

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 w/CS Continuing Education for Health Care Practitioners
SPONSOR(S): Patterson and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1666 (s)

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|-----------------------|-----------------|----------------|
| 1) <u>Health Standards (Sub)</u> | <u>9 Y, 0 N</u> | <u>Mitchell</u> | <u>Collins</u> |
| 2) <u>Health Care</u> | <u>22 Y, 0 N w/CS</u> | <u>Mitchell</u> | <u>Collins</u> |
| 3) <u>Health Appropriations (Sub)</u> | _____ | _____ | _____ |
| 4) <u>Appropriations</u> | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

HB 807 w/CS deletes provisions of s. 456.025(7), F.S., that require the Department of Health to implement an electronic system to track required continuing education of health care professions. The bill provides for increased health care licensure board responsibility to enforce compliance with continuing education requirements. The bill requires boards to establish rules for approval of continuing education providers and courses. It provides for a three month extension, and for enforcement of continuing education requirements for license renewal, including: citations and fines for failure to comply; and discipline of licensees who fail to meet requirements three or more times.

Currently, s. 456.013(6), F.S., requires each licensee to periodically demonstrate competency by completing continuing education every two years as a condition of license renewal. The number of required continuing education hours varies by profession.

Traditionally, health care professionals have reported the continuing education they have completed when they renew their license, by signing a statement attesting to completion of the required hours. The Department of Health monitored compliance with continuing education requirements using random audits before or after license renewal. The audits involve board staff contacting licensees to obtain proof of completed education courses, which is time-consuming for both the licensees and the department.

In 2001, the Legislature amended s. 456.025(7), F.S., to require the department to integrate an electronic tracking system for continuing education into the licensure and renewal system. The statute requires all continuing education providers to provide information on course attendance. The department contracted with Information Systems of Florida, Inc., to provide a tracking system, known as CE Broker, at no cost to the department, with the provision that the provider can charge licensees for access to their licensure information.

Both the requirement that continuing education providers must submit their training records electronically to CE Broker, and that licensees will be charged if they wish to access their continuing education information have been controversial. The administrative rule implementing the program system is being challenged.

The Department of Health estimates that HB 807 w/CS will have a fiscal impact on the Medical Quality Assurance Trust fund that will be paid by licensee renewal fees.

The bill will take effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0807b.hc.doc
DATE: March 25, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The bill increases sanctions for failure to comply with continuing education requirements and according to the Department of Health, will require additional resources from the Division of Medical Quality Assurance to monitor and discipline providers for failure to comply.

B. EFFECT OF PROPOSED CHANGES:

HB 807 w/CS deletes provisions of s. 456.025(7), F.S., that require the Department of Health to implement an electronic system to track required continuing education of health care professions regulated by the Division of Medical Quality Assurance.

The bill creates s. 456.0221, F.S., relating to continuing education, to provide for:

- Licensure boards, or the department when there is no board, to establish by rule, procedures for approval of continuing education providers and courses.
- Rules for an extension of three months for licensees who fail to complete all required continuing education credits within the two year licensure renewal period.
- Citations and fines for licensees who fail to complete required continuing education credits.
- The department to report to each board, licensees who fail to complete continuing education requirements within each two year licensure renewal cycle.
- Each board to direct the department on the percentage of licensees to be audited for compliance with continuing education requirements for each two year licensure renewal cycle.
- The department to audit licensees found to be deficient during any two licensure renewal periods.

The bill also amends s. 456.072, F.S., to include as grounds for discipline, the failure to complete required continuing education credits for a third or more times.

The bill provides an effective date of upon becoming law.

CURRENT SITUATION

CURRENT CONTINUING EDUCATION REQUIREMENTS

Existing Continuing Education Requirements for Licensure

Compliance with continuing education (CE) requirements is a condition of renewal of a license for health care practitioners. Pursuant to s. 456.013(6), F.S., as a condition of biennial license renewal, certain health profession boards, or the department when there is no board, shall require each licensee to periodically demonstrate competency by completing continuing education every two years.

Continuing education requirements include HIV/AIDS, domestic violence education, and other course requirements of ch. 456, F.S., and their practice act and rules. The number of required continuing education hours varies by profession.

The Department of Health and regulatory boards enforce the continuing education requirements by disciplining practitioners who fail to comply. The boards are required to establish disciplinary guidelines that provide a range of penalties for disciplinary violations. Continuing education violations have been designated by some regulatory boards as minor violations for which a citation may be issued under s. 456.077, F.S.

Department Use of Audits to Monitor Compliance

According to the Department of Health, approximately 20 years ago practitioners were required to mail in certificates from each course attended when they renewed their license, as proof of compliance with continuing education requirements. This was a very inefficient, labor intensive activity.

To address the lack of resources to record copies of all course completions, the Division of Medical Quality Assurance developed a random audit method to review compliance. Rather than manually audit all 474,000 licensed practitioners, a random sample of renewals are audited, based on the number of audits needed to predict the compliance rate for the profession. Practitioners do not need to submit proof of compliance when they renew, but have to sign a statement of compliance and submit proof of compliance with requirements if selected for a post renewal audit. Failure to comply with continuing education became a disciplinary violation by default.

Problem of Non-Compliance with Continuing Education Requirements

Based on the most recent audit sample, the department estimates that over 50,000 nurses, 8,760 medical doctors, 4,200 pharmacists, and 2,100 dentists are not completing required continuing education each renewal cycle. Less than 2% of the non-compliant practitioners are being disciplined for non-compliance. The department reports the following non-compliance rates for continuing education for selected professions:

Selected Professions Rates of Non-Compliance with Continuing Education Requirements Based on Sample Audits

| Selected Profession | Prior Audit Date | Percent Non-Compliance | Latest Audit Date | Percent Non-Compliance |
|-------------------------|------------------|------------------------|-------------------|------------------------|
| Acupuncture | 1996 | 9.2 | 1998 | 10.5 |
| Athletic Trainers | 1998 | 33.0 | 2000 | audit not complete |
| Chiropractors | 1998 | 9.0 | 2000 | 4.5 |
| Clinical Lab. Personnel | 1998 | 6.7 | 2000 | 10.3 |
| Dentistry | 1997 | not audited | 1999 | 19.6 |
| Dietetics | 1997 | not audited | 1999 | 23.0 |
| Electrolysis | 1998 | 24.0 | 2000 | 10.0 |
| Hearing Aid Spec. | 1997 | 5.0 | 1999 | 10.0 |
| Massage Therapy | 1996 | 9.0 | 1998 | 34.0 |
| Medicine | 1998 | 17.0 | 2000 | 15.0 |
| Midwifery | 1996 | 8.0 | 1998 | 5.0 |
| Nursing | 1999 | 20.0 | 2000 | 26.0 |
| Nursing Home Admin | 1998 | 0.0 | 2000 | audit not complete |
| Occupational Therapy | 1997 | not audited | 1999 | 19.0 |
| Optometry | 1997 | 12.8 | 1999 | 5.7 |
| Osteopathy | 1996 | 25.0 | 1998 | 40.0 |
| Pharmacy | 1997 | 16.4 | 1999 | 19.4 |
| Physical Therapy | 1997 | not audited | 1999 | 34.0 |
| Podiatry | 1998 | 11.8 | 2000 | 4.6 |
| Speech Lang./Audiology | 1997 | 16.0 | 1999 | 14.0 |

*Source: Department of Health, Division of Medical Quality Assurance

Problems with Manual Audits

Manual audits are time-consuming for both the licensee subject to the audit and the department, averaging about 45 minutes per practitioner. Board staff must contact the licensee to obtain proof that he or she completed the required continuing education courses for license renewal.

A Justification Review by the Office of Program Policy Analysis and Government Accountability (January, 2003) reports that compliance with continuing education requirements has been a long-standing problem and that the pre-licensure renewal audits in which licensees were notified six months in advance to provide proof of compliance with the continuing education requirements are more effective in advancing licensee compliance than post renewal audits.

NEW ELECTRONIC CONTINUING EDUCATION TRACKING SYSTEM

Required Electronic Tracking System for Continuing Education to Replace Random Audits

In 2001, the Legislature passed SB 1558 that established provisions of s. 456.025(7), F.S., to mandate the Department of Health to implement an electronic continuing education tracking system, to increase compliance with continuing education requirements and reduce the burden of manual audits on both licensees and the department. The legislation made continuing education providers responsible for submitting course attendance. The tracking system was to be integrated into the licensure and renewal system. The tracking system, along with other functions, was to be funded from existing fees of approximately \$330,000 charged annually to continuing education providers who serve over 474,000 practitioners.

Implementation of New Electronic Tracking System

In the summer of 2002, the Department of Health met with various professional association representatives who participated in a workgroup to design the system. A Request for Proposal was issued in early Fall of 2002.

After evaluation of the two proposals submitted, Information Systems of Florida, Inc., was selected and a contract was executed in August 2003 after a lengthy bid protest. The contract is at no cost to the state with funding coming from voluntary subscription fees from practitioners who want to track and manage compliance with their continuing education requirements. The system name is CE Broker.

How the New System Works

The system is designed to replace manual audits with electronic tracking of continuing education so that no one renews a license unless they are in compliance with the law. This is consistent with all professions at the Department of Business and Professional Regulation which has an electronic tracking system, as well as the Department of Financial Services.

Continuing education providers must register once with the basic information of the provider name, address, email address, contact person, etc. Each course must be registered with the following information provided: provider name, course title, when offered, and the number of hours approved. The provider has the option to enter more information for marketing purposes including a course description and website link. Continuing education providers can apply for initial board approval and renewal completely online. Providers are able to report attendance in one of four ways, by:

- Entering the information directly into the web based system;
- Emailing an Excel spreadsheet;
- Emailing the information in a text-file format; or
- Mailing in scan cards completed by the practitioner.

Should a practitioner choose to subscribe to CE Broker, the system provides them:

- Access to an individualized transcript of the continuing education hours they have completed, which was designed specifically for their profession;
- The ability to update his/her file;
- The ability to search for specific courses by subject, geographic area, dates, and provider; and
- The ability to create an alert system for renewal dates and credits still lacking from the continuing education transcript.

In addition, the practitioner is exempt from a continuing education manual audit by the department.

Subscription to CE Broker is completely voluntary on the part of the practitioner. Whether or not a practitioner subscribes to CE Broker will have no impact on the renewal of a license.

According to the department, there are currently over 5,700 practitioner subscribers to the system, and many of the continuing education providers are already registered in the system. Data is beginning to be submitted to the system.

ISSUES WITH THE NEW TRACKING SYSTEM

The requirements of the new electronic tracking system implemented by the department have been controversial. Continuing education providers are required to submit their training records at specific times and with specific information. Licensees must pay the tracking system provider to be able to access their individual continuing education information on the tracking system.

Current Fees for Continuing Education Providers to be Used for Tracking System

Section 456.025(7), F.S., requires each board, or the Department of Health if there is no board, to establish by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses or programs and to establish by rule a biennial renewal fee no greater than \$250 for the renewal of such courses. The fees collected from continuing education providers must be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, and any legal expenses incurred.

In 2001, the Legislature amended this section to include developing and maintaining an electronic tracking system (ch. 2001-277, L.O.F.).

The registration process for the electronic continuing education tracking system does not require current approved continuing education providers to pay a fee to register.

New Fees Charged to Licensed Practitioners by the System Provider--CE Broker

Although use of the tracking system by individual licensees is voluntary, CE Broker requires the payment of a \$35 biennial fee by each licensed professional who wants to view their continuing education credits on the www.cebroker.com website.

Disputed Authority to Implement the Department Electronic Tracking System

In December, 2003, the Department of Health noticed proposed administrative rules to implement the electronic tracking system for continuing education. Proposed Rule 64B-5.002, F.A.C., requires continuing education providers to submit their application for approval electronically through the continuing education tracking system, along with detailed information on continuing education courses offered by the provider. The proposed rule requires submission of all information and data required by the proposed rule to: www.cebroker.com. The Department of Health has held workshops explaining the proposed rules.

Challenges to the Proposed Rule

Joint Administrative Procedures Committee--The Joint Administrative Procedures Committee of the Legislature has stated that several provisions of the proposed administrative rules to implement the tracking system exceed the delegated legislative authority of the law as defined by s. 120.52(8)(c), F.S. The provisions challenged by the Joint Administrative Procedures Committee include proposed rules: 64B-5.002(2)(a), F.A.C., requiring all continuing education providers to submit course information by the first day of the renewal period; 64B-5.002(4), F.A.C., requiring all continuing education providers to provide information to CE Broker rather than to the department as required by s. 456.025(7), F.S.; and 64B-5.002, F.A.C., that continuing education be tracked by course credits, when s. 456.013, F.S., provides that continuing education requirements may be met by other means, including pro bono services to the indigent and attending disciplinary board meetings that will not be included in the tracking system.

Florida Chiropractic, Podiatric Medical, and Massage Therapy Associations--Three professional associations, the Florida Chiropractic Association, the Florida Podiatric Medical Association, and the Florida State Massage Therapy Association have challenged the proposed rules. All of the associations are concerned about due process for their members who may be denied renewal of a license because of any errors in the course credits recorded in the continuing education tracking system operated by a private contractor.

The chiropractic association and the podiatric association have challenged several provisions of the proposed rules. They are concerned that courses must be submitted for approval by the first day of the biennial renewal period as required by proposed rule 64B-5.002(2). This requirement for tracking courses using the CE Broker system does not support the associations' provision of continuing education at three day symposia made up of lectures and workshops on different topics repeated over the three days. The lecturers, presenters, and topics are often not finalized until the month before the symposia take place, so that can not be submitted in advance of the biennial renewal cycle.

Florida Dental Association/Division of Administrative Hearing--On January 22, 2004, the Florida Dental Association filed an administrative petition with the Division of Administrative Hearings to contest the validity of the proposed rules by the Department of Health, and the adoption of the rules is held in abeyance pending the outcome of the petition. An order was issued on January 29, 2004, holding the case in abeyance.

C. SECTION DIRECTORY:

Section 1. Amends s. 456.025(7), F.S., to repeal provisions that require the Department of Health to administer an electronic continuing education tracking system.

Section 2. Creates s. 456.0251, F.S., relating to continuing education, provide for rules for approval of continuing education providers and courses, a three month extension, and citations and fines for failure to comply with requirements.

Section 3. Amends s. 456.072, F.S., to include as grounds for discipline, the failure to complete required continuing education credits for a third or more times.

Section 4. Provides the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provider of the continuing education tracking system, which has a contract with the Department of Health, will suffer a financial loss if the system is terminated.

D. FISCAL COMMENTS:

According to the Department of Health, HB 807 w/CS creates a fiscal impact on the Medical Quality Assurance Trust Fund due to the need for an increased number of staff to handle: approval of a larger number of continuing education providers and courses; more manual audits; and discipline of health care professionals who fail to meet more stringent requirements to complete continuing education credits (see below). All fiscal impacts will be funded from licensee renewal fees.

According to the department, the number of staff needed to implement the requirements of the bill is unknown. Below are some of the fiscal impacts identified by the department that are related to board approval of continuing education providers and courses, and manual audits of increased compliance requirements.

Approval of all providers and courses--The bill requires board approval of all providers and courses, including national providers. The department does not currently approve national providers and does not track the number of courses offered by approved providers. According to the department, the American Medical Association has over 3,000 course providers whose courses would have to be approved. This would generate \$250 per provider.

Increased manual audit requirements--Currently, the department conducts about 9,500 manual audits each biennium. The department estimates that even a 1% increase in the number of required audits would add an additional 4,750 manual audits (based on a total of 475,000 licensees) at an additional cost of \$23.83 per audit for a total of \$113,193. (The department estimates that the cost of a manual audit for one licensee, based on an average of 45 minutes per audit, is approximately \$23.83. (The estimated cost per audit includes: \$19.12 for salaries, fringes and expense; \$4.42 for a certified letter advising the licensee of the audit; and \$0.29 for a letter advising the licensee of the findings.)

According to the department, even if licensure fees were used to fund the electronic tracking system, the cost of monitoring compliance would be less than \$10 per year, or less than \$20 per biennium, for each licensee.

Based on information provided by the department, the three month extension would also require additional staff, because each person requesting an extension would be subject to an audit as a part of the review of the extension, which would be an additional expense of \$23.83 just for the audit. If a board denied the extension request, the licensee has a right to a hearing, pursuant to Chapter 120, F.S., which would be an additional expense to be paid from licensure fees.

The department is also concerned that the bill requires it to report noncompliant licensees to the board within three months of the end of the biennium. This means that all the manual audits must be completed and the report compiled in the three months after the biennium ends, because the licensee has the full biennium to complete his/her continuing education. According to the department, a manual audit requires that the department send the licensee a certified letter advising that he/she has been selected to be audited and gives him/her 30 days to submit documentation of attendance at the requisite continuing education courses. When the documentation is received, the department then manually checks the number of hours, compliance with mandatory courses, the approval status of the continuing education provider, and the verification that the time period in which the continuing education hours were taken is within the biennium period.

According to the department, with the current electronic system, the department can instantly check compliance online. The system electronically checks the number of hours, compliance with mandatory courses, and the approval status of the continuing education provider. There is no need to involve the licensee at all unless the continuing education requirements are not met.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Health, the department has been encouraging boards to move away from approving courses to approving providers, because of the tremendous workload in approving each course. For example, massage therapy still reviews all courses and requires a full time staff person to handle course approval. For nursing, there are over 1,134 continuing education providers who offer multiple courses that will have to be reviewed and approved under the provisions of the bill.

The department is concerned that deletion of the electronic tracking system and increased monitoring requirements, returns the department to inefficient, labor intensive manual audits. The department has indicated that since each board can set the percentage of licensees to be audited, accountability for continuing education compliance may vary widely among professions. The number of licensees to be audited will increase each biennium as the number of noncompliant licensees is added to the percent to be audited.

The department is also concerned that while currently, continuing education violations are citation offenses for most professions, with only the first offense not counting as discipline, under the bill a licensee can be disciplined twice without the offense being made public to the consumer.

Currently, the fines for continuing education violations set by the boards are low. While the bill sets an upper limit of \$500, it does not require a minimum level of fine.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2004, the Subcommittee on Health Standards considered HB 807, and reported the bill favorably with one amendment. The strike everything amendment preserves the provisions of the original bill and strengthens provisions for enforcement of continuing education requirements for license renewal, including: citations and fines for failure to comply; and discipline of licensees who fail to meet requirements three or more times.

On March 18, 2004, the Health Care Committee adopted two amendments and reported the bill favorably, with a committee substitute. The committee adopted the strike-all amendment approved by the Health Standards Subcommittee and an amendment to the amendment which added a provision that boards shall also establish rules for approval of continuing education providers, in addition to courses. The committee substitute preserves the provisions of the original bill to delete from statute the requirement for the department to implement an electronic continuing education tracking system. The committee substitute also strengthens provisions for enforcement of continuing education requirements for license renewal, including: citations and fines for failure to comply; and discipline of licensees who fail to meet requirements three or more times.