



318540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2017	.	
	.	
	.	
	.	

---

The Committee on Health Policy (Young) recommended the following:

1       **Senate Substitute for Amendment (420676) (with title**  
2 **amendment)**

3  
4       Delete lines 88 - 492  
5 and insert:

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



318540

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  
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 participating  
20 in the impaired practitioner program by having entered into a  
21 participant contract. A practitioner ceases to be a participant  
22 when the participant contract is successfully completed or is  
23 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; chapter 457; chapter 458; chapter 459; chapter 460;  
31 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;  
32 chapter 466; chapter 467; part I, part II, part III, part V,  
33 part X, part XIII, or part XIV of chapter 468; chapter 478;  
34 chapter 480; part III or part IV of chapter 483; chapter 484;  
35 chapter 486; chapter 490; or chapter 491; or an applicant for a  
36 license, registration, or certification under the same laws.

37       (k) "Referral" means a practitioner who has been referred,  
38 either as a self-referral or otherwise, or reported to a  
39 consultant for impaired practitioner program services, but who



318540

40 is not under a participant contract.

41 (l) "Treatment program" means a department- or consultant-  
42 approved residential, intensive outpatient, partial  
43 hospitalization or other program through which an impaired  
44 practitioner is treated based on the impaired practitioner's  
45 diagnosis and the treatment plan approved by the consultant.

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

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



318540

69           ~~(a)1.~~ A practitioner ~~or recovered practitioner~~ licensed  
70 under chapter 458, chapter 459, or part I of chapter 464; or  
71           ~~(b)2.~~ An entity that employs:  
72            ~~1.a.~~ A medical director who is ~~must be a practitioner or~~  
73 ~~recovered practitioner~~ licensed under chapter 458 or chapter  
74 459; or  
75            ~~2.b.~~ An executive director who is ~~must be a registered~~  
76 ~~nurse or a recovered registered nurse~~ licensed under part I of  
77 chapter 464.  
78           (3) The terms and conditions of the impaired practitioner  
79 program must be established by the department by contract with a  
80 consultant for the protection of the health, safety, and welfare  
81 of the public and must provide, at a minimum, that the  
82 consultant:  
83            (a) Accepts referrals;  
84            (b) Arranges for the evaluation and treatment of impaired  
85 practitioners by a treatment provider, when the consultant deems  
86 the evaluation and treatment necessary;  
87            (c) Monitors the recovery progress and status of impaired  
88 practitioners to ensure that such practitioners are able to  
89 practice their profession with skill and safety. Such monitoring  
90 must continue until the consultant or department concludes that  
91 monitoring by the consultant is no longer required for the  
92 protection of the public or until the practitioner's  
93 participation in the program is terminated for material  
94 noncompliance or inability to progress; and  
95            (d) Does not directly evaluate, treat, or otherwise provide  
96 patient care to a practitioner in the operation of the impaired  
97 practitioner program.



318540

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

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

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

119           ~~(7)(e)1.~~ Each ~~The~~ consultant shall assist the department  
120 and licensure boards on matters of impaired practitioners,  
121 including the determination of probable cause panel and the  
122 department in carrying out the responsibilities of this section.  
123 ~~This includes working with department investigators to determine~~  
124 whether a practitioner is, in fact, impaired, as specified in  
125 the consultant's contract with the department.

126           ~~2. The consultant may contract with a school or program to~~



318540

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

134 ~~(d) A medical school accredited by the Liaison Committee on~~  
135 ~~Medical Education or the Commission on Osteopathic College~~  
136 ~~Accreditation, or another school providing for the education of~~  
137 ~~students enrolled in preparation for licensure as a health care~~  
138 ~~practitioner as defined in this chapter or a veterinarian under~~  
139 ~~chapter 474 which is governed by accreditation standards~~  
140 ~~requiring notice and the provision of due process procedures to~~  
141 ~~students, is not liable in any civil action for referring a~~  
142 ~~student to the consultant retained by the department or for~~  
143 ~~disciplinary actions that adversely affect the status of a~~  
144 ~~student when the disciplinary actions are instituted in~~  
145 ~~reasonable reliance on the recommendations, reports, or~~  
146 ~~conclusions provided by such consultant, if the school, in~~  
147 ~~referring the student or taking disciplinary action, adheres to~~  
148 ~~the due process procedures adopted by the applicable~~  
149 ~~accreditation entities and if the school committed no~~  
150 ~~intentional fraud in carrying out the provisions of this~~  
151 ~~section.~~

152 ~~(8)(3)~~ Before issuing an approval of, or intent to deny, an  
153 application for licensure, each board and profession within the  
154 Division of Medical Quality Assurance may delegate to its chair  
155 or other designee its authority to determine, ~~before certifying~~



318540

156 ~~or declining to certify an application for licensure to the~~  
157 ~~department,~~ that an applicant for licensure under its  
158 jurisdiction may have an impairment ~~be impaired as a result of~~  
159 ~~the misuse or abuse of alcohol or drugs, or both, or due to a~~  
160 ~~mental or physical condition that could affect the applicant's~~  
161 ~~ability to practice with skill and safety.~~ Upon such  
162 determination, the chair or other designee may refer the  
163 applicant to the consultant to facilitate ~~for~~ an evaluation  
164 before the board issues an approval of, ~~certifies~~ or intent to  
165 deny, ~~declines to certify~~ his or her application ~~to the~~  
166 ~~department.~~ If the applicant agrees to be evaluated ~~by the~~  
167 ~~consultant,~~ the department's deadline for approving or denying  
168 the application pursuant to s. 120.60(1) is tolled until the  
169 evaluation is completed and the result of the evaluation and  
170 recommendation ~~by the consultant~~ is communicated to the board by  
171 the consultant. If the applicant declines to be evaluated ~~by the~~  
172 ~~consultant,~~ the board shall issue an approval of, or intent to  
173 deny, ~~certify or decline to certify~~ the applicant's application  
174 ~~to the department~~ notwithstanding the lack of an evaluation and  
175 recommendation by the consultant.

176 (9) (a) (4) (a) ~~When~~ ~~Whenever~~ the department receives a  
177 ~~written or oral~~ legally sufficient complaint alleging that a  
178 practitioner has an impairment ~~licensee under the jurisdiction~~  
179 ~~of the Division of Medical Quality Assurance within the~~  
180 ~~department is impaired as a result of the misuse or abuse of~~  
181 ~~alcohol or drugs, or both, or due to a mental or physical~~  
182 ~~condition which could affect the licensee's ability to practice~~  
183 ~~with skill and safety,~~ and no complaint exists against the  
184 practitioner ~~licensee~~ other than impairment ~~exists,~~ the



318540

185 department shall refer the practitioner to the consultant, along  
186 with all information in the department's possession relating to  
187 the impairment. The impairment does ~~reporting of such~~  
188 ~~information shall~~ not constitute grounds for discipline pursuant  
189 to s. 456.072 or ~~the corresponding grounds for discipline within~~  
190 the applicable practice act if ~~the probable cause panel of the~~  
191 ~~appropriate board, or the department when there is no board,~~  
192 finds:

193       1. The practitioner licensee has acknowledged the  
194 impairment; ~~problem.~~

195       2. The practitioner becomes a participant licensee ~~has~~  
196 ~~voluntarily enrolled~~ in an impaired practitioner program and  
197 successfully completes a participant contract under terms  
198 established by the consultant; ~~appropriate, approved treatment~~  
199 ~~program.~~

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

206       4. The practitioner licensee has provided to the  
207 consultant, or has authorized the consultant to obtain, all  
208 records and information relating to the impairment from any  
209 source and all other medical records of the practitioner  
210 requested by the consultant; and ~~executed releases for medical~~  
211 ~~records, authorizing the release of all records of evaluations,~~  
212 ~~diagnoses, and treatment of the licensee, including records of~~  
213 ~~treatment for emotional or mental conditions, to the consultant.~~





318540

214 ~~The consultant shall make no copies or reports of records that~~  
215 ~~do not regard the issue of the licensee's impairment and his or~~  
216 ~~her participation in a treatment program.~~

217 5. The practitioner has authorized the consultant, in the  
218 event of the practitioner's termination from the impaired  
219 practitioner program, to report the termination to the  
220 department and provide the department with copies of all  
221 information in the consultant's possession relating to the  
222 practitioner.

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

238 ~~(c) Inquiries related to impairment treatment programs~~  
239 ~~designed to provide information to the licensee and others and~~  
240 ~~which do not indicate that the licensee presents a danger to the~~  
241 ~~public shall not constitute a complaint within the meaning of s.~~  
242 ~~456.073 and shall be exempt from the provisions of this~~



318540

243 ~~subsection.~~

244 ~~(d) Whenever the department receives a legally sufficient~~  
245 ~~complaint alleging that a licensee is impaired as described in~~  
246 ~~paragraph (a) and no complaint against the licensee other than~~  
247 ~~impairment exists, the department shall forward all information~~  
248 ~~in its possession regarding the impaired licensee to the~~  
249 ~~consultant. For the purposes of this section, a suspension from~~  
250 ~~hospital staff privileges due to the impairment does not~~  
251 ~~constitute a complaint.~~

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

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

265 ~~(10)(5)~~ In any disciplinary action for a violation other  
266 than impairment in which a practitioner licensee establishes the  
267 violation for which the practitioner licensee is being  
268 prosecuted was due to or connected with impairment and further  
269 establishes the practitioner licensee is satisfactorily  
270 progressing through or has successfully completed an impaired  
271 practitioner program ~~approved treatment program~~ pursuant to this



318540

272 section, such information may be considered by the board, or the  
273 department when there is no board, as a mitigating factor in  
274 determining the appropriate penalty. This subsection does not  
275 limit mitigating factors the board may consider.

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

289 (b) When a referral or participant is terminated from the  
290 impaired practitioner program for material noncompliance with a  
291 participant contract, inability to progress, or any other reason  
292 than completion, the consultant shall disclose ~~If in the opinion~~  
293 ~~of the consultant, after consultation with the treatment~~  
294 ~~provider, an impaired licensee has not progressed satisfactorily~~  
295 ~~in a treatment program, all information regarding the issue of a~~  
296 ~~licensee's impairment and participation in a treatment program~~  
297 in the consultant's possession relating to the practitioner  
298 shall be disclosed to the department. Such disclosure shall  
299 constitute a complaint pursuant to the general provisions of s.  
300 456.073. In addition, whenever the consultant concludes that



318540

301 impairment affects a practitioner's ~~licensee's~~ practice and  
302 constitutes an immediate, serious danger to the public health,  
303 safety, or welfare, the consultant shall immediately communicate  
304 such that ~~conclusion shall be communicated~~ to the department and  
305 disclose all information in the consultant's possession relating  
306 to the practitioner to the department ~~State Surgeon General.~~

307 (12) All information obtained by the consultant pursuant to  
308 this section is confidential and exempt from s. 119.07(1) and s.  
309 24(a), Art. I of the State Constitution.

310 (13) ~~(7)~~ A consultant, or a director, officer, employee, or  
311 agent of a consultant, may not be held liable financially or may  
312 not have a cause of action for damages brought against him or  
313 her for making a disclosure pursuant to this section, for any  
314 other action or omission relating to the impaired practitioner  
315 program, or for the consequences of such disclosure or action or  
316 omission, including, without limitation, action by the  
317 department against a license, registration, or certification  
318 licensee, or approved treatment provider who makes a disclosure  
319 pursuant to this section is not subject to civil liability for  
320 such disclosure or its consequences.

321 (14) The provisions of s. 766.101 apply to any consultant  
322 and the consultant's directors, officers, employees, or agents  
323 in regards to providing information relating to a participant to  
324 a medical review committee if the participant authorizes such  
325 disclosure ~~officer, employee, or agent of the department or the~~  
326 ~~board and to any officer, employee, or agent of any entity with~~  
327 ~~which the department has contracted pursuant to this section.~~

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



318540

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

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

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

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

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

347 ~~5. The consultant operate under policies and procedures~~  
348 ~~approved by the department.~~

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

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

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

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



318540

359 ~~with the consultant for noncompliance with the contract.~~  
360 (b) In accordance with s. 284.385, the Department of  
361 Financial Services shall defend any claim, suit, action, or  
362 proceeding, including a claim, suit, action, or proceeding for  
363 injunctive, affirmative, or declaratory relief, against the  
364 consultant, or the consultant's directors, officers, or  
365 employees, and agents brought as the result of any action or  
366 omission relating to the impaired practitioner program or those  
367 ~~acting at the direction of the consultant for the limited~~  
368 ~~purpose of an emergency intervention on behalf of a licensee or~~  
369 ~~student as described in subsection (2) when the consultant is~~  
370 ~~unable to perform such intervention, which claim, suit, action,~~  
371 ~~or proceeding is brought as a result of an act or omission by~~  
372 ~~any of the consultant's officers and employees and those acting~~  
373 ~~under the direction of the consultant for the limited purpose of~~  
374 ~~an emergency intervention on behalf of the licensee or student~~  
375 ~~when the consultant is unable to perform such intervention, if~~  
376 ~~the act or omission arises out of and is in the scope of the~~  
377 ~~consultant's duties under its contract with the department.~~  
378 (16)(e) If a the consultant retained by the department  
379 pursuant to this section subsection (2) is also retained by  
380 another any other state agency to operate an impaired  
381 practitioner program for that agency, this section also applies  
382 to the consultant's operation of an impaired practitioner  
383 program for that agency, and if the contract between such state  
384 agency and the consultant complies with the requirements of this  
385 section, the consultant, the consultant's officers and  
386 employees, and those acting under the direction of the  
387 consultant for the limited purpose of an emergency intervention



318540

388 ~~on behalf of a licensee or student as described in subsection~~  
389 ~~(2) when the consultant is unable to perform such intervention~~  
390 ~~shall be considered agents of the state for the purposes of this~~  
391 ~~section while acting within the scope of and pursuant to~~  
392 ~~guidelines established in the contract between such state agency~~  
393 ~~and the consultant.~~

394 ~~(17)(9) A~~ An impaired practitioner consultant is the  
395 official custodian of records relating to the referral of an  
396 impaired licensee or applicant to that consultant and any other  
397 interaction between the licensee or applicant and the  
398 consultant. The consultant may disclose to a referral or  
399 participant documents, records, or other information from the  
400 consultant's file on the referral or participant the impaired  
401 licensee or applicant or his or her designee any information  
402 that is disclosed to or obtained by the consultant or that is  
403 confidential under paragraph (6)(a), but only to the extent that  
404 it is necessary to do so to carry out the consultant's duties  
405 under the impaired practitioner program and this section, or as  
406 otherwise required by law. The department, and any other entity  
407 that enters into a contract with the consultant to receive the  
408 services of the consultant, has direct administrative control  
409 over the consultant to the extent necessary to receive  
410 disclosures from the consultant as allowed by federal law. If a  
411 disciplinary proceeding is pending, a referral or participant  
412 may obtain a complete copy of the consultant's file from the  
413 department as provided by an impaired licensee may obtain such  
414 information from the department under s. 456.073.

415 (18) (a) The consultant may contract with a school or  
416



318540

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

418 And the title is amended as follows:

419       Delete line 26

420 and insert:

421       practitioners; making technical changes; requiring the

422       department to refer