

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 104

INTRODUCER: Health Policy Committee and Senators Book and Harrell

SUBJECT: Prescription Drug Donation Repository Program

DATE: February 19, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Loe</u>	<u>Kidd</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 104 creates the Prescription Drug Donation Repository Program (program) within the Department of Health (DOH) to facilitate the donation and distribution of prescription drugs and supplies to eligible patients in the state. The program:

- Authorizes Florida residents with valid prescriptions who are either indigent, uninsured, or underinsured to receive donated prescription drugs and supplies under the program.
- Specifies a list of entities that may donate prescription drugs or medical devices to the program and establishes requirements that must be met before donations may be accepted.
- Limits dispensing of prescription drugs under the program to persons who are licensed, registered, or otherwise permitted by state law.
- Provides procedures for inventorying, storing, dispensing, recalling, and destroying prescription drugs under the program.
- Provides recordkeeping and reporting requirements for participating facilities.
- Requires the DOH to maintain and publish on its website registries of all participating facilities and available donated drugs and supplies.
- Authorizes the creation of a direct-support organization (DSO) to provide funding for the program.
- Requires the DOH to adopt rules necessary to implement the program.

The bill amends section 252.36(5), Florida Statutes, to allow the Governor to waive the patient eligibility requirements of the program during a declared state of emergency.

The DOH will experience an increase in workload to administer the program; however, these costs should be absorbed through funding collected by the DSO in support of the program.

The bill is effective July 1, 2019.

II. Present Situation:

State Prescription Drug Donation and Reuse Programs

State prescription drug donation and reuse programs have been in effect since 1997.¹ Such drug donation and reuse programs permit unused prescription or non-prescription drugs to be donated and re-dispensed to patients within certain federal guidelines. Currently, 38 states have passed laws authorizing such programs; however, not all of these states have operationalized their programs.²

Pharmaceutical donation and reuse programs involve the voluntary collection and re-distribution of donated, unused prescription and non-prescription drugs from participating donors to eligible patients. States vary in the types of drugs and supplies that are accepted, the number and types of sites that are considered eligible locations where donors may deposit donations, participant eligibility requirements, and the dispensing fees for the donated drugs. Generally, the drugs are not controlled substances. Some programs, such as Florida's, are limited to only cancer treatment drugs. Twelve other states besides Florida – Colorado, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, Ohio, Pennsylvania, Utah, Washington, and Wisconsin – have prescription drug donation and reuse programs limited to only cancer treatment drugs.

Pharmacies, charitable clinics, and hospitals are locations where such donations are accepted. In Florida's Cancer Drug Donation Program,³ only Class II hospital pharmacies that elect or volunteer to participate are eligible to accept donations of cancer drugs from designated individuals or entities.⁴

Individuals receiving donated drugs may be required to meet certain eligibility requirements beyond a cancer diagnosis to participate in the donation program such as proof of state residency (Minnesota), lack of access to other insurance coverage, or Medicaid ineligibility (Florida). Dispensing fees are set based on a maximum relative threshold above the Medicaid dispensing fee or capped at an absolute dollar amount that typically ranges from \$10 to \$15.

The statutory provisions of many pharmaceutical donation programs have several common requirements:

- No controlled substances are accepted as donations;
- No adulterated or misbranded medications are allowed;

¹ National Conference of State Legislatures, *State Prescription Drug Return, Reuse and Recycling Laws* (As of Oct. 1, 2018), <http://www.ncsl.org/research/health/state-prescription-drug-return-reuse-and-recycling.aspx> (last visited: Jan. 28, 2019).

² *Supra* note 1.

³ Section 499.029, F.S.

⁴ *See* s. 465.019, F.S. Class II institutional pharmacies are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to the patients of that institution, for use on the premises of that institution.

- All donated pharmaceuticals must be checked by a pharmacist prior to being dispensed;
- Pharmaceuticals must not be expired and most pharmaceuticals must have at least six months or longer before expiration;
- All pharmaceuticals must be unopened and in original, sealed, tamper-evident packaging; and
- Liability protection is assured for both donors and recipients.⁵

Most states permit the donation of any non-controlled substance to a designated medical facility, clinic, or pharmacy that has elected to participate in the program. Currently, outside of Florida, 14 states allow any non-institutional donor to donate prescription drugs to a donation program under varying degrees of quality control.⁶ Twenty states have operational repository programs – either cancer drug programs or broader collection programs – including states such as Iowa, which has served over 71,000 patients and re-distributed \$17.7 million in donated prescriptions and supplies since 2007.⁷ The Iowa program is limited to residents with incomes at or below 200 percent of the federal poverty level (FPL), or \$51,500 for a family of four under the 2019 guidelines,⁸ who are uninsured or underinsured, and are eligible to receive the donated medications and supplies.⁹ The Iowa program accepts donations from any organization or individual in the country with the medication provided in its sealed or original, tamper-resistant packaging. Any pharmacy or medical facility with authorization to dispense under Iowa administrative rules may then re-dispense the donated medication or supplies.¹⁰

Wyoming has also had a long-running Medication Donation Program. The state's program filled over 150,000 prescriptions since its inception in 2007 and provided more than \$2.4 million worth of donated prescriptions in 2016.¹¹ Recipients must be a Wyoming resident, have an income under 200 percent of the FPL, and be without prescription insurance or Medicaid coverage. Prescriptions are mailed to the recipient at no cost to the patient; however, neither controlled substances nor refrigerated prescriptions are covered in the program.¹²

Florida Cancer Drug Donation Program

The Florida Cancer Drug Donation Program (CDDP) was created in 2006¹³ and is administratively housed within the Florida Department of Business and Professional Regulation (DBPR). The CDDP allows eligible donors to donate cancer drugs and related supplies to participating facilities that may dispense the donations to eligible cancer patients. The hospital

⁵ *Supra* note 1.

⁶ *Supra* note 1.

⁷ *Supra* note 1.

⁸ U.S. Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs (Effective January 1, 2019)*, <https://aspe.hhs.gov/poverty-guidelines> (last visited Jan. 28, 2019).

⁹ Iowa Department of Public Health, *SafeNetRx Program*, <https://idph.iowa.gov/ohds/rural-health-primary-care/repository>, (last visited Jan. 28, 2019).

¹⁰ *Id.*

¹¹ Wyoming Department of Health, *Wyoming Medication Donation Program*, <https://health.wyo.gov/healthcarefin/medicationdonation/application-and-eligibility/> (last visited: Jan. 28, 2019).

¹² *Id.*

¹³ Chapter 2006-310, Laws of Fla. (creating s. 499.029, effective July 1, 2006). It was originally created within the Department of Health, but was part of a programmatic transfer by the 2010 Legislature to DBPR effective October 1, 2011.

pharmacies accept donations of cancer drugs and supplies from drug manufacturers and wholesalers; health care facilities, including nursing home facilities, hospices, or hospitals with a closed drug delivery system; pharmacies, medical device manufacturers, or suppliers; and patients or their representatives.¹⁴ However, all donations to the CDDP must be maintained in a closed drug delivery system.¹⁵

Eligible participating facilities are limited to only those Florida hospital pharmacies with a Class II institutional pharmacy permit.¹⁶ These pharmacies participate on a voluntary basis and must agree to accept, inspect, and dispense the donated drugs to the eligible patients in accordance with the statute. The DBPR is required to establish and maintain a participant facility registry for the CDDP. The law provides the content for the registry and a requirement for a website posting. Currently, the following 15 hospital pharmacies participate in the CDDP.

Cancer Drug Donation Program Participants¹⁷:	
Health Care Facility	Location
Moffitt Cancer Center	Tampa
Shands Hospital at the University of Florida	Gainesville
Sacred Heart Health	Pensacola
Halifax Medical Center	Daytona Beach
Jackson Memorial Hospital	Miami
Adventist Health System/Sunbelt Health Care	Celebration
Indian River Medical Center	Vero Beach
Tallahassee Memorial Hospital	Tallahassee
Baptist Medical Center	Jacksonville
Lower Keys Medical Center	Key West
Sun City Hospital, Inc.	Sun City Center
Mt. Sinai Medical Center	Miami Beach
Healthsouth Rehabilitation Hospital of Spring Hill	Brooksville
Baptist Hospital of Miami	Kendall
Palm Bay Hospital	Palm Beach

Florida’s recipient eligibility requirements limit participation to Florida residents who:

- Have been diagnosed with cancer; and
- Are ineligible for the Medicaid program, or any other prescription drug program funded in whole or in part by the federal government, or do not have third party insurance unless the benefits have been exhausted or a certain cancer drug is not covered.¹⁸

Donated drugs may only be prescribed by a licensed practitioner and dispensed by a licensed pharmacist to an eligible patient.¹⁹ Dispensed drugs and supplies under the CDDP are not

¹⁴ Section 499.029(3)(c), F.S.

¹⁵ Section 499.029(1)(b), F.S. A “closed drug delivery system” means a system in which the actual control of the unit-dose medication package is maintained by the facility rather than by the individual patient.

¹⁶ Section 499.029(2)(e), F.S.

¹⁷ Florida Department of Business and Professional Regulation, *Cancer Drug Donation Program Participation Report*, <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/cancer-drug-donation-program/> (last visited Jan. 28, 2019).

¹⁸ Rule 61N-1.026(1), F.A.C.

¹⁹ Section 499.029(5), F.S.

eligible for reimbursement by third parties, either public or private. However, the facility may charge the recipient of the donated drug a handling fee of no more than 300 percent of the Medicaid dispensing fee or no more than \$15, whichever is less, for each cancer drug that is dispensed.²⁰

The Division of Drugs, Devices, and Cosmetics within the DBPR does not maintain a list of available donated medications on its website; however, it does provide a list of other medical assistance programs that provide cancer medications based on different qualifications.²¹ The DBPR also does not require the participating facilities to report the medications that are available for re-dispensing in the CDDP program or the number of donated drugs that have been administered.²² A facility is required to maintain its own data for three years.²³

The CDDP site will only accept drugs if:

- The donation is accompanied by a Program Donation and Destruction Record Form;
- The donation occurs at least six months before the drug's expiration date;
- The donated drug is in the original, unopened tamper-evident unit dose packaging;
- The drug is not be adulterated, misbranded, or mislabeled;
- The donated drug has been maintained by a health care facility; and
- The drug is not a substance listed on Schedule II, III, IV, or V of s. 893.03, F.S.²⁴

Under the act, a donor or a participant in the CDDP who acts with reasonable care in donating, accepting, distributing, or dispensing prescription drugs or supplies is immune from civil or criminal liability or professional disciplinary action for any kind of injury, death, or loss relating to such activities.²⁵

Regulation of Pharmacy

The DBPR is the state agency charged with the regulation and licensure of businesses and professionals.²⁶ Under the provisions of chapter 499, F.S., the Division of Drugs, Devices, and Cosmetics safeguards the health, safety, and welfare of the state's citizens from injury due to the use of adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics. The Division oversees: the CDDP; issuance and regulation of licensure and permits for drug manufacturers, wholesalers, and distributors; controlled substance reporting requirements for certain wholesale distributors; issuance and regulation of other permits and licenses; and the Drug Wholesale Distributor Advisory Council.²⁷

²⁰ Section 409.029(7)(b), F.S., and Rule 61N-1.026(5), F.A.C.

²¹ Florida Department of Business and Professional Regulation, *Medical Assistance Programs List* (last visited Jan. 30, 2019).

²² Email correspondence from Colton Madill, Department of Business and Professional Regulation (Jan. 31, 2019) (on file with the Senate Committee on Health Policy).

²³ *Id.*

²⁴ See Rule 61N-1.026(6), F.A.C., and Florida Department of Business and Professional Regulation, *Florida Cancer Drug Donation Program Brochure*, <http://www.myfloridalicense.com/dbpr/ddc/documents/CDDP.Brochure.pdf> (last viewed: Jan. 28, 2019).

²⁵ Section 409.029(11), F.S.

²⁶ Section 20.165, F.S.

²⁷ Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics*, <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/> (last visited Jan. 30, 2019).

The Florida Drug and Cosmetic Act (Act) is codified as ss. 499.001 - 499.081, F.S. The Act provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the federal Food, Drug, and Cosmetic Act and the portion of the Federal Trade Commission Act which expressly prohibits the false advertisement of drugs, devices, and cosmetics. The Act provides definitions for what is considered a device, drug, and, specifically, a prescription drug.²⁸

Chapter 465, F.S., governs the regulation of the practice of pharmacy by the Board of Pharmacy in the DOH. Section 465.019(2)(b), F.S., provides requirements for institutional pharmacies. “Class II institutional pharmacies” are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of that institution for use on the premises of that institution.

Section 465.015(2)(c), F.S., makes it unlawful for a pharmacist to sell or dispense drugs without first being furnished a prescription. Section 465.016(1)(l), F.S., prohibits a pharmacist from placing into stock any part of any prescription compounded or dispensed which is returned by the patient. Additionally, the Board of Pharmacy has adopted an administrative rule that prohibits a pharmacist from placing any part of any prescription compounded or dispensed, which is returned by a patient, into the stock of any pharmacy, except as specified in the Board of Pharmacy rules.²⁹

There is an exception to the Board of Pharmacy rule for a closed drug delivery system³⁰ in which unit dose³¹ or customized patient medication packages are dispensed to individuals who are admitted as inpatients³² to a hospital. The unused medication may be returned to the pharmacy for re-dispensing only if each unit dose or customized patient medication package is individually sealed and if each unit dose or the unit dose system – or the customized patient medication package container or the customized patient medication package unit of which it is clearly a part – is labeled with the name of the drug, dosage strength, manufacturer’s control number, and expiration date, if any. In the case of controlled substances, such drugs may only be returned as permitted under federal law.³³

²⁸ A “prescription drug” under s. 499.003(40), F.S., is defined as a “prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active ingredients subject to, defined by, or described by, s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

²⁹ Rule 64B16-28.118(2), F.A.C.

³⁰ *Supra* note 15.

³¹ Rule 64B16-28-118(1), F.A.C. A “unit dose system” means a system in which all the individually sealed unit doses are physically connected as a unit.

³² Generally, an inpatient is an individual who is admitted to the hospital by a licensed physician or dentist with the expectation that the recipient will stay in excess of 24 hours and occupy an inpatient bed. *See* Agency for Health Care Administration, *Florida Medicaid –Inpatient Hospital Services Coverage Policy (July 2016)*, http://ahca.myflorida.com/medicaid/review/specific_policy.shtml (last visited: Feb. 1, 2019).

³³ Rule 64B16-28-118(2), F.A.C.

For nursing facility residents, s. 400.141(1)(d), F.S., requires a pharmacist licensed in Florida that is under contract with a nursing home to repackage a resident's bulk prescription medication which has been packaged by another pharmacist into a unit-dose system compatible with the system used by the nursing facility, if requested by the facility. In order to be eligible for the repackaging service, the resident or the resident's spouse's prescription medication benefits must be covered through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. part 831, or a long-term care policy as defined under specified state law. A pharmacist who correctly repackages and relabels the medication, and the nursing home that correctly administers the repackaged medication, cannot be held liable in any civil or administrative action arising from the repackaging. The pharmacist may charge a reasonable fee for costs of the repackaging.

A nursing home typically has a Class I institutional permit. This permit authorizes the nursing home to have patient-specific medications that have already been dispensed to the resident. Prescription drugs may not be dispensed in a Class I pharmacy.³⁴

Federal Law and Regulations

Controlled Substances Act

The federal Controlled Substances Act (CSA) was enacted by Congress in 1970 and codified as 21 U.S.C. §801, et seq. The CSA regulates the manufacture and distribution of controlled substances in the United States. The federal Drug Enforcement Agency (DEA) is responsible for the enforcement of the CSA.

The CSA categorizes drugs into five "schedules" based on their potential for abuse and safety or dependence liability.³⁵ The CSA provides for specific dispensing requirements for controlled substances, including written prescriptions, retention requirements, and refill restrictions, depending on the drug's schedule.³⁶ Prescriptions must also meet specific labeling and packaging requirements. For Schedule II, III, and IV drugs, the label must clearly contain a warning that it is a crime to transfer the drug to any person other than the patient.³⁷

³⁴ Section 465.019(2)(a), F.S.

³⁵ U.S. Department of Justice, Diversion Control Division, *Controlled Substance Security Manual*, https://www.deadiversion.usdoj.gov/pubs/manuals/sec/app_law.htm (last visited Jan. 30, 2019). Drugs classified as Schedule I are those that are considered to have no medical use in the United States and have a high abuse potential and include drugs such as heroin, LSD, and marijuana. Schedule II substances have a high abuse potential with severe psychological or physical dependency, but have accepted medical use. Examples of Schedule II drugs include opium, morphine, codeine, and oxycodone. Schedule III drugs have an abuse potential and dependency liability less than Schedule II with an accepted medical use. Schedule III drugs may also contain limited quantities of certain narcotic and non-narcotic drugs. Schedule IV drugs have an abuse potential and dependency liability less than those drugs in Schedule III and have an accepted medical use and include drugs such as Valium, Xanax, and Darvon. The drugs in the fifth and final schedule, Schedule V, have an abuse potential less than those listed in Schedule IV, have an accepted medical use, and are often available without a prescription, including some for antitussive and antidiarrheal purposes.

³⁶ 21 U.S.C. §829 and 21 CFR §§1306.21 and 1306.22.

³⁷ 21 U.S.C. §825.

The CSA permits the delivery of controlled substances by an “ultimate user,”³⁸ who has lawfully obtained the drug, to a designated covered entity for disposal and destruction such as through a prescription drug take-back program.³⁹ An authorized covered entity is defined in federal law as:

- A specified law enforcement agency;
- A manufacturer, distributor, or reverse distributor of prescription medications;
- A retail pharmacy;
- A registered narcotic treatment program;
- A hospital or clinic with an onsite pharmacy;
- An eligible long-term care facility; or
- Any other entity authorized by the DEA to dispose of prescription medications.⁴⁰

The last National Prescription Take Back Day sponsored by the DEA resulted in more than 914,236 pounds of expired, unused, and unwanted prescription drugs returned at 5,839 sites on October 27, 2018, of which 27,121 pounds were collected at 185 Florida sites.⁴¹ The goal of the take-back program is to prevent the diversion of unwanted drugs to misuse and abuse and to avoid the potential safety hazard of drugs flushed into wastewater, sewage, or septic tank systems.⁴²

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created non-profit organizations⁴³ authorized to carry out specific tasks in support of public entities or public causes.⁴⁴ The function and purpose of a CSO or DSO are prescribed by an enacting statute and a written contract with the governmental agency the CSO or DSO supports.⁴⁵

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.⁴⁶ Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:⁴⁷

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;

³⁸ An “ultimate user” is defined under 21 U.S.C. 802(27), as the person who has lawfully obtained, and who possesses, a controlled substance for his own use or the use of a member of his household or for an animal owned by him or by a member of his household.

³⁹ 21 U.S.C. 822a.

⁴⁰ *Id.*

⁴¹ Drug Enforcement Administration, *16th National Take Back Day Collection Results (October 27, 2018)* https://www.deadiversion.usdoj.gov/drug_disposal/takeback/ (last visited Jan. 29, 2019).

⁴² *Id.*

⁴³ Chapter 617, F.S.

⁴⁴ *E.g.*, ss. 1009.983 and 413.0111, F.S.

⁴⁵ *See* ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, Audits of Certain Nonprofit Organizations (effective June 30, 2018), available at https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited: Jan. 29, 2019).

⁴⁶ Section 3, ch. 2014-96, L.O.F.

⁴⁷ Section 20.058(1), F.S.

- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁴⁸

Each governmental agency receiving information from a CSO or DSO pursuant to law must make such information available to the public through the agency's website.⁴⁹ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁵⁰ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the required information to the agency as specified in law.⁵¹ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.⁵²

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.⁵³

Any law creating, or authorizing the creation of a CSO or DSO must state that the authorization for the organization repeals on October 1 of the 5th year after enactment, unless reviewed and reenacted by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.⁵⁴

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁵⁵ An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the governmental agency the CSO or DSO supports.⁵⁶ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.⁵⁷

⁴⁸ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁴⁹ Section 20.058(2), F.S.

⁵⁰ *Id.*

⁵¹ Section 20.058(4), F.S.

⁵² *Id.*

⁵³ *Id.* at (3).

⁵⁴ *Id.* at (5).

⁵⁵ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

⁵⁶ Section 215.981(1), F.S.

⁵⁷ Section 11.45(3), F.S.

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO to adopt a code of ethics. The code of ethics must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.⁵⁸ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must post its code of ethics on its website.⁵⁹

Governor's Executive Powers

During a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that “in the event of an emergency beyond local control, the Governor[...]may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state.”

In addition, the Governor may “issue executive orders, proclamations, and rules” which “shall have the force and effect of law.” Section 252.36(5), F.S., specifically authorizes the Governor to use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

The Governor is also directed to “take such action and give such direction to state and local law enforcement officers,” and state health officials as may be “reasonable and necessary” to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

III. Effect of Proposed Changes:

Section 1 creates s. 465.1902, F.S., to establish the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH). The purpose of the Program is to authorize and facilitate the donation and distribution of prescription drugs and supplies to eligible patients through a system of local and centralized repositories. The DOH may contract with a third party to implement and administer the Program.

The bill authorizes the following individuals or entities to donate prescription drugs and supplies:

- Nursing home facilities with closed drug delivery systems.
- Hospices that have maintained control of a patient’s prescription drug.
- Hospitals with closed drug delivery systems.
- Pharmacies.
- Drug manufacturers or wholesale distributors.
- Medical device manufacturers or suppliers.
- Prescribing individuals who receive prescription drugs or supplies directly from a drug manufacturer, wholesale distributor, or pharmacy.

⁵⁸ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

⁵⁹ Section 112.3251, F.S.

Patients or a patient's legal representative or next of kin may donate to a local repository that qualifies as a free clinic or nonprofit health clinic if the following specific requirements are met:

- An affidavit is signed by the donor on a form approved by the DOH which identifies the prescribing health care practitioner, and attests to the authenticity of the prescription drug or medical supply being donated;
- The prescription drug or medical supply being donated is in its original tamper-evident packaging and does not have any signs of tampering, misbranding, deterioration, comprised integrity, or adulteration;
- Any drug being donated has an expiration date that is more than three months after the date of donation; and
- A licensed pharmacist inspects the prescription drug or medical supply and verifies that it meets all of these requirements.

The bill provides that prescription drugs and supplies donated by a patient, a patient's legal representative, or a patient's next of kin are exempt from one, non-applicable safety provision that applies to other donations; however, these donations are subject to all applicable safety and storage requirements of the Program.

The bill authorizes prescription drugs to be donated at the discretion of the centralized repository or a local repository if the drug:

- Is approved for medical use in the United States;
- Does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, F.S.;
- Is in its original sealed and tamper-evident packaging, and does not have any physical signs of tampering or adulteration;
- Requires storage at normal room temperature per the manufacturer or the United States Pharmacopeia;
- Has been stored according to manufacturer or United States Pharmacopeia storage requirements;
- Packaging contains a lot number and expiration date of the drug, and will not expire within three months after the donation is made;
- Is not eligible for return to the Medicaid program for restocking; and
- Is not subject to a Federal Food and Drug Administration Risk Evaluation and Mitigation Strategy with Elements to Assure Safe Use.

The bill requires that prescription drugs or supplies must be donated at a repository and prohibits the use of a drop box and donation to a specific patient. Repositories must destroy any donated drug not eligible for dispensing and make a record of the destruction on a form developed by the DOH.

The bill requires a licensed pharmacist employed by, or under contract with, a repository to inspect all donated prescription drugs and supplies to determine whether they are eligible for donation under the Program, have been adulterated or misbranded, and are safe and suitable for dispensing. The pharmacist must sign an inspection record affirming the eligibility of the prescription drug or supply and attach the form to the inventory record. The pharmacist is not

required to re-inspect the prescription drug if the inspected drugs are redistributed to another repository under the Program.

The bill requires repositories to store all donated prescription drugs and supplies in a secure storage area, separate from non-donated inventory, and under the environmental conditions required by the manufacturer or the U.S. Pharmacopeia. Repositories must quarantine donated drugs and supplies from dispensing inventory until they have been inspected and approved for dispensing by the pharmacist.

The bill requires local repositories to maintain an inventory of all donated prescription drugs and supplies they receive and to notify the centralized repository within five days of receipt. The centralized repository maintains an inventory of all prescription drugs and supplies donated to the Program, including donations made at local repositories. The centralized repository may redistribute drugs and supplies to local repositories to facilitate dispensing as needed throughout the state.

The bill makes participation in the Program voluntary and requires an eligible entity to notify the DOH of its intent to participate before accepting or dispensing any prescription drugs or supplies under the Program. The DOH shall establish in rule a form for such notification, to include, at a minimum:

- The name, street address, website, and telephone number of the local repository, and any state-issued license or registration number issued to the local repository, including the name of the issuing agency;
- The name and telephone number of the pharmacist employed by, or under contract with, the local repository responsible for the inspection of donated prescription drugs and supplies; and
- A statement signed and dated by the responsible pharmacist affirming that the local repository meets the eligibility requirements.

An eligible patient wishing to receive drugs or supplies under the Program may contact a local repository and submit an intake collection form. The form, to be created by the DOH in rule, shall include, at a minimum:

- The name, street address, and telephone number of the eligible patient;
- The specific basis for eligibility, which must be indigent, uninsured, or underinsured, as defined in the Program;⁶⁰ and
- A statement signed and dated by the eligible patient affirming that he or she meets the eligibility requirements of the Program.

The bill requires local repositories to collect an executed intake form from each eligible patient receiving drugs or supplies under the Program. Upon receiving a duly executed intake form, the local repository shall issue the eligible patient an identification card that is valid for up to one year. Local repositories must send a summary of the intake collection form data to the centralized repository within five days of receipt.

⁶⁰ The bill defines “indigent” as persons with an income below 200 percent of the federal poverty level, “uninsured” as persons who have no third-party insurance and are not eligible under Medicaid or any other federal program, and “underinsured” as persons who have third-party insurance or are eligible under Medicaid or other federal program, but have exhausted these benefits or do not have prescription drug coverage for the drug prescribed.

The bill permits licensed pharmacists and those health care practitioners already authorized by law to dispense prescription drugs and supplies in Florida to do so under the Program. Prior to dispensing a prescription drug or supply to an eligible patient, the dispenser must:

- Verify that the patient is eligible to receive donations under the Program, either through a Program identification card or a duly executed intake collection form; and
- Inspect the donated prescription drug or supply to confirm it is still eligible for dispensing under the Program.

The bill prohibits repositories from reselling drugs, submitting claims, or otherwise seeking reimbursement from any public or private third-party payer for donated drugs or supplies dispensed under the Program. However, the dispensing facility may charge a nominal handling fee to be determined by the DOH in rule.

In the event of a prescription drug recall, the bill requires a local or centralized repository to:

- Have an established protocol to notify recipients of the drug;
- Destroy all of the recalled prescription drugs in the repository; and
- Complete a destruction information form for all donated prescription drugs that were destroyed.

The bill requires local repositories to maintain records of all prescription drugs and supplies accepted, donated, dispensed, distributed, or destroyed under the Program. Local repositories must submit these records quarterly to the centralized repository for data collection and the centralized repository must submit these records and the collected data in annual reports to the DOH.

The bill requires the DOH to maintain a registry on its website of all available drugs and supplies, including the name, strength, available quantity, and expiration date of each drug and supply, as well as the contact information for the repositories where it is available. The DOH is required to maintain a registry on its website of all participating local repositories, to include each repository's name, address, website, and telephone number.

The bill grants immunity from civil or criminal liability, and professional disciplinary actions, to a donor or participant relating to activities under the Program. Additionally, a pharmaceutical manufacturer who exercises reasonable care is not liable for any claim or injury arising from the transfer of prescription drugs under the Program.

Before a donated drug may be dispensed, the bill requires the dispenser to provide written notification to the patient, or his or her legal representative, that:

- The drug was donated to the Program;
- The dispenser is not liable for any injury, death, or loss related to the dispensing of the drug; and
- The requirement of a nominal handling fee.

The bill authorizes the DOH to establish a direct-support organization (DSO) to provide assistance, funding, and promotional support for the activities authorized for the Program. The DSO is repealed on October 1, 2024, unless reviewed and saved from repeal by the Legislature.

The bill provides rulemaking authority to the DOH to administer the Program and establish the DSO.

Section 2 amends s. 252.36(5), F.S., to allow the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

CS/SB 104 includes the issuance of an identification card to eligible patients who participate in the Program. These individuals are required to submit intake forms to either the local repository, the central repository, or a vendor selected by the Department of Health (DOH) to determine their eligibility for the Program, and such eligibility is based on income and sensitive medical information. It is not clear if that information would then be stored by the DOH, the repositories, or any contracted vendor.

The bill does not address how patient identification information from the medication donation process will be handled, or if any of the patient medical information not otherwise protected by other statutes, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA),⁶¹ could be subject to a public records release request since the bill does not have a companion public records exemption bill. If some of these records are subject to a public records release, it may impact participation in the Program.

C. Trust Funds Restrictions:

None.

⁶¹ The Health Insurance Accountability and Portability Act of 1996 or HIPAA, Public Law 104-191, was enacted to address concerns about both the effectiveness and the security of health care data. HIPAA required the federal Department of Health and Human Services to adopt rules relating to national standards for electronic health transactions, health care privacy and security, and health care clearinghouses. The privacy rule component of HIPAA sets standards for the use and disclosure of individuals' health care information, specifically what was protected, who was protected, how it was protected, and how it could be released and used. See Health Information Privacy, *HIPAA for Professionals*, <https://www.hhs.gov/hipaa/for-professionals/index.html> (last visited: Feb. 1, 2019).

D. State Tax or Fee Increases:

Article VII, section 19 of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, section 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Section 1 of the bill authorizes local repositories to charge a small handling fee for dispensing donated prescription drugs or medical supplies as set in rule by the DOH. Program participation is voluntary; however, governmental units such as county health departments under the jurisdiction of the DOH and State Veterans’ Nursing Homes under the jurisdiction of the Florida Department of Veterans’ Affairs may elect to participate in the Program and charge a small handling fee. As such, the Florida Constitution may require that this provision be passed in a separate bill by a two-thirds vote of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Hospitals and nursing homes volunteering to participate in the program may incur costs associated with collecting, storing, and re-dispensing donated prescription drugs. Those same hospitals and nursing homes may enjoy cost savings to the extent their patients might receive needed drugs or supplies on a more timely basis. Without such donations, some patients could return as sicker and costlier patients at a later date.

Participating hospitals and facilities are permitted to recoup some costs through a small handling fee. Current state regulations permit a handling fee of up to 300 percent of the Medicaid dispensing fee or \$15, whichever is less, for each cancer drug or supply dispensed.⁶²

C. Government Sector Impact:

The bill authorizes the creation of a direct-support organization (DSO) to provide assistance, funding, and promotional support for the Program's authorized activities. Sufficient funding and assistance provided by the DSO could relieve the DOH of

⁶² Rule 61N-1.026(5), F.A.C.

negative fiscal impacts created by the bill. The Department of Health (DOH) may need to submit a legislative budget request for an indeterminate amount to support the Program, if the DSO is unsuccessful in collecting the necessary resources to operate the Program.

The DOH may experience an increase in workload and operational costs to administer the program. The DOH estimates it will cost \$1,098,048 for the first year of implementation if it serves as the central repository.⁶³

Department of Health Estimated Costs for Fiscal Year 2019-20	
Component	Amount
Facility Costs <ul style="list-style-type: none"> • Estimated need for a 5,000 square foot facility at current market rate of \$11.73 per square foot: \$703,800 • Estimated Annual Utilities: \$5,000 	\$708,800
Personnel Costs <ul style="list-style-type: none"> • 1.0 FTE – Senior Pharmacist: <ul style="list-style-type: none"> ○ Rate: \$80,000; Benefits: \$34,400; Total: \$114,400 • 1.0 FTE –Administrative Assistant <ul style="list-style-type: none"> ○ Rate: \$25,479; Benefits: \$10,956; Total: \$36,435 • 3.0 FTE –Pharmacy Technicians <ul style="list-style-type: none"> ○ Rate: \$70,449; Benefits: \$30,293; Total: \$100,742 • Standard Expense Package (5.0 FTE): <ul style="list-style-type: none"> ○ Recurring Total: \$11,516 ○ Nonrecurring Total: \$19,510 • Human Resource Assessment (5.0 FTE): \$1,645 	\$284,248
Enhancements to Pharmacy Systems Enhancements to DOH Dispensing and Pharmaceutical Forms System (PFS) Inventory systems (nonrecurring cost).	\$70,000
Other Potential Costs Shipping of products to local repositories.	\$35,000
TOTAL OVERALL FIRST YEAR COSTS	\$1,098,048

The bill gives the DOH the option of contracting with a vendor to administer the Program. Several other states with drug donation programs have contracted with third party vendors. The DOH has not provided an estimate of costs to contract with a third party vendor; however, it expects that these costs would be less compared to the DOH serving as the central repository.⁶⁴

VI. Technical Deficiencies:

The Department of Health (DOH) notes that the use of terms within the bill may not be consistent with terms already in use in the pharmacy practice act and Chapter 456, F.S. Chapter 465, F.S., contains a definition of “prescriber” that differs from the term used in the bill. For

⁶³ Email correspondence from Gary Landry, Department of Health (Feb. 7, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

⁶⁴ Email correspondence from Gary Landry, Department of Health (Feb. 11, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

consistency, the DOH suggests the same definition be used. Secondly, the term “dispenser” is used in the bill versus “dispensing practitioner” in the current statutes.⁶⁵ For consistency, the DOH suggests that the term “dispensing practitioner” should be used.

On line 357, a technical correction to the phrase “centralized pharmacy” should be made as local repositories should send summaries of their intake forms to the “centralized repository.”

VII. Related Issues:

The Cancer Drug Donation Program (CDDP) as previously described is not amended or incorporated into this proposed, broader drug donation program under the bill. The two programs would continue to run simultaneously and administered separately by the DOH and DBPR.

VIII. Statutes Affected:

This bill substantially amends section 252.36 of the Florida Statutes.

This bill creates section 465.1902 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 4, 2019.

The CS authorizes a patient, a patient’s legal representative, or a patient’s next of kin to donate unopened and unadulterated prescriptions or medical supplies to participating free clinics or nonprofit free clinics under the following conditions:

- The donor must sign an affidavit, on a form approved by the DOH, attesting to the authenticity of the items being donated, along with the identity of the prescriber.
- The items being donated must be inspected by a licensed pharmacist who examines them for any signs of tampering or adulteration.
- The donation itself and the items donated must meet all applicable safety and storage standards that are required in the bill for other donations.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁶⁵ *Id at (8).*