

# 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/CS/SB 1250

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

SUBJECT: School Volunteer/Health Care Services

DATE: March 12, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	O'Farrell	ED	Favorable/CS
2.	Munroe	Wilson	HC	Favorable/CS
3.	_____	_____	AHS	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill creates an incentive program to encourage specified Florida-licensed health care professionals to provide their services without charge to public schools.

This bill creates section 381.00593, Florida Statutes.

## II. Present Situation:

### Full Service Schools

Pursuant to s. 402.3026, F.S., the State Board of Education and the Department of Health jointly establish full-service schools to serve students from schools that have a student population that has a high risk of needing medical and social services. The following are brief descriptions of two components of full-service schools.

### The Volunteer School Nurse Program

According to the Department of Health, the Volunteer School Nurse Program was implemented in eight counties in 2001 and will expand to fourteen counties in 2002. In each of these counties, the 2001-2002 General Appropriations Act pays the salary for a county health department registered nurse to recruit, train, supervise, and schedule the volunteer nurses.

### **Volunteer Health Care Provider Program**

The 1992 Legislature established the Volunteer Health Care Provider Program.<sup>1</sup> This program uses volunteers to increase access to health care services for the indigent. State sovereign immunity coverage for volunteers under this program has been a key to its success. The program relies on continuity in supervising, screening, and training volunteers by program staff. In most situations, a physician supervises the health care practitioners.

### **Comprehensive School Health Services Project**

The Comprehensive School Health Services Project provides health services in schools with a high proportion of students at-risk and in need of medical services. This program serves every school in 17 school districts, and 47 districts have the program in at least one school. The Comprehensive School Health Services Project has one health care professional for every 2.05 schools and one health care professional for every 1,614 students.

### **Florida Volunteer Protection Act**

Section 768.1355, F.S., provides that any person who volunteers to perform any service for a nonprofit organization without compensation, except for reimbursement for actual expenses, is an agent of that organization when acting within the scope of any official duties performed as a volunteer. The volunteer incurs no civil liability for any act or omission which results in personal injury or property damage if: (1) the person was acting in good faith within the scope of any official duties performed under the volunteer service, and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and (2) the injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of his or her duties.

### **Sovereign Immunity**

Section 768.28(9)(a), F.S., provides that an officer, employee, or agent of the state or of any of its subdivisions may not held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, except for cases of acting in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

### **Background Screening Requirements**

Any person who provides services under a school health plan must complete level 2 screening. This type of screening requires all employees in positions designated by law as positions of trust or responsibility to undergo security background investigations. The security and background checks include fingerprinting; records checks through the Florida Department of Law Enforcement; and federal criminal records checks through the Federal Bureau of Investigation (FBI).<sup>2</sup>

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<sup>1</sup> Section 766.1115, F.S.

<sup>2</sup> Sections. 381.0059, and 435.04, F.S.

### **Health Care Practitioner/School/Student Ratios**

In the 1999-2000 school year, Florida's schools enrolled a total of 2,375,196 students, of which 454,522 were Exceptional Student Education students or medically complex students.

In 1999-2000, a total of 2,148 full-time equivalents advanced registered nurse practitioners, registered nurses, licensed practical nurses and physician's assistant staffed non-medically complex students in public schools.

In 1999-2000, a total of 371 health care professionals worked in schools with the 454,522 medically complex students.

According to the 1999-2000 State Summary of School Health Services, produced by the Florida Department of Health, the registered nurse to student ratio was 1:3,515 and the registered nurse to school ratio was 1:4.25. The National Association of School Nurses recommends one registered nurse for every 750 students, and one registered nurse for every 250 medically complex students.

### **General Regulatory Provisions for Health Care Professions**

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); part 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 pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); part 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).

Pursuant to s. 456.013(9), F.S., any board that currently requires continuing education for renewal of a license, or the Department of Health, if there is no board, must adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The section provides a standard for determining indigency and authorizes rulemaking by the boards or department for continuing education requirements. Section 456.072, F.S., specifies grounds under which a licensed health care practitioner may be subject to discipline by his or her board or the Department of Health, as applicable. A licensed health care practitioner may be subject to discipline for attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board (s. 456.072(1)(h), F.S.); for making or filing a report which the licensee knows to be false, intentionally or negligently failing

to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so (s. 456.072(1)(l), F.S.); and for making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession (s. 456.072(1)(m), F.S.).

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

Section 20.435(1)(d), F.S., establishes the Medical Quality Assurance Trust Fund to be credited with revenue related to the licensing of health care practitioners. Section 456.025(5), F.S., requires that all licensure fees, fines, or costs awarded to the agency by a court be paid into the trust fund. Section 456.065(3), F.S., requires that the trust fund also be credited with revenues received from the department's unlicensed activity efforts. Funds in the trust fund are to be used for the purpose of providing administrative support for the regulation of health care practitioners and for such other purposes as may be appropriate in accordance with legislative appropriation. Any balance in the trust fund at the end of any fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund.

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

Section 456.025(1), F.S., requires the Department of Health (DOH) or each board to set, by rule, licensure renewal fees which are based on specified criteria, including requirements that such fees may not be more than 10 percent greater than the fee imposed for the previous biennium and may not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium. Section 456.025(3), F.S., requires each board or DOH if there is no board, to determine by rule, the amount of license fees for the profession it regulates, based upon long-range estimates of revenue from DOH. Each board is responsible for ensuring that the licensure fees set out are adequate to cover all anticipated costs in order to maintain a reasonable cash balance. If a board does not take sufficient action within one year after notification from DOH that license fees are projected to be inadequate, the department must set licensure fees within the caps on behalf of the board in order to cover anticipated costs and to maintain required cash balances. The department must include recommended fee cap increases in its annual report to the Legislature.

Section 456.025, F.S., specifies legislative intent that no regulated profession operate with a negative cash balance. The department is authorized to advance funds to a profession with a negative cash balance for a period not to exceed two consecutive years, however, the profession must pay interest. Section 456.025(5), F.S., provides that each board, or the department if there is no board, may collect a one-time fee from each active and voluntary inactive licensee in an amount necessary to eliminate a cash deficit, or if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions; however, no more than one assessment may be made in any four-year period without specific legislative authorization.

Section 456.025(8), F.S., requires DOH to maintain separate accounts in the trust fund for each profession and to charge direct expenses as well as proportionately allocate indirect expenses to each profession. Documentation to support allocated expenses must be maintained and DOH must provide this information to the boards upon request. The department must provide each board with an annual report of revenue and direct and allocated expenses related to the operation

of that profession. Boards are required to use these reports and the long-range plan to determine the amount of licensure fees. A condensed management report of this information, with recommendations from the department, is to be included in the annual report submitted to the Legislature. Additionally condensed quarterly management reports are to be provided to each board.

### **Auditor General Report No. 02-130**

The January 2002 Auditor General Operational Audit noted that the Department of Health took actions to implement recommendations of a previous report, but noted other areas should be addressed , including :

- License renewal fees are not sufficient to generate revenue to cover the cost of regulating most health care professions.
- The boards had not taken all actions available to eliminate or reduce deficit cash balances.
- Although the Division of Medical Quality Assurance (DMQA) significantly improved the timely distribution of financial reports, improvements are needed in report content and training of users of the reports.
- The Department of Health took actions to analyze its methodology for allocating costs to the Medical Quality Assurance Trust Fund (MQATF), but implementation of changes is ongoing.
- The Agency for Health Care Administration's allocation of administrative costs resulted in under allocating costs to the functions of the DMQA function.
- The annual operating costs of the Department of Health's credentialing program contribute to the decline of the MQATF without providing intended benefits.
- The Division had not taken actions to implement a continuing education tracking system.
- The Department of Health's costs related to administrative hearings have increased significantly.

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

The bill establishes an incentive program for health care practitioners to volunteer their services in public schools.

The bill applies to physicians, physician assistants, osteopathic physicians, podiatric physicians, optometrists, advanced registered nurse practitioners, registered nurses and licensed practical nurses, pharmacists, dentists and dental hygienists, midwives, speech-language pathologists and audiologists, and physical therapists. To be eligible, the practitioner must be licensed in one of

the listed professions and must provide the fingerprint check required of all professionals in contact with students in Florida public schools.

As an incentive, the bill provides a waiver for payment of the required licensing renewal fee and allows the practitioner to earn up to 25 percent of the continuing education hours required for license renewal by participating in the program.

To be eligible for the waiver, a health care practitioner must provide sufficient proof from the applicable school district that the health care practitioner has completed one of the following, as applicable, under procedures specified by the Department of Health, at licensure renewal: (1) he or she has agreed to provide his or her services, without compensation, in a public school and has volunteered for at least 80 hours per school year during the preceding two-year period; or if the health care practitioner is retired, that he or she he or she has agreed to provide his or her services, without compensation, in a public school and has volunteered for at least 400 hours per school year.

The bill requires the school district to pay for any increase in insurance premiums for liability protection for the volunteers and authorizes the school board to secure a loan if funds are insufficient.

The Department of Health will cooperate in administrative responsibilities for the program and will supervise the volunteers.

The Department of Education, in cooperation with the Department of Health, may adopt rules to implement the program.

The Department of Health will cooperate with the Department of Education to publicize the availability of the program and its benefits. The bill provides an implementation schedule to make it possible for volunteers to apply by November 30, 2002.

The bill takes effect upon becoming a law.

#### **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:**

None.

**B. Private Sector Impact:**

The background screening for volunteers costs \$39 each. The bill does not specify who will pay the background screening costs, although the bill specifies that, to participate in the program, a health care practitioner must submit fingerprints and have a background screening done.

Families of public school students may save the costs of some routine medical procedures, which will be performed at school.

**C. Government Sector Impact:**

The Department of Health will lose the fee revenue of any professional who participates and earns a fee waiver. Examples of the current amounts follow: physician (MD) \$330; osteopathic physician \$400; physician assistant \$200; advanced registered nurse practitioner \$105; registered nurse \$55; and licensed practical nurse \$55. The department estimates the loss of fee revenue to be \$46,125 annually. Professional regulation is supported by licensure fees that are collected from health care practitioners upon initial licensure and licensure renewal and that are deposited into the Medical Quality Assurance Trust Fund. The Medical Quality Assurance Trust Fund has a projected deficit cash balance of (\$10,177,898) as of June 30, 2003. For details on the department's efforts to address the projected cash balance deficit, please refer to Auditor General Report No. 02-130 at [http://www.state.fl.us/audgen/pages/pdf\\_files/02-130.pdf](http://www.state.fl.us/audgen/pages/pdf_files/02-130.pdf)

The Department of Health will also incur the expense of publicizing the program, estimated at \$45,000. The cost of supervising, training and evaluating the volunteers is estimated at \$450,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.