

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Byrd offered the following:

4

5 **Amendment**

6 Remove lines 46-393 and insert:

7 (e) "Impairment" means an impairing health condition that
8 is the result of the misuse or abuse of alcohol, drugs, or both,
9 or a mental or physical condition which could affect a
10 practitioner's ability to practice with skill and safety.

11 (f) "Inability to progress" means a determination by a
12 consultant based on a participant's response to treatment and
13 prognosis that the participant is unable to safely practice
14 despite compliance with treatment requirements and his or her
15 participant contract.

16 (g) "Material noncompliance" means an act or omission by a

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17 participant in violation of his or her participant contract as
18 determined by the department or consultant.

19 (h) "Participant" means a practitioner who is
20 participating in the impaired practitioner program by having
21 entered into a participant contract. A practitioner ceases to be
22 a participant when the participant contract is successfully
23 completed or is terminated for any reason.

24 (i) "Participant contract" means a formal written document
25 outlining the requirements established by a consultant for a
26 participant to successfully complete the impaired practitioner
27 program, including the participant's monitoring plan.

28 (j) "Practitioner" means a person licensed, registered,
29 certified, or regulated by the department under part III of
30 chapter 401; chapters 457 through 467; parts I, II, III, V, X,
31 XIII, or XIV of chapter 468; chapter 478; chapter 480; part III
32 or IV of chapter 483; chapter 484; chapter 486; chapter 490; or
33 chapter 491, Florida Statutes; or an applicant under the same
34 laws.

35 (k) "Referral" means a practitioner who has been referred,
36 either as a self-referral or otherwise, or reported to a
37 consultant for impaired practitioner program services but who is
38 not under a participant contract.

39 (l) "Treatment program" means a department or consultant-
40 approved residential, intensive outpatient, partial
41 hospitalization, or other program through which an impaired

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42 practitioner is treated based on the impaired practitioner's
43 diagnosis and the treatment plan approved by the consultant.

44 (m) "Treatment provider" means a department or consultant-
45 approved state-licensed or nationally-certified individual who
46 provides treatment to an impaired practitioner based on the
47 practitioner's individual diagnosis and a treatment plan
48 approved by the consultant ~~For professions that do not have~~
49 ~~impaired practitioner programs provided for in their practice~~
50 ~~acts, the department shall, by rule, designate approved impaired~~
51 ~~practitioner programs under this section. The department may~~
52 ~~adopt rules setting forth appropriate criteria for approval of~~
53 ~~treatment providers. The rules may specify the manner in which~~
54 ~~the consultant, retained as set forth in subsection (2), works~~
55 ~~with the department in intervention, requirements for evaluating~~
56 ~~and treating a professional, requirements for continued care of~~
57 ~~impaired professionals by approved treatment providers,~~
58 ~~continued monitoring by the consultant of the care provided by~~
59 ~~approved treatment providers regarding the professionals under~~
60 ~~their care, and requirements related to the consultant's~~
61 ~~expulsion of professionals from the program.~~

62 (2) (a) The department may ~~shall~~ retain one or more
63 impaired practitioner consultants to operate its impaired
64 practitioner program. Each consultant ~~who are each licensees~~
65 ~~under the jurisdiction of the Division of Medical Quality~~
66 ~~Assurance within the department and who must be:~~

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67 1. A practitioner ~~or recovered practitioner~~ licensed under
68 chapter 458, chapter 459, or part I of chapter 464; or

69 2. An entity that employs:

70 a. A medical director who is ~~must be a practitioner or~~
71 ~~recovered practitioner~~ licensed under chapter 458 or chapter
72 459; or

73 b. An executive director who is ~~must be a registered nurse~~
74 ~~or a recovered registered nurse~~ licensed under part I of chapter
75 464.

76 (3) The terms and conditions of the impaired practitioner
77 program must be established by the department by contract with a
78 consultant for the protection of the health, safety, and welfare
79 of the public and must provide, at a minimum, the consultant:

80 (a) Accept referrals of practitioners who have or are
81 suspected of having an impairment;

82 (b) Arrange for the evaluation and treatment of such
83 practitioners as recommended by the consultant;

84 (c) Monitor the recovery progress and status of impaired
85 practitioners to ensure that such practitioners are able to
86 practice their profession with skill and safety. Such monitoring
87 must continue until the consultant or department concludes that
88 monitoring by the consultant is no longer required for the
89 protection of the public or the practitioner's participation in
90 the program is terminated for material noncompliance or
91 inability to progress; and

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92 (d) May not evaluate, treat, or otherwise provide direct
93 patient care to practitioners in the operation of the impaired
94 practitioner program.

95 (4) The department shall specify, in its contract with
96 each consultant, the types of licenses, registrations, or
97 certifications of the practitioners to be served by that
98 consultant.

99 (5) A consultant shall enter into a participant contract
100 and an impaired practitioner which establishes the terms of
101 monitoring and shall include the terms in a participant
102 contract. In establishing the terms of monitoring, the
103 consultant may consider the recommendations of one or more
104 approved evaluators, treatment programs, or treatment providers.
105 A consultant may modify the terms of monitoring if the
106 consultant concludes, through the course of monitoring, that
107 extended, additional, or amended terms of monitoring are
108 required for the protection of the health, safety, and welfare
109 of the public.

110 ~~(7)(b) A An entity retained as an impaired practitioner~~
111 ~~consultant under this section which employs a medical director~~
112 ~~or an executive director is not required to be licensed as a~~
113 ~~substance abuse provider or mental health treatment provider~~
114 ~~under chapter 394, chapter 395, or chapter 397 for purposes of~~
115 ~~providing services under this program.~~

116 (8)(e)1. Each The consultant shall assist the department

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117 and licensure boards on matters of impaired practitioners,
118 including the determination of probable cause panel and the
119 department in carrying out the responsibilities of this section.
120 This includes working with department investigators to determine
121 whether a practitioner is, in fact, impaired, as specified in
122 the consultant's contract with the department.

123 ~~2. The consultant may contract with a school or program to~~
124 ~~provide services to a student enrolled for the purpose of~~
125 ~~preparing for licensure as a health care practitioner as defined~~
126 ~~in this chapter or as a veterinarian under chapter 474 if the~~
127 ~~student is allegedly impaired as a result of the misuse or abuse~~
128 ~~of alcohol or drugs, or both, or due to a mental or physical~~
129 ~~condition. The department is not responsible for paying for the~~
130 ~~care provided by approved treatment providers or a consultant.~~

131 ~~(d) A medical school accredited by the Liaison Committee~~
132 ~~on Medical Education or the Commission on Osteopathic College~~
133 ~~Accreditation, or another school providing for the education of~~
134 ~~students enrolled in preparation for licensure as a health care~~
135 ~~practitioner as defined in this chapter or a veterinarian under~~
136 ~~chapter 474 which is governed by accreditation standards~~
137 ~~requiring notice and the provision of due process procedures to~~
138 ~~students, is not liable in any civil action for referring a~~
139 ~~student to the consultant retained by the department or for~~
140 ~~disciplinary actions that adversely affect the status of a~~
141 ~~student when the disciplinary actions are instituted in~~

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142 ~~reasonable reliance on the recommendations, reports, or~~
143 ~~conclusions provided by such consultant, if the school, in~~
144 ~~referring the student or taking disciplinary action, adheres to~~
145 ~~the due process procedures adopted by the applicable~~
146 ~~accreditation entities and if the school committed no~~
147 ~~intentional fraud in carrying out the provisions of this~~
148 ~~section.~~

149 (9)(3) Before issuing an approval or intent to deny, each
150 board and profession within the Division of Medical Quality
151 Assurance may delegate to its chair or other designee its
152 authority to determine, ~~before certifying or declining to~~
153 ~~certify an application for licensure to the department,~~ that an
154 applicant for licensure under its jurisdiction may have an
155 impairment ~~be impaired as a result of the misuse or abuse of~~
156 ~~alcohol or drugs, or both, or due to a mental or physical~~
157 ~~condition that could affect the applicant's ability to practice~~
158 ~~with skill and safety.~~ Upon such determination, the chair or
159 other designee may refer the applicant to the consultant to
160 facilitate ~~for~~ an evaluation before the board issues an approval
161 ~~certifies or intent to deny declines to certify~~ his or her
162 application ~~to the department.~~ If the applicant agrees to be
163 evaluated ~~by the consultant,~~ the department's deadline for
164 approving or denying the application pursuant to s. 120.60(1) is
165 tolled until the evaluation is completed and the result of the
166 evaluation and recommendation ~~by the consultant~~ is communicated

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167 to the board by the consultant. If the applicant declines to be
168 evaluated ~~by the consultant~~, the board shall issue an approval
169 or intent to deny ~~certify or decline to certify~~ the applicant's
170 application ~~to the department~~ notwithstanding the lack of an
171 evaluation and recommendation by the consultant.

172 ~~(10)(4)~~(a) When ~~Whenever~~ the department receives a ~~written~~
173 ~~or oral~~ legally sufficient complaint alleging that a
174 practitioner has an impairment licensee under the jurisdiction
175 ~~of the Division of Medical Quality Assurance within the~~
176 ~~department is impaired as a result of the misuse or abuse of~~
177 ~~alcohol or drugs, or both, or due to a mental or physical~~
178 ~~condition which could affect the licensee's ability to practice~~
179 ~~with skill and safety,~~ and no complaint exists against the
180 practitioner licensee other than impairment ~~exists~~, the
181 department shall refer the practitioner to the consultant, along
182 with all information in the department's possession relating to
183 the impairment. The impairment does ~~reporting of such~~
184 ~~information shall~~ not constitute grounds for discipline pursuant
185 to s. 456.072 or ~~the corresponding grounds for discipline within~~
186 the applicable practice act if ~~the probable cause panel of the~~
187 ~~appropriate board, or the department when there is no board,~~
188 ~~finds:~~

189 1. The practitioner licensee has acknowledged the
190 impairment ~~problem~~.

191 2. The practitioner becomes a participant licensee ~~has~~

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192 ~~voluntarily enrolled in an impaired practitioner program and~~
193 ~~successfully completes a participant contract under terms~~
194 ~~established by the consultant appropriate, approved treatment~~
195 ~~program.~~

196 3. The practitioner licensee has voluntarily withdrawn
197 from practice or has limited the scope of his or her practice if
198 ~~as required by the consultant, in each case, until such time as~~
199 ~~the panel, or the department when there is no board, is~~
200 ~~satisfied the licensee has successfully completed an approved~~
201 ~~treatment program.~~

202 4. The practitioner licensee has provided to the
203 consultant, or has authorized the consultant to obtain, all
204 records and information relating to the impairment from any
205 source and all other medical records of the practitioner
206 requested by the consultant ~~executed releases for medical~~
207 ~~records, authorizing the release of all records of evaluations,~~
208 ~~diagnoses, and treatment of the licensee, including records of~~
209 ~~treatment for emotional or mental conditions, to the consultant.~~
210 ~~The consultant shall make no copies or reports of records that~~
211 ~~do not regard the issue of the licensee's impairment and his or~~
212 ~~her participation in a treatment program.~~

213 5. The practitioner has authorized the consultant, in the
214 event of the practitioner's termination from the impaired
215 practitioner program, to report the termination to the
216 department and provide the department with copies of all

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217 information in the consultant's possession relating to the
218 practitioner.

219 (b) To encourage practitioners who are or may be impaired
220 to voluntarily self-refer to a consultant, the consultant may
221 not provide information to the department relating to a self-
222 reporting participant if the consultant has no knowledge of a
223 pending department investigation, complaint, or disciplinary
224 action against the participant and if the participant is in
225 compliance with the terms of the impaired practitioner program
226 and any participant contract, unless authorized by the
227 participant ~~If, however, the department has not received a~~
228 ~~legally sufficient complaint and the licensee agrees to withdraw~~
229 ~~from practice until such time as the consultant determines the~~
230 ~~licensee has satisfactorily completed an approved treatment~~
231 ~~program or evaluation, the probable cause panel, or the~~
232 ~~department when there is no board, shall not become involved in~~
233 ~~the licensee's case.~~

234 ~~(c) Inquiries related to impairment treatment programs~~
235 ~~designed to provide information to the licensee and others and~~
236 ~~which do not indicate that the licensee presents a danger to the~~
237 ~~public shall not constitute a complaint within the meaning of s.~~
238 ~~456.073 and shall be exempt from the provisions of this~~
239 ~~subsection.~~

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

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242 ~~paragraph (a) and no complaint against the licensee other than~~
243 ~~impairment exists, the department shall forward all information~~
244 ~~in its possession regarding the impaired licensee to the~~
245 ~~consultant. For the purposes of this section, a suspension from~~
246 ~~hospital staff privileges due to the impairment does not~~
247 ~~constitute a complaint.~~

248 ~~(c) The probable cause panel, or the department when there~~
249 ~~is no board, shall work directly with the consultant, and all~~
250 ~~information concerning a practitioner obtained from the~~
251 ~~consultant by the panel, or the department when there is no~~
252 ~~board, shall remain confidential and exempt from the provisions~~
253 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
254 ~~and (7).~~

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

261 ~~(11)(5)~~ In any disciplinary action for a violation other
262 than impairment in which a practitioner licensee establishes the
263 violation for which the licensee is being prosecuted was due to
264 or connected with impairment and further establishes the
265 practitioner licensee is satisfactorily progressing through or
266 has successfully completed an impaired practitioner program

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267 ~~approved treatment program~~ pursuant to this section, such
268 information may be considered by the board, or the department
269 when there is no board, as a mitigating factor in determining
270 the appropriate penalty. This subsection does not limit
271 mitigating factors the board may consider.

272 (12)(6)(a) Upon request by the consultant, and with the
273 authorization of the practitioner when required by law, an
274 approved evaluator, treatment program, or treatment provider
275 ~~shall, upon request,~~ disclose to the consultant all information
276 in its possession regarding a referral or participant ~~the issue~~
277 ~~of a licensee's impairment and participation in the treatment~~
278 ~~program. All information obtained by the consultant and~~
279 ~~department pursuant to this section is confidential and exempt~~
280 ~~from the provisions of s. 119.07(1), subject to the provisions~~
281 ~~of this subsection and subsection (7).~~ Failure to provide such
282 information to the consultant is grounds for withdrawal of
283 approval of such evaluator, treatment program, or treatment
284 provider.

285 (b) When a referral or participant is terminated from the
286 impaired practitioner program for material noncompliance with a
287 participant contract, inability to progress, or any other
288 reason, the consultant shall disclose all information in the
289 consultant's possession relating to the practitioner to the
290 department ~~If in the opinion of the consultant, after~~
291 ~~consultation with the treatment provider, an impaired licensee~~

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292 ~~has not progressed satisfactorily in a treatment program, all~~
293 ~~information regarding the issue of a licensee's impairment and~~
294 ~~participation in a treatment program in the consultant's~~
295 ~~possession shall be disclosed to the department.~~ Such disclosure
296 shall constitute a complaint pursuant to the general provisions
297 of s. 456.073. In addition, whenever the consultant concludes
298 that impairment affects a practitioner's licensee's practice and
299 constitutes an immediate, serious danger to the public health,
300 safety, or welfare, the consultant shall immediately communicate
301 such that conclusion shall be communicated to the department and
302 disclose all information in the consultant's possession relating
303 to the practitioner to the department State Surgeon General.

304 (13) All information obtained by the consultant pursuant
305 to this section is confidential and exempt from s. 119.07(1) and
306 s. 24(a), Art. I of the State Constitution.

307 (14)(7) A consultant, or a director, officer, employee or
308 agent of a consultant, may not be held liable financially or
309 have a cause of action for damages brought against them for
310 making a disclosure pursuant to this section, or for any other
311 action or omission relating to the impaired practitioner
312 program, or the consequences of such disclosure or action or
313 omission, including, without limitation, action by the
314 department against a license, registration, or certification.
315 ~~licensee, or approved treatment provider who makes a disclosure~~
316 ~~pursuant to this section is not subject to civil liability for~~

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317 ~~such disclosure or its consequences.~~

318 (15) The provisions of s. 766.101 apply to any consultant,
319 employee, or agent of a consultant in regards to providing
320 information relating to a participant to a medical review
321 committee if the participant authorized such disclosure ~~officer,~~
322 ~~employee, or agent of the department or the board and to any~~
323 ~~officer, employee, or agent of any entity with which the~~
324 ~~department has contracted pursuant to this section.~~

325 (16 8) (a) A consultant retained pursuant to this section
326 and subsection (2), a consultant's directors, officers, and
327 employees, or agents ~~and those acting at the direction of the~~
328 ~~consultant for the limited purpose of an emergency intervention~~
329 ~~on behalf of a licensee or student as described in subsection~~
330 ~~(2) when the consultant is unable to perform such intervention~~
331 ~~shall be considered agents of the department for purposes of s.~~
332 ~~768.28 while acting within the scope of the consultant's duties~~
333 ~~under the contract with the department if the contract complies~~
334 ~~with the requirements of this section. The contract must require~~
335 ~~that:~~

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

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

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

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

344 ~~5. The consultant operate under policies and procedures~~
345 ~~approved by the department.~~

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

349 ~~7. The department be entitled to review the records~~
350 ~~relating to the consultant's performance under the contract for~~
351 ~~the purpose of management audits, financial audits, or program~~
352 ~~evaluation.~~

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

355 ~~9. The department be entitled to terminate the contract~~
356 ~~with the consultant for noncompliance with the contract.~~

357 (b) In accordance with s. 284.385, the Department of