

1 A bill to be entitled
 2 An act relating to treatment programs for impaired
 3 practitioners; amending s. 456.076, F.S.; revising
 4 requirements for program consultants; authorizing the
 5 Department of Health to contract with consultants to
 6 provide treatment services for allopathic and osteopathic
 7 physician students alleged to be impaired; providing
 8 certain schools with absence of liability in civil actions
 9 when referring students to such consultants or taking
 10 certain actions without intentional fraud; providing
 11 limited sovereign immunity for certain program consultants
 12 under specific contractual conditions; requiring the
 13 Department of Financial Services to defend actions against
 14 program consultants; providing an effective date.

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

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

29 | the department in intervention, requirements for evaluating and
 30 | treating a professional, and requirements for the continued care
 31 | and monitoring ~~of a professional~~ by the consultant ~~by an~~
 32 | ~~approved 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 shall be
 39 | an entity that employs a medical director who must be a
 40 | practitioner or recovered practitioner licensed under chapter
 41 | 458, chapter 459, or part I of chapter 464. The consultant shall
 42 | assist the probable cause panel and department in carrying out
 43 | the responsibilities of this section. This shall include working
 44 | with department investigators to determine whether a
 45 | practitioner is, in fact, impaired. The department may contract
 46 | with the consultant, for appropriate compensation, for services
 47 | to be provided, if requested by the school, for students
 48 | enrolled in schools for licensure under this chapter who are
 49 | alleged to be impaired as a result of the misuse or abuse of
 50 | alcohol or drugs, or both, or due to a mental or physical
 51 | condition. No school that is governed by accreditation standards
 52 | that require notice and the provision of due process procedures
 53 | to students shall be held liable in any civil action for
 54 | referring a student to the consultant retained by the department
 55 | or for disciplinary actions that adversely affect the status of
 56 | a student when the disciplinary actions are instituted in

57 reasonable reliance on the recommendations, reports, or
58 conclusions provided by such consultant, provided that the
59 school, in referring the student or taking disciplinary action,
60 adheres to the due process procedures adopted by the applicable
61 accreditation entities and provided that the school committed no
62 intentional fraud in carrying out the provisions of this
63 section.

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

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

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

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

80 4. The consultant operate under policies and procedures
81 approved by the department.

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

85 6. The department be entitled to review the records
86 relating to the consultant's performance under the contract for
87 the purpose of management audits, financial audits, or program
88 evaluation.

89 7. All performance measures and standards be subject to
90 verification and approval by the department.

91 8. The department be entitled to terminate the contract
92 with the consultant for noncompliance with the contract.

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

108 (c) If the consultant retained pursuant to subsection (2)
109 is retained by any other state agency, and if the contract
110 between such state agency and the consultant complies with the
111 requirements of this section, the consultant, the consultant's
112 officers and employees, and those acting at the direction of the

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113 consultant for the limited purpose of an emergency intervention
114 on behalf of a licensee or student as described in subsection
115 (2) when the consultant is unable to perform such intervention
116 shall be considered agents of the state for the purposes of this
117 section while acting within the scope of and pursuant to
118 guidelines established in the contract between such state agency
119 and the consultant.

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