

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 639 Practitioners  
**SPONSOR(S):** Health Quality Subcommittee; Harrell  
**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Poche	O'Callaghan
2) Appropriations Committee	26 Y, 0 N	Rodriguez	Leznoff
3) Health & Human Services Committee	16 Y, 0 N	Poche	Calamas

### SUMMARY ANALYSIS

CS/HB 639 directs certain fees collected by the Department of Health (DOH) for examination, certification, and recertification of emergency medical technicians and paramedics to be deposited into the Medical Quality Assurance Trust Fund.

The bill requires the Department of Financial Services (DFS) to provide legal representation to an impaired practitioner consultant, under contract with DOH to provide services under the impaired practitioner program, and certain agents in any action or proceeding for injunctive, affirmative, or declaratory relief as a result of an act or omission, if that act or omission occurred within the scope of the contract. DFS is currently required to provide legal representation to the same parties in other specific legal actions.

The bill appears to have a minimal fiscal impact on state government.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### *Medical Transportation Services*

Part III of ch. 401, F.S., applies to medical transportation services, and provides for:

- Training and certification of emergency medical technicians (EMTs) and paramedics.<sup>1</sup>
- Licensure of emergency medical service (EMS) providers and permitting of EMS vehicles.<sup>2</sup>
- Development of a comprehensive state plan for basic and advanced life support services, the EMS grants program, trauma centers, the injury control program, and medical disaster preparedness.<sup>3</sup>
- Approval of any program for the education of EMTs and paramedics at any public or private institution.<sup>4</sup>
- Establishing the Emergency Medical Services Advisory Council and detailing its duties.<sup>5</sup>
- Examination and inspection of licensees.<sup>6</sup>
- Imposing fees for certain organizations and persons.<sup>7</sup>

Florida currently has 38,053 certified EMTs and 28,191 certified paramedics.<sup>8</sup> There are 274 licensed EMS providers in the state, with more than 4,300 permitted vehicles.<sup>9</sup> Under the provisions of part I, chapter 401, F.S., 136 EMS providers were inspected in 2012.<sup>10</sup>

##### *Fees Imposed for Medical Transportation Services*

Section 401.34, F.S., establishes the following fee schedule payable by personnel, programs, or services subject to part I, chapter 401, F.S.:

- Basic life support service license application - \$660, biennially;
- Advanced life support service license application - \$1,375, biennially;
- Original or renewal vehicle permit application for basic or advanced life support - \$25, biennially;
- EMT certification examination application - \$40;
- EMT original certificate application - \$35;
- EMT renewal certificate application - \$20, biennially;
- Paramedic certification examination application - \$40;
- Paramedic original certificate application - \$45;
- Paramedic renewal certificate application - \$45, biennially;
- Air ambulance service application - \$1,375, biennially; and
- Original or renewal aircraft permit application for air ambulance - \$25, biennially.

All fees must be deposited into the Emergency Medical Services Trust Fund and used only for salaries and expenses incurred by DOH in administering part I of chapter 401, F.S.<sup>11</sup>

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<sup>1</sup> S. 401.27, F.S.

<sup>2</sup> SS. 401.25, 401.251, and 401.26, F.S.

<sup>3</sup> S. 401.24, F.S.

<sup>4</sup> S. 401.2701, F.S.

<sup>5</sup> S. 401.245, F.S.

<sup>6</sup> S. 401.31, F.S.

<sup>7</sup> S. 401.34, F.S.

<sup>8</sup> Florida Department of Health, Emergency Medical Services Program, *EMS Program Highlights-January 2013*, page 1, available at [www.doh.state.fl.us/demo/ems/EMSAC/ACPDFS/SBRHighlightsJan2013.pdf](http://www.doh.state.fl.us/demo/ems/EMSAC/ACPDFS/SBRHighlightsJan2013.pdf).

<sup>9</sup> Id.

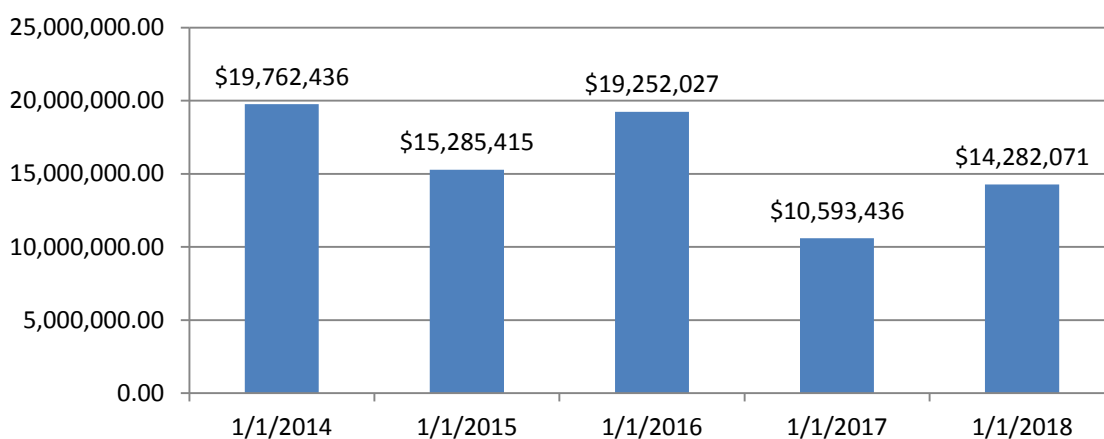
<sup>10</sup> Id. at page 2.

## Medical Quality Assurance Trust Fund

The Medical Quality Assurance Trust Fund (MQATF) was created in 1997 and re-created as required by law in subsequent years.<sup>12</sup> The MQATF is administered by DOH and funded with fees and fines related to the licensing of health care professionals.<sup>13</sup> Funds in the MQATF must be used for administrative support for the regulation of health care professionals and other appropriate purposes.<sup>14</sup> For fiscal year 2012-2013, budget appropriations from the MQATF totaled \$58,904,271; more than half of the appropriations were dedicated to funding 600 Full-Time Equivalents (FTEs) within the Division of Medical Quality Assurance (MQA).<sup>15</sup> As of March 19, 2013, the MQATF had undisbursed appropriations totaling \$34,208,442.67.<sup>16</sup>

The following chart shows the projected ending cash balance for the MQATF for the next five fiscal years:<sup>17</sup>

### Projected Ending Cash Balance for MQATF FY 2014-2018



## Health Care Professions

DOH is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include MQA. MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under chapter 457.
- The Board of Medicine, created under chapter 458.
- The Board of Osteopathic Medicine, created under chapter 459.
- The Board of Chiropractic Medicine, created under chapter 460.
- The Board of Podiatric Medicine, created under chapter 461.
- Naturopathy, as provided under chapter 462.
- The Board of Optometry, created under chapter 463.
- The Board of Nursing, created under part I of chapter 464.

<sup>11</sup> S. 401.34(2), F.S.

<sup>12</sup> S. 1, ch. 97-119, L.O.F.; the MQATF was subsequently recreated in 2000 (s. 1, ch. 2000-47), and 2004 (s.1, ch. 2004-176). In 2004, a provision requiring that the MQATF be terminated on a date certain appears to have been written out of s. 20.435, F.S. The MQATF has been in effect continuously since 2004.

<sup>13</sup> S. 20.435(4)(a), F.S.

<sup>14</sup> Id.

<sup>15</sup> S. 3, ch. 2012-118, L.O.F. (lines 562-572).

<sup>16</sup> 2012-13 Trust Fund Detail-Cash/Investment Balance, available at

<http://www.transparencyflorida.gov/TrustFundDetailReport.aspx?FY=13&RT=TF&Option=&BE=64&Fund=2352>.

<sup>17</sup> Email correspondence from DOH to Florida House of Rep. policy staff, MQA Trust Fund Information Request, March 20, 2013 (on file with the Florida House of Rep. Health Quality Subcommittee).

- Nursing assistants, as provided under part II of chapter 464.
- The Board of Pharmacy, created under chapter 465.
- The Board of Dentistry, created under chapter 466.
- Midwifery, as provided under chapter 467.
- The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- The Board of Nursing Home Administrators, created under part II of chapter 468.
- The Board of Occupational Therapy, created under part III of chapter 468.
- Respiratory therapy, as provided under part V of chapter 468.
- Dietetics and nutrition practice, as provided under part X of chapter 468.
- The Board of Athletic Training, created under part XIII of chapter 468.
- The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- Electrolysis, as provided under chapter 478.
- The Board of Massage Therapy, created under chapter 480.
- The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- Medical physicists, as provided under part IV of chapter 483.
- The Board of Opticianry, created under part I of chapter 484.
- The Board of Hearing Aid Specialists, created under part II of chapter 484.
- The Board of Physical Therapy Practice, created under chapter 486.
- The Board of Psychology, created under chapter 490.
- School psychologists, as provided under chapter 490.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.
- Emergency medical technicians and paramedics, as provided under part III of chapter 401.

DOH regulates most health care practitioners and professions.<sup>18</sup> Each practitioner or profession is governed by an individual practice act and by ch. 456, F.S., which is considered the core licensure statute for all health care practitioners within MQA.

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

The definition of health care practitioner does not include EMTs, paramedics<sup>19</sup> or radiology technologists.<sup>20</sup> However, s. 456.001, F.S., defines the term “profession” to mean any activity, occupation, profession, or vocation regulated by DOH within MQA, and EMTs and paramedics are listed as a “profession” regulated by MQA under s. 20.43, F.S. Therefore, EMTs and paramedics are a *profession* governed by ch. 456, F.S.

### *Impaired Practitioner Treatment Program*

The impaired practitioner treatment program (program) was created to help rehabilitate health care practitioners regulated by the MQA, within DOH.<sup>21</sup> Health care practitioners (practitioners), who are impaired as a result of drug or alcohol abuse or because of mental or physical conditions which could

<sup>18</sup> The Department of Business and Professional Regulation regulates veterinarians pursuant to ch. 474, F.S.

<sup>19</sup> EMT and paramedics are governed by part III of ch. 401, F.S.

<sup>20</sup> Radiation technologists are governed by part IV of ch. 468, F.S.

<sup>21</sup> Section 456.076, (1), F.S.

affect their ability to practice with skill and safety, are eligible for the program.<sup>22</sup> For professions that do not have programs established within their individual practice act, DOH is required by rule, to designate an approved program.

Section 456.076, F.S., authorizes DOH to contract with impaired practitioner consultants for services relating to intervention, evaluation, referral, and monitoring of impaired practitioners who have voluntarily agreed to treatment through a program.<sup>23</sup> The cost of the actual treatment is the responsibility of the impaired person. Currently, there are two vendors under contract with DOH to support the program: the Intervention Project for Nurses (IPN)<sup>24</sup> and the Professionals Resource Network (PRN).<sup>25</sup> The PRN provides services to all eligible professions except nurses. The PRN program is affiliated with the Florida Medical Association.

By entering and successfully completing the program, a practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment.<sup>26</sup> If the practitioner is unable to complete the program, DOH has authority to issue an emergency order suspending or restricting the license of the practitioner.<sup>27</sup>

Currently, DOH has a contract with PRN to provide services to the following professions:<sup>28</sup>

Medical Doctors	Chiropractic Physicians
Physician Assistants	Clinical Social Workers
Osteopathic Physicians	Marriage and Family Therapists
Pharmacists	Mental Health Counselors
Podiatric Physicians	Optometrists
Psychologists	Nursing Home Administrators
Dentists	Medical Physicists
Opticians	Dieticians
Occupational Therapists	Nutritionists
Physical Therapists	Respiratory Therapists
Electrologists	Midwives
Acupuncturists	Speech Language Pathologists
Audiologists	Clinical Laboratory Personnel
Massage Therapists	Athletic Trainers
Orthotists	Orthotists
Prosthetists	Hearing Aid Specialists
Radiologic Technologists	Pharmacy Technicians
Anesthesia Assistants	

### Effect of Proposed Changes

The bill revises s. 401.34, F.S., to redirect the payment of certain fees to the MQATF. Currently, all fees required to be paid by organizations or persons under part I of chapter 401, F.S., must be deposited into the Emergency Medical Services Trust Fund. The bill requires all fees to be paid by EMTs and paramedics relating to examination and initial and renewal certification to be deposited into the MQATF. Fees required to be paid by organizations for certain service applications and permits will continue to be deposited into the Emergency Medical Services Trust Fund.

<sup>22</sup> Section 456.076 (3)(a), F.S.

<sup>23</sup> Rules 64B31-10.10.001 and 64B31-10.002, F.A.C.

<sup>24</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 349 (which also relates to impaired practitioner consultants), dated January 22, 2013.

<sup>25</sup> Id.

<sup>26</sup> Section 456.076(3)(a), F.S.

<sup>27</sup> Section 456.074, F.S.

<sup>28</sup> Department of Health Contract with PRN, signed July 01, 2010, on file with committee staff.

The bill requires DFS to defend an impaired practitioner consultant, the consultant's officers and employees, and any person acting at the direction of the consultant in certain emergency intervention situations when the consultant is not available against a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief arising out of an act or omission committed by the specified actors, if the act or omission is within the scope of the consultant's duties under the contract with DOH. Current law requires DFS to defend the same parties against any claim, suit, action, or proceeding arising out of identical circumstances. The proposed requirement that DFS defend the parties in additional legal proceedings offers a near comprehensive range of representation in actions that could be brought against an impaired practitioner consultant, or its agents, for acting or not acting under the contract to provide services to impaired practitioners.

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

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 401.34, F.S., relating to fees.

**Section 2:** Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.

**Section 3:** Provides an effective date of July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill is revenue neutral; it simply realigns revenues between DOH trust funds.

**2. Expenditures:**

The bill requires the DFS to defend an impaired practitioner consultant, the consultant's officers or employees, or a person acting at the direction of the consultant in limited circumstances against a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief arising out of an act or omission in the scope of the consultant's duties under the contract with the DOH. DFS may need to hire, purchase, or otherwise obtain additional legal resources, including attorneys, paralegals, administrative assistants, computer hardware and software, office space, office supplies, and other personnel and equipment in order to provide the legal representation required under the bill. However, the potential expenditures may be absorbed within existing agency resources within DFS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill requires certain fees payable by EMTs and paramedics for application, certification, and recertification to be deposited into the MQATF. These fees are currently paid into the Emergency Medical Services Trust Fund (EMSTF). DOH may need to internally realign existing trust fund authority from the EMSTF to the MQATF in order to maintain funding for current FTEs and avoid reductions in services associated with the proposed redirection of fee revenue.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment made the following changes to the bill:

- Clarified that certain fees payable by EMTs and paramedics for examination, certification, and recertification will be deposited in the MQATF, instead of the Emergency Medical Services Trust Fund.
- Removed provisions that permitted an impaired practitioner consultant or an agent of an impaired practitioner consultant to have access to the Prescription Drug Monitoring Program (PDMP) database

and confidential records of the PDMP in certain circumstances and only with the written consent of an impaired practitioner enrolled in the impaired practitioner program.

The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.