

1 A bill to be entitled
 2 An act relating to treatment programs for impaired
 3 practitioners; amending s. 456.076, F.S.; revising
 4 requirements for program consultants; authorizing the
 5 Department of Health to contract with consultants to
 6 provide treatment services for allopathic and osteopathic
 7 physician students alleged to be impaired; providing for
 8 absence of liability in civil actions of certain schools
 9 for referring students to such consultants or taking
 10 certain actions without intentional fraud; providing
 11 limited sovereign immunity for certain program consultants
 12 under specific contractual conditions; requiring the
 13 Department of Financial Services to defend actions against
 14 program consultants; providing an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Subsections (1) and (2) of section 456.076,
 19 Florida Statutes, are amended, and subsection (7) is added to
 20 that section, to read:

21 456.076 Treatment programs for impaired practitioners.--

22 (1) For professions that do not have impaired practitioner
 23 programs provided for in their practice acts, the department
 24 shall, by rule, designate approved impaired practitioner
 25 programs under this section. The department may adopt rules
 26 setting forth appropriate criteria for approval of treatment
 27 providers. The rules may specify the manner in which the
 28 consultant, retained as set forth in subsection (2), works with

29 | the department in intervention, requirements for evaluating and
30 | treating a professional, and requirements for the continued care
31 | and monitoring ~~of a professional~~ by the consultant ~~by an~~
32 | ~~approved treatment provider.~~

33 | (2) The department shall retain one or more impaired
34 | practitioner consultants. The A consultant shall be either a
35 | licensee under the jurisdiction of the Division of Medical
36 | Quality Assurance within the department who, and at least one
37 | ~~consultant~~ must be a practitioner or recovered practitioner
38 | licensed under chapter 458, chapter 459, or part I of chapter
39 | 464 or an entity that employs a medical director who must be a
40 | practitioner or recovered practitioner licensed under chapter
41 | 458, chapter 459, or part I of chapter 464. The consultant shall
42 | assist the probable cause panel and department in carrying out
43 | the responsibilities of this section. This shall include working
44 | with department investigators to determine whether a
45 | practitioner is, in fact, impaired. The department may contract
46 | with the consultant, for appropriate compensation, for services
47 | to be provided, if requested by the school, for students
48 | enrolled in schools in preparation for licensure as allopathic
49 | physicians under chapter 458 or osteopathic physicians under
50 | chapter 459 who are alleged to be impaired as a result of the
51 | misuse or abuse of alcohol or drugs, or both, or due to a mental
52 | or physical condition. No medical school accredited by the
53 | Liaison Committee on Medical Education or Commission on
54 | Osteopathic College Accreditation, or other school that provides
55 | for the education of students enrolled in preparation for
56 | licensure as allopathic physicians under chapter 458 or

57 osteopathic physicians under chapter 459, which is governed by
58 accreditation standards that require notice and the provision of
59 due process procedures to students shall be held liable in any
60 civil action for referring a student to the consultant retained
61 by the department or for disciplinary actions that adversely
62 affect the status of a student when the disciplinary actions are
63 instituted in reasonable reliance on the recommendations,
64 reports, or conclusions provided by such consultant, provided
65 that the school, in referring the student or taking disciplinary
66 action, adheres to the due process procedures adopted by the
67 applicable accreditation entities and provided that the school
68 committed no intentional fraud in carrying out the provisions of
69 this section.

70 (7) (a) A consultant retained pursuant to subsection (2),
71 and its officers and employees and those acting at the direction
72 of the consultant for the limited purpose of an emergency
73 intervention of a licensee or student as described in subsection
74 (2) when the consultant is unable to perform such intervention,
75 shall be considered agents of the department for purposes of s.
76 768.28 while acting within the scope of the contractor's duties
77 under the contract with the department if the contract complies
78 with the requirements of this section. The contract must
79 provide:

80 1. That the consultant establish a quality assurance
81 program to monitor services delivered under the contract.

82 2. That the consultant's quality assurance program,
83 treatment, and monitoring records be evaluated quarterly.

84 3. That the consultant's quality assurance program be
85 subject to review and approval by the department.

86 4. That the consultant operate under policies and
87 procedures approved by the department.

88 5. That the consultant provide to the department for
89 approval a policy and procedure manual that comports with all
90 statutes, rules, and contract provisions approved by the
91 department.

92 6. That the department be entitled to review the records
93 relating to the consultant's performance under the contract for
94 the purpose of management audits, financial audits, or program
95 evaluation.

96 7. That all performance measures and standards be subject
97 to verification and approval by the department.

98 8. That the department be entitled to terminate the
99 contract with the consultant for noncompliance with the
100 contract.

101 (b) In accordance with s. 284.385, the Department of
102 Financial Services shall defend any claim, suit, action, or
103 proceeding against the consultant, or its officers or employees
104 or those acting at the direction of the consultant for the
105 limited purpose of an emergency intervention of a licensee or
106 student as described in subsection (2) when the consultant is
107 unable to perform such intervention, brought as a result of any
108 act or omission of action of any of its officers and employees
109 and those acting at the direction of the consultant for the
110 limited purpose of an emergency intervention of a licensee or
111 student as described in subsection (2) when the consultant is

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112 unable to perform such intervention, when such act or omission
113 arises out of and in the scope of the consultant's duties under
114 its contract with the department.

115 (c) If the consultant retained pursuant to subsection (2)
116 is retained by any other state agency, and if the contract
117 between such state agency and the consultant complies with the
118 requirements of this section, then the consultant, and its
119 officers and employees and those acting at the direction of the
120 consultant for the limited purpose of an emergency intervention
121 of a licensee or student as described in subsection (2) when the
122 consultant is unable to perform such intervention, shall be
123 considered agents of the state for the purposes of this section,
124 while acting within the scope of and pursuant to guidelines
125 established in the contract between such state agency and the
126 consultant.

127 Section 2. This act shall take effect July 1, 2007.