the 24 hours, dental hygienist must complete a 1-hour course on domestic violence. Dentists and dental hygienists must complete a course in cardiopulmonary resuscitation in addition to the required continuing education hours for their relicensure.

Health Insurance Policies

Under current law, for indemnity health insurance policies, each claimant, or provider acting on behalf of the claimant, who has had a claim denied as not medically necessary, must be provided an opportunity for an appeal to the insurer's licensed physician who is responsible for the medical necessity reviews under the plan (s. 627.6141, F.S.). The appeal may be by telephone, and the insurer's licensed physician must respond within 15 business days. Further, under s. 626.9541, F.S., the unfair or deceptive practices act, an insurer may be penalized for failing to acknowledge and act promptly upon communications with respect to claims, denying claims without reasonable investigations, failing to notify the insured that more information is needed to process a claim, or failing to provide an explanation in writing to the insured on the basis of the policy and law, for denial of a claim.

However, there is no provision in statute that specifically applies the appeal provision to dental services. In many cases, administrators employed by insurance companies may be making claims decisions as to appropriateness and dental necessity. Thus, patient care decisions are not necessarily being made by dentists licensed to perform dental procedures. It has been asserted that insureds should be able to obtain an opinion from a licensed dentist in appealing adverse decisions as to medical or dental necessity.

On the other side, it has been argued that in most cases the issue as to dental claim denials concerns "cosmetic" procedures that are often not covered under dental insurance. Therefore, it is argued that a licensed dentist is not necessary to render such determinations and that such a requirement will merely drive up administrative costs to insurers, which will ultimately be passed on to consumers.

Last year legislation was enacted that applied only to health maintenance organization (HMO) contracts, which required adverse determinations to be made by an allopathic or osteopathic physician and required notice to patients and the provider of the reason for denial of care (s. 641.51(4), F.S., ch. 2000-56, Laws of Florida).

Administrative Procedure Act

The Administrative Procedure Act (APA), contained in ch. 120, F.S., sets forth the general standards and procedures that all agencies must follow when considering an application for licensure. Section 120.60(1), F.S., requires an agency to act promptly on license applications within 30 days, to notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. The failure to correct an error or omission or to supply the additional information may be a ground for denial of the license. Every application for a license must be approved or denied within 90 days after the receipt of the original application or of the errors or omissions, unless a shorter period of time for agency action is provided by law. The 90-day period or shorter time as applicable will be tolled if there is a hearing initiated under ss. 120.569 and 120.57, F.S. An application for a license must be

approved or denied within the 90-day or shorter time period, within 15 days after the conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties. Any application for a license not approved or denied within the 90-day or shorter time period, within 15 days after the conclusion of the hearing required under 120.57, F.S., held on the application, or within 45 days after the recommended order is submitted to the agency and the parties, whichever is latest, will be deemed approved and, subject to the satisfactory completion of any required examination, the license will be issued.

Radiation Therapy

Part IV, ch. 468, F.S., specifies requirements for the regulation of radiation therapy. Under s. 468.302, F.S., a person who is trained and skilled in cardiopulmonary technology and who provides cardiopulmonary technology services at the direction, and under the direct supervision of a licensed practitioner, is exempt from the certification requirements. Licensed practitioner is defined to mean a licensed physician or person otherwise authorized by law to practice medicine, chiropody, osteopathic medicine, naturopathy, or chiropractic medicine in Florida.

Section 458.303(2), F.S., provides that nothing in s. 458.331, F.S., relating to grounds for disciplinary action against a medical physician, shall be construed to prohibit services rendered by an unlicensed medical assistant when done under the direct supervision and control of the physician and services rendered by registered nurses or licensed practical nurses when performed under the direct supervision and final approval of the medical physician. Similarly, s. 459.002, F.S., provides that nothing in chapter 459, F.S., shall be construed to prohibit services rendered by *any person* when performed under the direct supervision and control of a licensed osteopathic physician who must be available when needed, provide specific direction and give final approval to all services performed.

Respiratory Therapy

Part V, ch. 486, F.S., governs the practice of respiratory therapy. The part provides definitions and licensure requirements for respiratory care practitioners. A licensed respiratory therapist delivers respiratory care services under the order of a Florida-licensed allopathic or osteopathic physician, and in accordance with hospital protocols, other health care provider, or the Board of Respiratory Care, and who functions in situations of unsupervised patient contact requiring individual judgment. A licensed respiratory care practitioner is employed to deliver respiratory care services under a Florida licensed allopathic or osteopathic physician, and in accordance with hospital protocols, other health care provider, or the Board of Respiratory Care.

The National Board for Respiratory Care is a national organization recognized by the Council that provides voluntary certification for respiratory care practitioners, which is recognized under Florida licensure laws. The NBRC currently offers five credentialing programs. These examinations include the: certification examination for entry level respiratory therapists for the designation of (CRT); and the registry examination for advanced respiratory therapy practitioners (RRT).

Speech-Language Pathology and Audiology

Part I, ch. 486, F.S., provides for the regulation of the practice of speech-language pathology and audiology. The part specifies licensure requirements for persons wishing to practice speech-language pathology and audiology. The American Speech-Language-Hearing Association is a national organization providing national certification requirements for persons who provide speech-language pathology and audiology services. Institutions of higher learning that offer graduate degree programs in speech-language pathology and/or audiology can voluntarily seek accreditation by the Council on Academic Accreditation (CAA) of the American Speech-Language-Hearing Association (ASHA). The Council on Accreditation's accreditation program is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation (CHEA), formerly the Commission on Recognition of Postsecondary Accreditation.

Students in the new doctor of audiology (Au.D) program are experiencing difficulties completing their professional experience and complying with current law. Currently, the master's degree program does not include 9 months of supervised professional employment experience and our current law is written for persons who have either fully completed a master's degree or doctoral program requirements and 300 supervised clinical clock hours. The new doctoral degree program (doctor of audiology) includes the 9 months practicum within the degree program at the universities. Current law requires a minimum of a master's degree and the Au.D. degree program candidate cannot produce a master's degree since one is never awarded.

Hearing Aid Specialists

Part II, ch. 484, F.S., governs the regulation of hearing aid specialists. The Board of Hearing Aid Specialists certifies applicants for licensure. Any person who wishes to be licensed as a hearing aid specialist must take the licensure examination that includes a clinical component. To be eligible to sit for the licensure examination the candidate must have met the requirements under s. 484.0445, F.S., which require the completion of a board-approved training program. The board may adopt by rule a training program that does not exceed a duration of 6 months. Section 484.0445, F.S., outlines procedures for an applicant to register with the Department of Health as a trainee and to sit for the licensure examination. Upon completion of the training program, the applicant may take the first available written and practical examination administered by the department.

Psychology

Chapter 490, F.S., governs the regulation of the practice of psychology. The chapter provides definitions and protects specified titles.

Opticianry

Part I, ch. 484, F.S., contains provisions that regulate the practice of opticianry. Opticianry is defined to mean the preparation and dispensing of lenses, spectacles, eyeglasses, contact lenses, and other optical devices to the intended user or agent, upon the written prescription of a medical doctor or optometrist duly licensed to practice or upon presentation of a duplicate prescription.

The Board of Opticianry has regulatory jurisdiction over the practice of opticianry. Under s. 484.006(3), F.S., no rule or policy of the board may prohibit the sale of spectacles for reading purposes; toy glasses; goggles or sunglasses consisting of plano white, plano colored, or plano tinted glasses; or readymade nonprescription glasses; nor shall *anything in this part* be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any person engaged in the manufacturing or sale of plastic or glass artificial eyes.

Section 484.013, F.S., contains criminal penalty provisions. Section 484.007(3), F.S., requires any person who operates an optical establishment to obtain a permit from the Department of Health. An optical establishment is any establishment in the State that offers, advertises, and performs opticianry services for the general public. Duly authorized agents and employees of the Department of Health have the power to inspect in a lawful manner at all reasonable hours any establishment in the State in which lenses, spectacles, eyeglasses, contact lenses, and any other optical devices are prepared *and* dispensed

Offense Level Ranking

All felony offenders whose offenses were committed on or after October 1, 1998, are sentenced under the Criminal Punishment Code. The Code allows the trial judge to sentence any felony offender to the statutory maximum for the offense degree. The unlicensed practice of several health care professions (medicine, osteopathic medicine, naturopathy, optometry, nursing, pharmacy, dentistry and dental hygiene, midwifery, respiratory care services, clinical laboratory personnel, medical physics, and hearing aid specialists) is a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and maximum fine of $5,000.

The Practice of Pharmacy and Medication Errors

Chapter 465, F.S., authorizes the regulation of the practice of pharmacy. Section 465.0276, F.S., requires any person who is not a licensed pharmacist to register with her or his regulatory board and meet other specified requirements in order to dispense drugs to her or his patients in the regular course of her or his practice for a fee or remuneration. Under s. 465.0276(5), F.S., an exception to these requirements allows a practitioner to dispense drug samples to his or her patients. Under the exception, the practitioner must confine her or his activities to the dispensing of complimentary packages of medicinal drugs to the practitioner’s own patients in the regular course of her or his practice, without the payment of fee or remuneration of any kind.

According to a recent survey developed by the United States Department of Health and Human Services, prescription errors by physicians and pharmacists could cause up to 7,000 deaths this year. In 1983, prescription errors accounted for 2,900 deaths. Some experts are calling for more education, focusing on understanding why medication errors occur, instead of trying to cover up the errors or punishing pharmacists for reporting individual mistakes. In an effort to end the silence surrounding medical errors, 56 of the nation's 6,000 hospitals -- recently joined by more that 200 additional facilities -- have for the past 12 months "openly report[ed]" pharmaceutical "blunders" in a "first-of-its-kind" database called MedMARx®, providing a "glimpse into causes of medication errors." During the first year of the program, designed to "curb the miscues" in prescribing and administering drugs, the hospitals reported 6,224 drug therapy errors that injured 187 patients and killed one.

Clinical Laboratories

Part I, ch. 483, governs the regulation of clinical laboratories. Section 483.245, F.S., makes it unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency or person either directly or indirectly, for patients referred to a clinical laboratory licensed under this part.

III. Effect of Proposed Changes:

Section 1. Amends s. 395.0197, F.S., relating to hospital and ambulatory surgical center internal risk management programs, to exempt licensed health care practitioners who are required to complete continuing education coursework under ch. 456, F.S., or their respective practice act from the required 1 hour of risk management and risk prevention education annually. The bill requires risk management programs to prohibit unlicensed persons from assisting or participating in any surgical procedure, except under certain specified conditions. Risk management programs must also implement measures to minimize certain surgical mistakes. The bill corrects statutory cross-references and deletes a reference to the Department of Insurance to reflect the already completed transfer of licensure of risk managers from the Department of Insurance to the Agency for Health Care Administration.

The agency is required to publish on its website certain information regarding adverse incident reports and malpractice claims information. The published information may not identify the patient, the reporting facility, or the practitioners involved. The purpose of the publication of this information is to promote the rapid dissemination of information to assist in avoidance of similar incidents and reduce morbidity and mortality. The bill requires the risk manager to report to the Department of Health every allegation of sexual misconduct, as defined in ch. 456, F.S., and the respective practice act, by a licensed health care practitioner that involves a patient.

The bill creates a privilege against civil liability for any licensed risk manager or licensed facility with regard to information furnished under ch. 395, F.S., unless the risk manager or facility acted in bad faith or with malice in providing such information. The bill makes it unlawful for any person to coerce, intimidate, or preclude a risk manager from lawfully executing the reporting requirements of ch. 395, F.S., and any violation of this provision is subject to civil monetary penalties not to exceed $10,000 per violation.

Section 2. Amends s. 395.10972, F.S., to add two members to the Health Care Risk Manager Advisory Council and to specify that one of the active health care risk managers on the advisory council be recommended by and be a member of the Florida Society of Healthcare Risk Management. The two additional members must be licensed health care practitioners, one of whom must be an allopathic physician or an osteopathic physician.

Section 3. Amends s. 395.701, F.S., relating to the annual hospital assessment to fund public medical assistance, to specify that worksheets from a hospital's prior year financial report to the Agency for Health Care Administration may be reconciled to the hospital's audited financial statements, but no additional audited financial components may be required, other than those in effect on July 1, 2000, for purposes of determining the amount of the assessment.

Section 4. Amends s. 456.013, F.S., relating to the Department of Health's general licensing provisions for health care practitioners, to require health care practitioners to complete a 2-hour department or board-approved course relating to prevention of medical errors as part of the licensure and renewal process. The course may be counted towards the total number of continuing education hours required for the profession and must include a study of root-cause analysis, error reduction and prevention, and patient safety. For hospitals and ambulatory surgical center employees, 1 hour of the course may be related to error reduction and prevention methods used in the facility.

Section 5. Amends s. 456.063, F.S., to require health care practitioners to report allegations of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred.

Section 6. Amends s. 456.072, F.S., relating to health care practitioners' grounds for discipline and penalties, to add the following grounds for discipline: entering a plea of guilty to a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession; performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition; and leaving a foreign body in a patient following surgery, examination, or diagnosis. A legal presumption is created that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.

The bill modifies the penalties that may be imposed by a board or the department to: specify various types of restrictions that may be placed on a licensee; require imposition of a $10,000 fine, per count, for fraud or making a false or fraudulent representation; authorize the refund of fees billed and collected; and require the practitioner to undergo remedial education. The bill also requires the boards or the department to assess costs related to the investigation and prosecution of a disciplinary case.

Section 7. Amends s. 456.073, F.S., relating to disciplinary proceedings, to require the department to periodically notify the patient named in a complaint, or the patient's legal representative, of the status of the complaint investigation and whether probable cause has been found and the status of any civil action or administrative proceeding or appeal. The bill authorizes the person who files a complaint, in a disciplinary case for which probable cause is not found, to receive, upon request, a copy of the department's expert report, without the name of the expert, that supported the recommendation for closure, if such a report was relied upon by the department. This provision does not require the department to procure an expert opinion.

Section 8. Amends s. 456.077, F.S., to specify the types of violations that could subject health care practitioners to citations by a board or the department. The violations include: violations of continuing education requirements, failure to timely pay required fees and fines, failure to comply with requirements relating to disseminating information under the Florida Patient's Bill of Rights and Responsibilities, failure to comply with advertising requirements, failure to timely update practitioner profile and credentialing files, failure to display signs, licenses, and permits,

failure to have required reference books available, and all other violations that do not pose a direct and serious threat to the health and safety of the patient.

Section 9. Amends s. 456.074, F.S., relating to emergency suspension of the license of certain health care practitioners, to add felonies under ch. 817, F.S., as a ground for emergency suspension. Chapter 817, F.S., relates to fraudulent activities.

Section 10. Amends s. 456.081, F.S., to require the Department of Health and the boards to maintain a website that contains copies of the department's newsletter and certain information that would assist in reducing medical errors. The department and the boards are authorized to include information provided by professional associations and national organizations on the website.

Section 11. Amends s. 458.331, F.S., to correct a statutory cross-reference.

Section 12. Amends s. 459.015, F.S., to correct a statutory cross-reference.

Section 13. Amends s. 465.019, F.S., to require institutional pharmacies that employ or utilize pharmacy technicians to have a written policy and procedures manual specifying those duties, tasks, and functions that a pharmacy technician is allowed to perform.

Section 14. Amends s. 465.0196, F.S., to require pharmacies with a special permit that employ or utilize pharmacy technicians to have a written policy and procedures manual specifying those duties, tasks, and functions that a pharmacy technician is allowed to perform.

Section 15. Requires the department and AHCA to conduct a review of all statutorily imposed reporting requirements for health care practitioners and facilities and report to the Legislature by November 1, 2001, with recommendations and suggested statutory changes to streamline reporting requirements.

Section 16. Amends s. 468.1755, F.S., relating to disciplinary proceedings against nursing home administrators, to add failing to implement an ongoing quality assurance program directed by an interdisciplinary team that meets at least every other month as a ground for discipline.

Section 17. Reenacts ss. 468.1695 and 468.1735, F.S., relating to nursing home administration, for purposes of incorporating, by reference, the amendment to s. 468.1755, F.S., contained in section 16 of this bill.

Section 18. Reenacts s. 484.056, F.S., relating to grounds for disciplinary action against a hearing aid specialist, for purposes of incorporating, by reference, the amendment to s. 456.072, F.S., contained in section 6 of this bill.

Section 19. Amends s. 766.101, F.S., relating to immunity from liability for medical review committees, to include a continuous quality improvement committee of a pharmacy licensed under ch. 465, F.S., within the definition of medical review committee. The section also changes references to the Department of Business and Professional Regulation to the Department of Health or the Agency for Health Care Administration.

Section 20. Reenacts s. 440.105, F.S., relating to workers' compensation, and s. 626.989, F.S., relating to insurance fraud, for purposes of incorporating, by reference, the amendment to s. 766.101, F.S., contained in section 19 of this bill.

Section 21. Amends s. 766.1115, F.S., relating to health care providers under contract with the state, to clarify that reporting of adverse incidents by the health care provider to the governmental contractor must be as required in s. 395.0197, F.S., which is amended in section 1 of this bill.

Section 22. Amends s. 456.047, F.S., relating to credentialing for health care practitioners, to specify that the legislature intends the department and all entities and practitioners to work cooperatively to ensure the integrity and accuracy of the credentialing program. The bill modifies the definition of "core credentials data" to mean data that is primary-source-verified. Data elements that are removed from the definition include, current name, any former name, any alias, social security number, hospital or other institutional affiliations, evidence of professional liability coverage or evidence of financial responsibility, and history of claims, suits, judgments, or settlements. The bill authorizes the department to designate additional core credentials data elements by rule.

The definition of "health care entity" is modified to add organizations licensed under chapters 627, 636, 641, or 651, F.S. The bill deletes the definition of "hospital or other institutional affiliation" and adds a definition for "primary-source verification". The bill provides that health care entities and credentials verification organizations may rely upon any data that has been primary-source-verified by the department or its designee to meet primary-source-verification requirements of national accrediting organizations.

Section 23. Amends s. 240.4075, F.S., relating to the Nursing Student Loan Forgiveness Program, to include public schools as employing institutions whose nurse employees are eligible to receive loan repayment under the program. An exemption for employing institutions from the requirement to match loan forgiveness funding for those nurses employed by those entities is extended to also include public schools, family practice teaching hospitals, and specialty children's hospitals. If, in any given fiscal quarter, there are insufficient funds in the Nursing Student Loan Forgiveness Trust Fund to grant all eligible applicants' requests, the bill creates the following priority for the disbursement of Nursing Student Loan Forgiveness Program funding by employer: county health departments, federally sponsored community health centers, state-operated medical and health care facilities, public schools, statutory teaching hospitals, family practice teaching hospitals, specialty hospitals for children, and other hospitals, birthing centers, or nursing homes where the match is required. Conforming changes relating to the transfer of the Nursing Student Loan Forgiveness Program to the Department of Health are made to change references to the Department of Education to the Department of Health.

Section 24. Amends s. 240.4076, F.S., to revise requirements for the Nursing Scholarship Program to expand the eligibility to include scholarship applicants who are enrolled as full-time or part-time students in the upper division of an approved nursing program leading to the award of a graduate degree that qualifies the recipient for a nursing faculty position. The newly eligible applicants must be willing to work for 12 months in a faculty position in a college of nursing or community college nursing program in Florida for each full year of scholarship assistance. The

requirements for the Nursing Scholarship Program are expanded to include nursing homes and any type of hospital in Florida, public schools, colleges of nursing in universities in Florida and community college nursing programs in Florida in the list of facilities where recipients can complete their service obligation.

Section 25. Transfers, by a type two transfer as defined in s. 20.06(2), F.S., the Nursing Student Loan Forgiveness Program from the Department of Education to the Department of Health.

Section 26. Amends s. 464.005, F.S., to require the Board of Nursing to maintain its official headquarters in Tallahassee, rather than Jacksonville, effective July 1, 2003.

Section 27. Amends s. 464.008, F.S., relating to nursing licensure by examination requirements, to authorize the Board of Nursing to determine the equivalency of other nursing programs to an approved nursing program and the licensure by examination requirements are revised to conform to allow an applicant to become licensed who meets the equivalent educational requirements as determined by the board.

Section 28. Amends s. 464.009, F.S., relating to nursing licensure by endorsement requirements, to require endorsement applicants to submit a set of fingerprints on a form and in accordance with procedures specified by the Department of Health along with a payment in an amount equal to the costs incurred by the department for the criminal background check of the applicant. The department must submit the fingerprints provided by the applicant to the Florida Department of Law Enforcement, which must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant. The department must review the results of the criminal check of the applicant and must issue a license to an applicant who has no criminal history and who otherwise meets all the other requirements for licensure. Applicants with criminal histories must be referred to the board for a determination on the applicant's licensure status.

The department is required to develop an electronic applicant notification process and must provide electronic notification when the application has been received and when background screenings have been completed, and must issue a license within 30 days after the completion of all required data collection and verification. The 30-day period for issuing the license is tolled if the applicant must appear before the board due to information provided by the applicant or obtained through screening and data collection and verification procedures.

Section 29. Amends s. 464.0205, F.S., relating to procedures for the issuance of retired volunteer nurse certificates, to eliminate a $25 application and processing fee.

Section 30. Requires the Office of Program Policy Analysis and Governmental Accountability to study the feasibility of maintaining the entire Medical Quality Assurance function, including enforcement, within one department and issue a report to the Legislature by November 30, 2001.

Section 31. Amends s. 456.031, F.S., relating to continuing education requirements for health care practitioners, to permit dentists and dental hygienists to take a course designated by the Board of Dentistry, in lieu of completing a course in domestic violence, if the licensee has completed an approved domestic violence course in the immediately preceding biennium.

Section 32. Amends s. 456.033, F.S., relating to a requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome, to permit dentists and dental hygienists to take a course designated by the Board of Dentistry, in lieu of completing a course in AIDS/HIV, if the licensee has completed an approved AIDS/HIV course in the immediately preceding biennium.

Section 33. Amends s. 627.419, F.S. relating to the construction of insurance policies, to establish a process to appeal adverse decisions as to dental coverage. It provides that for any group or individual insurer covering dental services, that a claimant, or provider acting on the behalf of a claimant, who has had an adverse decision rendered on a claim, must be given an opportunity to appeal to the insurer's licensed dentist who is responsible for the dentally necessary reviews under the plan or is a member of the plan's peer review group. The appeal may be made by telephone and the insurance company's licensed dentist must respond within 15 business days.

Section 34. Provides that s. 33 of this bill, amending s. 627.419, F.S., shall apply to policies issued or renewed after July 1, 2001.

Section 35. Amends s. 468.302, F.S., relating to certification requirements for radiologic technology, to modify an existing exemption from the certification requirements so that a person who is trained and skilled in invasive cardiovascular technology, including the radiological technology duties associated with these procedures, rather than cardiopulmonary technology, and who provides invasive cardiovascular, rather than cardiopulmonary, technology services at the direction, and under the direct supervision, of a licensed allopathic or osteopathic physician need not be certified. Such persons must successfully complete a didactic and clinical training program in specified areas before performing radiologic technology duties. The areas include: principles of x-rays production and equipment operation; biological effects of radiation; radiation exposure and monitoring; radiation safety and protection; evaluation of radiographic equipment and accessories; radiographic exposure and technique factors; film processing; image quality assure; patient positioning; administration and complications of contrast media; and specific fluoroscopic and digital x-ray imaging procedures related to invasive cardiovascular technology.

An exemption to certification requirements for radiologic technology is created to allow a registered nurse or a general radiographer certified under s. 468.302, F.S., to perform radiologic technology services if a person certified in radiation therapy by the American Registry of Radiologic Technologists is in the immediate vicinity during the use of radiation.

Section 36. Amends s. 468.352, F.S., relating to respiratory therapy, to revise the definitions of respiratory care professionals by changing the titles to reflect credentials from national certification entities such as the National Board for Respiratory Care in addition to State licensure. The bill changes titles from: "respiratory therapist" to "registered respiratory therapist" and from "respiratory care practitioner" to "certified respiratory therapist" or "respiratory care practitioner."

Section 37. Amends s. 468.355, F.S., relating to respiratory therapy, to revise the licensure requirements of respiratory care practitioners by changing the titles to reflect credentials from national certification entities such as the National Board for Respiratory Care in addition to State

licensure. The bill changes the title of "respiratory care practitioner" to "certified respiratory therapist" and makes the distinction between a certified or registered respiratory therapist and other conforming changes to recognize the voluntary designation for advanced professionals, "registered respiratory therapist."

Section 38. Amends s. 468.357, F.S., relating to respiratory therapy, to revise the licensure by examination requirements for respiratory care practitioners by changing the titles to reflect credentials from national certification entities such as the National Board for Respiratory Care in addition to State licensure. The bill changes the title of "respiratory care practitioner" to "certified respiratory therapist" and makes the distinction between a certified or registered respiratory therapist and other conforming changes to recognize the voluntary designation for advanced professionals, "registered respiratory therapist."

Section 39. Amends s. 468.358, F.S., relating to respiratory therapy, to revise the licensure by endorsement requirements for respiratory care practitioners by changing the titles to reflect credentials from national certification entities such as the National Board for Respiratory Care in addition to State licensure. The bill changes the title of "respiratory care practitioner" to "certified respiratory therapist" and makes the distinction between a certified or registered respiratory therapist and other conforming changes to recognize the voluntary designation for advanced professionals, "registered respiratory therapist."

Section 40. Amends s. 468.359, F.S., relating to respiratory therapy, to restrict the use of specified titles to only Florida-licensed respiratory care practitioners to reflect credentials from national certification entities such as the National Board for Respiratory Care in addition to State licensure. The bill provides that no person in Florida may deliver respiratory care services; advertise as, or assume the title of respiratory care practitioner, certified respiratory therapist, or registered respiratory therapist or use the abbreviation "RCP," "CRT," or "RRT" which would lead the public to believe that such person is licensed, unless the person is licensed under part V of ch. 468, F.S.

Section 41. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology, to revise provisional license requirements, to allow candidates to obtain provisional licensure who have not yet received a master's degree and who are currently enrolled in a doctoral degree program from an accredited institution in speech-language pathology or audiology and who have completed the number of clock hours required by an accredited institution meeting national certification standards in lieu of the current requirements for such applicants that include obtaining a master's degree and the 300 supervised clinical clock hours.

Section 42. Amends s. 468.1215, F.S., relating to speech-language pathology and audiology, to revise certification requirements for speech-language pathology assistants and audiology assistants to require applicants to complete at least 24 semester hours of coursework that are currently required for certification at an institution accredited by an accrediting agency recognized by the Council for Higher Education Accreditation. The Council for Higher Education Accreditation is the successor to the Commission on Recognition of Postsecondary Accreditation.

Section 43. Amends s. 480.033, F.S., relating to definitions for the practice of massage therapy, to revise the definition of "massage" to mean the manipulation of the "soft" rather than "superficial" tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical device; or the application to the human body of a chemical or herbal preparation.

Section 44. Amends s. 484.0445, F.S., relating to the hearing aid specialists' training program and examination requirements, to delete requirements and procedures for the Department of Health to administer the written and practical examinations for persons to qualify for licensure to practice as a hearing aid specialist. The Board of Hearing Aid Specialist's rulemaking authority over training programs is revised to provide for a training program that has a minimum duration of 6 months. The board currently may only adopt by rule a training program that does not exceed a duration of 6 months.

Section 45. Amends s. 484.045, F.S., relating to hearing aid specialists, to revise license examinations to eliminate a clinical component, and to conform to changes to reflect that the Department of Health will no longer administer the examination. In lieu thereof, licensure candidates must pass an examination adopted by board rule and must demonstrate a knowledge of state laws relating to the fitting and dispensing of hearing aids. Restrictions on the number of times an applicant may sit for the licensure examination is eliminated. Any person who fails the examination may apply for reexamination to the appropriate examining entity as prescribed by board rule.

Section 46. Amends s. 490.012, F.S., relating to psychology, to prohibit any person from holding herself or himself out by any title or description incorporating the word "psychologist" unless such person holds a valid active license as a psychologist under ch. 490, F.S. A person is prohibited from holding herself or himself out by any professional title, name, or description incorporating the words "school psychologist" unless such person holds a valid, active license as a school psychologist under ch. 490, F.S., or is certified as a school psychologist by the Department of Education.

To conform to changes in s. 490.014, F.S., as amended in the bill, an existing title restriction is revised to delete the terms "psychologist" and "school psychologist". The title restriction currently prohibits a person from holding herself or himself out by any title or description incorporating the words, or permutation of the following words: "psychologist", "psychology", "psychodiagnostic", or "school psychologist", or describe any test as psychological, unless such person holds a valid, active license under ch. 490, F.S., or is exempt from ch. 490, F.S.

Section 47. Amends s. 490.014, F.S., relating to psychology, to limit an exemption to licensure by preventing the use of the protected title "psychologist," for employees of: governmental agencies, developmental services programs, mental health, alcohol, or drug abuse facilities operating under chs. 393, 394, or 397, F.S., subsidized child care programs, subsidized child care case management programs, or child care resources and referral programs operating under ch. 402, F.S.; child-placing or child-caring agencies licensed under ch. 409, F.S.; domestic violence centers certified under ch. 39, F.S.; accredited academic institutions; or research institutions, if such employees are performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution.

Section 48. Amends s. 491.012, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling, to revise criminal violations for unlicensed practice of these professions, to allow interns registered with the Department of Health to provide comparable services without being subject to the specified criminal penalties.

Section 49. Amends s. 456.057, F.S., relating to ownership and control of patient records, to authorize each board or the Department of Health, if there is no board, to temporarily or permanently appoint a health care practitioner who agrees to serve as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner. The appointed custodian shall comply with all provisions of this section, including the release of patient records.

Section 50. Creates an undesignated section, to establish the Florida Center for Nursing to address issues of supply and demand for nurses, including issues relating to recruitment, retention, and utilization of nurse workforce resources. The center shall: 1) develop a strategic statewide plan for nursing manpower in Florida; 2) convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators; and 3) enhance and promote recognition, reward, and renewal activities for nurses in Florida.

The governing board for the center shall consist of 16 members: four members appointed by the President of the Senate, one of whom must be a registered nurse recommended by the Florida Organization of Nurse Executives and one of whom must be a representative of the hospital industry recommended by the Florida Hospital Association; four members appointed by the Speaker of the House of Representatives, one of whom must be a registered nurse recommended by the Florida Nurses Association and one of whom must be a representative of the long-term care industry; four members appointed by the Governor, two of whom must be registered nurses; four nurse educators appointed by the State Board of Education, one of whom must be a dean of a state university college of nursing, and one of whom must be a director of a nursing program. The terms and expiration dates of the members of the governing board for the center are specified. The board shall have specified duties and powers and receive per diem and travel expenses as provided by for state boards and commissions.

Section 51. Amends s. 499.012, F.S., relating to wholesale drug distribution, to revise one of the conditions under which a retail pharmacy may engage in wholesale distribution, to include certain transfers between a modified class II institutional pharmacy and another retail pharmacy or a health care practitioner licensed in Florida and authorized to dispense or prescribe drugs.

Section 52. Creates an undesignated section, to establish the “Ernest Belles Act” to require licensed pharmacists and other health care practitioners as defined in s. 456.001, F.S., who become aware of a pharmaceutical adverse incident to report such incident to the Department of Health on forms provided by the department. The notification must be submitted in writing by certified mail and postmarked within 15 days after the occurrence of the adverse incident. The term “pharmaceutical adverse incident” is defined to mean the dispensing of a different medication, a different dose, or the correct medication in a container with different instructions than that specified in the prescription, but does not include the dispensing of a generic equivalent medication with the patient’s consent. The Department of Health must adopt forms and rules for administering the reporting of pharmaceutical adverse incidents by health care practitioners.

Section 53. Amends s. 484.002, F.S., relating to opticianry, effective October 1, 2001, to revise the definition of "opticianry" to replace references to the term "medical doctor" with the term "allopathic or osteopathic physician." "Contact lenses" is defined to mean a prescribed medical device intended to be worn directly against the cornea of the eye to correct vision conditions, act as a therapeutic device, or provide a cosmetic effect. In effect, persons who are not licensed to practice opticianry in Florida and who are not otherwise exempt may not prepare or dispense contact lenses as defined in this section without a prescription from a duly licensed physician or optometrist. The new offense is a third degree felony punishable by a maximum prison sentence of 5 years and maximum fine of $5,000.

Section 54. Amends s. 484.006, F.S., relating to opticianry, effective October 1, 2001, to replace references to the term "medical doctor" with the term "allopathic or osteopathic physician."

Section 55. Amends s. 484.012, F.S., relating to opticianry, effective October 1, 2001, to replace references to the term "medical doctor" with the term "allopathic or osteopathic physician."

Section 56. Amends s. 484.013, F.S., relating to opticianry, effective October 1, 2001, to enhance the criminal penalty applicable to the existing offenses under the opticianry practice act from a second degree misdemeanor to a third degree felony. A second degree misdemeanor carries a maximum sentence of 60 days in jail and a maximum fine of $500. A third degree felony carries a maximum prison sentence of 5 years and maximum fine of $5,000. The enhanced penalty applies to a person who intentionally makes a false or fraudulent statement to the Board of Opticianry; who prepares or dispenses lenses, spectacles, eyeglasses, contact lenses, or other optical devices when the person is not licensed as an optician in this State; who is not a Florida-licensed optician and who uses the protected title "optician" or otherwise leads the public to believe that she or he is engaged in the practice of opticianry; who is an optician who engages in the diagnosis of the human eyes, attempts to determine the refractive powers of the human eyes, or attempts to prescribe for or treat diseases or ailments of human beings; or who opens or operates an optical establishment that does not have the required permit. The criminal penalties do not apply to an individual transferring her or his personal lenses, spectacles, eyeglasses, contact lenses, or other optical devices that are exclusively cosmetic to another individual without any compensation or any incidental or peripheral compensation.

The making of false or fraudulent statements to the Board of Opticianry must be intentional in order to be considered a violation subject to the penalties.

Section 57. Amends s. 484.015, F.S., relating to opticianry, effective October 1, 2001, to expand the inspection authority of the Department of Health from establishments where optical devices are *prepared and dispensed* to include establishments *of any kind* in the State in which lenses, spectacles, eyeglasses, contact lenses, and any other optical device are *prepared or dispensed*.

Section 58. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code, effective October 1, 2001, to specify that practicing opticianry without a license (a third degree felony) is a level 7 offense, for purposes of a minimum sentence calculation.

Section 59. Amends s. 483.245, F.S., relating to prohibited rebates and split-fees for patients referred to licensed clinical laboratories, to revise the prohibition for any persons to pay or

receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a clinical laboratory licensed under part I, ch 483, F.S., to also prohibit the receipt of such commission, bonus, kickback, or rebate or engagement in any split-fee arrangement in any form whatsoever for patient referrals from a dialysis facility to a clinical laboratory.

Section 60. Provides, that except as otherwise provided in the bill, the bill will take effect 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:

Section 29 of the bill eliminates a $25 application and processing fee for retired volunteer nurse certificates.

B. Private Sector Impact:

The health care industry may benefit from the bill's requirements to make information available regarding medical errors.

Speech and language and audiology doctoral students who will qualify for licensure under the bill will benefit to the extent they may practice their profession.

Health care practitioners will incur some costs to report pharmaceutical adverse incidents to the Department of Health.

Establishments that prepare or dispense contact lenses as defined by the bill, without first being furnished with a prescription from a licensed physician or optometrist, or who perform

comparable acts and who wish to continue to perform such acts may be required to obtain a permit as an optical establishment.

Those persons who practice opticianry in violation of the bill's requirements will be subject to the bill's minimum penalties when interpreted with current law under s. 456.065(2)(d)2., F.S., calling for a fine of $1,000 and a minimum mandatory period of incarceration of 1 year.

Persons who prepare or dispense contact lenses as defined by the bill, or who perform comparable acts and who wish to continue to perform such acts or services will incur costs to get licensed as an optician or to hire a licensed optician.

Physicians and optometrists may obtain additional income to the extent the bill requires consumers to obtain a written prescription for contact lenses as defined by the bill. Consumers will incur the expense of seeking a physician or optometrist to obtain a prescription for any contact lenses.

C. Government Sector Impact:

The Department of Health has indicated that increased revenues associated with a level II background screening of nursing licensure by endorsement applicants would be offset by the Florida Department of Law Enforcement (FDLE) cost to conduct both the state and national criminal history check required by the bill. The Department of Health notes that payments to FDLE are charged to expense category. Based on approximately 7,500 nursing licensure by endorsement applicants at $43 each, the Department of Health indicated that an increase in expense appropriation of $322,500 would be necessary.

The bill requires the Department of Health to implement an electronic continuing education tracking system, for which electronic renewals are implemented. The department estimates costs for fiscal year 2001-2002 of $1,536,000 and recurring costs of $153,600 for fiscal year 2002-2003.

State agencies will incur per diem and travel costs to the extent their staff participate in the activities of the Florida Center for Nursing. The state will incur costs associated with administering the requirements for the Florida Center for Nursing to address nursing workforce issues.

To the extent the Department of Health will no longer be required to administer or develop the hearing aid specialist examination, it will save associated costs.

The Department of Health will incur costs to review reported "pharmaceutical adverse incidents" to determine whether they potentially involve conduct by a health care practitioner who is subject to disciplinary action.

The Department of Health will incur costs to adopt rules and forms for the reporting of pharmaceutical adverse incidents by licensed health care practitioners.

The Department of Health will incur additional costs to enforce and administer the bill's requirements to expand the practice of opticianry to include the preparation or dispensing of contact lenses as defined by the bill, and comparable acts. The department will incur costs to make the necessary inspections of establishments that provide opticianry services as revised by the bill.

This bill enhances the penalty applicable to six offenses of the opticianry practice act from a second degree misdemeanor to a third degree felony and by implication provides for a minimum mandatory sentence of 1 year incarceration for an existing offense of unlicensed practice of opticianry. Consequently, the bill could have an impact on the courts, county jails and state prison system. The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system. As of April 18, 2001, the Conference has not reviewed this bill's prison bed impact. Staff anticipates that the Conference will conclude that this bill's impact will be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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. 1st 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 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.