



205800

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/02/2017 05:36 PM

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Senator Young moved the following:

Senate Amendment (with title amendment)

Delete lines 294 - 567

and insert:

(b) For practitioners who are employed by governmental entities and who are also certified by the department pursuant to part III of chapter 401, the department may not refer the practitioner to the consultant if the practitioner is under a referral by the practitioner's employer to an employee assistance program through the governmental entity. If the practitioner fails to satisfactorily complete the employee



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12 assistance program or if his or her employment is terminated,
13 his or her employer must immediately notify the department,
14 which shall then refer the practitioner to the consultant as
15 required in paragraph (a). For purposes of this paragraph, the
16 term "governmental entity" has the same meaning as provided in
17 s. 70.001(3) (c).

18 (c) To encourage practitioners who are or may be impaired
19 to voluntarily self-refer to a consultant, the consultant may
20 not, unless authorized by the participant, provide information
21 to the department relating to a self-referring participant if
22 the consultant does not know of a pending department
23 investigation, complaint, or disciplinary action against the
24 participant and the participant is in compliance and making
25 progress with the terms of the impaired practitioner program and
26 contract ~~If, however, the department has not received a legally~~
27 ~~sufficient complaint and the licensee agrees to withdraw from~~
28 ~~practice until such time as the consultant determines the~~
29 ~~licensee has satisfactorily completed an approved treatment~~
30 ~~program or evaluation, the probable cause panel, or the~~
31 ~~department when there is no board, shall not become involved in~~
32 ~~the licensee's case.~~

33 ~~(c) Inquiries related to impairment treatment programs~~
34 ~~designed to provide information to the licensee and others and~~
35 ~~which do not indicate that the licensee presents a danger to the~~
36 ~~public shall not constitute a complaint within the meaning of s.~~
37 ~~456.073 and shall be exempt from the provisions of this~~
38 ~~subsection.~~

39 ~~(d) Whenever the department receives a legally sufficient~~
40 ~~complaint alleging that a licensee is impaired as described in~~



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41 ~~paragraph (a) and no complaint against the licensee other than~~
42 ~~impairment exists, the department shall forward all information~~
43 ~~in its possession regarding the impaired licensee to the~~
44 ~~consultant. For the purposes of this section, a suspension from~~
45 ~~hospital staff privileges due to the impairment does not~~
46 ~~constitute a complaint.~~

47 ~~(e) The probable cause panel, or the department when there~~
48 ~~is no board, shall work directly with the consultant, and all~~
49 ~~information concerning a practitioner obtained from the~~
50 ~~consultant by the panel, or the department when there is no~~
51 ~~board, shall remain confidential and exempt from the provisions~~
52 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
53 ~~and (7).~~

54 ~~(f) A finding of probable cause shall not be made as long~~
55 ~~as the panel, or the department when there is no board, is~~
56 ~~satisfied, based upon information it receives from the~~
57 ~~consultant and the department, that the licensee is progressing~~
58 ~~satisfactorily in an approved impaired practitioner program and~~
59 ~~no other complaint against the licensee exists.~~

60 ~~(10)(5)~~ In any disciplinary action for a violation other
61 than impairment in which a practitioner licensee establishes
62 that the violation for which the practitioner licensee is being
63 prosecuted was due to or connected with impairment, and further
64 establishes that the practitioner licensee is satisfactorily
65 progressing through or has successfully completed an impaired
66 practitioner program ~~approved treatment program~~ pursuant to this
67 section, such information may be considered by the board, or the
68 department when there is no board, as a mitigating factor in
69 determining the appropriate penalty. This subsection does not



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70 limit the mitigating factors that may be considered by the board
71 ~~may consider.~~

72 (11) (a) ~~(6) (a)~~ Upon request by the consultant, and with the
73 authorization of the practitioner when such authorization is
74 required by law, an approved evaluator, treatment program, or
75 treatment provider shall, ~~upon request,~~ disclose to the
76 consultant all information in its possession regarding a
77 referral or the participant ~~the issue of a licensee's impairment~~
78 and participation in the treatment program. All information
79 obtained by the consultant and department pursuant to this
80 section is confidential and exempt from the provisions of s.
81 119.07(1), ~~subject to the provisions of this subsection and~~
82 ~~subsection (7).~~ Failure to provide such information to the
83 consultant is grounds for withdrawal of approval of such
84 evaluator, treatment program, or treatment provider.

85 (b) If a referral to or participant in an impaired
86 practitioner program is terminated for material noncompliance
87 with a participant contract, inability to progress, or any
88 reason other than completion, the consultant shall disclose to
89 the department ~~If in the opinion of the consultant, after~~
90 consultation with the treatment provider, an impaired licensee
91 has not progressed satisfactorily in a treatment program, all
92 information regarding the issue of a licensee's impairment and
93 participation in a treatment program in the consultant's
94 possession relating to the practitioner shall be disclosed to
95 the department. Such disclosure shall constitute a complaint
96 pursuant to the general provisions of s. 456.073. In addition,
97 whenever the consultant concludes that impairment affects a
98 practitioner's licensee's practice and constitutes an immediate,



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99 serious danger to the public health, safety, or welfare, the
100 consultant shall immediately communicate that conclusion shall
101 be communicated to the department, disclosing all information in
102 the consultant's possession relating to the practitioner State
103 Surgeon General.

104 (12) Information obtained by the consultant pursuant to
105 this section is confidential and exempt from s. 119.07(1) and s.
106 24(a), Art. I of the State Constitution.

107 (13) ~~(7)~~ A consultant, or a director, officer, employee, or
108 agent of a consultant, may not be held liable financially and
109 may not have a cause of action for damages brought against him
110 or her for making a disclosure pursuant to this section, for any
111 other action or omission relating to the impaired practitioner
112 program, or for the consequences of such disclosure or action or
113 omission, including, without limitation, action by the
114 department against a license, registration, or certification
115 licensee, or approved treatment provider who makes a disclosure
116 pursuant to this section is not subject to civil liability for
117 such disclosure or its consequences.

118 (14) Section 766.101 applies ~~The provisions of s. 766.101~~
119 ~~apply~~ to any consultant and the consultant's directors,
120 officers, employees, or agents with regard to information
121 relating to a participant to a medical review committee if the
122 participant authorizes such disclosure ~~officer, employee, or~~
123 ~~agent of the department or the board and to any officer,~~
124 ~~employee, or agent of any entity with which the department has~~
125 ~~contracted pursuant to this section.~~

126 (15) (a) ~~(8) (a)~~ A consultant retained pursuant to this
127 section and ~~subsection (2),~~ a consultant's directors, officers,



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128 ~~and employees, or agents and those acting at the direction of~~
129 ~~the consultant for the limited purpose of an emergency~~
130 ~~intervention on behalf of a licensee or student as described in~~
131 ~~subsection (2) when the consultant is unable to perform such~~
132 ~~intervention shall be considered agents of the department for~~
133 ~~purposes of s. 768.28 while acting within the scope of the~~
134 ~~consultant's duties under the contract with the department if~~
135 ~~the contract complies with the requirements of this section. The~~
136 ~~contract must require that:~~

137 ~~1. The consultant indemnify the state for any liabilities~~
138 ~~incurred up to the limits set out in chapter 768.~~

139 ~~2. The consultant establish a quality assurance program to~~
140 ~~monitor services delivered under the contract.~~

141 ~~3. The consultant's quality assurance program, treatment,~~
142 ~~and monitoring records be evaluated quarterly.~~

143 ~~4. The consultant's quality assurance program be subject to~~
144 ~~review and approval by the department.~~

145 ~~5. The consultant operate under policies and procedures~~
146 ~~approved by the department.~~

147 ~~6. The consultant provide to the department for approval a~~
148 ~~policy and procedure manual that comports with all statutes,~~
149 ~~rules, and contract provisions approved by the department.~~

150 ~~7. The department be entitled to review the records~~
151 ~~relating to the consultant's performance under the contract for~~
152 ~~the purpose of management audits, financial audits, or program~~
153 ~~evaluation.~~

154 ~~8. All performance measures and standards be subject to~~
155 ~~verification and approval by the department.~~

156 ~~9. The department be entitled to terminate the contract~~



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157 ~~with the consultant for noncompliance with the contract.~~
158 (b) In accordance with s. 284.385, the Department of
159 Financial Services shall defend any claim, suit, action, or
160 proceeding, including a claim, suit, action, or proceeding for
161 injunctive, affirmative, or declaratory relief, against the
162 consultant, or the consultant's directors, officers, or
163 employees, or agents brought as the result of any action or
164 omission relating to the impaired practitioner program ~~those~~
165 ~~acting at the direction of the consultant for the limited~~
166 ~~purpose of an emergency intervention on behalf of a licensee or~~
167 ~~student as described in subsection (2) when the consultant is~~
168 ~~unable to perform such intervention, which claim, suit, action,~~
169 ~~or proceeding is brought as a result of an act or omission by~~
170 ~~any of the consultant's officers and employees and those acting~~
171 ~~under the direction of the consultant for the limited purpose of~~
172 ~~an emergency intervention on behalf of the licensee or student~~
173 ~~when the consultant is unable to perform such intervention, if~~
174 ~~the act or omission arises out of and is in the scope of the~~
175 ~~consultant's duties under its contract with the department.~~
176 (16)(e) If a the consultant retained by the department
177 pursuant to this section subsection (2) is also retained by
178 another any other state agency to operate an impaired
179 practitioner program for that agency, this section also applies
180 to the consultant's operation of an impaired practitioner
181 program for that agency, and if the contract between such state
182 agency and the consultant complies with the requirements of this
183 section, the consultant, the consultant's officers and
184 employees, and those acting under the direction of the
185 consultant for the limited purpose of an emergency intervention



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186 ~~on behalf of a licensee or student as described in subsection~~
187 ~~(2) when the consultant is unable to perform such intervention~~
188 ~~shall be considered agents of the state for the purposes of this~~
189 ~~section while acting within the scope of and pursuant to~~
190 ~~guidelines established in the contract between such state agency~~
191 ~~and the consultant.~~

192 ~~(17)-(9) A~~ An impaired practitioner consultant is the
193 official custodian of records relating to the referral of an
194 impaired licensee or applicant to that consultant and any other
195 interaction between the licensee or applicant and the
196 consultant. The consultant may disclose to a referral or
197 participant, or to the legal representative of the referral or
198 participant, the documents, records, or other information from
199 the consultant's file, including information received by the
200 consultant from other sources, and information on the terms
201 required for the referral's or participant's monitoring
202 contract, the referral's or participant's progress or inability
203 to progress, the referral's or participant's discharge or
204 termination, information supporting the conclusion of material
205 noncompliance, or any other information required by law ~~the~~
206 ~~impaired licensee or applicant or his or her designee any~~
207 ~~information that is disclosed to or obtained by the consultant~~
208 ~~or that is confidential under paragraph (6) (a), but only to the~~
209 ~~extent that it is necessary to do so to carry out the~~
210 ~~consultant's duties under this section. The department, and any~~
211 ~~other entity that enters into a contract with the consultant to~~
212 ~~receive the services of the consultant, has direct~~
213 ~~administrative control over the consultant to the extent~~
214 ~~necessary to receive disclosures from the consultant as allowed~~



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215 ~~by federal law.~~ If a consultant discloses information to the
216 department in accordance with this part, a referral or
217 participant, or his or her legal representative, may obtain a
218 complete copy of the consultant's file from the consultant or
219 disciplinary proceeding is pending, an impaired licensee may
220 ~~obtain such information from~~ the department under s. 456.073.

221 (18) (a) The consultant may contract with a school or
222 program to provide impaired practitioner program services to a
223 student enrolled for the purpose of preparing for licensure as a
224 health care practitioner as defined in this chapter or as a
225 veterinarian under chapter 474 if the student has or is
226 suspected of having an impairment. The department is not
227 responsible for paying for the care provided by approved
228 treatment providers or approved treatment programs or for the
229 services provided by a consultant to a student.

230 (b) A medical school accredited by the Liaison Committee on
231 Medical Education or the Commission on Osteopathic College
232 Accreditation, or another school providing for the education of
233 students enrolled in preparation for licensure as a health care
234 practitioner as defined in this chapter, or as a veterinarian
235 under chapter 474, which is governed by accreditation standards
236 requiring notice and the provision of due process procedures to
237 students, is not liable in any civil action for referring a
238 student to the consultant retained by the department or for
239 disciplinary actions that adversely affect the status of a
240 student when the disciplinary actions are instituted in
241 reasonable reliance on the recommendations, reports, or
242 conclusions provided by such consultant, if the school, in
243 referring the student or taking disciplinary action, adheres to



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244 the due process procedures adopted by the applicable
245 accreditation entities and committed no intentional fraud in
246 acting under this section.

247 Section 2. Effective December 31, 2018, or upon enactment
248 of the Nurse Licensure Compact into law by 26 states, whichever
249 occurs first, subsection (9) of section 456.076, Florida
250 Statutes, as amended by section 2 of chapter 2016-139, Laws of
251 Florida, is amended to read:

252 456.076 Impaired practitioner programs.—

253 ~~(16)(9) A An impaired practitioner consultant is the~~
254 ~~official custodian of records relating to the referral of an~~
255 ~~impaired licensee or applicant to that consultant and any other~~
256 ~~interaction between the licensee or applicant and the~~
257 ~~consultant. The consultant may disclose to a referral or~~
258 ~~participant, or to the legal representative of the referral or~~
259 ~~participant, the documents, records, or other information from~~
260 ~~the consultant's file, including information received by the~~
261 ~~consultant from other sources; information on the terms required~~
262 ~~for the referral's or participant's monitoring contract, the~~
263 ~~referral's or participant's progress or inability to progress,~~
264 ~~or the referral's or participant's discharge or termination;~~
265 ~~information supporting the conclusion of material noncompliance;~~
266 ~~or any other information required by law the impaired licensee~~
267 ~~or applicant or his or her designee any information that is~~
268 ~~disclosed to or obtained by the consultant or that is~~
269 ~~confidential under paragraph (6) (a), but only to the extent that~~
270 ~~it is necessary to do so to carry out the consultant's duties~~
271 ~~under this section. The department, and any other entity that~~
272 ~~enters into a contract with the consultant to receive the~~



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273 ~~services of the consultant, has direct administrative control~~
274 ~~over the consultant to the extent necessary to receive~~
275 ~~disclosures from the consultant as allowed by federal law. The~~
276 consultant must disclose to the department, upon the
277 department's request, whether an applicant for a multistate
278 license under s. 464.0095 is participating in a treatment
279 program and must report to the department when a nurse holding a
280 multistate license under s. 464.0095 enters a treatment program.
281 A nurse holding a multistate license pursuant to s. 464.0095
282 must report to the department within 2 business days after
283 entering a treatment program pursuant to this section. If a
284 consultant discloses information to the department in accordance
285 with this part, a referral or participant, or his or her legal
286 representative, may obtain a complete copy of the consultant's
287 file from the consultant or disciplinary proceeding is pending,
288 ~~an impaired licensee may obtain such information from the~~
289 department under s. 456.073.

290 Section 3. Section 456.0495, Florida Statutes, is created
291 to read:

292 456.0495 Reporting adverse incidents occurring in out-of-
293 hospital births.-

294 (1) A midwife licensed under chapter 467 or a health care
295 provider, as applicable, shall report any adverse incident, as
296 defined by department rule, occurring as a result of an
297 attempted or completed out-of-hospital or planned birthing
298 center birth or, along with a medical summary of events, to the
299 department within 15 days after the adverse incident occurs.

300 (2) The department shall adopt rules establishing
301 guidelines for reporting adverse incidents, including, but not



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302 limited to:

303 (a) Maternal deaths that occur during delivery or within 42
304 days after delivery.

305 (b) Transfers of maternal patients to a hospital intensive
306 care unit.

307 (c) Maternal patients who experience hemorrhagic shock or
308 who require a transfusion of more than 4 units of blood or blood
309 products.

310 (d) Fetal or infant deaths, including stillbirths,
311 associated with obstetrical deliveries.

312 (e) Transfers of infants to a neonatal intensive care unit
313 due to a traumatic physical or neurological birth injury,
314 including any degree of a brachial plexus injury.

315 (f) Transfers of infants to a neonatal intensive care unit
316 within the first 72 hours after birth if the infant remains in
317 such a unit for more than 72 hours.

318

319 ===== T I T L E A M E N D M E N T =====

320 And the title is amended as follows:

321 Delete lines 9 - 39

322 and insert:

323 consultants work with the department in intervention,
324 in evaluating and treating professionals, in providing
325 and monitoring continued care of impaired
326 professionals, and in expelling professionals from the
327 program; authorizing, instead of requiring, the
328 department to retain one or more consultants to
329 operate its impaired practitioner program; requiring
330 the department to establish the terms and conditions



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331 of the program by contract; providing contract terms;
332 requiring consultants to establish the terms of
333 monitoring impaired practitioners; authorizing
334 consultants to consider the recommendations of certain
335 persons in establishing the terms of monitoring;
336 authorizing consultants to modify monitoring terms to
337 protect the health, safety, and welfare of the public;
338 requiring consultants to assist the department and
339 licensure boards on matters relating to impaired
340 practitioners; making technical changes; requiring the
341 department to refer practitioners to consultants under
342 certain circumstances; authorizing consultants to
343 withhold certain information about self-reporting
344 participants from the department under certain
345 circumstances to encourage self-reporting; requiring
346 consultants to disclose all information relating to
347 practitioners who are terminated from the program for
348 material noncompliance; providing that all information
349 obtained by a consultant retains its confidential or
350 exempt status; providing that consultants, and certain
351 agents of consultants, may not be held liable
352 financially or have a cause of action for damages
353 brought against them for disclosing certain
354 information or for any other act or omission relating
355 to the program; authorizing consultants to contract
356 with a school or program to provide services to
357 certain students; creating s. 456.0495, F.S.;

358 requiring licensed midwives and health care providers
359 to report adverse incidents to the department within a



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360 certain period; requiring the department to adopt
361 rules establishing guidelines for reporting specified
362 adverse incidents; amending s. 456.0635, F.S.;