

# 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.)

Prepared By: Health Care Committee

BILL: SB 100

SPONSOR: Senator Saunders

SUBJECT: Continuing Education for Health Care Practitioners

DATE: November 29, 2004

REVISED: 12/01/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>HA</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

### I. Summary:

The bill eliminates requirements for the Department of Health (DOH) to implement an electronic tracking system for continuing education (CE) of health care professions regulated by the Division of Medical Quality Assurance in the department. Rulemaking authority is granted to the Department of Health and professional boards to establish procedures for the approval of CE providers and CE courses for renewal of licenses.

Except for those CE courses whose subjects are prescribed by law, the boards or DOH are authorized to limit by rule the subject matter for approved courses to courses addressing the scope of practice of each respective health care profession. Licensees who have not completed all CE credits during a biennial licensure period may obtain a 3-month extension to complete the required hours for license renewal. The boards and DOH must establish by rule procedures for health care practitioners to request a 3-month extension for completion of the required CE for license renewal.

Failure to complete the required CE hours shall be grounds for issuance of a citation and a fine, plus completion of any deficit CE hours which shall not be considered discipline for up to two times for two separate failures to complete the required CE hours. Requirements for DOH to audit practitioner completion of CE requirements are specified.

This bill creates section 456.0251, Florida Statutes.

This bill amends ss. 456.025 and 456.072, Florida Statutes.

## II. Present Situation:

Chapter 456, F.S., provides the general regulatory provisions to be administered by DOH and boards for health care professions. A number of health care professions must meet continuing education requirements as a condition of maintaining a license to practice in Florida. Any board that currently requires continuing education for license renewal or DOH, if there is no board, must adopt rules to establish *the criteria* for continuing education courses.<sup>1</sup>

As a condition of license renewal, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine must require licensees whom they regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years.<sup>2</sup> The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment.<sup>3</sup> Each of such boards must determine whether any specific continuing education requirements not otherwise mandated by law shall be mandated and shall *approve criteria for, and content of, any continuing education* mandated by such board.<sup>4</sup>

Notwithstanding any other provision of law, the board<sup>5</sup>, or department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term.

The boards, or the department when there is no board, must require the completion of a 2-hour course relating to the prevention of medical errors as part of the licensure and renewal process.<sup>6</sup> The medical errors course must count towards the total number of continuing education hours required for the profession. The course must be approved by the board or department, and must include a study of root-cause analysis, error reduction and prevention, and patient safety. During Special Session 2-D (2003), the Legislature amended the law to require that the prevention of medical errors course approved by the board or department also include information relating to the five most misdiagnosed conditions during the previous biennium.

Section 456.025(7), F.S., requires each board or DOH 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

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<sup>1</sup> See s. 456.013(9), F.S.

<sup>2</sup> See s. 456.013(6), F.S.

<sup>3</sup> See s. 456.013(6), F.S.

<sup>4</sup> See s. 456.013(6), F.S.

<sup>5</sup> See s. 456.013(6), F.S., the term includes the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and other boards within the Division of Medical Quality Assurance.

<sup>6</sup> See s. 456.013(7), F.S.

providership 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, covering legal expenses incurred as a result of not granting or renewing a providership, and developing and maintaining an electronic tracking system for each biennial renewal cycle for which electronic renewals are implemented.

The practice act for each health care profession may specify the number of hours of continuing education that must be completed to satisfy the license renewal requirements, the approval of the continuing education provider or programs, and the exceptions to satisfying the continuing education requirement. Under ch. 456, F.S., boards have express authority to adopt rules to assess a fee from providers of continuing education courses and programs seeking approval and express authority to establish criteria for continuing education courses. Some boards have not expressly approved continuing education providers, although they may have approved courses offered by continuing education providers or adopted rules specifying the criteria that such providers must meet.

The Board of Medicine has adopted a rule to require each medical physician to complete 40 hours of continuing education courses approved by the board in the 24 months preceding each biennial renewal period as established by DOH.<sup>7</sup> The Board of Medicine rule approves specified courses for licensees to take to satisfy the continuing education requirement, but does not expressly approve the provider of such continuing education courses.<sup>8</sup>

A dentist must complete no less than 30 hours of continuing education in dental subjects every 2 years to obtain license renewal.<sup>9</sup> Each dentist must submit sworn affidavits attesting that the dentist has completed the required continuing education and must retain records to document completion of the coursework. The Board of Dentistry may request the documentation from license renewal applicants selected at random without cause. The Board of Dentistry may approve continuing education providers and the continuing education may be developed and offered by entities specified in statute.<sup>10</sup> The Board of Dentistry has adopted rules that specify standards for the approval of continuing education providers.<sup>11</sup>

The Board of Osteopathic Medicine must, by rule, prescribe continuing education programs and courses, not to exceed 40 hours every 2 years, as a condition for the renewal of an osteopathic physician's license.<sup>12</sup> Up to 10 hours of continuing education credit may be extended to an osteopathic physician for the performance of pro bono services to indigent or underserved populations during each biennial period.

The Board of Nursing must, by rule, prescribe continuing education, not to exceed 30 hours biennially, as condition for renewal of a license or certificate.<sup>13</sup> The criteria for continuing education programs must be approved by the Board of Nursing. Each licensed nurse who is

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<sup>7</sup> See Rule 64B8-13.005, F.A.C.

<sup>8</sup> See Rule 64B8-13.005, F.A.C.

<sup>9</sup> See s. 466.0135, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> See Rules 64B5-12.017 and 64B5-12.0175, Florida Administrative Code.

<sup>12</sup> See Rules 64B15-13.001, 64B15-13.002, 64B15-13.003, and 64B15-13.005, F.A.C.

<sup>13</sup> See s. 464.013, F.S., and Rules in chapter 64B9-5, F.A.C.

presenting a continuing education course as either the lecturer of the offering or as an author of the course materials may earn a maximum of 12 hours of continuing education credit per biennium.<sup>14</sup>

The practice acts for the other health care professions regulated by DOH should be consulted for detail regarding the continuing education requirements for those professions. The Department of Health and regulatory boards enforce the continuing education requirements imposed on practitioners by disciplining the practitioner for failing to comply with the educational course requirements for HIV/AIDS,<sup>15</sup> or for domestic violence,<sup>16</sup> or for violating any provision of ch. 456, F.S., the applicable practice act, or any rules adopted pursuant thereto.<sup>17</sup> 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. Section 456.077, F.S., requires the boards or DOH to designate by rule citation violations for which there is no substantial threat to the public health, safety, and welfare or no violation of standard of care involving injury to a patient.

A medical physician who has continuing medical education (CME) violations is subject to the issuance of a citation for a minor violation with an accompanying range of penalties established by the Board of Medicine rule:

- Within 12 months of the date the citation is issued, the licensed physician must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; before renewing the license for the next biennial period, the physician must document compliance with the CME requirements for the relevant period; and
- If the violation involved failure to document the required HIV/AIDS CME *or* domestic violence CME *or* medical errors CME the physician may be fined \$500; and if the violation involved the failure to document the required HIV/AIDS, medical errors, *and* domestic violence CME, the physician may be fined \$1,000.
- If the violation involved some, but not all, of the 40 hours of required CME for license renewal, the physician may be fined \$50 for each hour not documented.
- If the violation involved obtaining license renewal by fraud or misrepresentation, the physician may be fined \$5,000.<sup>18</sup>

The Board of Nursing has not designated continuing education violations as appropriate for the issuance of a citation for a minor violation. A nurse who procures, or attempts to procure, or renew a license to practice nursing by bribery, by knowing misrepresentations, or through an error of DOH or the Board of Nursing is subject to the following range of penalties:

- (First offense) \$250 fine and probation – denial of licensure or revocation.
- (Second offense) \$500 fine and probation – denial of licensure or permanent revocation.<sup>19</sup>

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<sup>14</sup> *Id.* at Rule 64B9-5.006, F.A.C.

<sup>15</sup> See s. 456.072(1)(e), F.S.

<sup>16</sup> See s. 456.072(1)(s), F.S.

<sup>17</sup> See s. 456.072(1)(cc), F.S.

<sup>18</sup> See Rule 64B8-8.017(3), F.A.C.

<sup>19</sup> See Rule 64B9-8.006(3)(a), F.A.C.

A nurse who fails to comply with the education course requirements for HIV/AIDS or for domestic violence is subject to the following range of penalties:

- (First offense) \$250 fine and complete the course - \$500 fine and suspension until the course is completed.
- (Second offense) \$500 fine and complete the course - \$750 fine and suspension until the course is completed.
- (Third offense) \$750 fine and suspension until the course is completed - \$1,000 fine and suspension until the course is completed plus probation.<sup>20</sup>

Other boards have adopted by rule a range of penalties for continuing education violations.

The Department of Health has monitored licensee compliance with the continuing education requirements by implementing post-licensure renewal and pre-licensure renewal audits. The random audits are expressly authorized by statute in some instances<sup>21</sup> and involve board staff contacting the licensee to obtain proof that he or she did complete the required continuing education courses for license renewal. Both procedures have been reported to be time-consuming for both the licensee subject to the audit and the department. A Justification Review by the Office of Program Policy Analysis and Government Accountability 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 were more effective in advancing licensee compliance.<sup>22</sup>

In 2001, the Legislature amended s. 456.025(7), F.S., to require DOH to integrate the electronic tracking system for continuing education into the licensure and renewal system. The law also requires all approved continuing education providers to provide information on course attendance to DOH that is necessary to implement the electronic tracking system. The department must, by rule, specify the form and procedures by which the information is to be submitted.

Under the Department of Health's electronic tracking system for continuing education, continuing education providers must register once with basic information, including the name address, e-mail address, and contact person for the continuing education provider. "Approved" continuing education providers must register the provider name, course title, when the course is offered, and the number of hours for which the course is approved. For purposes of the tracking system, continuing education providers must apply for initial approval from DOH and for renewal of that approval online.

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<sup>20</sup> See Rules 64B9-8.006(3)(y) and 64B9-8.006(3)(hh), F.A.C.

<sup>21</sup> See (acupuncture) s. 457.107(3), F.S.; (dentistry) s. 466.0135(3), F.S.; (dental hygiene) s. 466.014, F.S.; (midwifery) s. 467.012(13), F.S.; (certified nursing assistants) s. 464.203(7), F.S.; (occupational therapy) s. 468.209, F.S.; (psychologists and school psychologists) s. 490.0085(3), F.S.; and (clinical social work, marriage and family therapy, and mental health counseling) s. 491.0085(3), F.S.

<sup>22</sup> See Office of Program Policy Analysis and Government Accountability, Justification Review: While Medical Quality Assurance Improving, Licensure Needs Increased Accountability (Report 03-06), January 2003 cited at <<http://www.oppaga.state.fl.us/reports/pdf/0306rpt.pdf>>.

In December 2003, DOH noticed proposed administrative rules to implement the electronic tracking system for continuing education.<sup>23</sup> Proposed Rule 64B-5.001, F.A.C, establishes definitions. The proposed rule defines “continuing education (CE) tracking system” to mean the designated electronic system through which approved providers submit necessary information on course attendance. The proposed rule defines “electronically” to mean the submission of information and data via the Internet. “Course” is also defined by the proposed rule. “Approved provider” is defined to mean a person, firm, institution of higher learning, partnership, company, corporation, society or association *deemed approved by statute, or approved by rule or action of the board or the department when there is no board*, to provide continuing education courses. This definition includes providers accredited by national organizations *approved by statute or approved by the appropriate licensing board*.

For purposes of the electronic tracking system for continuing education, DOH has taken the position that the Board of Medicine does not have express authority to approve continuing education providers *or* courses and therefore licensed medical physicians are exempt from the electronic tracking system for continuing education. The Board of Medicine has adopted rules that approve specified courses for the continuing education of medical physicians. The department’s position also appears to be in conflict with provisions in ch. 456, F.S. Section 456.013(9), F.S., requires any board that currently requires continuing education for license renewal or DOH, if there is no board, to adopt rules to establish the *criteria* for continuing education courses.<sup>24</sup> The boards for other professions within the Division of Medical Quality Assurance such dietetics and nutrition do not have express authority to approve continuing education providers but have statutory direction to impose continuing education requirements on licensees over which it has jurisdiction.<sup>25</sup>

Proposed Rule 64B-5.002, F.A.C., requires continuing education providers applying to a board for initial or renewed status as an approved provider or for initial or renewed approval of a continuing education course to electronically submit their application through the continuing education tracking system and to submit specified identifying information, including detailing information on continuing education courses offered by the approved provider. The proposed rule also requires all approved continuing education providers to electronically submit course information by the first day of the renewal period. The proposed rule requires continuing education providers to report continuing education course attendance: (1) in an designated excel format (electronic); (2) a text file format (electronic); (3) manual entry of the required data direct to the continuing education system; or (4) by submitting the completed scan cards signed by the licensed health care professional. The proposed rule requires submission of all information and

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<sup>23</sup> See Proposed Rules 64B-5.001 and 64B-5.002, F.A.C., in *Florida Administrative Weekly*, Vol. 29, No. 51, pp. 4973-4974, December 19, 2003.

<sup>24</sup> See s. 468.711(2), F.S., which provides that “[t]he board may, by rule, prescribe continuing education requirements, not to exceed 24 hours biennially. The *criteria for continuing education shall be approved by the board* and shall include 4 hours in standard first aid and cardiovascular pulmonary resuscitation from the American Red Cross or equivalent training as determined by the board.” The Board of Athletic Trainers has adopted a rule to approve continuing education courses for athletic trainers to complete as a condition of biennial licensure renewal. Rule 64B33-2.003, F.A.C.

<sup>25</sup> Section 468.514, F.S., relating to the regulation of dietetics and nutrition practice, provides that the agency shall renew a license under this part upon receipt of the renewal application, fee, and proof of the successful completion of continuing education requirements as determined by the board.

data required by the proposed rule to: <<https://www.cebroker.com>>.<sup>26</sup> The <<http://www.cebroker.com>> website requires the payment of a fee to use its services to view a licensed health care professional's continuing education credits. The registration process does not require current approved continuing education providers to pay a fee to register. Licensees have the option to subscribe to CE Broker to manage their compliance with continuing education credits for \$17.50 annually.

The Department of Health has held workshops on the proposed rules. 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 DOH, and the adoption of the rules is held in abeyance pending the outcome of the petition.<sup>27</sup> An order was issued on January 29, 2004, holding the case in abeyance. Since that time the Secretary of the Department of Health became involved and tried to work out many of the objections and problems that the professional associations have had with the implementation of the CE electronic tracking system.

The discussions have resolved many of the association's concerns regarding the continuing education tracking system. A major concern of the associations was the possibility of recording glitches in the tracking system. The failure of required continuing education credits to be recorded in CE Broker© system would have resulted in an automatic nonrenewal of a health care professional's license. The Department of Health has agreed that it would no longer automatically not renew a health care professional's license for failure to have the required credits recorded in the system. If a health care professional fails to have the required credits in the system, DOH would audit the professional's records or documents and require the professional to prove compliance with the continuing education requirements, or be subject to potential discipline by the professional's board.

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<sup>26</sup> *Id.*

<sup>27</sup> See Division of Administrative Hearings Case No. 04-0284RP.

After several workshops and various informal meetings between DOH officials and the professional associations, community colleges, and other stakeholders, another proposed rule was noticed by DOH on July 23, 2004, and public hearings were held on the proposed rule. The proposed rule defines “approved provider” to mean a person as defined in s. 1.01(3), F.S., that is required to be approved by a board, or the department when there is no board, to provide continuing education *or whose programs are required to be approved by a board*, or the department when there is no board. That proposed rule has been challenged by the Florida Chiropractic Association and a continuing education provider that presents CE courses to Florida-licensed massage therapists (petitioners) as an invalid rule.<sup>28</sup> The petitioners argue that s. 460.408 or s. 480.0415, F.S., do not authorize or require the Board of Chiropractic Medicine or the Board of Massage Therapy to approve CE providers. Section 460.408 or s. 480.0415, F.S., only authorize the Board of Chiropractic Medicine or the Board of Massage Therapy to approve courses. As such the petitioners assert that they are not approved providers pursuant to a statute authorizing approval of the petitioners as CE providers. The petitioners note that this interpretation follows the conclusions of law found by an administrative law judge in *Freiberg v. Department of Health, Board of Acupuncture*.<sup>29</sup>

In *Freiberg*, the administrative law judge found that the Board of Acupuncture did not have statutory authority to approve the provider of CE courses or programs. The Division of Administrative Hearings issued a final order in the *Freiberg* case in which existing rules of the Board of Acupuncture requiring board approval of CE providers were declared an invalid exercise of delegated legislative authority. In *Freiberg*, the administrative law judge found that s. 456.025(7), F.S., authorizes boards to impose a fee of up to \$250 on “anyone seeking approval to provide continuing education courses or programs” and requires boards to establish by rule a “biennial renewal fee” for the “renewal of providership” of continuing education courses. Although this fee relates to obtaining the board’s approval of the provider and the board may adopt a rule imposing the fee under s. 456.025(7), F.S., it may not be inferred that the board has statutory authority to approve the CE provider. The administrative law judge found that the challenged portion of the Board of Acupuncture rule enlarges, modifies, or contravenes the statutes purportedly implemented.

In its arguments against the proposed rule by DOH to implement the electronic system to track continuing education, the Florida Chiropractic Association argued that the proposed rule is invalid against CE providers who are not approved under a statute by a board or DOH. Section 456.025(7), F.S., requires *all approved continuing education providers to provide information on course attendance* to DOH that is necessary to implement the electronic tracking system. The Florida Chiropractic Association argued against the validity of the proposed rule by pointing out that s. 456.025(7), F.S., does not apply to or require CE providers who are not *approved* to submit CE course attendance to DOH necessary to implement an electronic tracking system. On November 23, 2004, the administrative law judge found that the portion of the definition of an “approved provider” set forth in the challenged DOH proposed rules is invalidated as an invalid exercise of delegated legislative authority: “...a person as defined in s.

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<sup>28</sup> See *Florida Chiropractic Assoc., Inc. and Marc H. Kalmanson v. Department of Health*, Division of Administrative Hearings Case No.04-3172RP.

<sup>29</sup> See *Freiberg v. Department of Health, Board of Acupuncture*, DOAH Case No. 03-2964RX.



1.01(3), Florida Statutes, ... whose programs are required to be approved by a board, or the department when there is no board.”<sup>30</sup>

In a separate administrative action, the Florida Chiropractic Association and a continuing education provider that presents CE courses to Florida-licensed massage therapists (petitioners) challenged the validity of existing rules (Rules 64B2-13.004 and 64B7-28.010, F.A.C.) by the Board of Chiropractic Medicine and the Board of Massage Therapy which require CE providers to be approved by the board and to pay a non-refundable fee for the approval.<sup>31</sup> The petition for this administrative challenge was filed on October 27, 2004 and scheduled for a hearing on December 17, 2004. The basis of the challenge to these rules is that the Board of Chiropractic Medicine and the Board of Massage Therapy do not have statutory authority to adopt a rule requiring CE providers for Florida-licensed chiropractors or massage therapists, to be approved as CE providers. Although the Board of Chiropractic Medicine and the Board of Massage Therapy are statutorily authorized to approve CE courses and to adopt rules necessary for implementation of approval of courses, the petitioners in the administrative challenge argue that the statutes do not authorize the boards to approve CE providers. Under s. 120.52(8), F.S., an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute, and therefore, the petitioners argue that the boards would need specific authority in a statute to authorize the boards to approve CE providers.

The Department of Health’s implementation of the CE electronic tracking system could be hampered by a DOAH determination about the legal validity of existing administrative rules relating to the approval of CE providers and its proposed rule to implement the system.

Although no funding was specifically appropriated to implement the CE electronic tracking system, DOH began to implement the requirements of the law for an electronic CE tracking system by entering into a contract with Information Systems of Florida, Inc. (ISF). There is no monetary consideration for the contract, so it appears that DOH may opt out of the contract at anytime without a monetary penalty. The original contract with ISF included a mechanism for ISF to recoup its costs and to get revenue by an assessment of fees on CE providers for reporting CE courses into the system and an assessment of subscription fees on licensed health care practitioners. This funding mechanism drew criticism from the affected stakeholders, and on April 12, 2004, the contract was later revised to:

- Delete a provision which required ISF to charge CE training providers for each CE course reported into the system;
- Delete a provision which required ISF to charge licensed health care practitioners a subscription fee for each license renewal period; and
- Authorize ISF to charge licensed health care practitioners an optional subscription fee of not more than \$35 for each license renewal period.

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<sup>30</sup> See *Florida Chiropractic Assoc., Inc. and Marc H. Kalmanson v. Department of Health*, Division of Administrative Hearings Case No.04-3172RP.

<sup>31</sup> See *Florida Chiropractic Assoc., Inc. and Marc H. Kalmanson v. Department of Health*, Division of Administrative Hearings Case No.04-3866RX.

The contract was also revised to add a provision giving DOH a license to use, copy and distribute certain computer software programs relating to the CE electronic tracking system developed by ISF.

To promote the CE electronic tracking system, since December 2003, DOH sent out various mailings to licensed health care practitioners at initial licensure and licensure renewal. In July 2004, DOH disseminated a list of frequently asked questions on CE electronic tracking which was developed by the department in conjunction with a series of meetings and informal workshops with the professional associations. The subscription rate for use of the CE Broker system has become stagnant recently according to the information provided by ISF and DOH. Department of Health officials believe that the CE Broker system subscription rate has leveled due to three potential causes:

- The disruption of the provision of CE due to the series of hurricanes that struck Florida;
- Since this is the initial year of a 2-year license renewal cycle and health care practitioners will comply or show compliance towards the end of the 2-year period; and
- Marketing efforts to health care practitioners regarding the benefits from subscription to the CE Broker system may need to be reexamined.

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

**Section 1.** Amends s. 456.025, F.S., to eliminate requirements for DOH to implement an electronic tracking system for continuing education of health care professions regulated by the Division of Medical Quality Assurance in the department.

**Section 2.** Creates s. 456.0251, F.S., to grant rulemaking authority to DOH and boards to establish procedures for the approval of CE providers and CE courses for renewal of licenses. Except for those CE courses whose subjects are prescribed by law, the boards are authorized to limit by rule the subject matter for approved courses to courses addressing the scope of practice of each respective health care profession. Licensees who have not completed all CE credits during a biennial licensure period may obtain a 3-month extension to complete the required hours for license renewal. The boards and DOH must establish by rule procedures for health care practitioners to request a 3-month extension and whether proof of completion of some approved hours of continuing education are required to be submitted with the request for extension as a prerequisite for granting the request.

Failure to complete the required CE hours shall be grounds for issuance of a citation and a fine, plus completion of any deficit CE hours which shall not be considered discipline for up to two times for two separate failures to complete the required CE hours. The Department of Health must report to each board no later than 3 months following the last day of the licensure renewal period, the percentage of licensees regulated by that board who have not timely complied with CE requirements for the previous license renewal period for which audits are completed. Each board must provide DOH with the percentage of licensees regulated by that board which are be audited during the next license renewal period. The Department of Health must also audit those licensed health care practitioners who have been found to be deficient during any of the two license renewal periods.

**Section 3.** Amends s. 456.072, F.S., to make a health care practitioner subject to discipline for failure for three or more times to complete the required number of CE hours within a license renewal biennium or within a 3-month period from the date after the renewal biennium, if an extension is requested.

**Section 4.** Provides an effective date 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, Subsection 19(f) of the Florida Constitution.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Health will not incur additional expenditures to implement an electronic tracking system for continuing education.

**VI. Technical Deficiencies:**

On page 3, lines 7-23, the bill provides for the issuance of a citation and fine for a licensed health care practitioner's failure to complete the requisite number of hours of continuing education within a license renewal period or requested extension of that period. The bill does not distinguish this citation from the existing citation authority for violations of continuing education under s. 456.077, F.S., or the regular procedures for discipline of health care practitioners under s. 456.073, F.S.

**VII. Related Issues:**

Article I, s. 24(a) of the State Constitution states:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Section 456.014, F.S., provides that all information required by DOH of any applicant shall be a public record and shall be open to public inspection, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are exempt from disclosure under the Public Records Law, and may not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof who have a bona fide need to know such information. Section 119.01, F.S., which provides general state policy on public records was amended by ch. 2004-335, Laws of Florida, to provide, in part, that “an agency may not enter *into a contract for the creation or maintenance of a public records database* if that contract impairs the ability of the public to inspect or copy the public records of agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency.” Section 119.01(2)(f), F.S., provides that each agency that maintains a public record *in an electronic recordkeeping system* shall provide to any person, pursuant to the Public Records Law, a copy of any public record in that system which is not exempted from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with ch. 119, F.S.

It is unclear whether the contract between DOH and ISF, needs to be revised to address the requirements of ss. 456.014 and 119.01, F.S., to provide the public electronic access to the CE Broker system.

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## **VIII. Summary of Amendments:**

Barcode 884368 by Health Care:

Conforms procedures for the issuance of a citation and imposition of a fine for failure to complete the required number of hours of continuing education with existing disciplinary procedures on licensed health care practitioners. (WITH TITLE AMENDMENT)

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

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