

By Senator Atwater

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1 A bill to be entitled

2 An act relating to treatment programs for impaired
3 medical practitioners; amending s. 456.076, F.S.;
4 revising requirements for consultants retained by the
5 Department of Health; authorizing the department to
6 contract with consultants to provide treatment
7 services for students of allopathic and osteopathic
8 medicine who are alleged to be impaired; indemnifying
9 certain schools from liability in civil actions under
10 certain circumstances; providing limited sovereign
11 immunity for certain program consultants under
12 specified contractual conditions; requiring that the
13 Department of Financial Services defend legal actions
14 against program consultants; providing an effective
15 date.

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

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

22 456.076 Treatment programs for impaired practitioners.--

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

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

34 (2) The department shall retain one or more impaired
35 practitioner consultants. The A consultant shall be a licensee
36 under the jurisdiction of the Division of Medical Quality
37 Assurance within the department who, ~~and at least one consultant~~
38 must be a practitioner or recovered practitioner licensed under
39 chapter 458, chapter 459, or part I of chapter 464, or an entity
40 employing a medical director who must be a practitioner or
41 recovered practitioner licensed under chapter 458, chapter 459,
42 or part I of chapter 464. The consultant shall assist the
43 probable cause panel and department in carrying out the
44 responsibilities of this section. This shall include working with
45 department investigators to determine whether a practitioner is,
46 in fact, impaired. The department may contract with the
47 consultant, for appropriate compensation, for services to be
48 provided, if requested by the school, for students enrolled in
49 schools for licensure as allopathic physicians under chapter 458
50 or osteopathic physicians under chapter 459 who are alleged to be
51 impaired as a result of the misuse or abuse of alcohol or drugs,
52 or both, or due to a mental or physical condition. A medical
53 school accredited by the Liaison Committee on Medical Education
54 of the Commission on Osteopathic College Accreditation, or other
55 school providing for the education of students enrolled in
56 preparation for licensure as allopathic physicians under chapter
57 458 or osteopathic physicians under chapter 459, which is
58 governed by accreditation standards requiring notice and the

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59 provision of due process procedures to students, is not liable in
60 any civil action for referring a student to the consultant
61 retained by the department or for disciplinary actions that
62 adversely affect the status of a student when the disciplinary
63 actions are instituted in reasonable reliance on the
64 recommendations, reports, or conclusions provided by such
65 consultant, if the school, in referring the student or taking
66 disciplinary action, adheres to the due process procedures
67 adopted by the applicable accreditation entities and if the
68 school committed no intentional fraud in carrying out the
69 provisions of this section.

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

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

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

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

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

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

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

95 7. All performance measures and standards be subject to
96 verification and approval by the department.

97 8. The department be entitled to terminate the contract
98 with the consultant for noncompliance with the contract.

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

114 (c) If the consultant retained pursuant to subsection (2)
115 is retained by any other state agency, and if the contract
116 between such state agency and the consultant complies with the

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117 requirements of this section, the consultant, the consultant's
118 officers and employees, and those acting under the direction of
119 the consultant for the limited purpose of an emergency
120 intervention on behalf of a licensee or student as described in
121 subsection (2) when the consultant is unable to perform such
122 intervention shall be considered agents of the state for the
123 purposes of this section while acting within the scope of and
124 pursuant to guidelines established in the contract between such
125 state agency and the consultant.

126 Section 2. This act shall take effect July 1, 2008.