



420676

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RS | . | |
| 03/14/2017 | . | |
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The Committee on Health Policy (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 88 - 492
and insert:

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

(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and



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11 prognosis that the participant is unable to safely practice
12 despite compliance with treatment requirements and his or her
13 participant contract.

14 (g) "Material noncompliance" means an act or omission by a
15 participant in violation of his or her participant contract as
16 determined by the department or consultant.

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

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

26 (j) "Practitioner" means a person licensed, registered,
27 certified, or regulated by the department under part III of
28 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
29 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
30 chapter 466; chapter 467; part I, part II, part III, part V,
31 part X, part XIII, or part XIV of chapter 468; chapter 478;
32 chapter 480; part III or part IV of chapter 483; chapter 484;
33 chapter 486; chapter 490; or chapter 491; or an applicant for a
34 license, registration, or certification under the same 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
38 is not under a participant contract.

39 (l) "Treatment program" means a department- or consultant-



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40 approved residential, intensive outpatient, partial
41 hospitalization or other program through which an impaired
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 impaired
63 practitioner consultants to operate its impaired practitioner
64 program. Each consultant who are each licensees under the
65 jurisdiction of the Division of Medical Quality Assurance within
66 the department and who must be:

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



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



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98 certifications of the practitioners to be served by that
99 consultant.

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

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

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

124 ~~2. The consultant may contract with a school or program to~~
125 ~~provide services to a student enrolled for the purpose of~~
126 ~~preparing for licensure as a health care practitioner as defined~~



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

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

150 ~~(8)(3) Before issuing an approval of, or intent to deny, an~~
151 ~~application for licensure, each board and profession within the~~
152 ~~Division of Medical Quality Assurance may delegate to its chair~~
153 ~~or other designee its authority to determine, ~~before certifying~~~~
154 ~~or declining to certify an application for licensure to the~~
155 ~~department, that an applicant for licensure under its~~



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

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



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185 ~~the impairment. The impairment does reporting of such~~
186 ~~information shall~~ not constitute grounds for discipline pursuant
187 to s. 456.072 or ~~the corresponding grounds for discipline within~~
188 the applicable practice act if ~~the probable cause panel of the~~
189 ~~appropriate board, or the department when there is no board,~~
190 ~~finds:~~

191 1. The practitioner licensee has acknowledged the
192 ~~impairment; problem.~~

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

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

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



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214 ~~her participation in a treatment program.~~

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

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

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

242 ~~(d) Whenever the department receives a legally sufficient~~



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

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

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

263 ~~(10)(5)~~ In any disciplinary action for a violation other
264 than impairment in which a practitioner licensee establishes the
265 violation for which the practitioner licensee is being
266 prosecuted was due to or connected with impairment and further
267 establishes the practitioner licensee is satisfactorily
268 progressing through or has successfully completed an impaired
269 practitioner program ~~approved treatment program~~ pursuant to this
270 section, such information may be considered by the board, or the
271 department when there is no board, as a mitigating factor in



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272 determining the appropriate penalty. This subsection does not
273 limit mitigating factors the board may consider.

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

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



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301 safety, or welfare, the consultant shall immediately communicate
302 such ~~that~~ conclusion ~~shall be communicated~~ to the department and
303 disclose all information in the consultant's possession relating
304 to the practitioner to the department ~~State Surgeon General.~~

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

308 (13) ~~(7)~~ A consultant, or a director, officer, employee, or
309 agent of a consultant, may not be held liable financially or may
310 not have a cause of action for damages brought against him or
311 her for making a disclosure pursuant to this section, for any
312 other action or omission relating to the impaired practitioner
313 program, or for the consequences of such disclosure or action or
314 omission, including, without limitation, action by the
315 department against a license, registration, or certification
316 licensee, or approved treatment provider who makes a disclosure
317 pursuant to this section is not subject to civil liability for
318 such disclosure or its consequences.

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

326 (15) (a) ~~(8) (a)~~ A consultant retained pursuant to this
327 section and ~~subsection (2)~~, a consultant's directors, officers,
328 and employees, or agents and those acting at the direction of
329 the consultant for the limited purpose of an emergency



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

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

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

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

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

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

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

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

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

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

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



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359 Financial Services shall defend any claim, suit, action, or
360 proceeding, including a claim, suit, action, or proceeding for
361 injunctive, affirmative, or declaratory relief, against the
362 consultant, or the consultant's directors, officers, or
363 employees, and agents brought as the result of any action or
364 omission relating to the impaired practitioner program or those
365 acting at the direction of the consultant for the limited
366 purpose of an emergency intervention on behalf of a licensee or
367 student as described in subsection (2) when the consultant is
368 unable to perform such intervention, which claim, suit, action,
369 or proceeding is brought as a result of an act or omission by
370 any of the consultant's officers and employees and those acting
371 under the direction of the consultant for the limited purpose of
372 an emergency intervention on behalf of the licensee or student
373 when the consultant is unable to perform such intervention, if
374 the act or omission arises out of and is in the scope of the
375 consultant's duties under its contract with the department.

376 (16)(e) If a the consultant retained by the department
377 pursuant to this section subsection (2) is also retained by
378 another any other state agency to operate an impaired
379 practitioner program for that agency, this section also applies
380 to the consultant's operation of an impaired practitioner
381 program for that agency, and if the contract between such state
382 agency and the consultant complies with the requirements of this
383 section, the consultant, the consultant's officers and
384 employees, and those acting under the direction of the
385 consultant for the limited purpose of an emergency intervention
386 on behalf of a licensee or student as described in subsection
387 (2) when the consultant is unable to perform such intervention



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388 ~~shall be considered agents of the state for the purposes of this~~
389 ~~section while acting within the scope of and pursuant to~~
390 ~~guidelines established in the contract between such state agency~~
391 ~~and the consultant.~~

392 ~~(17)(9) A An impaired practitioner consultant is the~~
393 ~~official custodian of records relating to the referral of an~~
394 ~~impaired licensee or applicant to that consultant and any other~~
395 ~~interaction between the licensee or applicant and the~~
396 ~~consultant. The consultant may disclose to a referral or~~
397 ~~participant documents, records, or other information from the~~
398 ~~consultant's file on the referral or participant the impaired~~
399 ~~licensee or applicant or his or her designee any information~~
400 ~~that is disclosed to or obtained by the consultant or that is~~
401 ~~confidential under paragraph (6) (a), but only to the extent that~~
402 ~~it is necessary to do so to carry out the consultant's duties~~
403 ~~under the impaired practitioner program and this section, or as~~
404 ~~otherwise required by law. The department, and any other entity~~
405 ~~that enters into a contract with the consultant to receive the~~
406 ~~services of the consultant, has direct administrative control~~
407 ~~over the consultant to the extent necessary to receive~~
408 ~~disclosures from the consultant as allowed by federal law. If a~~
409 ~~disciplinary proceeding is pending, a referral or participant~~
410 ~~may obtain a complete copy of the consultant's file from the~~
411 ~~department as provided by an impaired licensee may obtain such~~
412 ~~information from the department under s. 456.073.~~

413 ~~(18) (a) The consultant may contract with a school or~~

414
415 ===== T I T L E A M E N D M E N T =====

416 And the title is amended as follows:



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417 Delete line 26
418 and insert:
419 practitioners; making technical changes; requiring the
420 department to refer