

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/SB 1286

INTRODUCER: Regulated Industries Committee and Senator Thrasher

SUBJECT: Treatment Programs for Impaired Professionals

DATE: February 2, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.			HR	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be subject to the treatment program for impaired practitioners at the election of the impaired practitioner consultant.

In addition, the CS amends the requirements for the impaired practitioner consultant. It provides that the consultant may be an entity that employs a registered nurse as its executive director. It provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or DOH shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The CS takes effect on July 1, 2012.

This CS substantially amends section 456.076, Florida Statutes.

This CS creates the following sections of the Florida Statutes: 401.466 and 468.315.

II. Present Situation:

Department of Health

The Department of Health (DOH) is created in s. 20.43, F.S. The purpose of the Department of Health is to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.¹

Section 20.43(3)(g), F.S., provides that the Division of Medical Quality Assurance is responsible for the following boards and professions within DOH:

- Board of Acupuncture, created under ch. 457.
- Board of Medicine, created under ch. 458.
- Board of Osteopathic Medicine, created under ch. 459.
- Board of Chiropractic Medicine, created under ch. 460.
- Board of Podiatric Medicine, created under ch. 461.
- Naturopathy, created under ch. 462.
- Board of Optometry, created under ch. 463.
- Board of Nursing, created under part I of ch. 464.
- Nursing Assistants, created under part II of ch. 464.
- Board of Pharmacy, created under ch. 465.
- Board of Dentistry, created under ch. 466.
- Midwifery, as provided under ch. 467.
- Board of Speech-Language Pathology and Audiology, created under ch. part I of ch. 468.
- Board of Nursing Home Administrators, created under part II of ch. 468.
- Board of Occupational Therapy, created under part III of ch. 468.
- Respiratory Therapy, as provided in part V of ch. 468.
- Dietetics and Nutrition Practice, as provided in part X of ch. 468.
- Board of Athlete Training, created under XIII of ch. 468.
- Board of Orthotists and Prosthetists, created under part XIV of ch. 468.
- Electrolysis, as provided under ch. 478.
- Board of Massage Therapy, created under ch. 480.
- Board of Clinical Laboratory Personnel, created under part III of ch. 483.
- Medical Physicists, as provided under part IV of ch. 483.
- Board of Opticianry, created under part I of ch. 484.
- Board of Hearing Aid Specialists, created under part II of ch. 484.
- Board of Physical Therapy Practice, created under ch. 486.
- Board of Psychology, created under ch. 490.
- School Psychologists, as provided under ch. 490.
- Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491.

¹ Section 20.43(1), F.S.

State Surgeon General

The head of the DOH is the State Surgeon General and the State Health Officer.² The State Surgeon General must be a physician licensed under chapter 458 or chapter 459 who has advanced training or extensive experience in public health administration.

Definition of Health Care Practitioner

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the DOH. Section 456.001(4), F.S., defines “health care practitioner” to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel and medical physicists); 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).

Impaired Practitioners’ Treatment Programs

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness, or use of alcohol, drugs, narcotics, chemicals or any other type of material, or as the result of any mental or physical condition. The impaired practitioners’ treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse. By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program.³ To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioners’ treatment program consultant.⁴ Unless specifically made part of the program,⁵ the impaired practitioners’ treatment program is only available to health care practitioners regulated by the DOH.

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist the department in determining whether a practitioner is impaired and to monitor the

² Section 20.43(2)(a), F.S.

³ Section 456.076(3)(a), F.S.

⁴ *Id.*

⁵ Currently, both the Board of Veterinary Medicine and the Board of Pilot Commissioners under the Department of Business and Professional Regulation provide impaired practitioner treatment programs for licensees within those practice acts. *See ss. 474.221 and 310.102, F.S.*

treatment of the impaired practitioner. The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director licensed under these provisions. Consultants must refer impaired practitioners to department-approved treatment programs and providers.⁶ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions.

III. Effect of Proposed Changes:

Section 1. Creates s. 401.466, F.S., pertaining to treatment programs for impaired emergency medical technicians and paramedics.⁷ The CS provides that a certified emergency medical technician or paramedic or person who has applied to be certified may be subject to the provisions of s. 456.076, F.S., at the election of an impaired practitioner consultant. Costs may not be charged to the Medical Quality Assurance Trust Fund within the Department of Health.

Section 2. Amends the requirements for an impaired practitioner consultant under s. 456.076, F.S. The CS provides that the consultant may also be an entity employing a registered nurse as an executive director, who must be a practitioner or recovered practitioner licensed under chs. 458, 459, or part I of ch. 464, F.S.

The CS provides that an entity that is retained as a consultant and employs a medical director or registered nurse as an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider if the entity employs or contracts with licensed professionals to perform or appropriately supervise any specific treatment or evaluation that requires individual licensing or supervision.

The CS provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The CS further provides that the school who refers such student to the consultant is not liable in any civil action against the student for the referral or for any resulting disciplinary action that affects the status of the student.

The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or the Department of Health shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The CS clarifies that the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or

⁶ See s. 456.076, F.S.

⁷ Part III of ch. 401, F.S., includes all persons licensed in medical transportation services.

declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant.

The CS provides that the impaired practitioner consultant is the official custodian of records concerning any impaired licensee monitored by that consultant. The consultant may not disclose to the impaired licensee any information that is disclosed to or retained by the consultant and is confidential. Instead, the impaired licensee must obtain such information from the Department of Health if a disciplinary proceeding is pending.

Section 3. Creates s. 468.315, F.S., pertaining to the creation of a treatment program for impaired radiological personnel.⁸ The CS provides that a radiologic technologist who is certified or who has applied to be certified may be subject to s. 456.076, F.S., at the election of an impaired practitioner consultant.

Section 4. Provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be required to participate in the impaired practitioner program under the jurisdiction of the Division of Medical Quality Assurance. As a result, more licensed professionals may be eligible for assistance.

C. Government Sector Impact:

According to the DOH, this CS adds the professions of emergency medical technicians, paramedics, and radiological personnel to the professions covered by the impaired

⁸ Part IV of ch. 468, F.S., includes all persons licensed as radiological personnel.

practitioner treatment programs, and will require additional contracts for services with PRN. The DOH estimates that it will cost approximately \$81,620 per year beginning in FY 13-14 to cover those other professions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on February 2, 2012:

The CS removed the provisions relating to the Department of Business and Professional Regulation (DBPR) which required a person licensed by or applying for a license from DBPR to be governed by the provisions providing programs for impaired practitioners under the jurisdiction of the Medical Quality Assurance within the Department of Health.

- B. **Amendments:**

None.