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

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

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

24           456.076 Treatment programs for impaired practitioners.--

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

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

41 (2) The department shall retain one or more impaired  
42 practitioner consultants. The ~~A~~ consultant shall be a licensee  
43 under the jurisdiction of the Division of Medical Quality  
44 Assurance within the department ~~who, and at least one consultant~~  
45 must be a practitioner or recovered practitioner licensed under  
46 chapter 458, chapter 459, or part I of chapter 464, or an entity  
47 employing a medical director who must be a practitioner or  
48 recovered practitioner licensed under chapter 458, chapter 459,  
49 or part I of chapter 464. The consultant shall assist the  
50 probable cause panel and department in carrying out the  
51 responsibilities of this section. This shall include working with  
52 department investigators to determine whether a practitioner is,  
53 in fact, impaired. The consultant may contract for services to be  
54 provided, for appropriate compensation, if requested by the  
55 school, for students enrolled in schools for licensure as  
56 allopathic physicians or physician assistants under chapter 458,  
57 osteopathic physicians or physician assistants under chapter 459,  
58 nurses under chapter 464, or pharmacists under chapter 465 who

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

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

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88 department for purposes of s. 768.28 while acting within the  
89 scope of the consultant's duties under the contract with the  
90 department if the contract complies with the requirements of this  
91 section. The contract must require that:

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

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

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

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

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

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

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

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

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

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

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

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

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