

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 Regulated Industries

BILL: CS/SB 248

INTRODUCER: Health Policy Committee and Senator Thrasher

SUBJECT: Treatment Programs for Impaired Licensees and Applicants

DATE: March 26, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 248 authorizes an entity that employs a registered nurse as an executive director to serve as a consultant. It provides that entities serving as consultants for the impaired practitioner treatment program within the Department of Health (DOH) are not required to be licensed as substance abuse providers or mental health treatment providers for purposes of participating in the program. Consultants are authorized to assist students enrolled in a school or program to become licensed as health care practitioners as defined in ch. 456, F.S., or as veterinarians. The bill releases health care practitioner schools and veterinary schools from liability for referring students to consultants.

The bill states that each board or profession within the Division of Medical Quality Assurance within the DOH has the authority to ask any license applicant to undergo an evaluation for impairment before deciding to certify or not certify the licensure application. If the applicant agrees to undergo such an evaluation, DOH's deadline for certifying or not certifying the application is tolled until the evaluation can be completed and results reported to the appropriate board. 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 substantially amends the following sections of the Florida Statutes: 456.076, 458.331, and 459.015, F.S. This bill creates section 468.315, Florida Statutes.

II. Present Situation:

Treatment Programs for Impaired Health Care Practitioners

Section 456.076, F.S., provides 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 Department of Health (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. The Department of Health 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

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 Section 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.

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

Treatment Programs for Other Impaired Practitioners

The Department of Business and Professional Regulation (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 persons 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 other profession regulated by the DBPR provides an impaired practitioner program.

Section 468.3101(1)(n), F.S., which provides the disciplinary grounds for radiologic personnel, also subjects the licensee to discipline for failing to comply with the recommendations of the department's impaired practitioner program for treatment, evaluation, or monitoring. However, radiological personnel 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.⁸

Currently, the Professionals Resource Network also treats veterinarians, harbor pilots, and certified public accountants.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 456.076(2)(a), F.S., to add an entity that employs an executive director who is a registered nurse to the list of persons eligible to contract with the DOH as an impaired practitioner consultant.

The bill amends s. 456.076(2)(b), F.S., to provide that entities serving as consultants are not required to be licensed as substance abuse providers or mental health treatment providers under chs. 394, 395, or 397, F.S., for purposes of participating in the impaired practitioner treatment program.

The bill amends s. 456.076(2)(c), F.S., to provide that consultants are authorized to contract with schools or programs to assist students enrolled to become licensed as health care practitioners or veterinarians. It deletes the current provision that limits the provision to students enrolled to become medical and osteopathic physicians and their assistants, nurses, and pharmacists.

⁶ See Professionals Resource Network, located at: <http://www.flprn.org/about.html> (Last visited March 26, 2013).

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

⁸ See s. 456.001(4), F.S.

⁹ *Supra* note 6.

The bill amends s. 456.076(2)(d), F.S., to provide liability protection for health care practitioner schools and veterinary schools for referring students to consultants.

The bill amends s. 456.076(3), F.S., to provide that each board or profession within the Division of Medical Quality Assurance has the authority to refer any licensure applicant to a consultant to determine if he or she is impaired. This referral may be conducted before the board or profession decides whether to certify the license application. If the applicant agrees to be evaluated by a consultant, the DOH's deadline to approve or deny the licensure application¹⁰ is tolled until the evaluation is completed and the consultant's recommendation has been conveyed to the appropriate board. If the applicant refuses an evaluation, the board may approve or deny the license application.

The bill creates s. 456.076(3), F.S., to provide that the consultant is the official custodian of all records relating to any action between an impaired practitioner 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 Department of Health 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 2 amends s. 458.331(1)(e), 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 in accordance with the impaired practitioner requirements in s. 456.076, F.S.

Section 3 amends s. 459.015(1)(e), F.S., to also 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 in accordance with the impaired practitioner requirements in s. 456.076, F.S.

Section 4 creates s. 468.315, F.S., to provide that radiologic personnel are subject to the provisions of the impaired practitioner program under s. 456.076, F.S.

Section 5 provides an effective date of July 1, 2013.

¹⁰ Section 120.60(1), F.S., provides a maximum period of 90 days for an agency to approve a completed application for a license.

¹¹ Section 456.073(10), F.S., states that any complaint and subsequent investigation relating to a complaint is held confidential and exempt from disclosure as a public record under s. 119.07(1), F.S., 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.

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:

Consultants may see an increase in revenue from the expanded pool of students, 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:

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 Health Policy on March 14, 2013:

The CS eliminates the amendment to s. 20.165, F.S., which would have allowed DBPR to 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

amendment also granted DBPR and its professional boards the same powers granted to the DOH and its boards under s. 456.076, F.S.

The CS clarifies that consultants do not need to be licensed as substance abuse providers or mental health treatment providers for the purposes of providing services under the impaired practitioner treatment program. The CS also clarifies that consultants are authorized to assist students enrolled in a school or program to become licensed as health care practitioners as defined in ch. 456, F.S.

The CS eliminates the bill's original expansion of provisions concerning identification, monitoring, and treatment of impaired health care practitioners to include applicants for licensure under the DOH in addition to current licensees. Instead, the CS provides that each board or profession may evaluate licensure applicants for impairment before deciding whether to certify or not certify the application. If the applicant agrees to undergo evaluation by a consultant, the DOH's deadline for certifying or not certifying a licensure application is tolled until the evaluation is concluded and the results have been relayed to the appropriate board.

The CS also removes the bill's expansion of entities who can submit information on a potentially impaired practitioner or license applicant to a consultant; only DOH may submit such information. The CS also makes some technical amendments to numbering of subsections to correspond to changes made in the bill.

B. Amendments:

None.