

By the Committees on Health and Human Services Appropriations;  
Health Regulation; and Senator Atwater

603-07691-08

20082598c2

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; providing that a consultant may contract for  
6 services to be provided to students of allopathic and  
7 osteopathic medicine or physician assistants and nursing  
8 students who are alleged to be impaired, if requested by  
9 the school; exempting the department from paying the costs  
10 for services provided by treatment providers or  
11 consultants; indemnifying certain schools from liability  
12 in civil actions under certain circumstances; providing  
13 limited sovereign immunity for certain program consultants  
14 under specified contractual conditions; requiring that the  
15 Department of Financial Services defend legal actions  
16 against program consultants; providing an effective date.

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

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

23 456.076 Treatment programs for impaired practitioners.--

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

603-07691-08

20082598c2

30 | set forth in subsection (2), works with the department in  
31 | intervention, requirements for evaluating and treating a  
32 | professional, requirements for continued care of impaired  
33 | professionals by approved treatment providers, continued  
34 | monitoring by the consultant of the care provided by approved  
35 | treatment providers regarding the professionals under their care,  
36 | and requirements related to the consultant's expulsion of  
37 | professionals from the program ~~and requirements for the continued~~  
38 | ~~care and monitoring of a professional by the consultant by an~~  
39 | ~~approved treatment provider.~~

40 |       (2) The department shall retain one or more impaired  
41 | practitioner consultants. The A consultant shall be a licensee  
42 | under the jurisdiction of the Division of Medical Quality  
43 | Assurance within the department ~~who, and at least one consultant~~  
44 | must be a practitioner or recovered practitioner licensed under  
45 | chapter 458, chapter 459, or part I of chapter 464, or an entity  
46 | employing a medical director who must be a practitioner or  
47 | recovered practitioner licensed under chapter 458, chapter 459,  
48 | or part I of chapter 464. The consultant shall assist the  
49 | probable cause panel and department in carrying out the  
50 | responsibilities of this section. This shall include working with  
51 | department investigators to determine whether a practitioner is,  
52 | in fact, impaired. The consultant may contract for services to be  
53 | provided, for appropriate compensation, if requested by the  
54 | school, for students enrolled in schools for licensure as  
55 | allopathic physicians or physician assistants under chapter 458,  
56 | osteopathic physicians or physician assistants under chapter 459,  
57 | or nurses under chapter 464 who are alleged to be impaired as a  
58 | result of the misuse or abuse of alcohol or drugs, or both, or

603-07691-08

20082598c2

59 due to a mental or physical condition. The department is not  
60 responsible under any circumstances for paying the costs of care  
61 provided by approved treatment providers, and the department is  
62 not responsible for paying the costs of consultants' services  
63 provided for students. A medical school accredited by the Liaison  
64 Committee on Medical Education of the Commission on Osteopathic  
65 College Accreditation, or other school providing for the  
66 education of students enrolled in preparation for licensure as  
67 allopathic physicians or physician assistants under chapter 458,  
68 osteopathic physicians or physician assistants under chapter 459,  
69 or nurses under chapter 464, which is governed by accreditation  
70 standards requiring notice and the provision of due process  
71 procedures to students, is not liable in any civil action for  
72 referring a student to the consultant retained by the department  
73 or for disciplinary actions that adversely affect the status of a  
74 student when the disciplinary actions are instituted in  
75 reasonable reliance on the recommendations, reports, or  
76 conclusions provided by such consultant, if the school, in  
77 referring the student or taking disciplinary action, adheres to  
78 the due process procedures adopted by the applicable  
79 accreditation entities and if the school committed no intentional  
80 fraud in carrying out the provisions of this section.

81 (7) (a) A consultant retained pursuant to subsection (2), a  
82 consultant's officers and employees, and those acting at the  
83 direction of the consultant for the limited purpose of an  
84 emergency intervention on behalf of a licensee or student as  
85 described in subsection (2) when the consultant is unable to  
86 perform such intervention shall be considered agents of the  
87 department for purposes of s. 768.28 while acting within the

603-07691-08

20082598c2

88 scope of the consultant's duties under the contract with the  
89 department if the contract complies with the requirements of this  
90 section. The contract must require that:

91 1. The consultant indemnify the state for any liabilities  
92 incurred up to the limits set out in chapter 768.

93 2. The consultant establish a quality assurance program to  
94 monitor services delivered under the contract.

95 3. The consultant's quality assurance program, treatment,  
96 and monitoring records be evaluated quarterly.

97 4. The consultant's quality assurance program be subject to  
98 review and approval by the department.

99 5. The consultant operate under policies and procedures  
100 approved by the department.

101 6. The consultant provide to the department for approval a  
102 policy and procedure manual that comports with all statutes,  
103 rules, and contract provisions approved by the department.

104 7. The department be entitled to review the records  
105 relating to the consultant's performance under the contract for  
106 the purpose of management audits, financial audits, or program  
107 evaluation.

108 8. All performance measures and standards be subject to  
109 verification and approval by the department.

110 9. The department be entitled to terminate the contract  
111 with the consultant for noncompliance with the contract.

112 (b) In accordance with s. 284.385, the Department of  
113 Financial Services shall defend any claim, suit, action, or  
114 proceeding against the consultant, the consultant's officers or  
115 employees, or those acting at the direction of the consultant for  
116 the limited purpose of an emergency intervention on behalf of a

603-07691-08

20082598c2

117 licensee or student as described in subsection (2) when the  
118 consultant is unable to perform such intervention which is  
119 brought as a result of any act or omission by any of the  
120 consultant's officers and employees and those acting under the  
121 direction of the consultant for the limited purpose of an  
122 emergency intervention on behalf of a licensee or student as  
123 described in subsection (2) when the consultant is unable to  
124 perform such intervention when such act or omission arises out of  
125 and in the scope of the consultant's duties under its contract  
126 with the department.

127 (c) If the consultant retained pursuant to subsection (2)  
128 is retained by any other state agency, and if the contract  
129 between such state agency and the consultant complies with the  
130 requirements of this section, the consultant, the consultant's  
131 officers and employees, and those acting under the direction of  
132 the consultant for the limited purpose of an emergency  
133 intervention on behalf of a licensee or student as described in  
134 subsection (2) when the consultant is unable to perform such  
135 intervention shall be considered agents of the state for the  
136 purposes of this section while acting within the scope of and  
137 pursuant to guidelines established in the contract between such  
138 state agency and the consultant.

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