

By the Committee on Health Regulation; and Senator Atwater

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1 A bill to be entitled

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

15
16 Be It Enacted by the Legislature of the State of Florida:

17
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 programs
25 under this section. The department may adopt rules setting forth
26 appropriate criteria for approval of treatment providers. The
27 rules may specify the manner in which the consultant, retained as
28 set forth in subsection (2), works with the department in
29 intervention, requirements for evaluating and treating a

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

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

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

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

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

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

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

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

87 5. The consultant provide to the department for approval a

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88 policy and procedure manual that comports with all statutes,
89 rules, and contract provisions approved by the department.

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

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

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

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

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

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

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