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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.