

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 25 CS

Health Care Practitioners

SPONSOR(S): Bean

TIED BILLS:

IDEN./SIM. BILLS: SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Regulation Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>Hamrick</u>	<u>Mitchell</u>
2) <u>Health & Families Council</u>	<u>10 Y, 0 N</u>	<u>Hamrick</u>	<u>Moore</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 25 CS provides that the Department of Health (DOH) may discipline a practitioner who is enrolled in a treatment program for impaired practitioners and who is terminated from the program for failure to comply with his or her monitoring or treatment contract. The bill establishes disciplinary guidelines within each medical professional practice act. The bill further allows DOH to discipline health care practitioners who fail to successfully complete any drug or alcohol treatment program, thus not limiting disciplinary action to individuals who participate in a designated impaired practitioner program.

There are two impaired practitioner programs that serve health care practitioners in Florida. The Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN) evaluate practitioners for impairment and rehabilitate those who need treatment.

Currently, if a practitioner drops out of a treatment program or fails to comply with the terms of the monitoring contract, it is difficult for DOH to take disciplinary action against the practitioner. This bill will provide the department and its boards the authority to charge the licensee for failing to comply with the contractual arrangements for his or her treatment or monitoring.

Practitioners usually enter a program based on a complaint or self-referral, and are then evaluated to see if impairment exists. If the practitioner is found to be impaired, the referred individual is required to enter treatment, and sign a monitoring contract. The contract is specific for the particular illness and may vary in length, but most are for a 5-year time period. According to DOH, approximately 84 percent of all referrals occur prior to any violation of the Medical Practice Act or any evidence of patient harm. Participation is confidential unless there is failure to progress in recovery.

The effective date of the bill is July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill increases agency authority, by allowing the Department of Health to discipline any practitioner enrolled in a treatment program for impaired practitioners who fails to complete the program. It also allows boards and councils to promulgate rules concerning disciplinary guidelines within practice acts and set guidelines for each violation.

B. EFFECT OF PROPOSED CHANGES:

Professional Licensing Boards and Councils

Most health care practitioners in Florida are governed by professional licensing boards or councils that are independent entities overseen by the Department of Health's Division of Medical Quality Assurance. The Division of Medical Quality Assurance (MQA) also directly regulates some practitioner groups that are not governed by an external board or council, as well as some health care facilities, such as pharmacies.

The Department of Health's Division of Medical Quality Assurance

The department's Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 37 professions and 6 facilities, and works with 28 boards and councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations. MQA also regulates continuing education requirements and mandatory participation in intervention programs. In total, MQA regulates more than 850,000 health care practitioners and facilities. Practitioners must demonstrate their proficiency by meeting testing, licensing, credentialing and continuing education requirements.

Department of Health Procedures for Handling Practitioner Impairment Cases

Currently, when an impaired practitioner under the jurisdiction of MQA self-refers or voluntarily enters an impaired practitioner program and complies with all specified requirements of the program the department may not discipline the practitioner for the impairment. Impairment can result from the abuse of alcohol or drugs, or both, or may be due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety.

When the Department of Health receives a complaint alleging impairment, the complaint is processed immediately to determine whether emergency action (in the form of the emergency suspension or restriction of the licensee) is necessary.

Under existing statutes, the department must institute formal disciplinary proceedings against the license of the health care practitioner affected by emergency action within twenty (20) days of the emergency action. Only the secretary of the department has the statutory authority to take emergency action against the license of health care practitioners.

The Impaired Practitioner Program

The impaired practitioner treatment program was created to help rehabilitate various health care practitioners regulated by MQA. By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment. There are two impaired practitioner programs, Professionals Resource Network (PRN) and a program for nurses called the Intervention Project for Nurses (IPN).

Impaired practitioners may be evaluated, treated, and monitored for one or more of the following conditions: chemical dependency, psychiatric illness, psychosexual illness (including boundary violations), neurological/cognitive impairment, physical illness, HIV Infection/AIDS, and behavioral disorders. Practitioners usually enter a PRN or IPN program based on a complaint and subsequent finding of impairment.

Once a complaint is deemed valid and impairment is found, the referred individual is required to enter treatment and, in most cases, establishes a monitoring contract with PRN or IPN. The contract is specific for the particular illness and may vary in length, but most are for a 5-year time period. Once in a contract the licensee is monitored by an impairment consultant. The consultant is required to monitor the licensee's participation and ensure compliance.

As of November 2004, the PRN program was monitoring 1,220 cases and IPN was monitoring 2,859 cases. According to the program, approximately 84 percent of all referrals to the PRN occur prior to any violation of the Medical Practice Act or any evidence of patient harm. Approximately, 80 percent of all PRN participants have no disciplinary cases being pursued by the State. The names of the participants in the program are not revealed to the department, MQA or licensing board as long as they remain in compliance.

Should other problems or patient harm occur, discipline may be imposed concurrently. The disciplinary process remains confidential unless the licensee waives confidentiality or probable cause is found. If a complaint concerns a matter of immediate and serious threat to the public, an emergency suspension may be requested by the Secretary of the Department of Health. Failure to comply and progress in the treatment or monitoring is considered grounds for disciplinary action. If a practitioner does not progress and comply with the treatment or monitoring program his or her entire record of impairment is open to review by the public and the press.

C. SECTION DIRECTORY:

Section 1. Adds s. 456.072 (1) (gg), F.S., to provide additional grounds for disciplinary action against health care practitioners who are terminated from an impaired practitioner program.

Section 2. Amends s. 457.109 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program to the practice act of acupuncturist.

Section 3. Amends s. 458.331 (2), adding grounds for disciplinary action for termination from an impaired practitioner program to the practice act of medical practice.

Section 4. Amends s. 459.015 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program to the practice act of osteopathic medicine.

Section 5. Amends s. 460.413 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of chiropractic medicine.

Section 6. Amends s. 461.013 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of podiatric medicine.

Section 7. Amends s. 462.14 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of naturopathy.

Section 8. Amends s. s. 463.016 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of optometry.

Section 9. Amends s. 464.018 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of nursing.

Section 10. Amends s. 465.016 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of pharmacy.

Section 11. Amends s. 466.028 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of dentistry, dental hygiene, and dental laboratories.

Section 12. Amends s. 467.203 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of midwifery.

Section 13. Amends s. 468.1295 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of speech-language pathology and audiology.

- Section 14.** Amends s. 468.1755 (1) (a) and (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of nursing home administration.
- Section 15.** Amends s. 468.217 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of occupational therapy.
- Section 16.** Amends s. 468.365 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of respiratory therapy.
- Section 17.** Amends s. 468.518 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of dietetics and nutrition.
- Section 18.** Amends s. 468.719 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of athletic trainers.
- Section 19.** Amends s. 468.811 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of orthotics, prosthetics and pedorthics.
- Section 20.** Amends s. 478.52 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of electrolysis.
- Section 21.** Amends s. 480.046 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of massage practice.
- Section 22.** Amends s. 483.825 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of clinical laboratory personnel.
- Section 23.** Amends s. 483.901 (6) (h), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of medical physicists.
- Section 24.** Amends s. 484.014 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of opticians.
- Section 25.** Amends s. 484.056 (1) (a) and (2) (a), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of hearing aid specialist
- Section 26.** Amends s. 486.125 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of physical therapy practice.
- Section 27.** Amends s. 490.009 (2), F.S., adding grounds for disciplinary action into the practice act of psychology.
- Section 28.** Amends s. 491.009 (2), F.S., adding grounds for disciplinary action for termination from an impaired practitioner program into the practice act of clinical, counseling, and psychotherapy services.
- Section 29.** Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Health may experience an increase in case load for enforcement. The department feels that they can handle the potential increase in cases within existing resources. Funding for enforcement comes from the Medical Quality Trust Fund, which is funded by fees assessed on licensed health care professionals.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or 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 revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Each profession has authority within each practice act to promulgate rules that outline the disciplinary guidelines for each violation and requires guidelines for each violation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2005, the Health Care Regulation Committee adopted an amendment sponsored by Representative Bean. The amendment expands authority to the Department of Health to discipline impaired practitioners who fail to successfully complete any drug or alcohol treatment program. This bill will enable the Department to reach out to impaired practitioners who are in programs other than the PRN or IPN.

This analysis is drafted to the committee substitute.