

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1263 Department of Health

SPONSOR(S): Health & Human Services Committee; Appropriations Committee, Health & Human Services Quality Subcommittee; Hudson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	7 Y, 4 N, As CS	Holt	Calamas
2) Appropriations Committee	12 Y, 8 N, As CS	Clark	Leznoff
3) Health & Human Services Committee	12 Y, 6 N, As CS	Holt	Gormley

SUMMARY ANALYSIS

The bill revises the purposes and structure of the Department of Health (DOH), streamlining divisions by combining and renaming titles of current divisions. The bill makes substantive changes to several programs: Children's Medical Services (CMS), tuberculosis control, regulation of public bathing places, the nursing student loan forgiveness program, and health professional licensure processes.

The bill amends ch. 391, F.S., governing the Children's Medical Services network amending the eligibility provisions to refocus the program on seriously ill children and simplify the financial eligibility process.

The bill amends ch. 392, F.S., governing the tuberculosis control hospitalization program, removing authority for DOH to operate a state-owned hospital effective January 1, 2013. The bill requires DOH to contract with health care providers, including hospitals and other facilities, for treatment of drug-resistant tuberculosis patients.

The bill amends provisions in ch. 514, F.S., regulating public bathing places and swimming pools to remove authority for DOH to regulate building and construction and retain its authority to regulate water quality.

The bill amends s. 383011, F.S., creating a multi-agency organizational structure of the Women, Infant, and Children (WIC) program to delegate responsibility for development of the electronic benefits cards to the Department of Children and Families (DCF). The DOH is required to establish an interagency agreement with DCF for the management of the WIC program.

The bill transfers the nursing student loan forgiveness program from DOH to the Department of Education.

The bill requires the Division of Medical Quality Assurance, which regulates health professions and occupations within DOH, to develop a plan to improve its efficiency. The bill establishes criteria for the plan, and requires plan submission to the Governor and the principals of the Legislature by November 1, 2012.

The bill removes unused rulemaking authority, unnecessary legislative intent and findings, and obsolete date references. It also removes provisions requiring the Legislature to expend funds, which have no effect on the Legislature's budget decisions in the General Appropriations Act. Finally, the bill makes numerous statutory amendments to conform to changes in the bill, and establishes varying effective dates.

The bill will have an indeterminate, but insignificant fiscal impact on state government.

The bill provides an effective date of upon becoming law, except as provided otherwise within it.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Health

Prior to 1991, most of Florida's health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (HRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of HRS, now the Department of Children and Family Services, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Family Services, and the four new agencies—the Department of Elder Affairs, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Health¹—were responsible for administering the majority of Florida's health and human services programs.

The Department of Health (DOH) is established pursuant to section 20.43, Florida Statutes. Since being established in 1996, DOH's mission has persistently grown and diversified. Currently, DOH's 13 statutory mission statements comprise the following:²

- Prevent the occurrence and progression of communicable and non-communicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics to establish disease trends and design health programs.
- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.
- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under section 186.021, Florida Statutes, an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

¹ Chapter 96-403, L.O.F.

² Section 20.43(1), F.S.

Generally, the State Surgeon General has statutory authority to be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.³

DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention, Information Technology, Health Access and Tobacco, and Disability Determinations.⁴ DOH operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with thousands of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit health professionals to work for DOH or participants for DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.⁵

When DOH was created in 1996, it received a total appropriation of \$1.4 billion, including \$384 million in general revenue funds, and had approximately 14,000 full-time equivalents (FTE) positions. In Fiscal Year 2011-2012, DOH received more than \$377 million in general revenue funds and is authorized to spend a total of \$2.8 billion. In Fiscal Year 2011-2012, the General Appropriations Act funded 17,107.5 FTE.⁶

In 2010⁷, the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation.⁸ The DDC regulates oversight of the manufacture and distribution of drugs, devices, cosmetics, either within or into Florida, pursuant to part I of chapter 499, Florida Statutes.

In 2010⁹, the Legislature directed the DOH to conduct a comprehensive evaluation and justification review of each division and submit a report to the Legislature by March 1, 2011. The review was to be comprehensive in scope and, at a minimum, be conducted in a manner that:

- Identified the costs of each division and program within the division;
- Specified the purpose of each division and program;
- Specified the public health benefit derived from each program;
- Identified the progress toward achieving the outputs and outcomes associated with each division and program;
- Explained the circumstances for the ability to achieve, not achieve, or exceed projected outputs and outcomes for each program;
- Provided alternate course of action to administer the same program in a more efficient or effective manner. The course of action must include:
 - A determination on whether the DOH could be organized in a more efficient and effective manner to include a recommendation for reductions and restructuring;

³ Section 20.43(2), F.S.

⁴ Section 20.43(3), F.S.

⁵ Section 20.43(7), F.S.

⁶ This number includes County Health Department staff.

⁷ Chapter 2010-161, L.O.F.

⁸ Among many other provisions, chapter 499 provides for: criminal prohibitions against the distribution of contraband and adulterated prescription drugs; regulation of the advertising and labeling of drugs, devices, and cosmetics; establishment of permits for manufacturing and distributing drugs, devices, and cosmetics; regulation of the wholesale distribution of prescription drugs, which includes pedigree papers; regulation of the provision of drug samples; establishment of the Cancer Drug Donation Program; establishment of numerous enforcement avenues for DOH, including seizure and condemnation of drugs, devices, and cosmetics.

⁹ Chapter 2010-161, L.O.F.

- Whether the goals, mission, or objectives of the DOH, divisions, or programs be redefined to avoid duplication, maximize the return on investment, or performed more efficiently or more effectively by another unit of government or private entity; and
- A determination of whether the cost to administer exceeds the revenues collected.

Starting in Fiscal Year 2010-2011, the DOH was precluded from initiating or commencing any new programs without express authorization from the Legislative Budget Commission. Also, before applying for any continuation or new federal or private grant in an amount of \$50,000 or greater, the DOH was required to provide written notification to the Governor and Legislature.¹⁰ The notification must include detailed information about the purpose of the grant, the intended use of the funds, and the number of full-time permanent or temporary employees needed to administer the program funded by the grant.

On March 1, 2011, the DOH submitted the report titled, “Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations.” The report contained recommendations in the following areas:

- Transfer programs or activities to another state government agency;
- Outsource the program or activity and maintain contractual oversight;
- Privatize the program or activity with no contractual oversight; and/or
- Eliminate the program or activity.

The bill contains several recommendations proposed by DOH to streamline and simplify the duties and responsibilities of DOH. The bill substantially amends the DOH mission statement, responsibilities assigned, and management structure outlined in ss. 20.43, 381.001, and 381.0011, F.S. The bill streamlines and decreases the number of the statutory mission statements from thirteen to seven. Additionally, the bill decreases the statutory created divisions from eleven to eight. The bill makes conforming changes to implement the changes to ss. 20.43, F.S.¹¹

EMTs and Paramedics

Section 20.43, F.S., provides a detailed list of all the boards and professions that are established under and the responsibility of MQA. Currently, EMTs and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S.

Moreover, the health care professions regulated by DOH are governed by individual practice acts and the general licensing provisions in ch. 456, F.S. Section 456.001(4), F.S., defines “health care practitioner” to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S. (psychotherapy).

The definition of “health care practitioner” does not include emergency medical technicians and paramedics¹². Therefore, these two professions are not governed by ch. 456, F.S, and are not governed by MQA pursuant to s. 20.43, F.S.

The bill amends s. 20.43, F.S., adding Emergency Medical Technicians (EMTs) and paramedics under the responsibility of MQA and includes the two professions within the definition of health care

¹⁰ Chapter 2010-161, L.O.F.

¹¹ See s. 409.256, 381.0101, and 381.0065(3)-(4), F.S.

¹² EMT and paramedics are governed by part III of ch. 401, F.S.

practitioner in s. 456.001, F.S. This is a DOH recommendation and part of their 2012 legislative package.

Quarantine

Section 381.0011, F.S., provides the general duties and enforcement powers to the DOH. This section also directs DOH to adopt rules specifying the conditions and procedures for imposing and releasing a quarantine. This provision does not specify under what circumstances DOH may issue a quarantine. The rules must include provisions related to:

- The closure of premises.
- The movement of persons or animals exposed to or infected with a communicable disease.
- The tests or treatment, including vaccination, for communicable disease required prior to employment or admission to the premises or to comply with a quarantine.
- Testing or destruction of animals with or suspected of having a disease transmissible to humans.
- Access by the department to quarantined premises.
- The disinfection of quarantined animals, persons, or premises.
- Methods of quarantine.

The bill streamlines s. 381.0011, F.S., by deleting unnecessary language and transfers prescriptive quarantine language to s. 381.00315, Florida Statutes.

Children's Medical Services

Children's Medical Services (CMS) currently has two statutorily created divisions pursuant to s. 20.43, F.S., the CMS Network, and CMS Prevention and Intervention. The bill deletes the Division of CMS Prevention and Intervention and the Children's Medical Services Network and merges both divisions into a broader, renamed Division of Children's Medical Services. All the functions, duties and responsibilities will be merged into the one division. This is a recommendation from the DOH and was included in the 2012 DOH legislative package. The bill makes conforming changes to reflect the integration of the two divisions.

The CMS Network within the Division of Children Medical Services provides a continuum of early identification, screening, medical, developmental and supporting services for eligible children under the age of 21 with special health care needs. The CMS Network provides services to children enrolled in Medicaid (Title XIX) and KidCare (Title XXI). Additionally, CMS serves children who are not eligible for other insurance programs, are underinsured, or who's cost of care spends down the family income to eligible financial levels.

Children with special health care needs are those children whose chronic physical, developmental, behavioral, or emotional conditions require extensive preventative and maintenance care beyond that required by a typically healthy child. The CMS Network provides services through 22 CMS regional offices located throughout the state. Clinic services include: cardiac, cerebral palsy, cleft lip/cleft palate, craniofacial, diabetes, endocrinology, gastroenterology, liver disease, neurology, orthopedic, pulmonary/respiratory disease, spina bifida and pediatric surgery.

The bill does not alter the current CMS structure or functions, but cleans up the language by deleting unnecessary words. The bill states that the CMS director can provide for an operational system utilizing DOH staff and contract providers as necessary. The program activities are to be implemented under the supervision of a physician on a statewide basis. The bill removes statutory language requiring regional offices, but does not require DOH to change the current structure.

The bill also attempts to narrow the definition of children with special health care needs by specifying that the children must have "serious" conditions. The current definition provides that, "children with special health care needs," are children younger than 21 years of age who have chronic physical,

developmental, behavioral, or emotional conditions and who require health care and related services of a type or amount beyond which is generally required by children.

The bill simplifies the eligibility process and specifies that eligibility is based on the diagnosis of one or more chronic and serious medical conditions, as well as the family's need for specialized services that are not available or accessible by the family from any other source. The bill changes the terms of financial participation by allowing families to participate in the cost of care by using a sliding fee scale, instead of the current complicated process that involves projecting an annual cost of care and adjusting the family income (or spend down) to Medicaid financial criteria.

The bill cleans up some ambiguity by clarifying that CMS is not deemed an insurer; thus not subject to the requirements of the Florida Insurance Code.

Division of Medical Quality Assurance

DOH Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

The bill creates an unnumbered section requiring MQA to develop a plan to improve the efficiency of its functions, to delineate methods to:

- reduce the average length of time for a qualified applicant to receive initial and renewal licensure, certification, or registration, by one-third;
- improve the agenda process for board meetings to increase transparency, timeliness, and usefulness for board decision-making; and
- improve the cost-effectiveness and efficiency of the joint functions of the Division and the regulatory boards.

MQA is also directed to identify and analyze best practices found within the MQA and other state agencies with similar functions, options for information technology improvements, options for contracting with outside entities, and any other option MQA deems useful. MQA is directed to consult with and solicit recommendations from the regulatory boards. The plan must be submitted to the Legislature and the Governor by November 1, 2012.

A.G. Holley State Hospital

According to the United States Census Bureau, there are approximately four active tuberculosis hospitals in the United States.¹³ Florida operates one of these tuberculosis hospitals, known as the A.G. Holley State Hospital. A.G. Holley was opened in 1950 as the Southeast Tuberculosis Hospital, the second of four state tuberculosis hospitals built in Florida between 1938 and 1952.¹⁴ Today, however, A.G. Holley is the only state-operated tuberculosis (TB) hospital in the state and is the last of the original American sanatoriums dedicated to treating tuberculosis patients.¹⁵ A.G. Holley operates a complete X-ray department, bronchoscopy suite, dental office, optometric clinic, and pharmacy.

A.G. Holley is located in the City of Lantana on a 134 acre plot. In May 2007, the land was appraised at \$34.1 million. The hospital is four stories and encompasses 194,000 square feet. It was originally built to serve 500 patients, with living accommodations for the physicians, nurses and administrative staff. However, by 1971 the daily census at the hospital dropped to less than half of the original 500. By 1976, the beds and staff at A.G. Holley were reduced to serve a maximum of 150 patients. Currently,

¹³ United States Census Bureau, Hospitals-Summary Characteristics, *available at*: <http://www.census.gov/compendia/statab/2007/tables/07s0162.xls> (last viewed March 30, 2010).

¹⁴ Bureau of TB and Refugee Health, Florida Department of Health, A.G. Holley Hospital History, *available at*: <http://www.doh.state.fl.us/AGHolley/history.htm> (last viewed March 30, 2010).

¹⁵ *Id.*

the hospital does not operate at full capacity and receives state funding for 50 beds, of which, sixteen are isolation (negative air pressure) rooms.

Today, the hospital receives funding for approximately 160 FTE positions for an average daily census of 37 patients, some of whom are involuntarily committed to the hospital. It costs approximately \$10 million a year to manage the hospital, and the hospital consistently runs an annual deficit. Moreover, the hospital will require significant outlay for capital improvements in the near future.

In addition to the main hospital, the campus includes a lab that is part of the state laboratory service (16,700 sq. ft.), a county health department (35,000 sq. ft.), a warehouse (26,500 sq. ft.), a boiler room (4,552 sq ft), a water treatment plant (880 sq. ft.), an additional building (26,500 sq. ft.), and ten small residential cottages.

According to a recent research memorandum issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA), only one other large state, Texas, operates a state-run infectious disease hospital that treats TB patients. In other large states, such as California, Illinois, Michigan, New York, North Carolina, and Ohio, local health departments use local or regional hospitals to treat such medically complex TB patients.¹⁶

In 2006, the department proposed developing the A.G. Holley hospital and campus into a Florida Institute for Public Health at a cost of approximately \$10 million. In 2008, the Legislature directed DOH to procure a new TB hospital more suited to modern treatment and caseloads, and to outsource the management functions to a private vendor. The procurement was not successful. In 2009, the Legislature gave new, more specific direction to DOH to initiate a second procurement. DOH received one proposal, but the bidder did not meet the requirements of the procurement. In 2010¹⁷, the Legislature, directed DOH to develop a plan that exclusively uses private and nonstate public hospitals to provide hospitalization, isolation, and treatment to cure.

The bill removes the authority for DOH to operate a TB hospital, effective January 1, 2013. The bill authorizes DOH to contract for the operation of a treatment program for persons with active TB. The contractor must use existing licensed community hospitals and other facilities for the care and treatment to cure of persons with active TB and a history of non-compliance with prescribed drug regimens.

The bill requires DOH to develop and implement a transition plan for the closure of A.G. Holley. The plan must include specific steps to end voluntary admissions, transfer patient to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and closure of the facility. Moreover, the bill directs the Agency for Health Care Administration to modify its reimbursement plans and seek federal approval, if necessary, to continue Medicaid funding throughout the treatment period in community hospitals and other facilities. The plan must be submitted to the Legislature by May 31, 2012, and be fully implemented by January 1, 2013. The bill makes conforming changes to ss. 392.51, 392.61, and 392.62, F.S., to reflect the closure of AG Holley State Hospital.

Public Swimming and Bathing Facilities

Chapter 514, F.S., provides for the regulation of public swimming and bathing facilities. "Public swimming pool", or "public pool", is:

"...a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool,

¹⁶ "Tuberculosis Hospitalization in Other States," OPPAGA Research Memorandum (March 11, 2010).

¹⁷ Chapter 2010-161, L.O.F.

spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”¹⁸

A “public bathing place” is:

“...a body of water, natural or modified by humans, for swimming, diving, and recreational bathing, together with adjacent shoreline or land area, buildings, equipment, and appurtenances pertaining thereto, used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.”¹⁹

Florida has more than 27,000 public pools of varying size.²⁰ Also, DOH has currently issued permits to 180 fresh water bathing places.²¹ A permit is necessary to operate a public swimming pool or bathing place in Florida.²² The DOH is charged with creating application documents for the permit, as well as reviewing and evaluating, approving or denying applications.²³ In addition, DOH must approve all plans to construct, develop, or modify any public swimming pool or bathing place, other than coastal or intracoastal beaches.²⁴ DOH rules specifically detail the construction plan or modification plan approval process.²⁵ DOH is authorized to create a schedule of fees for review of an application for permit, the issuance of a permit, and the review of applications for variance.²⁶ The fee schedule is set out in statute and presented in further detail in rule.²⁷

The bill revises the definition of “public bathing place” to remove the adjacent shoreline or land area, building, equipment and appurtenances from the definition, which limits the term to mean only the body of water. The bill limits the authority of DOH by removing the ability to define terms associated with public swimming pools and public bathing places. The bill permits DOH to set water quality and safety standards for these facilities, including water source and quality standards, purification and treatment standards, and lifesaving equipment and other safety standards. The bill prohibits DOH from making rules that have no impact on water quality and safety. The bill removes authority of DOH to conduct plan reviews, issue approvals of plans, and enforce certain occupancy standards under the Florida Building Code.

The bill adds public bathing waters to the section of law concerning beach water sampling and health advisories associated with poor water quality revealed by beach water sampling. This allows DOH to adopt rules and regulations regarding the quality of beach or bathing waters, standards for water quality, and the issuance and enforcement of health advisories.

¹⁸ Section 514.011(2), F.S.

¹⁹ Section 514.011(4), F.S.; *see also* Rule 64E-9.002(23), F.A.C.; the definition includes lakes, ponds, rivers, springs, streams, and artificial impoundments.

²⁰ Florida Department of Health, Division of Environmental Health, *Facility Report-Swimming Pools*, October 27, 2011, page 1 (on file with the Health and Human Services Quality Subcommittee).

²¹ Email correspondence from Bureau Chief for Bureau of Water Programs, Environmental Public Health Division, Florida Department of Health to Health and Human Services Quality Subcommittee staff on November 8, 2011 (on file with the Health and Human Services Quality Subcommittee).

²² Section 514.031, F.S.

²³ Section 514.031(1), F.S., and section 514.05(1), F.S.; *see also* Rule 64E-9.003, F.A.C., containing all forms required by chapter 514, F.S.

²⁴ Section 514.03, F.S.

²⁵ Rule 64E-9.005, F.A.C.; *see also* Rule 64E-9.006, F.A.C., establishing construction plan approval standards; *see also* Rule 64E-9.013, F.A.C., establishing rules for development and operating of public bathing places.

²⁶ Section 514.033(1), F.S.; variances from the requirement of rule and statute may be obtained pursuant to Rule 64E-9.016, F.A.C.

²⁷ Section 514.033(2) and (3), F.S.; *see also* Rule 64E-9.015, F.A.C.

The bill gives CHDs the authority to review applications and plans for construction, development, or modification of public swimming pools or bathing places if the department has qualified engineering personnel on staff. If such professionals are not staff, the DOH is responsible for conducting these activities. CHDs are also tasked with monitoring water sanitation in all public swimming pools and bathing places.

The bill permits local governments or enforcement districts to determine, through plan reviews and inspections, whether plans for construction or modification of public swimming pools and bathing places are compliant with the Florida Building Code. The bill repeals the authority of DOH to conduct plan reviews and issue approvals of construction or modification plans for public swimming pools and bathing places.

The bill requires a permit only for the operation of a public swimming pool. Applications for a permit are to be developed by and submitted to the DOH or a CHD. The CHD is granted the authority to review and evaluate the applications for permit and approve or deny said applications. The bill allows an operating permit to be transferrable from one owner of a public swimming pool to another. A change in name or ownership of a public swimming pool must be reported to the CHD within 30 days of the change.

The bill requires all fees collected by DOH or a CHD to be deposited into the County Health Department Trust Fund or the Grants and Donations Trust Fund, which is current practice. Funds are no longer to be deposited into the Public Swimming Pool and Bathing Place Trust Fund, as the Trust Fund does not exist. The bill deletes the Public Swimming Pool and Bathing Place Trust Fund. The bill repeals an out-of-date study in s. 514.023(5), F.S.

Lastly, the bill declares any public swimming pool or bathing place to present a significant health risk if it fails to meet sanitation and safety standards established in chapter 514, F.S., and to be a public nuisance, allowing DOH or a CHD to abate or enjoin operation of the facility through legal process. The construction, development, operation, or maintenance of a public swimming pool or bathing place contrary to the provisions of the chapter is no longer grounds upon which a facility may be declared a public nuisance.

Ordinances and regulations

In 1955²⁸, the Legislature enacted a provision permitting any municipality to enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department.

The bill amends s. 381.0016, F.S., adding counties, thus permitting counties to enact health regulations and ordinances.

School Health Services Program

Section 381.0056, F.S., authorizes the School Health Services Act (act). The act in s. 381.0056(11), F.S., specifies that school health programs that are funded by health care districts or health care entity must be supplementary and consistent with the requirements of the act.

The bill repeals s. 381.0056(11), F.S., as it is unclear why funding provided by health care districts or health care entities must be supplementary to state funding.

Epidemiologic Research Studies and Public Health Reporting

Section 381.0032(1), F.S., states that DOH may conduct studies concerning the epidemiology of diseases of public health significance, such as HIV and other diseases in Florida. The studies may not duplicate national studies, but are to be designed to provide special insight and understanding into Florida-specific problems given this state's unique climate and geography, demographic mix, and high

²⁸ Chapter 29834, L.O.F.

rate of immigration. Furthermore s. 381.0032(2), F.S., provides that the studies are to emphasize practical applications and utility in the control of disease of public health significance, such as chronic diseases caused by infectious agents, host factors, or toxic substances. The studies should use state and local public health workers as field team members, reviewers, and co-authors to the maximum extent possible. The studies are to be directed by the State Health Officer or his or her designee. Pursuant to s. 381.0032(3), F.S., DOH is directed to work with various colleges and universities to include the College of Public Health at the University of South Florida when it deems appropriate and necessary.

The bill repeals s. 381.0032, F.S., but transfers the authority to conduct epidemiologic studies to s. 381.0031(1), F.S., which provides DOH the authority to report diseases of public health significance.

Section 381.0031, F.S., provides that any health care practitioner licensed in this state to practice medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; any hospital licensed under part I of chapter 395; or any laboratory licensed under chapter 483 that diagnoses or suspects the existence of a disease of public health significance is required to immediately report the fact to the DOH. The DOH is required to periodically issue a list of infectious or noninfectious diseases it determines to be a threat to public health. A health care practitioner is required to submit a report to DOH on each case and all diseases that are included on this list

The bill further amends s. 381.0031, F.S., limiting the ability of DOH to deem infectious and non-infectious diseases of public health significance that practitioners, laboratories, and hospitals have to report by providing that the list of diseases of public health significance be based on the diseases recommended to be nationally notifiable by the Council of State and Territorial Epidemiologists and the Centers for Disease Control and Prevention. Furthermore, the bill provides DOH the authority to expand the list if a disease emerges for which regular, frequent and timely information regarding individual cases is considered necessary for the prevention and control of a disease specific to Florida.

HIV/AIDS Prevention Campaign Positions

The bill amends s. 381.0046(2), F.S., to remove specific references to the number of positions DOH is required to establish to implement a statewide HIV/AIDS prevention campaign. The bill also removes language specifying the reporting hierarchy for staff, which is unnecessary.

Environmental Health Laboratories

Section 381.00591, F.S., states that DOH may apply for and become a National Environmental Laboratory Accreditation Program accrediting authority. DOH, as an accrediting entity, may adopt rules to implement standards of the National Environmental Laboratory Accreditation Program, including requirements for proficiency testing providers to include rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

The bill amends s. 381.00591, F.S., to simplify the language authorizing DOH to become a National Laboratory Accreditation Program accreditation body and removes the rule-making authority.

Section 403.863, F.S., outlines the state public water supply laboratory certification program. The bill amends s. 403.863, F.S., requiring DOH to contract with an outside entity to perform the evaluation and review of laboratory certification applications, and laboratory inspections. The bill makes conforming changes to s. 403.863, Florida Statutes.

Food Establishment

In 2010²⁹, the Legislature amended s. 381.0072(1)(b), F.S., which provides the definition of “food service establishment” to include the following specific entities: detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers,

²⁹ Ch. 2010-161, L.O.F.

short term residential treatment centers, residential treatment facilities, crisis stabilization units, hospices, prescribed pediatric care centers, ICF/DDs, boarding schools, civic or fraternal organizations, bars and lounges, and vending machines dispensing potentially hazardous foods at facilities these facilities. The bill authorizes DOH to advise Agency for Health Care Administration (AHCA), Department of Business and Professional Regulation (DBPR), Department of Agriculture and Consumer Services, and Department of Children and Family Services (DCF) concerning procedures related to the storage, preparation, serving and display of food at any building, structure or facility not expressly included in this section that may be inspected, licensed or regulated by those agencies. Additionally, the bill exempts civic organizations and facilities not regulated by DOH under this section from the requirement to have a certified food manager.

The bill amends s. 381.0072(1)(b), F.S., to include facilities participating in the U.S. Department of Agriculture Afterschool Meal Program in the definition of “food service establishment”, allowing DOH to conduct food service inspections in such facilities.

Fees for Tattoo Profession

In 2010³⁰, the Legislature began regulation of the tattoo artists and tattoo establishments. As part of the created regulatory structure, fees were authorized to support the cost of regulation. In s. 381.00781(2), F.S., allowed DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

The bill repeals s. 381.00781(2), F.S., removing the ability for fees to increase over time.

Statewide Pharmacy

Section 381.0203, F.S, authorized DOH to contract on a statewide basis for the purchase of drugs, as to be used by state agencies and CHDs. DOH is directed to establish and maintain:³¹

- A central pharmacy to support pharmaceutical services provided by the CHDs, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.
- Regulation of drugs, cosmetics, and household products pursuant to chapter 499.
- Consultation to CHDs.

Moreover, this section also establishes eligibility for a contraception distribution program (program) to be operated through the licensed pharmacies of CHDs. To be eligible for participation in the program a woman must:³²

- Be a client of the department or the Department of Children and Family Services.
- Be of childbearing age with undesired fertility.
- Have an income between 150 and 200 percent of the federal poverty level.
- Have no Medicaid benefits or applicable health insurance benefits.
- Have had a medical examination by a licensed health care provider within the past 6 months.
- Have a valid prescription for contraceptives that are available through the contraceptive distribution program.
- Consent to the release of necessary medical information to the CHD.
- Fees charged for the contraceptives under the program must cover the cost of purchasing and providing contraceptives to women participating in the program.

³⁰ Chapter 2010-220, L.O.F.

³¹ Section 381.0203(2), F.S.

³² Section 381.0203(2)(d), F.S.

Section 381.0051, F.S., creates the comprehensive family planning act that requires DOH to provide women medically recognized methods of contraception. Under s. 154.01(2)(c), F.S., the CHDs are required to provide primary care services, which includes family planning. As noted above, the statewide pharmacy is required to support pharmaceutical services provided by the CHDs, which would include contraceptives.

The bill deletes the contraceptive distribution program found in s. 381.0203(2)(d), F.S.; streamlining the provision by deleting unnecessary language. The contraceptive distribution program will continue to operate; deleting this language will have no impact on the program.

Patient's Bill of Rights

Section 381.0261, F.S., creates the Patient's Bill of Rights. Currently, AHCA is directed to print and make continuously available a summary of the Florida Patient's Bill of Rights and Responsibilities to health care facilities licensed under chapter 395, physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, and podiatric physicians licensed under chapter 461. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which the AHCA prints and distributes the summary.

According to AHCA, the Patient's Bill of Rights may be accessed on their website. AHCA does not print or distribute this document.³³

The bill amends s. 381.0261, F.S., providing DOH publish on its internet website a summary of the Patient's Bill of Rights and removing AHCA's oversight of this provision.

Rules for Migrant Farm Workers

Section 381.0086(1), F.S., required DOH to adopt rules necessary to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants, including rules governing field sanitation facilities. The rules are to include definitions of terms, provisions relating to plan review of the construction of new, expanded, or remodeled camps or residential migrant housing, sites, buildings and structures, personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, bedding, food equipment, food storage and preparation, insect and rodent control, garbage, heating equipment, water supply, maintenance and operation of the camp, housing, or roads, and such other matters as the department finds to be appropriate or necessary to protect the life and health of the occupants.

The bill amends s. 381.0086(1), F.S., to clarify that DOH is required to adopt rules to create standards for personal hygiene facilities and removes the requirement to adopt rules regulating lighting and roads.

Community Hospital Education Act

The bill amends s. 381.0403(3), F.S., providing that funding for the program for interns and residents through the statewide graduate medical education program will be appropriated in the General Appropriations Act.

Florida Board of Nursing Approval of Prelicensure Programs

In 2009, the Legislature revised s. 464.019, F.S., to legislatively prescribe the approval process for practical and professional nursing programs and to repeal existing law that vests the Florida Board of Nursing (BON) with the authority to prescribe this process by rule. Under the section, each institution wishing to conduct a new nursing education program must submit a program application and fee to the DOH. Existing nursing education programs are subject to a "grandfathering clause" so that they continue to be authorized to provide these programs in the future, except for programs on probationary

³³ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

status due to inadequate student performance on the National Council of State Boards of Nursing Licensing Examination (NCLEX). Programs with such status must achieve compliance with the student performance standards by July 1, 2011, or they will be terminated.

The BON is required to approve a new program application within 90 days if the application documents compliance with program standards set by the bill for: (a) faculty qualifications; (b) clinical training and clinical simulation requirements; (c) faculty-to-student supervision ratios; and (d) curriculum and instruction requirements. If the application does not document compliance, the BON may issue a notice of denial and the applicant may request review under the Administrative Procedure Act (APA).

The bill amends s. 464.019, F.S., requiring the BON to deny a program application for a new pre-licensure program if the institution has an existing program that is on probationary status.

Women, Infant, and Children Program

Federal

The Women, Infants, and Children (WIC) program is a 100 percent federally-funded program that provides food, nutrition education, and referrals to social services to eligible participants at no charge. The WIC program began in 1972 as a pilot program, becoming permanent in 1974. The WIC program is administered by the Division of Food and Nutrition Services (FNS) of the United States Department of Agriculture. WIC benefits are redeemed through the use of a food instrument that lists the food items that may be purchased. FNS rules state that a food instrument (food voucher) may in the form of a “voucher, check, electronic benefits transfer card . . . or other document used by a participant to obtain supplemental foods.”³⁴ According to FNS, most WIC programs provide paper vouchers to participants to use at authorized food stores; roughly 46,000 merchants nationwide accept WIC vouchers.³⁵

Eligible participants include low-income pregnant, postpartum, and breastfeeding women, and infants and children up to age 5 who are at nutrition risk and income eligible.³⁶ Income eligible participants include those who meet the WIC income guidelines³⁷ and those who are receiving Medicaid, Temporary Cash Assistance, or Food Stamps. Foods available through the WIC program include milk, cheese, eggs, cereals, and peanut butter, as well as infant formula and infant cereal and fruit juice for infants 6 months or older.³⁸

Florida

In Florida, the WIC program is administered by the DOH, Bureau of WIC and Nutrition Services. The WIC program is available in all 67 Florida counties through 42 local agencies, including county health departments. According to the department, the number of participants in the program varies from month-to-month. Approximately 2,000 vendors in Florida, including major grocery chain stores and above-50-percent (50-percent) stores, are authorized to accept WIC vouchers. A 50-percent vendor is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food vouchers. Of these approximately 2000 authorized vendors, there are approximately 39 50-percent vendors, of which 37 derive nearly 100 percent of their revenue from the WIC program.

³⁴ 7 C.F.R. §246.2 (2007).

³⁵ Division of Food and Nutrition Services, United States Department of Agriculture, WIC’s mission <http://www.fns.usda.gov/wic/aboutwic/mission.htm> (last updated September 12, 2003).

³⁶ Division of Food and Nutrition Services, United States Department of Agriculture, Nutrition Program Facts (last updated March 2006).

³⁷ The Income Guidelines range from \$1,575 gross income per month for a household of 1, to \$5,330 gross income per month for a household of 8 (185% of the Federal Poverty Level).

³⁸ See also Florida Department of Health, WIC Eligible Foods, <http://www.floridawic.org/Documents/WICEligibleFoodList.pdf> (last updated November 2007).

Over the past 8 years, several states have begun implementation of an electronic benefits transfer (EBT) system for WIC, using both off-line smartcards and on-line magstripe cards. An off-line smartcard system uses a smartcard with encoded data that is modified by the vendor at the point-of-sale. In contrast, an on-line magstripe system uses a card that functions much like a debit or credit card, using vendor point-of-sale equipment and processors to communicate with a state-contracted processor to determine, for example, remaining benefits. No data is stored on an on-line magstripe card.

A state that decides to move to an EBT system must first obtain FNS approval by submitting an advanced planning document to FNS.³⁹ In addition, a state is prohibited from imposing the costs of any equipment, system, or processing required for EBT on any authorized vendor as a condition of authorization or participation in the program.⁴⁰ Consequently, the state must pay for any modifications to the vendor's point-of-sale equipment or provide new equipment if existing equipment cannot be modified. In 2008, DOH was directed to implement an EBT system, with the assistance of the Department of Children and Families.

Other State Assistance Programs Utilizing EBT

According to FNS, EBT has been implemented for food stamps in all states as of June 2004.⁴¹ In Florida, s. 409.942, F.S., required the DCF to establish an electronic benefit transfer program to disseminate food stamp benefits and temporary assistance payments. Similarly, Workforce Florida, Inc., through the Agency for Workforce Innovation, was required to establish an electronic benefit transfer program for the use and management of education, training, child care, transportation, and other program benefits under its direction. In addition, the DCF was required to assist Workforce Florida, Inc., in developing an electronic benefit transfer program that is fully compatible with the department's electronic benefit transfer program.

According to DCF, the electronic benefit transfer program required in s. 409.942, F.S., became fully operational statewide in October 1998 using an on-line magstripe system that uses one card for the benefits described above.⁴² According to the department, there are more than 10,000 authorized retailers participating in the food stamp EBT program.

The bill amends s. 383.011, F.S., creating a multi-agency organizational structure of the WIC program to delegate responsibility for development of the electronic benefits cards to the DCF. The DOH is required to establish an interagency agreement with DCF for the management of the WIC program. The responsibilities delegated to each department are:

- DOH retains responsibility for clinical direction, manage program eligibility, distribute nutritional guidance and information to participants, assist DCF in the development of the electronic benefits system, and serve as the liaison with the federal government to coordinate submission of information to obtain approval of the electronic benefits system and cost containment plan, which must include participation of WIC only stores.
- DCF shall develop a cost containment plan that provides timely and accurate adjustments based on wholesale price fluctuations, and adjusts for the number of cash registers in calculating statewide averages.

The bill provides that full implementation shall occur on later than July 1, 2013.

³⁹ Division of Food and Nutrition Services, United States Department of Agriculture, FNS Handbook 901, http://www.fns.usda.gov/apd/Handbook_901/Handbook_901.htm (last updated February 7, 2008).

⁴⁰ Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265.

⁴¹ Division of Food and Nutrition Services, United States Department of Agriculture, Electronic Benefit Transfer, <http://www.fns.usda.gov/fsp/ebt/> (last viewed March 25, 2008).

⁴² According to the Department of Children and Families, federal payments, such as SSI, SSA, and VA, are not available through EBT as the US Treasury decided to move to either direct deposit or a direct payment card in 2001-2002.

Developmental Disabilities

Healthy Start

The Florida Healthy Start Program provides for universal risk screening of all Florida's pregnant women and newborn infants to identify those at risk of poor birth, health, and developmental outcomes. Healthy Start also includes targeted support services to address identified risks, including information and referral, comprehensive assessment of service needs in light of family and community resources, ongoing care coordination and support to assure access to needed services, psychosocial, nutritional, and smoking cessation counseling, and childbirth, breastfeeding, and parenting support and education.

Healthy Start prenatal screening focuses on improving mothers' medical or socioeconomic risk factors to create a healthier pregnancy. Factors considered in pregnant women include level of education, presence of other special needs children, marital status, mental health screening, financial hardship, drug and tobacco use, feelings about the pregnancy, and any medical problems. Healthy Start does not place any emphasis on support for those babies who have been given a medical diagnosis via medical prenatal screening or genetic testing. Physicians are required to administer such screening on the patient's initial pregnancy visit and report the results to the Office of Vital Statistics for further care coordination.

Newborn Screening

DOH screening for medical diseases occurs after the birth of the child. Specific diseases which are screened for and procedures for reporting are specified in rule. Newborns who receive a positive result on any of the disease screens are referred to appropriate healthcare professionals and support and counseling services.

DOH is also required to educate the public about the prevention and management of metabolic, hereditary, and congenital disorders associated with environmental risk factors; and promote the availability of genetic studies and counseling in order that the parents, siblings, and affected newborns may benefit from available knowledge of the condition. Healthy Start provides information and support concerning environmental risk factors during pregnancy, and CMS coordinates counseling for any disorders identified during post-natal screening, but currently no programs focus on prenatally-diagnosed medical conditions.

The bill creates 383.141, F.S., to address access to information on certain fetal conditions. The bill provides legislative intent that pregnant women who choose to undergo prenatal screening for developmental disabilities should have access to timely and informative counseling about the conditions being tested for, the accuracy of such tests, and resources for obtaining support services for such conditions. Definitions for various terms are provided.

The bill requires a healthcare provider who diagnoses a developmental disability in a fetus based on a prenatal test to provide the pregnant mother with current information about the nature of the developmental disability, the accuracy of the prenatal test, and resources for support services for the diagnosed disorder. Such services include hotlines, resource centers, and information clearinghouses related to Down syndrome or other prenatally diagnosed developmental disabilities; support programs for parents and families; and developmental evaluation and intervention services under s. 391.303, F.S.

The bill authorizes the department to establish on its website, a clearinghouse of information relating to support services for people and the families of people with developmental disabilities. Such information will be made available to health care providers for use in counseling pregnant women whose unborn children have been prenatally diagnosed with developmental disabilities.

An advisory board is also established within DOH to provide technical assistance and expertise to the department in the creation of this clearinghouse. The council will consist of nine members who are health care providers or caregivers who perform health care services for persons who have

developmental disabilities, including Down syndrome and autism. Three members each are appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. Details concerning the terms and duties of the council are specified. The department will provide administrative support to the council, and the members will serve without compensation or per diem and travel expenses.

Nursing Student Loan Forgiveness Program

The bill amends ss. 1009.66, and 1009.67, F.S., the Nursing Student Loan Forgiveness Program and Nursing scholarship program, to transfer the programs and the associated trust fund from the DOH to the Department of Education.

The Nursing Student Loan Forgiveness Program, the Nursing Scholarship Program, the Nursing Student Loan Forgiveness Trust Funds and 1 FTE will be transferred to the Department of Education effective July 1, 2012. This is a DOH recommendation and part of their 2012 legislative package.

Repealed Statutes

Eminent Domain

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken property.⁴³ Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed pursuant to ch. 73, F.S."⁴⁴

Section 381.0013, F.S., provides the DOH the power of eminent domain to acquire private property that DOH may use and occupy. This section, is not limited to acquiring property due to public health significance, instead provides DOH carte blanche authority to take private property.

The bill repeals s. 381.0013, F.S., which provides DOH unnecessary general authority to take private property.

Ordinances

Section 381.0014, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502 or any rule adopted under that chapter.

⁴³ U.S. Const. amend. V.

⁴⁴ *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).

Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).

The bill repeals s. 381.0014, F.S.

Presumptions

Section 381.0015, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502, F.S. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to DOH, it is unknown how this section of law is used.⁴⁵

The bill repeals s. 381.0015, F.S., as this is too broad of authority and the use is unknown.

Real Property

Section 381.0017, F.S., provides DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health. According to DOH, this section is obsolete. The DOH does not take deeds to buildings, and all lands reside with the Department of Environmental Protection.

The bill repeals s. 381.0017, F.S., as the provision is obsolete.

Penalties

Currently, pursuant to s. 381.0025(1), F.S., any person who violates any of the provisions of chapter 381, F.S., or any quarantine, or any rule adopted by the department under the provisions of this chapter is guilty of a misdemeanor of the second degree.⁴⁶

Additionally, pursuant to s. 381.0025(2), F.S., any person who interferes with, hinders, or opposes any employee of the department in the discharge of his or her duties pursuant to the provisions of chapter 391 (general public health provisions), chapter 386 (part I: sanitary nuisances; part II: indoor air/tobacco smoke), chapter 513 (mobile home and recreational vehicle parks), or chapter 514 (public swimming and bathing facilities), or who impersonates an employee of the department, is guilty of a misdemeanor of the second degree.

Finally, pursuant to s. 381.0025(3), F.S., any person who maliciously disseminates any false rumor or report concerning the existence of any infectious or contagious disease is guilty of a misdemeanor of the second degree.

The bill repeals s. 381.0025, F.S., as the provisions are out of date. Criminal penalties for these action are unnecessary, and DOH supports this repeal.

Hepatitis A Awareness Program

Currently, there are two separate statutory provisions that grant DOH similar authority. Section 381.00325, F.S., requires DOH to develop a Hepatitis A Awareness Program. The purpose of the program is to provide education and information to the public regarding the availability of the Hepatitis A vaccine. Section 381.0011(7), F.S., requires DOH to provide information to the public regarding the prevention, control, and cure of diseases and illnesses. Under this authority, the Division of Disease Control, within DOH, currently maintains a Hepatitis Awareness Program web page that provides necessary information regarding vaccines and educational tools for Hepatitis A, B and C.

The bill repeals s. 381.00325, F.S., as the provision is duplicative.

⁴⁵ Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

⁴⁶ Second degree misdemeanor is punishable

Healthy Lifestyle Promotion

In 2004⁴⁷, the Legislature created s. 381.0054, F.S., requiring DOH to promote healthy lifestyles to reduce the prevalence of excess weight gain and obesity in Florida by implementing appropriate physical activity and nutrition programs. Pursuant to s. 381.0054(3), F.S., the program was to be implemented contingent upon an appropriation in the GAA. According to DOH, the program never received a specific appropriation.⁴⁸

The bill repeals s. 381.0054, F.S., as the program is unfunded.

Primary and Preventive Health Services

Section 381.005(2), F.S., was enacted in 1991.⁴⁹ It directs hospitals licensed by AHCA pursuant to chapter 395, F.S., to implement a program to offer an immunization program against influenza and pneumococcal bacteria to patients over 65.⁵⁰ According to AHCA, they have no authority to enforce this requirement.⁵¹

The bill repeals s. 381.005(2), F.S., as the provision is out-of-date and not under the purview of DOH.

Florida Health Service Corps

This section of law was enacted in 1992,⁵² and is modeled on the National Health Services Corps,⁵³ offering loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program has not been funded since 1996.⁵⁴

The bill repeals s. 381.0302, F.S., as the program is unfunded.

Office of Women's Health Strategy

In 2004⁵⁵, the Legislature created the Office of Women's Health Strategy.⁵⁶ The strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women. The Officer of Women's Health Strategy is tasked with:⁵⁷

- Ensuring state policies and programs are responsive to sex and gender differences and women's health needs;
- Organizing an interagency Committee for Women's Health with DOH, the Agency for Health Care Administration, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation and the Department of Juvenile Justice in order to integrate women's health into current state programs;
- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state's insurance code as it relates to women's health issues;
- Working with medical school curriculum committees to integrate women's health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;

⁴⁷ Chapter 2004-338, L.O.F.

⁴⁸ Email correspondence with DOH staff, dated January 29, 2012, on file with the Health & Human Services Quality Subcommittee staff.

⁴⁹ Chapter. 91-297, s. 18, L.O.F.

⁵⁰ Section 381.005(2), F.S.

⁵¹ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

⁵² Chapter 92-33, s. 111, L.O.F.

⁵³ See, <http://nhsc.hrsa.gov/> (site last visited February 2, 2012).

⁵⁴ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

⁵⁵ Chapter 2004-350, LO.F.

⁵⁶ Section 381.04015, F.S.

⁵⁷ Section 381.04015(4), F.S.

- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs;
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health;
- Developing a statewide, web-based clearinghouse on women's health issues and resources; and
- Promoting public awareness campaigns and education on the health needs of women.

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the strategy.⁵⁸ According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states—Florida, Illinois and Maine—have designated a women's health officer or coordinator.⁵⁹

The bill repeals s. 381.04015, F.S., the Women's Health Officer, which overlaps with other programs within DOH; therefore is duplicative. Moreover, the DOH was never appropriated a FTE or funds to support the office. This repeal was requested by DOH. The bill makes conforming changes to s. 20.43(2)(b), F.S.

Managed Care and Publicly Funded Primary Care Program Coordination Act

In 1996⁶⁰, the Legislature enacted the Managed Care and Publicly Funded Primary Care Program Coordination (act).⁶¹ The purpose of the act is to ensure that publicly funded health providers are reimbursed by managed care plans when certain health care services are provided that are needed to protect and improve public health. Under the act, managed care plans and the Medipass program are required to pay claims initiated by any public provider, to the extent that they provide coverage for:⁶²

- The diagnosis and treatment of sexually transmitted diseases and other communicable diseases;
- The provision of immunizations;
- Family planning services and related pharmaceuticals; and
- School health services rendered on an urgent basis.

The act requires public providers to contact managed care plans before providing health care services to their subscribers. Public providers must also provide managed care plans with the results of the office visit and must be reimbursed by managed care plans at the negotiated rate. If a rate has not been negotiated, the reimbursement rate is the lesser of either the rate charged by the public provider or the Medicaid fee-for-service reimbursement rate.⁶³ CHDs are reimbursed by managed care plans, and the Medipass program for clients of the Department of Children and Family Services who receive emergency shelter medical screenings. The act also requires reimbursement in the event of a vaccine-preventable disease emergency to CHDs by providers for the cost of the administration of vaccines, provided such action is necessary to end the emergency.⁶⁴ The act requires AHCA, in consultation with

⁵⁸ Section 381.04015(2)(p), F.S.

⁵⁹ "Laws and Initiatives on Women's Health," National Conference of State Legislatures, *available at*: <http://www.ncsl.org/default.aspx?tabid=14377> (last viewed on March 17, 2010).

⁶⁰ Chapter 96-199, L.O.F.

⁶¹ Section 381.0407, F.S.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

DOH, to encourage agreements between Medicaid-financed managed care plans and public providers for the authorization of payment for maternity case management, well-child care, and prenatal care.⁶⁵

In 2011⁶⁶, the Legislature enacted significant reforms to the Medicaid program, establishing a statewide, integrated managed care program for all covered services.

The bill repeals s. 381.0407, F.S., on October 1, 2014 as the provision is preempted by the 2011 Medicaid reforms.

Hepatitis B or HIV Carriers

Section 381.045, F.S., authorizes DOH to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401, chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

The bill repeals s. 381.045, F.S., as the language is unnecessary.

AHCA Survey of State Hospital Facilities

Section 381.0605, F.S., designates AHCA as the sole agency of the state to carry out the purposes and administration of the Federal Hospital and Medical Facilities Amendments (Hill-Burton Act) of 1964.⁶⁷ Section 381.0605, F.S., also authorizes the Governor to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General of the United States.

According to AHCA, the current certificate of need program meets this requirement, although the federal funds to support this program have long since stopped.⁶⁸

The bill repeals s. 381.0605, F.S., as AHCA does not need the authority.

Community Health Pilot

This section of law was enacted in 1999⁶⁹ to develop community health pilot projects in rural and urban low-income areas. Specifically, this section of law created pilot projects in:

- Pinellas County, for the Greenwood Health Center in Clearwater;
- Escambia County, for the low income communities in the Palafox Redevelopment Area;
- In Hillsborough, Pasco, Pinellas and Manatee Counties, for the Urban League of Pinellas County;
- In Palm Beach County, for the low income communities within the City of Riveria;
- In the City of St. Petersburg, for the low-income communities within the Challenge 2001 Area; and
- Broward County, for the communities surrounding Miles Health Center in Ft. Lauderdale.

The department is authorized, to the extent that is possible, to assist pilot projects to enhance synergies and reduce duplication of efforts.⁷⁰ These pilot programs do not exist. The DOH states that they were unable to find any information on these two provisions and the Division of Family Health Services did not implement the pilot programs.⁷¹

The bill repeals ss. 381.1001, 381.102 and 381.103, F.S., as these pilot projects do not currently exist.

⁶⁵ *Id.*

⁶⁶ Chapter 2011-134, L.O.F.

⁶⁷ 42 U.S.C. 29 – Sec. 291

⁶⁸ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

⁶⁹ Chapter. 99-356, ss. 11-12, L.O.F.

⁷⁰ Section 381.103, F.S.

⁷¹ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

AHCA Background Screening

Section 381.60225, F.S., was created by chapter 98-171, L.O.F., to provide the following background screening requirements for licensure by AHCA:

- AHCA must require background screening of the managing employee, agency, or entity;
- The applicant must comply with the procedures for level 2 background screening;
- AHCA may require background screening of any individual who is an applicant if they have probable cause to believe the applicant has been convicted of a crime and/or committed any other crime prohibited under the level 2 standards for screening;
- Each applicant must submit with its application to AHCA a description of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs;
- Each applicant must submit with its application to AHCA a description of any conviction of an offense prohibited under the level 2 standards by a member of the boards of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant; and
- Any organization, agency, or entity that has been found guilty of any offense prohibited under the level 2 standards for screening may not be certified by AHCA.

The bill repeals s. 381.60225, F.S. AHCA has sufficient authority under the Core Licensure Act, part II of chapter 408, F.S., and s. 381.60225 F.S., is unnecessary.⁷²

Healthy Communities, Healthy People Program

In 1992, the Legislature enacted the Healthy Communities, Healthy People Act.⁷³ The act directed the department to use existing resources to educate Floridians as to risk factors and behaviors that can lead to chronic diseases. The purpose of this is to enhance the knowledge, skills, motivation, and opportunities for individuals, organizations, health care providers, small businesses, health insurers, and communities to develop and maintain healthy lifestyles.⁷⁴ This program is implemented through the CHDs, and is funded by a federal block grant.

Although DOH has been required since 1992⁷⁵ to develop and implement a Healthy Communities, Healthy People program, it has not established a separate formal program to do so.⁷⁶ Instead, the department is addressing the statute's intent through nine of its individual subprograms authorized in other laws. Most of these efforts are delivered through the Bureau of Chronic Disease Prevention and Health Promotion.⁷⁷

The bill repeals ss. 381.732-381.734, F.S. The program was never implemented and the intent is being achieved through other statutory directives.

Nursing Home Survey for Brain and Spinal Cord Injury Program

The Brain and Spinal Cord Injury Program administers a statewide coordinated system of care to serve persons who have sustained moderate-to-severe traumatic brain and/or spinal cord injuries.⁷⁸

⁷² Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

⁷³ Chapter 92-33, L.O.F.

⁷⁴ Section 381.734(1), F.S.

⁷⁵ Chapter 92-33, L.O.F.

⁷⁶ Office of Program Policy Analysis & Government Accountability, Healthy Communities, Health People Activities Effectively Monitored, But Assessment Could Improve (2005-10), available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=05-10> (last viewed January 27, 2012).

⁷⁷ Office of Program Policy Analysis & Government Accountability, Healthy Communities, Health People Activities Effectively Monitored, But Assessment Could Improve (2005-10), available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=05-10> (last viewed January 27, 2012).

⁷⁸ Section 381.76, F.S.

In 1976⁷⁹, the Legislature required DOH to conduct annual surveys of nursing homes in the state to determine the number of persons 55 years of age and under who reside in such homes due to brain or spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.⁸⁰ At that time, persons who had sustained a brain or spinal cord injury were sent to nursing homes from acute care settings.

Today, individuals who are injured are referred to the Brain and Spinal Cord Injury Program Central Registry. If a person is placed in a nursing home they are provided services for one-year to determine if they will improve and are a candidate for community reintegration and may receive services through the Nursing Home Transition Initiative and the TBI/SCI Home and Community-Based Medicaid Waiver. Currently, DOH states there is no funding allocated to conduct the survey and recommends repealing the program.

The bill repeals s. 381.77, F.S., as it is out-dated and unnecessary.

Long-term Community-based Supports

Section 381.795, F.S., authorizes DOH to establish, contingent upon specific appropriations, a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Currently, eligible individuals who have sustained a brain or spinal cord injury receive services through the Home and Community-based Medicaid Waiver. According to DOH, no specific appropriation has ever been appropriated to implement this program. DOH recommends repeal.⁸¹

The bill repeals s. 381.795, Florida Statutes.

Florida Center to Eradicate Disease

The Florida Center for Universal Research to Eradicate Disease (FLCURED) was created by the 2004 Legislature. The legislation followed a Senate Interim Report that found a need for improved coordination, information sharing and reduced duplication within Florida's medical research enterprise. To accomplish these goals, FLCURED holds an annual biomedical research summit, hosts a website and produces an annual report. FLCURED is operated within the Florida State University College of Medicine and is sponsored by the department. FLCURED has a 16 member Advisory Council that guides FLCURED's activities and recommends policies regarding biomedical research to the legislature.

The bill repeals s. 381.855, F.S., the FLCURED and eliminates the center, and the center's goal, purpose, responsibilities and advisory council. This is a DOH recommendation and part of their 2012 legislative package. The bill amends s. 381.922, F.S., William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program and eliminates language allowing up to \$250,000 to be provided for the Florida Center for Universal Research to Eradicate Disease to accomplish the goals of the Bill Bankhead and David Coley Cancer Research program.

Osteoporosis Prevention and Education Program

This section of law was enacted in 1996,⁸² and directs the department to establish, promote and maintain an osteoporosis education and prevention program in the state. The program has not been funded since Fiscal Year 2008-2009. DOH recommends repeal.⁸³

⁷⁹ Chapter 76-201, L.O.F.

⁸⁰ Section 381.77, F.S.

⁸¹ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

⁸² Chapter 96-282, s. 1, L.O.F.

⁸³ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

The bill repeals s. 381.87, F.S., as the section is obsolete.

Health Information Systems Council

The Florida Health Information Systems Council (Council) was created in the Department of Health by the Information Resource Management Reform Act of 1997.⁸⁴ The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities.⁸⁵ Members of the Council include:

- The State Surgeon General;
- The Executive Director of the Department of Veterans' Affairs;
- The Secretary of Children and Family Services;
- The Secretary of Health Care Administration;
- The Secretary of Corrections;
- The Attorney General;
- The Executive Director of the Corrections Medical Authority;
- One member representing a small CHD and one member representing a large CHD, both appointed by the Governor;
- A representative from the Florida Association of Counties;
- The Chief Financial Officer;
- A representative from the Florida Health Kids Corporation;
- A representative from a school of public health chosen by the Commissioner of Education;
- The Commissioner of Education;
- The Secretary of Elder Affairs; and
- The Secretary of Juvenile Justice.

Representatives from the federal government may also serve on the Council, but do not have voting rights.⁸⁶ The Council is required to meet at least quarterly, but may also meet at the call of its chair, at the request of a majority of the membership, or at the request of a department.⁸⁷

According to DOH, the Council has continued to meet as required, but takes no official action.⁸⁸ The last meeting of the Council at which any official action was taken occurred on October 22, 2003.⁸⁹ At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.⁹⁰ However, none of the recommendations contained in the Plan have been implemented over the last 8 years. Lastly, the Council has not received any recent funding, nor have any appointments to the Council been made in the last two years.⁹¹

The bill repeals s. 381.90, F.S., because the Council is defunct.

Arthritis Prevention and Education.

The department has a cooperative agreement with the Centers for Disease Control and Prevention (CDC) for a project titled "Implementation of Arthritis Evidence-Based Self-Management and Physical Activity" commonly referred to as the "Arthritis Program".

⁸⁴ Chapter 97-286, L.O.F.

⁸⁵ Section 381.90(2), F.S.

⁸⁶ Section 381.90(3), F.S.

⁸⁷ Section 381.90(5), F.S.

⁸⁸ Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.

⁸⁹ Florida Department of Health, Florida Health Information Systems Council, *Meeting Minutes, October 22, 2003*, available at <http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html> (last viewed on January 21, 2012).

⁹⁰ Department of Health, Florida Health Information Systems Council, *Strategic Plan-Fiscal Years 2004-05 through 2008-09*, May 15, 2003 (revised October 22, 2003), available at

http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf (last viewed January 22, 2012).

⁹¹ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

The program serves the purpose outlined in s. 385.210, F.S., including creating a statewide program to evaluate surveillance data, increase public and provider awareness about the impact of arthritis on the state, and facilitate evidence-based programs to prevent, reduce and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012. The program has worked with several large partners, including the Department of Elderly Affairs, Health Foundation of South Florida, the Veterans Administration, and Florida Hospital to establish self-sustaining chronic disease self management programs, at the community level, which help prevent the onset of or complications due to chronic diseases.

Effective June 30, 2012, this program would no longer be authorized and DOH will not apply for CDC funding for this program in 2012. According to DOH, these programs have been structured to be sustainable after the grant funding ends.⁹²

The bill repeals s. 385.210, F.S., effective July 1, 2012.

Public Sector Physician Advisory Committee

Section 458.346, F.S., creates a Public Sector Physician Advisory Committee which shall review and make recommendations to the Board of Medicine on all matters relating to public sector physicians that come before the board.

The bill repeals s. 458.346, F.S., as the language is unnecessary. DOH recommends repeal.

Legislative Findings and Intent

The bill deletes or amends legislative findings or intent language for the following areas:

- Section 381.0037, F.S., relating to findings and intent for the AIDS program.
- Section 381.004(1), F.S., relating to HIV testing.
- Section 381.0051(2), F.S., relating to family planning.
- Section 381.0056(2), F.S., relating to the school health services program.
- Section 381.0057(1), F.S., relating to funding for school health services.
- Section 381.0062(1), F.S., relating to supervision, private and certain public water systems.
- Section 381.0098(1), F.S., relating to biomedical waste.
- Section 381.0101(1), F.S., relating to environmental health professionals.
- Section 381.0301(1)-(2), F.S., relating to education and resource development.
- Section 381.0403(2), F.S., relating to the Community Hospital Education Act.
- Section 381.4018(2), F.S., relating to physician workforce assessment and development.
- Section 381.7352(1), F.S., relating to legislative intent and findings for the Closing the Gap Act.
- S. 381.853(1), F.S., relating to the Florida Center for Brain Tumor Research.
- S. 381.91(1)(a), F.S., relating to the Jessie Trice Cancer Prevention Program.

The amendments to legislative intent language have no substantive policy impact on the programs.

Unused Rulemaking Authority

The bill amends several section of law to remove unused rulemaking authority. The bill repeals the following provisions:

- Section 381.0052(5), F.S., related to dental health;
- Section 381.0053(4), F.S., related to the comprehensive nutrition program;
- Section 381.00593(8), F.S., related to the public school volunteer healthcare practitioner program;

⁹² Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 1263, February 2, 2012.

- Section 381.765(3), F.S., related to retention of title and disposal of equipment;
- Section 401.243(4), F.S., related to the injury prevention program;
- Section 401.245(5), F.S., related to the Emergency Medical Services Advisory Council;
- Section 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces, and their spouses;
- Section 402.45(9), F.S., related to the community resource mother or father program;
- Section 462.19(2), F.S., related to renewal of licenses and inactive status for naturopaths;
- Section 464.208(4), F.S., related to background screening information for nurse licensure; and
- Section 466.00775, F.S., related to the Board of Dentistry.

According to DOH, no rules have been adopted which use these specific sections of authority.⁹³ The repeal of rulemaking authority has no substantive impact on these programs.

Trust Funds

The bill repeals two trust funds: the Drugs, Devices, and Cosmetics Trust Fund⁹⁴ and the Nursing Student Loan Forgiveness Trust Fund⁹⁵. The Drugs, Devices and Cosmetics Trust Fund is no longer necessary as DOH no longer manages the program (responsibilities were transferred to the Department of Business and Professional Regulation). The bill transfers the Nursing Student Loan Forgiveness Program to the Department of Education, thus, trust fund will no longer be necessary after the transfer.

Other Provisions

The bill removes various obsolete dates.⁹⁶ The bill deletes requirements for programs to submit recommendations to the legislature, as they do not need specific authority to submit legislative proposals.⁹⁷

The bill deletes specific authority for the State Surgeon General to convene an ad hoc committee, pursuant to s. 381.7353(3), F.S., as he or she does not need specific statutory authority to convene such a committee.

The bill adopts changes to ss. 212.08, 499.003, 499.601, 499.61, F.S., recommended by Statutory Revision to reflect the transfer of the Drugs, Device, and Cosmetic Act from the DOH to the Department of Business and Professional Regulation

The bill removes language requiring a specific appropriation by the legislature to support the Office of Rural Health⁹⁸ and the Florida Center for Nursing⁹⁹. Legislature does not need statutory directive to spend money. The repeals will have no effect on either program.

Finally, the bill corrects references to the Shands Cancer Hospital.

B. SECTION DIRECTORY:

Section 1: Amending s. 20.43, F.S., relating to Department of Health;

Section 2: Amending s. 20.435, F.S., relating to Department of Health; trust funds;

Section 3: Amending s. 154.05, F.S., relating to cooperation agreements between counties.

Section 4: Amending s. 212.08, F.S., relating to sales, rental, use, consumption, distribution, and storage tax; specified exemptions.

⁹³ Department of Health Memorandum, "Unused Rulemaking Authority", February 1, 2012, on file with Health & Human Services Quality Subcommittee staff.

⁹⁴ Section 20.435(13), F.S.

⁹⁵ Section 20.435(17), F.S.

⁹⁶ See sections 381.0034, 381.0403(3), 381.06015(7), and 381.7356, F.S.

⁹⁷ See section 381.0303, F.S.

⁹⁸ Section 381.0405(7), F.S.

⁹⁹ Section 464.0197, F.S.

- Section 5:** Amending s. 215.5602, F.S., relating to James and Esther King Biomedical Research Program;
- Section 6:** Amending s. 381.001, F.S., relating to legislative intent;
- Section 7:** Amending s. 381.0011, F.S., relating to duties and powers of the Department of Health;
- Section 8:** Repealing s. 381.0013, F.S., relating to eminent domain;
- Section 9:** Repealing s. 381.0014, F.S., relating to regulations and ordinances superseded;
- Section 10:** Repealing s. 381.0015, F.S., relating to presumptions;
- Section 11:** Amending s. 381.0016, F.S., relating to municipal regulations and ordinances;
- Section 12:** Repealing s. 381.0017, F.S., relating to purchase, lease, and sale of real property;
- Section 13:** Amending s. 381.0025, F.S., relating to penalties;
- Section 14:** Amending s. 381.003, F.S., relating to communicable disease and AIDS prevention and control;
- Section 15:** Amending s. 381.0031, F.S., relating to report of diseases of public health significance to department;
- Section 16:** Amending s. 381.00315, F.S., relating to public health advisories; public health emergencies;
- Section 17:** Repealing s. 381.0032, F.S., relating to epidemiological research;
- Section 18:** Repealing s. 381.00325, F.S., relating to Hepatitis A awareness program;
- Section 19:** Amending s. 381.0034, F.S., relating to requirement for instruction on HIV and AIDS;
- Section 20:** Repealing s. 381.0037, F.S., relating to findings; intent;
- Section 21:** Amending s. 381.004, F.S., relating to HIV testing;
- Section 22:** Amending s. 381.0046, F.S., relating to statewide HIV and AIDS prevention campaign;
- Section 23:** Amending s. 381.005, F.S., relating to primary and preventive health services;
- Section 24:** Amending s. 381.0051, F.S., relating to family planning;
- Section 25:** Amending s. 381.0052, F.S., relating to dental health;
- Section 26:** Amending s. 381.0053, F.S., relating to comprehensive nutrition program;
- Section 27:** Repealing s. 381.0054, F.S., relating to healthy lifestyles promotion;
- Section 28:** Amending s. 381.0056, F.S., relating to school health services program;
- Section 29:** Amending s. 381.0057, F.S., relating to funding for school health services;
- Section 30:** Amending s. 381.00591, F.S., relating to Department of Health; National Environmental Laboratory accreditation; application; rules;
- Section 31:** Amending s. 381.00593, F.S., relating to public school volunteer health care practitioner program;
- Section 32:** Amending s. 381.0062, F.S., relating to supervision; private and certain public water systems;
- Section 33:** Amending s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems; regulation;
- Section 34:** Amending s. 381.0068, F.S., relating to technical review and advisory panel;
- Section 35:** Amending s. 381.0072, F.S., relating to food service protection.
- Section 36:** Amending s. 381.00781, F.S., relating to fees; disposition;
- Section 37:** Amending s. 381.0086, F.S., relating to rules; variances; penalties;
- Section 38:** Amending s. 381.0098, F.S., relating to biomedical waste;
- Section 39:** Amending s. 381.0101, F.S., relating to environmental health professionals;
- Section 40:** Amending s. 381.0203, F.S., relating to pharmacy services;
- Section 41:** Amending s. 381.0261, F.S., relating to summary of patient's bill of rights; distribution; penalty;
- Section 42:** Amending s. 381.0301, F.S., relating to education and resource development;
- Section 43:** Repealing s. 381.0302, F.S., relating to Florida Health Services Corps;
- Section 44:** Amending s. 381.0303, F.S., relating to special needs shelters;
- Section 45:** Repealing s. 381.04015, F.S., relating to Women's Health Strategy; legislative intent; duties of Officer of Women's Health Strategy; other state agency duties;
- Section 46:** Amending s. 381.0403, F.S., relating to the Community Hospital Education Act;
- Section 47:** Amending s. 381.0405, F.S., relating to Office of Rural Health;
- Section 48:** Amending s. 381.0406, F.S., relating to rural health networks;
- Section 49:** Repealing s. 381.0407, F.S., effective October 1, 2014, relating to managed care and publicly funded primary care program coordination;
- Section 50:** Repealing s. 381.045, F.S., relating to Hepatitis B or HIV carriers;
- Section 51:** Amending s. 381.06015, F.S., relating to Public Cord Blood Tissue Bank;
- Section 52:** Repealing s. 381.0605, F.S., relating to survey of state hospital facilities; Agency for Health Care Administration;

- Section 53:** Repealing s. 381.1001, 381.1015, 381.102, and 381.103, F.S., relating to community health pilot projects;
- Section 54:** Amending s. 381.4018, F.S., relating to physician workforce assessment and development;
- Section 55:** Repealing s. 381.60225, F.S., relating to background screening;
- Section 56:** Repealing s. 381.732, 381.733, and 381.734, F.S., relating to short title; Healthy Communities, Healthy People Act;
- Section 57:** Amending s. 381.7352, F.S., relating to legislative findings and intent;
- Section 58:** Amending s. 381.7353, F.S., relating to reducing racial and ethnic health disparities: Closing the Gap grant program; administration; department duties;
- Section 59:** Amending s. 381.7356, F.S., relating to local matching funds; grant awards;
- Section 60:** Amending s. 381.765, F.S., relating to retention of title to and disposal of equipment;
- Section 61:** Repealing s. 381.77, F.S., relating to nursing home residents, age 55 and under; annual survey;
- Section 62:** Repealing s. 381.795, F.S., relating to long-term community-based supports;
- Section 63:** Amending s. 381.853, F.S., relating to Florida Center for Brain Tumor Research;
- Section 64:** Repealing s. 381.855, F.S., relating to Florida Center for Universal Research to Eradicate Disease;
- Section 65:** Repealing s. 381.87, F.S., relating to osteoporosis prevention and education program;
- Section 66:** Repealing s. 381.90, F.S., relating to Health Information Systems Council; legislative intent; creation, appointment, duties;
- Section 67:** Amending s. 381.91, F.S., relating to Jessie Trice Cancer Prevention Program;
- Section 68:** Amending s. 381.922, F.S., relating to William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program;
- Section 69:** Amending s. 383.011, F.S., relating to administration of maternal and child health programs;
- Section 70:** Creating s. 383.141, F.S., relating to prenatally diagnosed conditions; patient to be provided information; information clearinghouse; advisory council;
- Section 71:** Repealing s. 385.210, F.S., effective July 1, 2012, relating to arthritis prevention and education;
- Section 72:** Amending s. 391.016, F.S., relating to legislative intent;
- Section 73:** Amending s. 391.021, F.S., relating to definitions;
- Section 74:** Amending s. 391.025, F.S., relating to applicability and scope;
- Section 75:** Amending s. 391.026, F.S., relating to powers and duties of the department;
- Section 76:** Amending s. 391.028, F.S., relating to administration;
- Section 77:** Amending s. 391.029, F.S., relating to program eligibility;
- Section 78:** Amending s. 391.0315, F.S., relating to benefits;
- Section 79:** Amending s. 392.51, F.S., relating to findings and intent;
- Section 80:** Amending s. 392.61, F.S., relating to community tuberculosis control programs;
- Section 81:** Amending s. 392.62, F.S., relating to hospitalization and placement programs;
- Section 82:** Amending s. 395.1027, F.S., relating regional poison control centers;
- Section 83:** Creating an unnumbered section of law; relating to the closure of A.G. Holley State Hospital;
- Section 84:** Amending s. 401.243, F.S., relating to injury prevention;
- Section 85:** Amending s. 401.245, F.S., relating to Emergency Medical Services Advisory Council;
- Section 86:** Amending s. 401.271, F.S., relating to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces of the United States; spouses of members of the Armed Forces;
- Section 87:** Amending s. 402.45, F.S., relating to community resource mother or father program;
- Section 88:** Amending s. 403.863, F.S., relating to state public water supply laboratory certification program;
- Section 89:** Amending s. 400.914, F.S., relating to rules establishing standards;
- Section 90:** Amending s. 411.203, F.S., relating to continuum of comprehensive services;
- Section 91:** Amending s. 409.256, F.S., relating to administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing;
- Section 92:** Repealing s. 458.346, F.S., relating to Public Sector Physician Advisory Committee;
- Section 93:** Amending s. 462.19, F.S., relating to renewal of license; inactive status;
- Section 94:** Amending s. 464.019, F.S., relating to approval of nursing education programs;
- Section 95:** Repealing s. 464.0197, F.S., relating to Florida Center for Nursing; state budget support;

- Section 96:** Amending s. 464.208, F.S., relating to background screening information; rulemaking authority;
- Section 97:** Amending s. 466.00775, F.S., relating to rulemaking;
- Section 98:** Amending s. 514.011, F.S., relating to definitions;
- Section 99:** Amending s. 514.021, F.S., relating to department authorization;
- Section 100:** Amending s. 514.023, F.S., relating to sampling of beach waters; health advisories;
- Section 101:** Amending s. 514.025, F.S., relating to assignment of authority to county health departments;
- Section 102:** Amending s. 514.03, F.S., relating to construction plans approval necessary to construct, develop, or modify public swimming pools or bathing places;
- Section 103:** Amending s. 514.031, F.S., relating to permit necessary to operate public swimming pool or bathing place;
- Section 104:** Amending s. 514.033, F.S., relating to creation of fee schedules authorized;
- Section 105:** Amending s. 514.05, F.S., relating to denial, suspension, or revocation of permit; administrative fines;
- Section 106:** Amending s. 514.06, F.S., relating to injunction to restrain violations;
- Section 107:** Amending s. 633.115, F.S., relating to Fire and Emergency Incident Information Reporting Program; duties; fire reports;
- Section 108:** Amending s. 1009.66, F.S., relating to Nursing Student Loan Forgiveness Program;
- Section 109:** Amending s. 1009.67, F.S., relating to nursing scholarship program;
- Section 110:** Creating an unnumbered section of law; relating to type two transfer from Department of Health to Department of Education of certain programs and materials;
- Section 111:** Creating an unnumbered section of law; relating to a plan to improve efficiency of Division of Medical Quality Assurance;
- Section 112:** Amending s. 154.503, F.S., relating to Primary Care for Children and Families Challenge Grant Program; creation; administration;
- Section 113:** Amending s. 381.0041, F.S., relating to donation and transfer of human tissue; testing requirements;
- Section 114:** Amending s. 384.25, F.S., relating to reporting required;
- Section 115:** Amending s. 392.56, F.S., relating to hospitalization, placement, and residential isolation;
- Section 116:** Amending s. 456.032, F.S., relating to Hepatitis B or HIV carriers;
- Section 117:** Amending s. 499.003, F.S., relating to definitions of terms used in this part;
- Section 118:** Amending s. 499.601, F.S., relating to legislative intent; construction;
- Section 119:** Amending s. 499.61, F.S., relating to definitions;
- Section 120:** Amending s. 513.10, F.S., relating to operating without permit; enforcement of chapter; penalties;
- Section 121:** Amending s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs;
- Section 122:** Amending s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties;
- Section 123:** Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

A.G. Holley State Hospital

Eventual closure of the A.G. Holley State Hospital will make possible the sale of public land upon which it is sited, however the anticipated revenue is unknown.

2. Expenditures:

A.G. Holley State Hospital

The bill is likely to result in a savings due to the closure of A.G. Holley State Hospital. Currently, the annual operating costs for A.G. Holley is approximately \$10 million in federal and state funds, however the cost of a contract for the operation of a program to care for TB patients and the funding that would be realigned to operate participating facilities is unknown. Significant fiscal impacts that are known are as follows:

- Savings as a result of elimination of 158.0 FTE due to reduction in retirement and state health insurance costs.
- Savings in operating, maintenance, and repair costs.
- Expenditures related to the payout of leave accruals is approximately \$833,984 from the General Revenue Fund, which can be absorbed within current department resources.
- The current Medicaid State Plan provides an exemption for A.G. Holley to the 45-day inpatient reimbursement limitation for Medicaid eligible
- A.G. Holley currently receives Disproportionate Share funding of \$2.4 million, which is not addressed. It is unknown if this funding can be transferred to the participating facilities for the care and treatment of inpatient TB patients.

Children's Medical Services

The bill does not alter the current CMS structure or functions, but allows DOH, if it chooses, to operate the Children's Medical Services network through a contract network manager. While this section of the bill is permissive, the DOH has indicated in its analysis that if it chooses to pursue, the impact would be as follows:

- Eliminate 1,003.5 staff (FTE, OPS and contract staff) in the CMS area offices. The associated salary is \$36.4 million and a leave payout would be approximately \$2.4 million, with approximately 47% from the General Revenue Fund and 53% from trust funds.
- Eliminate an undetermined number of program staff (FTE, OPS, and contract) at DOH central office. Costs would include associated salary plus leave payouts.
- Undetermined savings from leases and state-owned buildings.
- Undetermined savings related to administrative costs to operate provider service networks.

DOH Divisions

The bill reduces state and federal expenditures by \$472,086 as a result of reducing the number of DOH divisions from eleven to eight. And there will be minimal cost associated with creating new signage, updating the DOH website, and business cards, etc., to reflect the names of the new divisions.

Arthritis Prevention and Education Program

The bill eliminates the Arthritis Prevention and Education Program, thereby reducing 6.0 FTE and \$444,935 in federal funding.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None identified.
2. Expenditures:
None Identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DOH has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2012, the Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute to the committee substitute. The amendment restores the changes made to ch. 154, F.S., thereby removing the provisions recreating the CHDs as a decentralized system under the control of county governments funded by block grants and fees established by the local governments.

On February 27, 2012, the Health & Human Services Committee adopted on strike-all and 4 amendments to the amendment and reported the bill favorably as a committee substitute for the committee substitute. The strike-all (#194335):

- Expands on County Health Departments' (CHDs) ability to enter into interlocal agreement to share or co-administer specific functions.
- Removes limitation on communicable diseases by allowing DOH to study the epidemiological of any diseases of public health significance affecting the people in Florida.
- Removes onsite sewage provisions except:
 - Repeals legislative intent;
 - Makes conforming changes to the new Division of Emergency Preparedness and Community Support to include changing committee appointee from the division director to the Surgeon General or his or her designee;
 - Repeals an obsolete date; and
 - Repeals language requesting TRAP members to advise the Legislature on legislation.
- Provides that it is a power and duty of Children's Medical Services (CMS) to provide services to abused and neglected children through child protective teams pursuant to s. 39.303, which directs DOH to develop, maintain, and coordinate child protective teams.
- Deletes permissive language allowing CMS to contract out its functions to a Provider Service Network.
- Provides a specific repeal date of the Arthritis Prevention & Education Program of July 1, 2012, as requested by DOH.
- Specifies in the A.G. Holley transition plan that AHCA is directed to modify its reimbursement plans and seek any necessary federal approval to continue Medicaid funding throughout the treatment period.

- Requires the Board of Nursing to deny a program application for a new pre-licensure program if the institution has an existing program that is on probationary status.
- Makes several changes to the public bathing provisions requested by DOH:
 - Replaces “water quality” with “sanitation”;
 - Restores the DOH role in issuing permits, which was removed in a prior bill version that decentralized CHDs;
 - Deletes an outdated study; and
 - Authorizes the DOH to deposit permit fees into the Grants and Donations Trust Fund.
- Creates a new section of law: Requires physicians to disclose information on certain fetal health conditions to certain patients; requires DOH to establish an information clearinghouse on its website relating to developmental disabilities; and creates a prenatal advisory council to assist with the clearinghouse.
- Deletes the repeal of s. 381.895, F.S., the standards for compressed air used for recreational diving.
- Makes updates recommended by Statutory Revision to reflect the transfer of the Drugs, Device, and Cosmetic Act from the DOH to DBPR.
- Makes several changes to conform to the Senate bill:
 - Repeals an all of s. 381.0014, F.S., relating to penalties.
 - Restores the definition of “certified” and “primary environmental health program.”
 - Adds the title of the Community health pilot project, which was inadvertently left out when we repealed the program and combines the statutes into one section instead of three.

Amendment to Amendment 1 (#572061):

- Removes the limitation on DOH to request practitioners, laboratories and hospitals to report only on communicable diseases and restores current law allowing DOH to report on diseases of public health significance;
- Provides that list of diseases of public health significance shall be based on the diseases recommended to be nationally notifiable by the Council of State and Territorial Epidemiologists and the Centers for Disease Control and Prevention; and
- Provides DOH the authority to expand the list if a disease emerges for which regular, frequent and timely information regarding individual cases is considered necessary for the prevention and control of a disease specific to Florida.

Amendment to Amendment 2 (#894773):

- Amending the definition of “food establishment” to include facilities participating in the U.S. Department of Agriculture Afterschool Meal Program

Amendment to Amendment 3 (#443871):

- Creating a multi-agency organizational structure of the WIC program to delegate responsibility for development of the electronic benefits cards to the Department of Children and Families.
- DOH retains responsibility for clinical direction and serves as the liaison with the federal government.

Amendment to Amendment 4 (#047141):

- Amends the definition of health care providers who are responsible for informing patients about developmental disabilities to include physician assistants.

The analysis is drafted to the committee substitute to the committee substitute.