

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 Committee on Health Policy

BILL: SB 248
 INTRODUCER: Senator Thrasher
 SUBJECT: Treatment Programs for Impaired Licensees and Applicants
 DATE: March 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	Pre-meeting
2.			RI	
3.				
4.				
5.				
6.				

I. Summary:

SB 248 allows the Department of Business and Professional Regulation (DBPR) to require its licensees or license applicants to comply with provisions concerning impaired practitioners in s. 456.076, F.S. The DBPR and its boards are also granted the same powers given to the Department of Health (DOH) under this section of law.

The bill provides that entities serving as impaired practitioner consultants are not required to be licensed as substance abuse providers or mental health treatment providers. Consultants are authorized to assist students enrolled in a school or program to become licensed as health care practitioners subject to ch. 456, F.S., or as veterinarians, and certain health care practitioner schools and veterinary school are released from liability for referring students to consultants.

Provisions concerning identification, monitoring, and treatment of impaired health care practitioners in s. 456.076, F.S., are modified to include applicants for licensure under the DOH in addition to current licensees. The bill expands the entities which can submit information on a potentially impaired practitioner or license applicant to a consultant to include the appropriate board or the board's designee in addition to the DOH. The bill provides guidelines concerning the release and custody of records relating to the impaired practitioner. The bill also subjects radiologic technologists to the impaired practitioner provisions in s. 456.076, F.S.

The bill provides an effective date of July 1, 2013.

This bill creates s. 20.165, F.S., and substantially amends ss. 456.076, 458.331, 459.015 and 468.315, F.S.

II. Present Situation:

Treatment Programs for Impaired Health Care Practitioners

Section 456.076, F.S., provides for resources to assist health care practitioners¹ who are impaired as a result of the misuse or abuse of alcohol, drugs, or a mental or physical condition which could affect the practitioners' ability to practice with skill and safety. Whenever the DOH receives a legally sufficient complaint² alleging that a practitioner is so impaired, and no other complaints exist against the practitioner, the DOH shall forward all information it has concerning him or her to a consultant.³ The consultant, who must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director, assists the DOH in determining if the practitioner is actually impaired, connects the practitioner to appropriate resources for treatment of the impairment, and monitors progress. Consultants may also work with medical students, physician assistant students, nursing students, or pharmacy students at a school's request. However, the DOH or the consultant is not responsible for any fees incurred throughout this process.⁴

An impaired practitioner will not be disciplined by the DOH as long as he or she:

- Is not the subject of any other complaints to the DOH;
- Has acknowledged the impairment;
- Has voluntarily enrolled in an appropriate, approved treatment program;
- Has voluntarily withdrawn from practice or limited his or her scope of practice, as required by the consultant, until the successful completion of an approved treatment program; and
- Has authorized release of all records of evaluations, diagnoses, and treatment to the consultant.⁵

There are currently two department-approved treatment programs for impaired practitioners in Florida, the Professionals Resource Network and the Intervention Project for Nurses. These programs also serve as consultants to the DOH.⁶ Any information related to treatment of an impaired practitioner is exempt from state public records requirements except when a consultant determines that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare.⁷

¹ Health care practitioners are defined in s. 456.001(4), F.S., to include licensed acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, practitioners of electrolysis, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among other professions. These practitioners are regulated by the Division of Medical Quality Assurance within the Department of Health.

² According to s. 456.073(1), F.S., a complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., or any of the practice acts or rules relating to professions regulated by the department. Special requirements apply to complaints filed by state prisoners. The department is statutorily required to investigate all legally sufficient complaints.

³ Section 456.076(3), F.S.

⁴ Section 456.076(2), F.S.

⁵ Section 456.076(3)(a), F.S.

⁶ Professionals Resource Network, *About Us*, <http://www.flprn.org/about.html>. Last accessed March 11, 2013.

⁷ Section 456.076(3)(e), (5), and (6), F.S.

Treatment Programs for Other Impaired Practitioners

The DBPR has no statutory authority under its general provisions in ch. 455, F.S., to create its own impaired practitioner program. However, ch. 455, F.S., does provide for disciplinary action against people who do not fully participate in the program operated by the DOH.

Section 455.227(1)(u), F.S., states that “termination from a treatment program for impaired practitioners as described in s. 456.076, F.S., for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program” is grounds for disciplinary action from the DBPR. Chapter 310, F.S., concerning harbor pilots, and ch. 474, F.S., concerning veterinarians, charge the DBPR with the same duties concerning impaired practitioners as the DOH, but no statute governing any other profession under the DBPR mentions this program.

Part IV of ch. 468, F.S., which governs radiologic technologists, also describes disciplinary consequences of failure to participate in an impaired practitioner program.⁸ However, radiologic technologists are not included in the definition of “health care practitioner” in ch. 456, F.S., and are thus not subject to the impaired practitioner program in s. 456.076, F.S.⁹

Currently, the Professionals Resource Network also treats veterinarians, harbor pilots, and certified public accountants.¹⁰

III. Effect of Proposed Changes:

Section 1 creates a new subsection in s. 20.165, F.S., to state that the DBPR may require that a licensee or license applicant to comply with impaired practitioner program provisions in s. 456.076, F.S., as if he or she were under the jurisdiction of the DOH. This section also grants DBPR and its professional boards the same powers granted to the DOH and its boards under s. 456.076, F.S.

Section 2 amends s. 456.076, F.S., to make technical changes and to state that entities serving as impaired practitioner consultants are not required to be licensed as substance abuse providers or mental health treatment providers under chs. 394, 395, or 397, F.S. This section also allows consultants to assist veterinary students and other practitioners in addition to medical, physician assistant, and nursing students and releases health practitioner schools and veterinary schools from liability for referring students to consultants.

Provisions concerning identification, monitoring, and treatment of impaired health care practitioners in s. 456.076, F.S., are modified to include applicants for licensure under the DOH in addition to current licensees. This section expands the entities which can submit information on a potentially impaired practitioner or license applicant to a consultant to include the appropriate board or the board’s designee in addition to the DOH.

⁸ Section 468.3101(1)(n), F.S.

⁹ Section 456.001(4), F.S.

¹⁰ *Supra* fn. 6.

This section also provides that the consultant is the official custodian of all records relating to any action between an impaired licensee or applicant and the consultant. The consultant may disclose to the practitioner, license applicant, or his or her designee any information that has been obtained by the consultant, but only to the extent that it is necessary to carry out the consultant's duties under s. 456.076, F.S. The DOH and any other entity that has entered into a contract with the consultant for his or her services has direct administrative control over the consultant so as to receive disclosures required by federal law. If a disciplinary proceeding is pending, the impaired practitioner or license applicant may obtain these records from the DOH following procedures in s. 456.073, F.S.¹¹

Section 3 amends s. 458.331, F.S., to require approved treatment providers licensed under the Medical Practice Act to forward information to the DOH or the consultant as the official custodian of records, pursuant to s. 456.076(8), F.S., which this bill adds to statute.

Section 4 amends s. 459.015, F.S., to require approved treatment providers licensed under the Osteopathic Medical Practice Act to forward information to the DOH or the consultant as the official custodian of records, pursuant to s. 456.076(8), F.S., which this bill adds to statute.

Section 5 amends s. 468.315, F.S., to require that radiologic technologists also be subject to the provisions of the impaired practitioner program under s. 456.076, F.S.

Section 6 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Section 456.073(10), F.S., states that any complaint and subsequent investigation relating to a complaint is held confidential and exempt from public record until ten days after probable cause has been found by the appropriate disciplinary panel or until the subject of the investigation waives his or her right to confidentiality, whichever occurs first. Upon completion of the investigation and finding of probable cause, the subject of the investigation has the right to inspect the investigative file after submission of a written request. The subject may also examine the testimony of expert witnesses or patient if he or she agrees to keep this information confidential until ten days after probable cause has been found. Confidentiality of patient records must also be maintained.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Consultants may see an increase in revenue from newly being allowed to assist veterinary students and health practitioner licensure applicants. These students and applicants will bear the costs of their own referral and treatment.

C. Government Sector Impact:

The DBPR may experience an increase in cost if it decides to set up its own impaired practitioner referral program. The DOH may experience an increase in cost from a possible increased volume of impaired professionals identified due to the expansion of eligibility for the impaired practitioner program.

VI. Technical Deficiencies:

Lines 90-94 exempt certain entities from licensure as a substance abuse provider or as a mental health treatment provider. However, this is a very broad statement and might exempt an entity that also provides substances abuse services or mental health services under another program where licensure might be appropriate. An amendment in line 94 is suggested as follows: “under chs. 394, 395, or 397 for purposes of providing services under this program”.

Lines 103-104 and 119-120 refer to licensure as a health care practitioner under ch. 456, F.S. However, no health care practitioners are licensed under this chapter; rather they are licensed under their respective practice acts. This could be amended to read: “health care practitioner as defined under ch. 456...”.

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.)

None.

B. Amendments:

None.