HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 1263 (CS/SB 1824)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Health & Human Services Committee; Appropriations Committee; Health & Human Services Quality Subcommittee; Hudson and others (Health Regulation; Garcia and others)	86 **Y's**	29 **N's**
COMPANION BILLS:	CS/SB 1824	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1263 passed the House on March 2, 21012. The bill was amended by the Senate on March 9, 2012, and subsequently passed the House on March 9, 2012. 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, onsite sewage, regulation of public bathing places, the nursing student loan forgiveness program, and health professional licensure processes. The bill:

- Amends ch. 381, F.S., to repeal the onsite sewage treatment and disposal system evaluation program and requires counties and municipalities with first magnitude springs to implement local evaluation and assessment programs, unless the county or municipality opts out, authorizes all other counties and municipalities to do the same, and establishes criteria for such programs;
- Amends ch. 391, F.S., governing CMS, to restructure clinical and financial eligibility requirements;
- Amends ch. 392, F.S., governing the tuberculosis control hospitalization program, to remove the authority for DOH to operate a state-owned hospital effective January 1, 2013. DOH is required to contract with health care providers, including hospitals and other facilities, for treatment of drug-resistant tuberculosis patients;
- Amends 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;
- Amends s. 383.011, F.S., to create a multi-agency organizational structure for 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). DOH is required to establish an interagency agreement with DCF for the management of the WIC program;
- Transfers the nursing student loan forgiveness program from DOH to the Department of Education;
- 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;
- Removes unused rulemaking authority, defunct programs, unnecessary legislative intent and findings, and obsolete date references;
- Removes provisions requiring the Legislature to expend funds, which have no effect on the Legislature's budget decisions in the General Appropriations Act; and
- Makes numerous conforming amendments.

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

The bill was approved by the Governor on April 27, 2012, ch. 2012-184, Laws of Florida. Except as expressly provided, the effective date of the bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

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 Health[1]—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. DOH has 13 statutory mission statements, providing that its mission is to:[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 FTEs.[6]

In 2010[7], the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation. The DDC program regulates the manufacture and distribution of drugs, devices, cosmetics pursuant to Part I of Chapter 499, Florida Statutes. [8]

In 2010[9], the Legislature directed 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 determinations whether:
    - 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.

- The goals, mission, or objectives of 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
- The cost to administer DOH programs exceeds the revenues collected.

Starting in Fiscal Year 2010-2011, 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, 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, DOH submitted the report titled, "Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations." The report contained four types of recommendations:

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

Effect of Proposed Changes

The bill enacts several recommendations proposed by DOH to streamline and simplify its duties and responsibilities. The bill substantially amends DOH mission statement, responsibilities, 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 number of divisions from eleven to eight. The bill makes conforming changes to implement the changes to ss. 20.43, F.S.[11] In addition to the recommendations proposed by DOH, the bill makes substantive changes to several programs, and repeals defunct programs, and unused rulemaking authority.

County Health Departments

Section 154.05, F.S., provides that two or more counties may combine in the establishment and maintenance of a single full-time county health department for the counties which combine for that purpose. Pursuant to such combination or agreement, such counties may cooperate with one another and DOH and contribute to a joint fund in carrying out the purpose and intent of this chapter. The duration and nature of such agreement shall be evidenced by resolutions of the boards of county commissioners of such counties and shall be submitted to and approved by the department. In the event of any such agreement, a full-time CHD is to be established and maintained by DOH, rather than the counties.

The bill amends s. 154.05, F.S., to authorize counties to establish a cooperative arrangement for the merged operation of two or more CHDs when both parties agree to the specific roles and responsibilities of each county and CHD. The agreement must specify:

- Method of governance and executive direction;
- Manner by which each county's public health needs will be addressed;
- Inventory of necessary facilities, equipment, and personnel; and
- Other needed infrastructure.

[10] Chapter 2010-161, L.O.F.
[11] *See* s. 409.256, 381.0101, and 381.0065(3)-(4), F.S.

Emergency Medical Technicians 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 the Division of Medical Quality Assurance (MQA). Currently, Emergency Medical Technicians (EMTs) and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S. Rather, they are regulated by the Division of Emergency Medical Operations within DOH.

The health care professions regulated by MQA 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" however; the definition of "health care practitioner" does not include emergency medical technicians and paramedics.[12] EMTs and paramedics are governed by Pt. III of Ch. 401, F.S. 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 EMTs and paramedics under the responsibility of MQA and includes the two professions within the definition of health care practitioner in s. 456.001, F.S. This is a DOH recommendation.

Quarantine

Section 381.0011, F.S., provides the general duties and enforcement powers of 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:

- Closure of premises;
- Movement of persons or animals exposed to or infected with a communicable disease;
- 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; and
- Methods of quarantine.

The bill transfers the quarantine provisions in s. 381.0011, F.S., to s. 381.00315, Florida Statutes.

Children's Medical Services

Children's Medical Services (CMS) currently has two divisions pursuant to s. 20.43, F.S.: the CMS Network, and CMS Prevention and Intervention.

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

[12] "Health care practitioner" means 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).

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 deletes the Division of CMS Prevention and Intervention and the CMS Network and merges both divisions into a new Division of CMS. This is a recommendation from DOH. The bill makes conforming changes to reflect the integration of the two divisions. The bill does not alter the current CMS structure or functions, but deletes 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 refocuses 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 specifies that clinical eligibility is based on the diagnosis of one or more chronic and serious medical conditions. The bill changes financial eligibility by allowing families who do not qualify for Medicaid to participate based on 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.

<u>Division of Medical Quality Assurance</u>

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 (TB) hospitals in the United States.[13] Florida operates one of these TB 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 TB hospitals built in Florida between 1938 and 1952.[14] Today, however, A.G. Holley is the only state-operated TB hospital in the state and is the last of the original American sanatoriums dedicated to treating TB 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. 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.

AG Holley 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, 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.

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 2010[17], the Legislature directed DOH to develop a plan that exclusively uses private and nonstate public hospitals to provide hospitalization, isolation, and treatment to cure.

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[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, 210).
[15] *Id.*
[16] "*Tuberculosis Hospitalization in Other States*," OPPAGA Research Memorandum (March 11, 2010).
[17] Chapter 2010-161, L.O.F.

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 patients to alternate facilities, communicate with families, providers, other affected parities, 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, 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] DOH has issued permits to 180 fresh water bathing places.[21] A permit is necessary to operate a public swimming pool or bathing place in

[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).

Florida.[22] 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.

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, 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 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

[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.

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.

Onsite Sewage and Treatment Disposal Systems

DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is regulation of septic systems.[28]

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[29]

DOH estimates there are approximately 2.67 million septic tanks in use statewide.[30] The DOH Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[31]

In 2008, the Legislature directed DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide five-year septic tank inspection program to be phased in over 10 years pursuant to DOH's procedure for voluntary inspection, including use of fees to offset costs.[32] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).[33] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83 to $215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.[34]

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[28] *See* s. 381.006, F.S.
[29] Section 381.0065(2)(j), F.S.
[30] Florida Department of Health, Bureau of Onsite Sewage, *Home*, available at: http://www.myfloridaeh.com/ostds/index.html (last visited Jan. 13, 2012).
[31] Florida Department of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited Jan.13, 2012).
[32] *See* ch. 2008-152, Laws of Fla.
[33] Florida Department of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at: http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited Jan. 13, 2012).
[34] Florida Department of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (last visited Dec. 22, 2011). *See also* Florida

Because repairs of septic systems were not regulated or permitted by DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a six inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.[35]

Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems, may not provide the same level of protection expected from systems permitted and installed under current construction standards.[36]

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.[37] Depending on the estimated sewage flow, the septic system may or may not be approved by DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.[38]

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family dwelling unit, the estimated sewage flows are: for one bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.[39]

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, L.O.F. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[40] The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every five years;
- Directs DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide

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Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at: http://www.doh.state.fl.us/environment/ostds/New.htm (last visited on Dec. 22, 2011).

[35] Florida Department of Heath, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at: http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm (last visited Jan. 15, 2012).

[36] *Id.*

[37] Rule 64E-6.001, F.A.C.

[38] *Id.*

[39] Rule 64E-6.008, F.A.C.

[40] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

funding for inspections, pump-outs, repairs, or replacements. DOH is authorized under the law to adopt rules to establish the application and award process for grants.

Finally, ch. 2010-205, L.O.F., amended s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that DOH can collect. No more than $5 of each evaluation fee may be used to fund the grant program. The State's Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).[41] If approved, DOH would then be able to expend funds to begin implementation. Currently, DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.[42] First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridian Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The Department of Environmental Protection recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.[43]

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[44] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[45] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[46] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[47] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be

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[41] *See* ch. 2011-047, s. 13, Laws of Fla.
[42] Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at: http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Dec. 19, 2011).
[43] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at: http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf (last visited Jan. 22, 2012).
[44] FLA. CONST. art. VIII, s. 1(f).
[45] FLA. CONST. art. VIII, s. 1(g).
[46] FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.
[47] *See, e.g.*, *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

made by implication or by inference.[48] A county or municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.[49] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[50]

The bill repeals the state wide septic system evaluation program, including program requirements, and DOH's rulemaking authority to implement the program. It repeals legislative intent regarding DOH's administration of a state wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill also repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. The bill also corrects two cross references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by DOH for the installation, modification, or repair of a septic system transfers with the title to the property in a real estate transaction. A title is not encumbered at the time of transfer by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill prohibits any governmental entity, including municipality, county, or statutorily created commission from requiring an engineered-designed performance-based treatment system, except for passive engineer-designed performance-based treatment systems, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project or December 31, 2014, whichever comes first. The prohibition does not apply to the above entities that adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding the prohibition, an engineer-designed performance-based treatment system may be used to meet the requirements of the Variance Review and Advisory Committee recommendations.

The bill specifies a septic system serving a foreclosed property is not considered abandoned. It also specifies a septic system is not considered abandoned if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure, which contains the same number of bedrooms or less, provided the square footage is less than or equal to 110 percent of the original square footage, that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and

[48] *Id.*
[49] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[50] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

- The septic system has not been altered without prior authorization.

The bill provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system if fundamental site conditions have not changed between the time of construction approval and final approval. The bill also provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this bill within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, and that do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected. Existing evaluation programs that require point of sale inspections are preempted regardless of when the program was adopted.

A county or municipality may opt out by a majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this bill. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every five years to assess the fundamental operational condition of the system and to identify system failures.
- The ordinance may not mandate an evaluation or a soil examination at the point of sale in a real estate transaction.
- Each evaluation must be performed by:
    - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.;
    - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.;
    - An environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation; or
    - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- Results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum

separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that a septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks is exempt from inclusion in a local septic system evaluation program. The bill also exempts a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every five years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair or modification of the septic system within the previous five years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and water tightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure. The evaluation must note the presence and condition of:

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information must be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether the septic system has a check valve and purge hole; and

- Whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of five years and until a subsequent report is filed;
- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, storm water or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance;
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance;

The bill requires DOH to provide access to the Environmental Health Database to county health departments and qualified contractors for use in the assimilation of data to track relevant information resulting from an assessment and evaluation. The Environmental Health Database will be used by contractors to report all service and evaluation events and by the county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information will be recorded and updated as service and evaluations are conducted and reported.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of the DEP, DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within

existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund grants. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the above mentioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits DOH from adopting any rule that alters the provisions contained within the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

Ordinances and Regulations

In 1955[51], 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., creates 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., which allows funding provided by health care districts or health care entities to be in lieu of, not just 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 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.

[51] Chapter 29834, L.O.F.

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 DOH. 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. These changes allow the Surgeon General to make staffing decisions.

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, F.S.

Food Establishment

In 2010[52], 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, 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.

[52] Chapter 2010-161, L.O.F.

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 that are not inspected by another agency for compliance with sanitation standards.

Tattoo Artists and Establishments

In 2010[53], the Legislature began regulation of tattoo artists and tattoo establishments, including fees to support the cost of regulation. Section 381.00781(2), F.S., allows 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, authorizes 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:[54]

- Establish and maintain 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.
- Regulate drugs, cosmetics, and household products pursuant to chapter 499.
- Provide consultation services 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:[55]

- 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.

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. The bill also deletes the reference

[53] Chapter 2010-220, L.O.F.
[54] Section 381.0203(2), F.S.
[55] Section 381.0203(2)(d), F.S.

to the regulation of drugs, cosmetics, and household products pursuant to ch. 499, F.S.; the program was transferred to the Department of Business and Professional Regulation in 2010. [56]

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 the AHCA website. AHCA does not print or distribute this document.[57]

The bill amends s. 381.0261, F.S., requiring DOH to publish on its internet website a summary of the Patient's Bill of Rights and removing AHCA's publication duties.

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 Pre-licensure Programs

In 2009, the Legislature revised s. 464.019, F.S., to 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 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 status due to inadequate student performance on the National Council of State Boards of Nursing Licensing Examination (NCLEX). Programs with such status must have achieved compliance with the student performance standards by July 1, 2011, or were 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.

Liposuction

Subsections 458.309(3) and 459.005(2), F.S., require that physicians who perform Level II procedures lasting more than 5 minutes and all Level III surgical procedures in an office setting must register the office with DOH unless the office is licensed as a facility pursuant to ch. 395, F.S. There is a one-time

[56] Chapter 2010-161, L.O.F.
[57] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

registration fee of $150 and an annual inspection fee of $1,500 for each practice location.[58] Rules adopted by the Board of Medicine and Board of Osteopathic Medicine (boards) establish standards for surgery offices, including record requests, policies and procedures, and adverse incident reporting. Failure to comply with office surgery requirements may result, at the department's discretion, in probation, suspension, or revocation of office surgery registration; 50-200 hours of community service; and administrative fines of up to $10,000.[59]

The boards have adopted rules for liposuction in physician offices, which classify liposuction as a Level I or Level II office surgery procedure, depending on the type of anesthesia used. In any liposuction procedure, the surgeon is responsible for determining the appropriate amount of fat to be removed from the patient, up to a maximum of 4,000 cc in the office setting.[60] A maximum of 50 mg/kg of Lidocaine can be injected for tumescent liposuction[61] in the office setting. Liposuction may be performed in combination with another surgical procedure during a single Level II or Level III operation if combined with abdominoplasty or when liposuction is associated with and directly related to another procedure, and the total amount of fat removed does not exceed 1,000 cc.[62] The boards have authority to amend the office surgery rules to require office registration for additional liposuction procedures.

The bill expressly requires the boards to adopt rules requiring any physician who performs liposuction procedures in which more than 1,000 cc of supernatant fat is removed to register his or her office with DOH, unless the office is licensed as a facility under ch. 395, F.S.

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. 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.[63] Income eligible participants include those who meet the WIC income guidelines[64] 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.[65]

WIC benefits are redeemed through the use of a food instrument that lists the food items that may be purchased. FNS rules state that the food instrument may in the form of a "voucher, check, electronic benefits transfer card or other document used by a participant to obtain supplemental foods."[66] 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.[67]

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[58] Rule 64B-4.003, F.A.C.
[59] Rule 64B8-8.001(2)(rr)9., F.A.C.
[60] Rules 64B8-9.009 and 64B15-14.007, F.A.C.
[61] Tumescent liposuction is a method in which fat deposits swell (tumesce) after injection of a salt water-anesthetic solution that is two to three times the amount of fat removed
[62] *Id.*
[63] Division of Food and Nutrition Services, United States Department of Agriculture, Nutrition Program Facts (last updated March 2006).
[64] 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).
[65] *See also* Florida Department of Health, WIC Eligible Foods, http://www.floridawic.org/Documents/WICEligibleFoodList.pdf (last updated November 2007).
[66] 7 C.F.R. §246.2 (2007).
[67] 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).

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 CHDs. According to DOH, 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.

EBT Systems

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 magnetic stripe (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 for WIC must first obtain FNS approval by submitting an advanced planning document to FNS.[68] 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.[69] Consequently, the state must pay for any modifications to the vendor's point-of-sale equipment or provide new equipment if the existing equipment cannot be modified. In 2008, DOH was directed to implement an EBT system, with the assistance of DCF.[70]

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. DOH is required to establish an interagency agreement with DCF for the management of the WIC program. DOH retains responsibility for clinical direction, program eligibility, distribution of nutritional guidance and information to participants. In addition, DOH must 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 must 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 no later than July 1, 2013.

<u>Developmental Disabilities</u>

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

[68] 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).
[69] Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265.
[70] An EBT system is currently in place for DCFs food stamp and temporary assistance programs, with more than 10,000 authorized retailers participating in the food stamp EBT program.

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. DOH 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 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.

Repealed Statutes

Eminent Domain

"Eminent domain" is the 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.[71] 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."[72]

Section 381.0013, F.S., provides 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 concerns.

The bill repeals s. 381.0013, F.S., removing DOH's eminent domain authority.

Ordinances

Section 381.0014, F.S., provides that the rules adopted concerning public health by 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., or any rule adopted under that chapter. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to DOH, it is unknown how this section of law is used.[73]

[71] U.S. Const. amend. V.
[72] *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).
[73] Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

The bill repeals s. 381.0014, F.S.

Presumptions

Section 381.0015, F.S., specifies that the authority, action, and proceedings of DOH to enforce rules adopted under the provisions of this Ch. 381, F.S., are to be regarded as judicial in nature and treated as prima facie just and legal. No published judicial opinion has ever cited to this section, and its purpose is unknown.

The bill repeals s. 381.0015, F.S.

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 DOH when the acquisition is necessary to the efficient accomplishment of public health. According to DOH, this section is obsolete. 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 DOH under the provisions of this chapter is guilty of a misdemeanor of the second degree.[74]

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.

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.

[74] Second degree misdemeanor is punishable

Healthy Lifestyle Promotion

In 2004[75], 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 General Appropriations Act. According to DOH, the program never received a specific appropriation.[76]

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

Florida Health Service Corps

Section 381.0302, F.S., was enacted in 1992,[77] and is modeled on the National Health Services Corps.[78] It offers 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.[79]

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

Office of Women's Health Strategy

In 2004[80], the Legislature created the Office of Women's Health Strategy.[81] The office 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:[82]

- 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;
- 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;

[75] Chapter 2004-338, L.O.F.
[76] Email correspondence with DOH staff, dated January 29, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[77] Chapter 92-33, s. 111, L.O.F.
[78] *See,* http://nhsc.hrsa.gov/ (site last visited February 2, 2012).
[79] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[80] Chapter 2004-350, LO.F.
[81] Section 381.04015, F.S.
[82] Section 381.04015(4), F.S.

- 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.[83] 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.[84]

The bill repeals s. 381.04015, F.S., the Office of Women's Health Strategy, as 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 1996[85], the Legislature enacted the Managed Care and Publicly Funded Primary Care Program Coordination Act (act).[86] 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:[87]

- 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.[88] CHDs are reimbursed by managed care plans, and the Medipass program for clients of the DCF 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.[89] The act requires AHCA, in consultation with 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.[90]

In 2011[91], 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.

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[83] Section 381.04015(2)(p), F.S.
[84] "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).
[85] Chapter 96-199, L.O.F.
[86] Section 381.0407, F.S.
[87] *Id*.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] Chapter 2011-134, L.O.F.

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, F.S., 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 of 1964, known as the Hill-Burton Act.[92] 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.[93]

The bill repeals s. 381.0605, F.S., as it is obsolete.

Community Health Pilot

Sections 381.1001, 381.102 and 381.103, F.S., were enacted in 1999[94] to develop community health pilot projects in rural and urban low-income areas. Specifically, these sections 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;
- Hillsborough, Pasco, Pinellas and Manatee Counties, for the Urban League of Pinellas County;
- Palm Beach County, for the low income communities within the City of Riveria;
- 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.[95] These pilot programs do not exist. DOH was unable to find any information on these provisions and the Division of Family Health Services did not implement the pilot programs.[96]

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

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;

[92] 42 U.S.C. 29 – Sec. 291
[93] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[94] Chapter 99-356, ss. 11-12, L.O.F.
[95] Section 381.103, F.S.
[96] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

- 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.

However, AHCA-regulated entities are not governed by chapter 381, F.S. Rather, they are governed by the core licensure act in Part II of Chapter 408, F.S., and the applicable practice acts. Specifically, s. 408.809, F.S., governs background screening of AHCA-regulated entities.

The bill repeals s. 381.60225, F.S. AHCA has sufficient authority under Part II of Chapter 408, F.S., and s. 381.60225 F.S., is unnecessary.[97]

Healthy Communities, Healthy People Program

In 1992, the Legislature enacted the Healthy Communities, Healthy People Act.[98] 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.[99] This program is implemented through the CHDs, and is funded by a federal block grant.

Although DOH has been required since 1992[100] to develop and implement a Healthy Communities, Healthy People program, it has not established a separate formal program to do so.[101] Instead, the department addresses the statute's intent through nine individual programs authorized in other laws. Most of these efforts are delivered through the Bureau of Chronic Disease Prevention and Health Promotion.[102]

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.[103]

In 1976[104], 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

[97] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[98] Chapter 92-33, L.O.F.
[99] Section 381.734(1), F.S.
[100] Chapter 92-33, L.O.F.
[101] 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).
[102] 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).
[103] Section 381.76, F.S.

spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.[105] 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. A person placed in a nursing is provided services for one year to determine if he or she will improve and is a candidate for community reintegration. Such patients 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 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.[106]

The bill repeals s. 381.795, F.S.

Florida Center to Eradicate Disease

The Florida Center for Universal Research to Eradicate Disease (FL CURED) was created in 2004. 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, FL CURED holds an annual biomedical research summit, hosts a website and produces an annual report. FL CURED is operated within the Florida State University College of Medicine and is sponsored by the DOH. FL CURED has a 16-member Advisory Council that guides FL CURED's activities and recommends policies regarding biomedical research to the Legislature.

The bill repeals s. 381.855, F.S., the FL CURED and eliminates the center, and the center's goal, purpose, responsibilities and advisory council. This is a DOH recommendation. The bill amends s. 381.922, F.S., to eliminate language allowing up to $250,000 to be provided for the Florida Center for Universal Research to Eradicate Disease from funding for the William G. "Bill" Bankhead, Jr. and David Coley Cancer Research program.

Osteoporosis Prevention and Education Program

Section 381.87, F.S., was enacted in 1996,[107] and directs DOH to establish, promote and maintain an osteoporosis education and prevention program. The program has not been funded since Fiscal Year 2008-2009. DOH recommends repeal.[108]

The bill repeals s. 381.87, F.S., as the program is unfunded.

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[104] Chapter 76-201, L.O.F.
[105] Section 381.77, F.S.
[106] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[107] Chapter 96-282, s. 1, L.O.F.
[108] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

Health Information Systems Council

The Florida Health Information Systems Council (Council) was created in DOH by the Information Resource Management Reform Act of 1997.[109] 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.[110] 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;
- A representative of a small CHD and a representative of 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.[111] 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.[112]

According to DOH, the Council meets as required, but takes no official action.[113] The last meeting of the Council at which any official action was taken occurred on October 22, 2003.[114] At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.[115] 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.[116]

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 for a project titled "Implementation of Arthritis Evidence-Based Self-Management and Physical Activity."

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[109] Chapter 97-286, L.O.F.
[110] Section 381.90(2), F.S.
[111] Section 381.90(3), F.S.
[112] Section 381.90(5), F.S.
[113] Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.
[114] 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).
[115] 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).
[116] 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, increasing public and provider awareness about the impact of arthritis on the state, and facilitating evidence-based programs to prevent, reduce and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012.

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 at the local level after the grant funding ends.[117]

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 reviews 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 Committee 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;
- Section 381.765(3), F.S., related to retention of title and disposal of equipment;

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

- 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.[118] The repeal of rulemaking authority has no substantive impact on these programs.

Trust Funds

The bill repeals the Drugs, Devices, and Cosmetics Trust Fund[119]. The Drugs, Devices and Cosmetics Trust Fund is no longer necessary as DOH not longer manages the program (the program was transferred to DBPR).

Other Provisions

The bill removes various obsolete dates.[120] The bill deletes requirements for programs to submit recommendations to the Legislature, as they do not need specific authority to submit legislative proposals.[121]

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 DOH to DBPR.

The bill removes language requiring a specific appropriation by the Legislature to support the Office of Rural Health[122] and the Florida Center for Nursing[123]. The Legislature does not need statutory directives to appropriate funds. The repeals will have no effect on either program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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.

[118] Department of Health Memorandum, "Unused Rulemaking Authority", February 1, 2012, on file with Health & Human Services Quality Subcommittee staff.
[119] Section 20.435(13), F.S.
[120] *See* sections 381.0034, 381.0403,(3), 381.06015(7), and 381.7356, F.S.
[121] *See* section 381.0303, F.S.
[122] Section 381.0405,(7), F.S.
[123] Section 464.0197, F.S.

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.

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. There will be minimal cost associated with creating new signage, updating 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, which is scheduled to end on July 1,2012.

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.