Health Quality Subcommittee

Tuesday, February 2, 2016
1:30 PM – 3:00 PM
306 HOB

Steve Crisafulli
Speaker

Cary Pigman
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Tuesday, February 02, 2016 01:30 pm

End Date and Time: Tuesday, February 02, 2016 03:00 pm

Location: 306 HOB

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 591 Laser Hair Removal by Raschein
HB 1151 Parentage by Richardson
HB 1217 Hair Restoration or Transplant by Geller
HB 1293 Newborn Adrenoleukodystrophy Screening by La Rosa, Campbell
HB 1431 Agency Relationships with Governmental Health Care Contractors by Raulerson

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, February 1, 2016.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 1, 2016.

NOTICE FINALIZED on 01/29/2016 3:51PM by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 Laser Hair Removal
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The practice of electrology is governed by the Florida Board of Medicine, in consultation with the Electrolysis Council. The practice of electrolysis refers to the permanent removal of hair using equipment and devices approved and registered by the United States Food and Drug Administration (FDA), and are used pursuant to protocols approved by the Board of Medicine.

Pursuant to rule 64B8-56.002, F.A.C., an electrologist may only perform laser and light-based hair removal or reduction if he or she:

- Has completed an approved training course;
- Is certified in the use of laser and light-based devices for the removal or reduction of hair by an approved national certification organization;
- Is only using the laser and light-based hair removal or reduction devices on which he or she has been trained; and
- Is operating pursuant to written protocols and under the direct supervision and responsibility of a licensed physician.

The bill defines "laser or pulsed-light device" as an electronic device approved by the FDA for laser hair removal, and "laser hair removal" as the use of laser or pulsed-light device in a hair removal procedure that does not remove the epidermis.

The bill seeks to codify rule 64B8-56.002, F.A.C., in law by requiring that an electrologist who uses a laser or pulsed-light device to be certified by a nationally recognized electrology organization in the use of these devices and to have appropriate training as defined by the board for each device used.

The bill appears to have no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Practice of Electrolysis

The practice of electrolysis and the regulation of electrologists are governed by the Electrolysis Practice Act.[1] Electrolysis or electrology refers to the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices cleared by and registered with the United States Food and Drug Administration (FDA), and using such equipment and devices in accordance with protocols approved by the Board of Medicine (board).[2]

An electrologist is a person who practices electrolysis. To qualify to be licensed as an electrologist, an applicant must: [3]

- Be at least 18 years old;
- Be of good moral character;
- Possess a high school diploma or its equivalent;
- Have not committed an act in any jurisdiction that would constitute grounds for discipline as an electrologist in this state;
- Have successfully completed the academic requirements of an electrolysis training program, approved by the board; and
- Have successfully passed a written exam developed by the Department of Health (DOH), or a national examination adopted by the board.

Licenses are renewed biennially.[4] A licensee must comply with a 20-hour continuing education requirement each biennium.[5] There are approximately 1,240 electrologists who hold active licenses in Florida.[6] Unless a person holds an active license as an electrologist, he or she may not hold herself or himself out as an electrologist or use the title "electrologist," "registered electrologist," or the abbreviation "RE."

The board has approved needle type epilators and laser and light-based hair removal devices cleared by the FDA for hair removal or reduction.[7] An electrologist may not use a laser or light-based device for hair removal or reduction unless he or she:[8]

- Has completed an approved 30- hour training course in laser and light-based hair removal or reduction;
- Has been certified in the use of laser and light-based devices for the removal or reduction of hair by an approved national certification organization;[9]

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[1] Chapter 478, F.S.
[2] Section 478.42(5), F.S.
[3] Section 478.75, F.S. Pursuant to s. 478.47, F.S., licensure by endorsement is available for those holding licenses in other jurisdictions whose licensure requirements are equivalent to those in Florida.
[4] Section 478.50, F.S.
[5] Rule 64B8-52.001, F.A.C. Upon the first licensure renewal, a licensee must complete an approved course on HIV/AIDS and blood-borne disease. Two hours each biennium must be on the prevention of medical errors.
[6] Florida Department of Health, Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, 10, *available at* http://mqawebteam.com/annualreports/1415/files/assets/basic-html/page-1.html# (last visited January 27, 2016). This number includes in state, out of state, and military active licensees.
[7] Rule 64B8-56.002(1), F.A.C.
[8] Rule 64B8-56.002(2), F.A.C.
[9] The approved certification organization is the Society of Clinical & Medical Hair Removal, Inc. (SCMHR). *See* http://www.floridahealth.gov/licensing-and-regulation/electrolysis/laser/index.html (last visited January 27, 2016).

- Is only using the laser and light-based devices for which he or she has been trained; and
- Is operating under the direct supervision and responsibility of a physician properly trained in hair removal and licensed pursuant to ch. 458 or 459, F.S.

The supervising physician and the electrologist must have written protocols, which must be provided to the DOH.[10] The supervising physician must review and inspect the techniques, procedures, and equipment utilized by the electrologist, upon assuming duties as the supervisor and semiannually thereafter. The supervising physician must ensure that the electrologist receives semi-annual training in infection control, sterilization, and emergency procedures. A physician may not supervise more than four electrologists at any one time.[11]

Any establishment or portion thereof wherein electrolysis is performed is deemed to be an electrology facility. All electrology facilities must be licensed by and is subject to inspection by the DOH for compliance with safety and sanitary requirements.[12]

Electrolysis Council

The Electrolysis Council (council), created by s. 478.44, F.S., assists the board in determining minimum standards for the delivery of electrolysis services.[13] The duties of the council include:

- Approval and denial of applicants for examination and applicants for endorsement;
- Approval and denial of continuing education providers and electrolysis training programs;
- The authority to accept non-disciplinary voluntary relinquishments;
- The authority to notice rules for development and to propose rules to the board; and
- Initial consideration of rulemaking proposals, petitions for declaratory statements, and petitions to adopt, amend, or repeal rules that relate to the practice of electrology and make recommendations on such to the board.[14]

Certification for Use of Laser and Light-Based Devices

The Society for Clinical and Medical Hair Removal (SCMHR) is an international organization that provides the only national certifications of physicians, nurses, and medical estheticians to demonstrate competency in hair removal procedures.[15] SCMHR offers four certifications:[16]

- Certified Clinical Electrologist (CCE) for those using needle modality;
- Certified Medical Electrologist (CME) for those with advanced knowledge and skill in needle modalities, as well as laser and light-based hair removal modalities;[17]
- Certified Laser Hair Removal Professional (CLHRP); and
- Certified Pulse Light Hair Removal Professional (CPLHRP).

For certification as a CME, an electrologist must hold a valid CCE designation, which is the first level of certification for electrologists, and successfully pass a CME examination,[18] which consists of questions

[10] Rule 64B8-56.002(4), F.A.C. Sections 458.348(3) and 459.025(2), F.S., also provides that all protocols relating to the use of laser or light-based hair removal or reduction by persons other than licensed physicians shall require the person performing such services be appropriately trained and work only under the direct supervision and responsibility of a licensed physician.
[11] Rule 64B8-56.002(5), F.A.C.
[12] *See* Rule 64B8-51.006, F.A.C.
[13] The Council consists of five members appointed by the Board of Medicine, and include three licensed electrologists who have been actively practicing electrology and two consumer members who have no financial interest in the practice of electrology.
[14] Rule 64B8-50.003, F.A.C.
[15] SCMHR, *About Us*, *available at* https://www.scmhr.org/about-scmhr (last visited January 28, 2016).
[16] SCMHR, *Certification*, *available at* https://www.scmhr.org/cert (last visited January 28, 2016).
[17] *Id.* The Certified Medical Electrologist is the certification required for licensure in the state of Florida.
[18] The examination costs $200 for SCMHR members and $300 for nonmembers. Additionally, those sitting for the exam are charged a separate $85 proctoring fee.

on the use of lasers and advanced electrology.[19] The CME designation is valid for five years, after which, an electrologist must either retake the exam or complete 75 hours of approved continuing education.[20]

Effect of Proposed Changes

The bill defines the following terms:

- "Laser or pulsed-light device" means an electronic device approved by the United States Food and Drug Administration for laser hair removal.
- "Laser hair removal" means the use of a laser or pulsed-light device in a hair removal procedure that does not remove the epidermis.

The bill requires an electrologists who uses a laser or pulsed-light device to be certified by a nationally recognized electrology organization in the use of these devices and must have the appropriate training as defined by the board for each device used.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 478.45, F.S., relating to requirements for licensure.
Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An electrologist who wishes to use laser or pulsed-light devices in his or her practice would be subject to the costs associated with obtaining national certification and training. However, since this requirement is currently in rule, the costs of such certification and training should remain the same.

[19] SCMHR, *CME Frequently Asked Questions, available at* https://www.scmhr.org/certified-medical-electrologist-cme/15-cme/157-cme-frequently-asked-questions (last visited January 28, 2016).
[20] SCMHR, *Certified Medical Electrologist, available at* https://www.scmhr.org/certified-medical-electrologist-cme (last visited January 28, 2016).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to laser hair removal; amending s. 478.45, F.S.; defining terms; providing certification and training requirements for electrologists who use laser or pulsed-light devices in hair removal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (5) and (6) of section 478.45, Florida Statutes, are redesignated as subsections (6) and (7), respectively, and a new subsection (5) is added to that section, to read:

478.45 Requirements for licensure.—

(5)(a) As used in this subsection, the term:

1. "Laser or pulsed-light device" means an electronic device approved by the United States Food and Drug Administration for laser hair removal.

2. "Laser hair removal" means the use of a laser or pulsed-light device in a hair removal procedure that does not remove the epidermis.

(b) An electrologist who uses a laser or pulsed-light device must be certified by a nationally recognized electrology organization in the use of these devices and must have the appropriate training as defined by the board for each device used.

Section 2. This act shall take effect July 1, 2016.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Steube offered the following:

Amendment (with title amendment)

Between lines 9 and 10, insert:

Section 1. Subsection (3) of section 458.348, Florida Statutes, is amended to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(3) PROTOCOLS RELATING TO LASER OR LIGHT-BASED HAIR REMOVAL OR REDUCTION ~~REQUIRING DIRECT SUPERVISION~~.—All protocols relating to electrolysis or electrology using laser or light-based hair removal or reduction by persons other than physicians licensed under this chapter or chapter 459 shall require the person performing such service to be appropriately trained and work only under the direct supervision and responsibility of a

physician licensed under this chapter or chapter 459. However, electrologists licensed under chapter 478 may perform laser or light-based hair removal or reduction under the indirect supervision of a physician licensed under this chapter or chapter 459.

Section 2. Subsection (2) of section 459.025, Florida Statutes, is amended to read:

459.025 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(2) PROTOCOLS RELATING TO LASER OR LIGHT-BASED HAIR REMOVAL OR REDUCTION ~~REQUIRING DIRECT SUPERVISION~~.—All protocols relating to electrolysis or electrology using laser or light-based hair removal or reduction by persons other than osteopathic physicians licensed under this chapter or chapter 458 shall require the person performing such service to be appropriately trained and to work only under the direct supervision and responsibility of an osteopathic physician licensed under this chapter or chapter 458. However, electrologist licensed under chapter 478 may perform laser or light-based hair removal or reduction under the indirect supervision of a physician licensed under this chapter or chapter 458.

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

Amendment No.

Remove line 3 and insert:

458.348, F.S.; revising the supervision requirements relating to the laser or light-based hair removal or reduction; amending s. 459.025, F.S.; revising the supervision requirements relating to the laser or light-based hair removal or reduction; amending s. 478.45, F.S.; defining terms; providing certification

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 Parentage
SPONSOR(S): Richardson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Tuszynski	O'Callaghan
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A preplanned adoption arrangement is an arrangement in which a volunteer mother enters into an agreement with an intended mother and father for adoption of an unborn child carried by the volunteer mother.

Artificial insemination is a form of assisted reproductive technology that allows the introduction of donor sperm either via intracervical or intrauterine insemination into a woman's body. In-vitro insemination is a form of assisted reproductive technology in which eggs are removed from a woman's body (or donor eggs are used), mixed with sperm to create embryos, and then placed into the woman's body.

A gestational surrogacy contract is a binding and enforceable agreement between a commissioning couple and a gestational surrogate. The commissioning couple is the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents. The gestational surrogate is defined as a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

HB 1151 makes multiple changes in statute to provide same-sex married couples with mechanisms to establish parentage.

The bill amends s. 63.213, F.S., relating to preplanned adoption agreements to change language referring to the intended adoptive parents to gender-neutral descriptors and phrases.

The bill amends s. 742.11, F.S., relating to the presumed status of a child conceived by means of artificial or in-vitro insemination or donated eggs or pre-embryos. In this section "husband and wife" has been changed to "mother and her spouse" in relation to the woman carrying the child and her spouse, and also changes "husband and wife" to "spouses," elsewhere in the section.

The bill amends s. 742.13, F.S., to change the definition of "commissioning couple" to mean the intended parents, instead of the intended mother and father. The definition for "intended parents" is also added to that section to mean parents whose consent for artificial or in-vitro insemination using donated sperm or eggs and gestational surrogacy is established under s. 742.11 or s. 742.15, F.S., respectively, and persons defined as intended parents under s. 63.213, F.S.

The bill amends s. 742.15, F.S., relating to gestation surrogacy contracts by making it clear that a physician must determine that neither intended parent can physically gestate to term, or gestate a pregnancy without causing harm to the intended parent, or gestate without causing risk to the fetus. This language clarifies that, in a same-sex marriage in which each partner is a woman, the couple cannot use a surrogate unless neither woman can gestate a pregnancy.

The bill also amends s. 742.14, F.S., relating to the donation of eggs, sperm, or pre-embryos, by changing the term "father" to "donor" and fixing a cross reference; and amends s. 742.16, F.S., relating to the expedited affirmation of parental status for gestational surrogacy, by removing the notice requirement for anyone claiming paternity, and instead making the notice requirement applicable to any party claiming to be a genetic or intended parent unless such rights are relinquished pursuant to s. 742.14, F.S.

The bill could have an indeterminate, negative fiscal impact on DOH for the cost of processing birth certificates due to same-sex married couples having a mechanism to establish parentage..

The bill provides that it will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Marital Presumption of Parentage

All states have a statute or common law rule that presumes children born during the marriage, absent any agreements between parties at childbirth, are the biological children of the husband.[1] This marital presumption protects parents and children.[2] Historically, without genetic testing to prove that the husband was not the child's biological parent, raising the issue of legitimacy could harm the child (and the reputation of the child's mother), but would not resolve the question.[3] The advent of genetic testing has changes this; user-friendly, relatively inexpensive tests are now available.[4] These tests will exclude men who could not possibly be a child's genetic parent and establish with great certainty whether a particular man is a child's biological father.[5]

In recent years, same-sex couples have begun to adopt children, bear children from in-vitro fertilization, and "blended" families consisting of multiple parents and stepparents are more commonplace. However, state statutes relating to parentage have not kept pace with the changing structure of the American family.

Preplanned Adoption

A preplanned adoption arrangement is an arrangement in which a volunteer mother enters into an agreement with an intended mother and father for adoption of an unborn child carried by the volunteer mother.[6] A preplanned adoption agreement must include, but need not be limited to, the following terms:

- The volunteer mother agrees to become pregnant by the fertility technique specified in the agreement, to bear the child, and to terminate any parental rights and responsibilities through a written consent executed at the same time as the preplanned adoption agreement, subject to the volunteer mother's 48 hour right of rescission;[7]
- The volunteer mother agrees to submit to a reasonable medical evaluation and treatment and adhere to medical instructions about her prenatal health;[8]
- The volunteer mother acknowledges that she will assume parental rights and responsibilities if the intended mother and father terminate the agreement prior to final transfer of custody or if the preplanned adoption is not approved by the court;[9]
- That an intended father who is also a biological father acknowledges that he is aware that he will assume parental rights and responsibilities if the agreement is terminated for any reason or not approved by the court;[10]

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[1] Paula Roberts, Truth and consequences: Part II: Questioning the paternity of Marital Children, 37 Fam. L.Q. 55, 56 n.2 (2003) (referring to the rule as "one of the strongest and most persuasive presumptions known to the law").
[2] Id.
[3] Id.
[4] Id.
[5] Id.
[6] See s. 63.213(6)(h), F.S.
[7] S. 63.213(2)(a), F.S.
[8] S. 63.213(2)(b), F.S.
[9] S. 63.213(2)(c), F.S.
[10] S. 63.213(2)(d), F.S.

- The intended mother and father acknowledge they may not receive custody or parental rights if the volunteer mother terminates the agreement or rescinds her consent within 48 hours of birth;[11]
- The intended mother and father may agree to pay all reasonable legal, medical, psychological or psychiatric expenses of the volunteer mother related to the preplanned adoption agreement, and may also agree to pay reasonable living expenses and lost wages due to the pregnancy and birth, as well as reasonable compensation for inconvenience, discomfort, and medical risk, but no other compensation may be made;[12]
- The intended mother and father agree to accept custody and to assert full parental rights and responsibilities immediately upon birth, regardless of any impairment;[13]
- The intended mother and father must have the right to specify the blood and tissue typing tests to be performed if the agreement specifies that at least one of them is intended to be the biological parent;[14] and
- The agreement may be terminated at any time by any party.[15]

Artificial or In-vitro Insemination

Both artificial insemination and in-vitro insemination are methods to attempt pregnancy without natural insemination through sexual intercourse. Artificial insemination is a form of assisted reproductive technology that allows the introduction of donor sperm either via intracervical or intrauterine insemination into a woman's body. In-vitro insemination is a form of assisted reproductive technology in which eggs are removed from a woman's body (or donor eggs are used), mixed with sperm to create embryos, and then placed into the woman's body.[16]

Section 742.11, F.S., states that any child born within wedlock who has been conceived by either of these means, using donated eggs or sperm, is irrebuttably presumed to be the child of the husband and wife, provided they have both consented in writing to the artificial or in-vitro insemination and the use of donated eggs or pre-embryos, except in the case of gestational surrogacy.

Gestational Surrogacy Contract

A gestational surrogacy contract is a binding and enforceable agreement between a commissioning couple and a gestational surrogate.[17] The "commissioning couple" is defined to be intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parties.[18] The "gestational surrogate" is defined as a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

The contract may be entered into only when, within reasonable medical certainty as determined by licensed physician, the:[19]

- Commissioning mother cannot physically gestate a pregnancy to term;
- Gestation will cause a risk to the physical health of the commissioning mother; or
- Gestation will cause risk to the health of the fetus.

[11] S. 63.213(2)(e), F.S.
[12] S. 63.213(2)(f), F.S.
[13] S. 63.213(2)(g), F.S.
[14] S. 63.213(2)(h), F.S.
[15] S. 63.213(2)(i), F.S.
[16] U.S. National Library of Medicine, MedlinePlus Health Topics, Assisted Reproductive Technology, *accessible at*: https://www.nlm.nih.gov/medlineplus/assistedreproductivetechnology.html (last accessed 01/20/16).
[17] S. 742.15(1), F.S.
[18] S. 742.13(2), F.S.
[19] S. 742.15(2), F.S.

The contract must include the following provisions:[20]

- The commissioning couple agrees that the gestational surrogate shall be the sole source of consent with respect to clinical intervention and management of the pregnancy;
- The gestational surrogate agrees to submit to reasonable medical evaluation and treatment and to adhere to reasonable medical instructions about her prenatal health;
- The gestational surrogate agrees to relinquish any parental rights upon the child's birth, and proceed with affirmation of parental status proceedings, unless it is determined that neither of the commissioning couple is the genetic parent of the child;
- The commissioning couple agrees to accept custody of and to assume full parental rights and responsibilities upon the child's birth, regardless of any impairment; and
- The gestational surrogate agrees to assume parental rights and responsibilities for the child if it is determined that neither of the commissioning couple is the genetic parent of the child.

The contract may allow the commissioning couple to pay only reasonable living, legal, medical, psychological, and psychiatric expenses of the gestational surrogate that are directly related to pre-natal, intrapartal, and postpartal periods.[21]

Effect of Proposed Changes

Preplanned adoption

The bill amends s. 63.213, F.S., relating to preplanned adoption agreements to change language referring to the intended adoptive parents to gender-neutral descriptors and phrases. The bill also clarifies that the 48-hour right of rescission belongs to the genetic mother of the child in a preplanned adoption. This change allows for all married couples, including same-sex married couples, to enter into preplanned adoption agreements.

Artificial or In-vitro Insemination

The bill amends s. 742.11, F.S., relating to the presumed status of a child conceived by means of artificial or in-vitro insemination or donated eggs or pre-embryos. In this section "husband and wife" has been changed to "mother and her spouse" in relation to the woman carrying the child and her spouse, and also changes "husband and wife" to "spouses," elsewhere in the section. This language recognizes same-sex married couples and their ability to use assisted reproductive technology to create a family.

Gestational Surrogacy Contract

The bill amends s. 742.13, F.S., to change the definition of "commissioning couple" to mean the intended parents, instead of the intended mother and father. The definition for "intended parents" is also added to that section to mean parents whose consent for artificial or in-vitro insemination using donated sperm or eggs and gestational surrogacy is established under s. 742.11 or s. 742.15, F.S., respectively, and persons defined as intended parents under s. 63.213, F.S.

The bill amends s. 742.15, F.S., relating to gestation surrogacy contracts by making it clear that a physician must determine that neither intended parent can physically gestate to term, gestate a pregnancy without causing harm to the intended parent, or gestate without causing risk to the fetus. This language clarifies that, in a same-sex marriage in which each partner is a woman, the couple cannot use a surrogate unless neither woman can gestate a pregnancy.

[20] S. 742.15(3), F.S.
[21] S. 742.15(4), F.S.

The bill also:

- Amends s. 742.14, F.S., relating to the donation of eggs, sperm, or pre-embryos by changing the term "father" to "donor" and fixing a cross reference; and
- Amends s. 742.16, F.S., relating to the expedited affirmation of parental status for gestational surrogacy by removing the notice requirement for anyone claiming paternity, and instead making the notice requirement applicable to any party claiming to be a genetic or intended parent unless such rights are relinquished pursuant to s. 742.14, F.S.

The bill provides that it takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 63.213, F.S., relating to preplanned adoption agreements.
Section 2: Amends s. 742.11, F.S., relating to presumed status of child conceived by means of artificial or in vitro insemination or donated eggs or pre-embryos.
Section 3: Amends s. 742.13, F.S., relating to definitions.
Section 4: Amends s. 742.14, F.S., relating to donation of eggs, sperm, or pre-embryos.
Section 5: Amends s. 742.15, F.S., relating to gestational surrogacy contracts.
Section 6: Amends s. 742. 16, F.S., relating to expedited affirmation of parental status for gestational surrogacy.
Section 7: Provides the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   This bill could create an indeterminate, negative fiscal impact on DOH related to the cost of any additional birth certificate processing through the Bureau of Vital Statistics.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill references s. 752.11, F.S., on line 167, which does not appear germane to this bill. This is likely a scrivener's error meant to reference s. 742.11, F.S., which this bill amends.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to parentage; amending s. 63.213, F.S.; revising terminology relating to parents; amending ss. 742.11 and 742.13, F.S.; revising terminology relating to married couples; amending ss. 742.14 and 742.15, F.S.; revising terminology relating to parents; making technical changes; amending s. 742.16, F.S.; revising to whom notice of hearing must be given on a petition for expedited affirmation of parental status; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1), paragraphs (a) and (c) through (h) of subsection (2), subsections (4) and (5), and paragraphs (d) through (i) of subsection (6) of section 63.213, Florida Statutes, are amended to read:

63.213 Preplanned adoption agreement.—

(1) Individuals may enter into a preplanned adoption arrangement as specified in this section, but such arrangement may not in any way:

(b) Constitute consent of a mother to place her biological child for adoption until 48 hours after the birth of the child and unless the court making the custody determination or approving the adoption determines that the mother was aware of her right to rescind within the 48-hour period after the birth

of the child but chose not to rescind such consent. The volunteer mother's right to rescind her consent in a preplanned adoption applies only when she is the genetic mother of the child ~~is genetically related to her~~.

(2) A preplanned adoption agreement must include, but need not be limited to, the following terms:

(a) That the volunteer mother agrees to become pregnant by the fertility technique specified in the agreement, to bear the child, and to terminate any parental rights and responsibilities to the child she might have through a written consent executed at the same time as the preplanned adoption agreement, subject to a right of rescission by the volunteer mother any time within 48 hours after the birth of the child, if the volunteer mother is the genetic mother of ~~genetically related to~~ the child.

(c) That the volunteer mother acknowledges that she is aware that she will assume parental rights and responsibilities for the child born to her as otherwise provided by law for a mother if the intended parents ~~father and intended mother~~ terminate the agreement before final transfer of custody is completed, if a court determines that a parent clearly specified by the preplanned adoption agreement to be the biological parent is not the biological parent, or if the preplanned adoption is not approved by the court pursuant to the Florida Adoption Act.

(d) That an intended parent ~~father~~ who is also the biological parent ~~father~~ acknowledges that the parent ~~he~~ is aware that the parent ~~he~~ will assume parental rights and

responsibilities for the child as otherwise provided by law for a biological parent ~~father~~ if the agreement is terminated for any reason by any party before final transfer of custody is completed or if the planned adoption is not approved by the court pursuant to the Florida Adoption Act.

(e) That the intended parents ~~father and intended mother~~ acknowledge that they may not receive custody or the parental rights under the agreement if the volunteer mother terminates the agreement or if the volunteer mother rescinds her consent to place her child for adoption within 48 hours after the birth of the child, if the volunteer mother is the genetic mother of ~~genetically related to~~ the child.

(f) That the intended parents ~~father and intended mother~~ may agree to pay all reasonable legal, medical, psychological, or psychiatric expenses of the volunteer mother related to the preplanned adoption arrangement and may agree to pay the reasonable living expenses of the volunteer mother and her wages lost due to the pregnancy and birth ~~of the volunteer mother~~ and reasonable compensation to the volunteer mother for inconvenience, discomfort, and medical risk. No other compensation, whether in cash or in kind, shall be made pursuant to a preplanned adoption arrangement.

(g) That the intended parents ~~father and intended mother~~ agree to accept custody of and to assert full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment to the child.

(h) That the intended parents ~~father and intended mother shall~~ have the right to specify the blood and tissue typing tests to be performed if the agreement specifies that at least one of them is intended to be the biological parent of the child.

(4) An attorney who represents the ~~an~~ intended parents ~~father and intended mother~~ or any other attorney with whom that attorney is associated may ~~shall~~ not represent simultaneously a female who is or proposes to be a volunteer mother in any matter relating to a preplanned adoption agreement or preplanned adoption arrangement.

(5) Payment to agents, finders, and intermediaries, including attorneys and physicians, as a finder's fee for finding volunteer mothers or matching a volunteer mother and intended parents ~~father and intended mother~~ is prohibited. Doctors, psychologists, attorneys, and other professionals may receive reasonable compensation for their professional services, such as providing medical services and procedures, legal advice in structuring and negotiating a preplanned adoption agreement, or counseling.

(6) As used in this section, the term:

(d) "Intended parents ~~father~~" means a married couple ~~male~~ who, as evidenced by a preplanned adoption agreement, intends to assert the parental rights and responsibilities for a child conceived through a fertility technique, regardless of whether the child is biologically related to both parents or either

parent ~~the male~~.

~~(e) "Intended mother" means a female who, as evidenced by a preplanned adoption agreement, intends to assert the parental rights and responsibilities for a child conceived through a fertility technique, regardless of whether the child is biologically related to the female.~~

(e) ~~(f)~~ "Party" means the intended father, the intended mother, the volunteer mother, or the volunteer mother's spouse ~~husband~~, if she has a spouse ~~husband~~.

(f) ~~(g)~~ "Preplanned adoption agreement" means a written agreement among the parties that specifies the intent of the parties as to their rights and responsibilities in the preplanned adoption arrangement, consistent with ~~the provisions of~~ this section.

(g) ~~(h)~~ "Preplanned adoption arrangement" means the arrangement through which the parties enter into an agreement for the volunteer mother to bear the child, for payment by the intended parents ~~father and intended mother~~ of the expenses allowed by this section, for the intended parents ~~father and intended mother~~ to assert full parental rights and responsibilities to the child if consent to adoption is not rescinded after birth by a volunteer mother who is the genetic mother of ~~genetically related to~~ the child, and for the volunteer mother to terminate, subject to any right of rescission, all her parental rights and responsibilities to the child in favor of the intended parents ~~father and intended~~

~~mother~~.

(h)~~(i)~~ "Volunteer mother" means a female at least 18 years of age who voluntarily agrees, subject to a right of rescission if she is the genetic mother of the ~~it is her biological~~ child, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate her parental rights and responsibilities to the child in favor of the intended parents ~~father and intended mother~~.

Section 2. Section 742.11, Florida Statutes, is amended to read:

742.11 Presumed status of child conceived by means of artificial or in vitro insemination or donated eggs or preembryos.—

(1) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the mother and her spouse ~~husband and wife~~, provided that both spouses ~~husband and wife~~ have consented in writing to the artificial or in vitro insemination.

(2) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by means of donated eggs or preembryos shall be irrebuttably presumed to be the child of the recipient gestating woman and her spouse ~~husband~~, provided that both spouses ~~parties~~ have consented in writing to the use of donated eggs or preembryos.

Section 3. Subsection (2) of section 742.13, Florida

Statutes, is amended, subsections (10) through (15) are renumbered as subsections (11) through (16), respectively, and a new subsection (10) is added to that section, to read:

742.13 Definitions.—As used in ss. 742.11-742.17, the term:

(2) "Commissioning couple" means the intended parents ~~mother and father~~ of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

(10) "Intended parents" means parents whose consent is established under s. 752.11 or s. 742.15 and persons defined as intended parents under s. 63.213.

Section 4. Section 742.14, Florida Statutes, is amended to read:

742.14 Donation of eggs, sperm, or preembryos.—The donor of any egg, sperm, or preembryo, other than the commissioning couple or a donor ~~father~~ who has executed a preplanned adoption agreement under s. 63.213 ~~63.212~~, shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children. Only reasonable compensation directly related to the donation of eggs, sperm, and preembryos shall be permitted.

Section 5. Subsection (2) of section 742.15, Florida Statutes, is amended to read:

742.15 Gestational surrogacy contract.—

(2) The commissioning couple shall enter into a contract

with a gestational surrogate only when, within reasonable medical certainty as determined by a physician licensed under chapter 458 or chapter 459:

(a) Neither intended parent can ~~The commissioning mother cannot~~ physically gestate a pregnancy to term;

(b) Neither intended parent can physically gestate a pregnancy without causing ~~The gestation will cause~~ a risk to the physical health of the intended parent ~~commissioning mother~~; or

(c) Neither intended parent can physically gestate a pregnancy without causing ~~The gestation will cause~~ a risk to the health of the fetus.

Section 6. Paragraph (c) of subsection (4) of section 742.16, Florida Statutes, is amended to read:

742.16 Expedited affirmation of parental status for gestational surrogacy.—

(4) Notice of the hearing shall be given by the commissioning couple to:

(c) Any party claiming to be a genetic or intended parent unless such rights are relinquished pursuant to s. 742.14 ~~paternity~~.

Section 7. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Richardson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 382.015, Florida Statutes, is amended to read:

382.015 New certificates of live birth; duty of clerks of court and department.—The clerk of the court in which any proceeding for adoption, annulment of an adoption, affirmation of parental status, or determination of parentage ~~paternity~~ is to be registered, shall within 30 days after the final disposition, forward to the department a certified copy of the court order, or a report of the proceedings upon a form to be furnished by the department, together with sufficient information to identify the original birth certificate and to

enable the preparation of a new birth certificate. The clerk of the court shall implement a monitoring and quality control plan to ensure that all judicial determinations of parentage ~~paternity~~ are reported to the department in compliance with this section. The department shall track parentage ~~paternity~~ determinations reported monthly by county, monitor compliance with the 30-day timeframe, and report the data to the clerks of the court quarterly.

(1) ADOPTION AND ANNULMENT OF ADOPTION.—

(a) Upon receipt of the report or certified copy of an adoption decree, together with the information necessary to identify the original certificate of live birth, and establish a new certificate, the department shall prepare and file a new birth certificate, absent objection by the court decreeing the adoption, the adoptive parents, or the adoptee if of legal age. The certificate must ~~shall~~ bear the same file number as the original birth certificate. All names and identifying information relating to the adoptive parents entered on the new certificate shall refer to the adoptive parents, but nothing in the certificate shall refer to or designate the parents as being adoptive. All other items not affected by adoption shall be copied as on the original certificate, including the date of registration and filing.

(b) Upon receipt of the report or certified copy of an annulment-of-adoption decree, together with the sufficient information to identify the original certificate of live birth,

the department shall, if a new certificate of birth was filed following an adoption report or decree, remove the new certificate and restore the original certificate to its original place in the files, and the certificate so removed shall be sealed by the department.

(c) Upon receipt of a report or certified copy of an adoption decree or annulment-of-adoption decree for a person born in another state, the department shall forward the report or decree to the state of the registrant's birth. If the adoptee was born in Canada, the department shall send a copy of the report or decree to the appropriate birth registration authority in Canada.

(2) DETERMINATION OF PARENTAGE ~~PATERNITY~~.—Upon receipt of the report, a certified copy of a final decree of determination of parentage ~~paternity~~, or a certified copy of a final judgment of dissolution of marriage which requires the former spouse ~~husband~~ to pay child support for the child, together with sufficient information to identify the original certificate of live birth, the department shall prepare and file a new birth certificate, which must ~~shall~~ bear the same file number as the original birth certificate. The registrant's name shall be entered as decreed by the court or as reflected in the final judgment or support order. The names and identifying information of the parents shall be entered as of the date of the registrant's birth.

(3) AFFIRMATION OF PARENTAL STATUS.—Upon receipt of an order of affirmation of parental status issued pursuant to s. 742.16, together with sufficient information to identify the original certificate of live birth, the department shall prepare and file a new birth certificate which must ~~shall~~ bear the same file number as the original birth certificate. The names and identifying information of the registrant's parents entered on the new certificate shall be the commissioning couple, but the new certificate may not make reference to or designate the parents as the commissioning couple.

(4) SUBSTITUTION OF NEW CERTIFICATE OF BIRTH FOR ORIGINAL.—When a new certificate of birth is prepared, the department shall substitute the new certificate of birth for the original certificate on file. All copies of the original certificate of live birth in the custody of a local registrar or other state custodian of vital records shall be forwarded to the State Registrar. Thereafter, when a certified copy of the certificate of birth or portion thereof is issued, it must ~~shall~~ be a copy of the new certificate of birth or portion thereof, except when a court order requires issuance of a certified copy of the original certificate of birth. In an adoption, change in parentage ~~paternity~~, affirmation of parental status, undetermined parentage, or court-ordered substitution, the department shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken except by

order of a court of competent jurisdiction or as otherwise provided by law.

(5) FORM.—Except for certificates of foreign birth which are registered as provided in s. 382.017, and delayed certificates of birth which are registered as provided in ss. 382.019 and 382.0195, all original, new, or amended certificates of live birth must ~~shall~~ be identical in form, regardless of the marital status of the parents or the fact that the registrant is adopted or of undetermined parentage.

(6) RULES.—The department shall adopt and enforce ~~all~~ rules necessary to implement ~~for carrying out the provisions of~~ this section.

Section 2. Subsection (2) and paragraphs (a) and (b) of subsection (3) of section 382.013, Florida Statutes, are amended to read:

382.013 Birth registration.—A certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred and shall be registered by the local registrar if the certificate has been completed and filed in accordance with this chapter and adopted rules. The information regarding registered births shall be used for comparison with information in the state case registry, as defined in chapter 61.

(2) PARENTAGE ~~PATERNITY~~.—

(a) If the mother is married at the time of birth, the name of the spouse must ~~husband shall~~ be entered on the birth certificate as a parent ~~the father~~ of the child, unless parentage ~~paternity~~ has been determined otherwise by a court of competent jurisdiction.

(b) Notwithstanding paragraph (a), if the spouse ~~husband~~ of the mother dies while the mother is pregnant but before the birth of the child, the name of the deceased spouse must ~~husband shall~~ be entered on the birth certificate as a parent ~~the father~~ of the child, unless parentage ~~paternity~~ has been determined otherwise by a court of competent jurisdiction.

(c) If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency established pursuant to s. 409.2557, regarding the benefits of voluntary establishment of parentage ~~paternity~~. Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of parentage ~~paternity~~, or a

voluntary acknowledgment of parentage ~~paternity~~ that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2).

(d) If the parentage ~~paternity~~ of the child is determined by a court of competent jurisdiction as provided under s. 382.015 or there is a final judgment of dissolution of marriage which requires the former spouse ~~husband~~ to pay child support for the child, the name of the former spouse ~~father~~ and the surname of the child shall be entered on the certificate in accordance with the finding and order of the court. If the court fails to specify a surname for the child, the surname must ~~shall~~ be entered in accordance with subsection (3).

(e) If the parentage ~~paternity~~ of the child is determined pursuant to s. 409.256, the name of the father and the surname of the child must ~~shall~~ be entered on the certificate in accordance with the finding and order of the Department of Revenue.

(f) If the parents ~~mother and father~~ marry each other at any time after the child's birth, upon receipt of a marriage license that identifies any such child, the department shall amend the certificate with regard to the parents' marital status as though the parents were married at the time of birth.

(g) If the father is not named on the certificate, no other information about the father shall be entered on the certificate.

(3) NAME OF CHILD.—

(a) If the mother is married at the time of birth, the mother and spouse ~~father~~ whose names are entered on the birth certificate shall select the given names and surname of the child if both parents have custody of the child, otherwise the parent who has custody shall select the child's name.

(b) If the parents ~~mother and father~~ whose names are entered on the birth certificate disagree on the surname of the child and both parents have custody of the child, the surname selected by each parent ~~the father and the surname selected by the mother~~ shall both be entered on the birth certificate, separated by a hyphen, with the selected names entered in alphabetical order. If the parents disagree on the selection of a given name, the given name may not be entered on the certificate until a joint agreement that lists the agreed upon given name and is notarized by both parents is submitted to the department, or until a given name is selected by a court.

Section 3. Section 742.011, Florida Statutes, is amended to read:

742.011 Determination of parentage ~~paternity~~ proceedings; jurisdiction.—Any woman who is pregnant or has a child, any spouse of a woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the parentage ~~paternity~~ of the child when parentage ~~paternity~~ has not been established by law or otherwise.

Section 4. Section 742.091, Florida Statutes, is amended to read:

742.091 Marriage of parents.—If the ~~mother of any child born out of wedlock and the~~ reputed parents of a child ~~father shall~~ at any time after its birth intermarry, the child shall in all respects be deemed and held to be the child of the spouses ~~husband and wife~~, as though born within wedlock, and upon the payment of all costs and attorney fees as determined by the court, the cause shall be dismissed and the bond provided for in s. 742.021 is ~~shall be~~ void. The record of the proceedings in such cases shall be sealed against public inspection in the interests of the child.

Section 5. Section 742.105, Florida Statutes, is amended to read:

742.105 Effect of a determination of parentage ~~paternity~~ from a foreign jurisdiction.—A final order of parentage ~~paternity~~ entered in a foreign jurisdiction, whether resulting from a voluntary acknowledgment or an administrative or judicial process, or an affidavit acknowledging paternity signed in any other state according to its procedures, must ~~shall~~ be given the same legal effect as if such final order was entered or affidavit was signed pursuant to this chapter. In any proceeding in this state, a certified copy of the final order of parentage ~~paternity~~ from a foreign jurisdiction is ~~shall be~~ conclusive evidence of parentage ~~paternity~~.

Section 6. Section 742.11, Florida Statutes, is amended to read:

742.11 Presumed status of child conceived by means of artificial or in vitro insemination or donated eggs or preembryos.—

(1) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the spouses ~~husband and wife~~, provided that both spouses ~~husband and wife~~ have consented in writing to the artificial or in vitro insemination.

(2) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by means of donated eggs or preembryos shall be irrebuttably presumed to be the child of the recipient gestating woman and her spouse ~~husband~~, provided that both parties have consented in writing to the use of donated eggs or preembryos.

Section 7. Subsection (2) of section 742.13, Florida Statutes, is amended to read:

742.13 Definitions.—As used in ss. 742.11-742.17, the term:

(2) "Commissioning couple" means the intended parents ~~mother and father~~ of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

Section 8. This act shall take effect July 1, 2016.

247

248 ----------

249 **T I T L E A M E N D M E N T**

250 Remove everything before the enacting clause and insert:

251 A bill to be entitled

252 An act relating to parentage; amending s. 382.015, F.S.;

253 requiring the Department of Health to prepare, file, and issue a

254 new birth certificate under specified circumstances; requiring

255 the new birth certificate to bear a specified reference;

256 amending ss. 382.013, 742.011, 742.091, 742.105, 742.11, and

257 742.13, F.S.; conforming provisions to changes made by the act;

258 providing an effective date.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Richardson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 382.015, Florida Statutes, is amended to read:

382.015 New certificates of live birth; duty of clerks of court and department.—The clerk of the court in which any proceeding for adoption, annulment of an adoption, affirmation of parental status, or determination of parentage ~~paternity~~ is to be registered, shall within 30 days after the final disposition, forward to the department a certified copy of the court order, or a report of the proceedings upon a form to be furnished by the department, together with sufficient information to identify the original birth certificate and to

enable the preparation of a new birth certificate. The clerk of the court shall implement a monitoring and quality control plan to ensure that all judicial determinations of parentage ~~paternity~~ are reported to the department in compliance with this section. The department shall track parentage ~~paternity~~ determinations reported monthly by county, monitor compliance with the 30-day timeframe, and report the data to the clerks of the court quarterly.

(1) ADOPTION AND ANNULMENT OF ADOPTION.—

(a) Upon receipt of the report or certified copy of an adoption decree, together with the information necessary to identify the original certificate of live birth, and establish a new certificate, the department shall prepare and file a new birth certificate, absent objection by the court decreeing the adoption, the adoptive parents, or the adoptee if of legal age. The certificate must ~~shall~~ bear the same file number as the original birth certificate. All names and identifying information relating to the adoptive parents entered on the new certificate shall refer to the adoptive parents, but nothing in the certificate shall refer to or designate the parents as being adoptive. All other items not affected by adoption shall be copied as on the original certificate, including the date of registration and filing.

(b) Upon receipt of the report or certified copy of an annulment-of-adoption decree, together with the sufficient information to identify the original certificate of live birth,

the department shall, if a new certificate of birth was filed following an adoption report or decree, remove the new certificate and restore the original certificate to its original place in the files, and the certificate so removed shall be sealed by the department.

(c) Upon receipt of a report or certified copy of an adoption decree or annulment-of-adoption decree for a person born in another state, the department shall forward the report or decree to the state of the registrant's birth. If the adoptee was born in Canada, the department shall send a copy of the report or decree to the appropriate birth registration authority in Canada.

(2) DETERMINATION OF PARENTAGE ~~PATERNITY~~.—Upon receipt of the report, a certified copy of a final decree of determination of parentage ~~paternity~~, or a certified copy of a final judgment of dissolution of marriage which requires the former spouse ~~husband~~ to pay child support for the child, together with sufficient information to identify the original certificate of live birth, the department shall prepare and file a new birth certificate, which must ~~shall~~ bear the same file number as the original birth certificate. The registrant's name shall be entered as decreed by the court or as reflected in the final judgment or support order. The names and identifying information of the parents shall be entered as of the date of the registrant's birth.

(3) AFFIRMATION OF PARENTAL STATUS.—Upon receipt of an order of affirmation of parental status issued pursuant to s. 742.16, together with sufficient information to identify the original certificate of live birth, the department shall prepare and file a new birth certificate which must ~~shall~~ bear the same file number as the original birth certificate. The names and identifying information of the registrant's parents entered on the new certificate shall be the commissioning couple, but the new certificate may not make reference to or designate the parents as the commissioning couple.

(4) SUBSTITUTION OF NEW CERTIFICATE OF BIRTH FOR ORIGINAL.—When a new certificate of birth is prepared, the department shall substitute the new certificate of birth for the original certificate on file. All copies of the original certificate of live birth in the custody of a local registrar or other state custodian of vital records shall be forwarded to the State Registrar. Thereafter, when a certified copy of the certificate of birth or portion thereof is issued, it must ~~shall~~ be a copy of the new certificate of birth or portion thereof, except when a court order requires issuance of a certified copy of the original certificate of birth. In an adoption, change in parentage ~~paternity~~, affirmation of parental status, undetermined parentage, or court-ordered substitution, the department shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken except by

order of a court of competent jurisdiction or as otherwise provided by law.

(5) FORM.—Except for certificates of foreign birth which are registered as provided in s. 382.017, and delayed certificates of birth which are registered as provided in ss. 382.019 and 382.0195, all original, new, or amended certificates of live birth must ~~shall~~ be identical in form, regardless of the marital status of the parents or the fact that the registrant is adopted or of undetermined parentage.

(a) The department shall include on every certificate of live birth where the name of each parent is printed the following designations:

1. Mother;

2. Father; or

3. Parent.

(b) The parent or parents signing the certificate of live birth shall select a designation of relationship as described in paragraph (a) for each parent.

(6) RULES.—The department shall adopt and enforce ~~all~~ rules necessary to implement ~~for carrying out the provisions of~~ this section.

Section 2. Subsection (2) and paragraphs (a) and (b) of subsection (3) of section 382.013, Florida Statutes, are amended to read:

382.013 Birth registration.—A certificate for each live birth that occurs in this state shall be filed within 5 days

after such birth with the local registrar of the district in which the birth occurred and shall be registered by the local registrar if the certificate has been completed and filed in accordance with this chapter and adopted rules. The information regarding registered births shall be used for comparison with information in the state case registry, as defined in chapter 61.

(2) PARENTAGE ~~PATERNITY~~.—

(a) If the mother is married at the time of birth, the name of the spouse must ~~husband shall~~ be entered on the birth certificate as a parent ~~the father~~ of the child, unless parentage ~~paternity~~ has been determined otherwise by a court of competent jurisdiction.

(b) Notwithstanding paragraph (a), if the spouse ~~husband~~ of the mother dies while the mother is pregnant but before the birth of the child, the name of the deceased spouse must ~~husband shall~~ be entered on the birth certificate as a parent ~~the father~~ of the child, unless parentage ~~paternity~~ has been determined otherwise by a court of competent jurisdiction.

(c) If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent

is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency established pursuant to s. 409.2557, regarding the benefits of voluntary establishment of parentage ~~paternity~~. Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of parentage ~~paternity~~, or a voluntary acknowledgment of parentage ~~paternity~~ that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2).

(d) If the parentage ~~paternity~~ of the child is determined by a court of competent jurisdiction as provided under s. 382.015 or there is a final judgment of dissolution of marriage which requires the former spouse ~~husband~~ to pay child support for the child, the name of the former spouse ~~father~~ and the surname of the child shall be entered on the certificate in accordance with the finding and order of the court. If the court fails to specify a surname for the child, the surname must ~~shall~~ be entered in accordance with subsection (3).

(e) If the parentage ~~paternity~~ of the child is determined pursuant to s. 409.256, the name of the father and the surname of the child must ~~shall~~ be entered on the certificate in accordance with the finding and order of the Department of Revenue.

(f) If the parents ~~mother and father~~ marry each other at any time after the child's birth, upon receipt of a marriage license that identifies any such child, the department shall amend the certificate with regard to the parents' marital status as though the parents were married at the time of birth.

(g) If the father is not named on the certificate, no other information about the father shall be entered on the certificate.

(3) NAME OF CHILD.—

(a) If the mother is married at the time of birth, the mother and spouse ~~father~~ whose names are entered on the birth certificate shall select the given names and surname of the child if both parents have custody of the child, otherwise the parent who has custody shall select the child's name.

(b) If the parents ~~mother and father~~ whose names are entered on the birth certificate disagree on the surname of the child and both parents have custody of the child, the surname selected by each parent ~~the father and the surname selected by the mother~~ shall both be entered on the birth certificate, separated by a hyphen, with the selected names entered in alphabetical order. If the parents disagree on the selection of a given name, the given name may not be entered on the certificate until a joint agreement that lists the agreed upon given name and is notarized by both parents is submitted to the department, or until a given name is selected by a court.

Section 3. Section 742.011, Florida Statutes, is amended to read:

742.011 Determination of parentage ~~paternity~~ proceedings; jurisdiction.—Any woman who is pregnant or has a child, any spouse of a woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the parentage ~~paternity~~ of the child when parentage ~~paternity~~ has not been established by law or otherwise.

Section 4. Section 742.091, Florida Statutes, is amended to read:

742.091 Marriage of parents.—If the ~~mother of any child born out of wedlock and the~~ reputed parents of a child ~~father shall~~ at any time after its birth intermarry, the child shall in all respects be deemed and held to be the child of the spouses ~~husband and wife~~, as though born within wedlock, and upon the payment of all costs and attorney fees as determined by the court, the cause shall be dismissed and the bond provided for in s. 742.021 is ~~shall be~~ void. The record of the proceedings in such cases shall be sealed against public inspection in the interests of the child.

Section 5. Section 742.105, Florida Statutes, is amended to read:

742.105 Effect of a determination of parentage ~~paternity~~ from a foreign jurisdiction.—A final order of parentage ~~paternity~~ entered in a foreign jurisdiction, whether resulting

from a voluntary acknowledgment or an administrative or judicial process, or an affidavit acknowledging paternity signed in any other state according to its procedures, must ~~shall~~ be given the same legal effect as if such final order was entered or affidavit was signed pursuant to this chapter. In any proceeding in this state, a certified copy of the final order of parentage ~~paternity~~ from a foreign jurisdiction is ~~shall be~~ conclusive evidence of parentage ~~paternity~~.

Section 6. Section 742.11, Florida Statutes, is amended to read:

742.11 Presumed status of child conceived by means of artificial or in vitro insemination or donated eggs or preembryos.—

(1) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the spouses ~~husband and wife~~, provided that both spouses ~~husband and wife~~ have consented in writing to the artificial or in vitro insemination.

(2) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by means of donated eggs or preembryos shall be irrebuttably presumed to be the child of the recipient gestating woman and her spouse ~~husband~~, provided that both parties have consented in writing to the use of donated eggs or preembryos.

Section 7. Subsection (2) of section 742.13, Florida Statutes, is amended to read:

742.13 Definitions.—As used in ss. 742.11-742.17, the term:

(2) "Commissioning couple" means the intended parents ~~mother and father~~ of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

Section 8. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to parentage; amending s. 382.015, F.S.; requiring the Department of Health to prepare, file, and issue a new certificate of live birth under specified circumstances; requiring the new certificate of live birth to bear a specified reference; requiring the certificate of live birth to contain a designation of relationship; amending ss. 382.013, 742.011, 742.091, 742.105, 742.11, and 742.13, F.S.; conforming provisions to changes made by the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 Hair Restoration or Transplant
SPONSOR(S): Geller
TIED BILLS: **IDEN./SIM. BILLS:** SB 974

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

An individual affected by hair loss may be treated with medication or by surgery, including hair transplantation, scalp reduction, scalp expansion, and scalp flaps. Each of these surgical interventions involves an incision to either harvest hair for transplantation or to redistribute sections of hair-bearing scalp.

Currently, Florida law does not delineate who may perform hair restoration or transplant services. The bill prohibits anyone who is not a licensed physician or physician assistant, under ch. 458 or ch. 459, F.S., or an advanced registered nurse practitioner, certified under s. 464.012, F.S., from performing hair restoration or transplant services or making an incision for the purpose of performing such services.

The bill defines "hair restoration or transplant" to mean a surgical procedure that extracts or removes hair follicles from one location on an individual living human body for the purpose of redistributing the hair follicles to another location on that body.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Hair Transportation and Restoration

Hair loss, also known as alopecia, is experienced by millions of individuals, and may be caused by a number conditions, diseases, medical regimens, or other factors, such as heredity or stress.[1] To determine the cause of hair loss, a health care practitioner may inquire about medications, nutrition, and allergies, among other things. The health care practitioner may also find it necessary to perform a scalp biopsy or order a blood test to determine the cause of hair loss.[2]

There are a number of treatments available to address hair loss, including prescription and nonprescription medications and surgical procedures. Hair transplantation is a surgical procedure in which hair is moved from a donor area of a patient's scalp to areas that are thinning or balding.[3] This is accomplished by one of two methods: follicular unit transplantation, which involves removing a long, thin strip from the donor area that is dissected into follicular units[4] under special microscopes; and follicular unit extraction, which involves removing follicular units one by one directly from the scalp. Once the follicular units are harvested, they are grafted into needle-sized holes made in the recipient area of the scalp by the health care practitioner.

Other surgical interventions for hair loss include scalp reduction, scalp expansion, and scalp flaps. A scalp reduction involves a health care practitioner surgically removing bald scalp and then stretching the hair-bearing scalp to cover the area removed.[5] In a scalp expansion, devices are inserted under the scalp to stretch the skin; this may be done to relax the scalp prior to a scalp reduction or it may be done to stretch the hair-bearing areas in an effort to reduce balding. Scalp flaps involve surgically moving hair-bearing segments of the scalp and placing them where hair is needed.[6]

To determine the best course of treatment, a health care practitioner may assess the cause of the hair loss and the expected outcomes of treatment.

Licensure and Regulation of Physicians

Chapter 458, F.S., provides for the licensure and regulation of the practice of allopathic medicine by the Florida Board of Medicine (Board of Medicine), and ch. 459, F.S., addresses the licensure and regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (Osteopathic Board). The boards work in conjunction with the Department of Health (DOH) to regulate the practice of allopathic and osteopathic physicians. The respective chapters provide, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

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[1] American Academy of Dermatology, *Hair Loss*, *available at* https://www.aad.org/public/diseases/hair-and-scalp-problems/hair-loss (last visited January 28, 2016).
[2] *Id.*
[3] Bernstein Medical Center for Hair Restoration, *Hair Transplant Surgery*, available at http://www.bernsteinmedical.com/hair-transplant/ (last visited January 28, 2016).
[4] A follicular unit is a tiny bundle of one to four hairs that occur in the human scalp. *Id.*
[5] *Supra* note 1. This procedure may be done in conjunction with a hair transplant.
[6] *Supra* note 1.

Licensure of Allopathic Physicians

An individual seeking to be licensed by examination as a medical doctor, must meet the following requirements:[7]

- Complete an application and pay an application fee;[8]
- Be at least 21 years of age;
- Be of good moral character;
- Has not committed an act or offense that would constitute the basis for disciplining a physician, pursuant to s. 458.331, F.S.;
- Complete 2 years of post-secondary education which includes, at a minimum, courses in fields such as anatomy, biology, and chemistry prior to entering medical school;
- Meets one of the following medical education and postgraduate training requirements:
    - Is a graduate of an allopathic medical school recognized and approved by an accrediting agency recognized by the U.S. Office of Education or recognized by an appropriate governmental body of a U.S. territorial jurisdiction, and has completed at least one year of approved residency training;
    - Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute as meeting the standards required to accredit U.S. medical schools, and has completed at least one year of approved residency training; or
    - Is a graduate of an allopathic foreign medical school that has not been certified pursuant to statute; has an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG),[9] has passed that commission's examination; and has completed an approved residency or fellowship of at least 2 years in one specialty area;
- Has submitted to a background screening by the DOH; and
- Has obtained a passing score on:
    - The United States Medical Licensing Examination (USMLE);
    - A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or
    - The Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX), if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the United States or Canada, and has practiced for a period of at least 10 years.

An individual who holds an active license to practice medicine in another jurisdiction may seek licensure by endorsement to practice medicine in Florida.[10] The applicant must meet the same basic requirements for licensure by examination. To qualify for licensure by endorsement, the applicant must also submit evidence of the licensed active practice of medicine in another jurisdiction for at least 2 of the preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure.[11]

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[7] Section 458.311(1), F.S.

[8] Pursuant to r. 64B8-3.002(5), F.A.C., the application fee for a person desiring to be licensed as a physician by examination is $500. The applicant must pay an initial license fee of $429. Section 766.314(4), F.S., assesses a fee to be paid with at time of an initial license to finance the Florida Birth-Related Neurological Injury Compensation Plan. The current assessment amount is $250.

[9] A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination. (Section 458.311, F.S.)

[10] Section 458.313, F.S.

[11] If an applicant for licensure by endorsement fails to meet all the requirements for licensure, the DOH may deny the application or may issue a license and impose additional requirements or restrictions on the applicant's license. *See* s. 458.311(8), F.S.

Licensure of Osteopathic Physicians

To be licensed as an osteopathic physician (DO), an applicant must:[12]

- Complete an application and pay an application fee;[13]
- Be of at least 21 years of age;
- Be of good moral character;
- Complete at least 3 years of pre-professional postsecondary education;
- Have not previously committed or be under investigation in any jurisdiction for any act that would constitute a violation of ch. 459, F.S., unless the Osteopathic Board determines that such act does not adversely affect the applicant's present ability and fitness to practice;
- Have not had an application for a license to practice osteopathic medicine denied, revoked, suspended, or acted against by any licensing authority unless the Osteopathic Board determines the grounds on which the action was taken do not adversely affect the applicant's present ability and fitness to practice;
- Have not received less than a satisfactory evaluation from an internship, residency, or fellowship training program, unless the Osteopathic Board determines that such act does not adversely affect the applicant's present ability and fitness to practice;
- Submit to a background screening by the DOH;
- Be a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Successfully complete a resident internship of at least 12 months in an approved hospital or another approved internship program approved by the Osteopathic Board upon a good showing by the applicant; and
- Obtain a passing score on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners (NBOME) or other approved examination within five years of application.

If an individual holds a valid DO license from another state and wishes to practice medicine in Florida, he or she is required to submit evidence to the board that they possess an active license in another state.[14] The initial license from another jurisdiction must have occurred less than 5 years after receiving a passing score on the examination administered by the NBOME or other substantially similar examination approved by the Osteopathic Board.[15] If the DO has not practiced for more than 2 years, then the Osteopathic Board has the discretion to determine if the lapse in time has adversely affected the DO's present ability and fitness to practice osteopathic medicine.[16]

Licensure and Regulation of Physician Assistants

Licensure and Regulation

A physician assistant (PA) is a person who has completed an approved medical training program and is licensed to perform medical services, as delegated by a supervising physician.[17] PAs licensure is governed by ss. 458.347(7) and 459.022(7), F.S. The DOH licenses PAs, and the Florida Council on Physician Assistants (Council) regulates the practice of PAs in conjunction with either the Board of

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[12] Section 459.0055(1), F.S.
[13] Pursuant to r. 64B15-10.002, F.A.C., the application fee is $200. The applicant must also pay an initial license fee of $300 upon the submission of the application. Section 766.314(4), F.S., assesses a fee to be paid with at time of an initial license to finance the Florida Birth-Related Neurological Injury Compensation Plan. The current assessment amount is $250.
[14] Section 459.0055(2), F.S.
[15] Section 459.0055(1)(m), F.S.
[16] *Supra* note 14. If the Osteopathic Board determines that the interruption in practice has adversely affected the applicant's ability and fitness to practice, the Osteopathic Board may deny the application or issue the license and impose additional requirements or restrictions on the license.
[17] Sections 458.347(2)(e) and 459.022(2)(e), F.S.

Medicine for PAs licensed under ch. 458, F.S., or the Osteopathic Board for PAs licensed under ch. 459, F.S.

To be licensed as a PA, an applicant must demonstrate to the Council that he or she has met the following requirements:

- Satisfactory passage of the proficiency examination administered by the National Commission on Certification of Physician Assistants;
- Completion of an application and remittance of the applicable fees to the DOH; [18]
- Completion of an approved PA training program;
- Submission of a sworn statement of any prior felony convictions;
- Submission of a sworn statement of any revocation or denial of licensure or certification in any state;
- Submission of two letters of recommendation; and
- If the applicant is seeking prescribing authority, a submission of a copy of course transcripts and the course description from a PA training program describing the course content in pharmacotherapy.[19]

Supervision of PAs

A PA may only practice under the delegated authority of a supervising physician. A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.[20] Supervision is defined as responsible supervision and control that requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.[21] A physician may not supervise more than four PAs at any time.[22]

The Board of Medicine and the Osteopathic Board have prescribed by rule what constitutes adequate responsible supervision. Responsible supervision is the ability of a supervising physician to reasonably exercise control and provide direction over the services or tasks performed by the PA.[23] Whether the supervision of the PA is adequate is dependent on the:

- Complexity of the task;
- Risk to the patient;
- Background, training, and skill of the PA;
- Adequacy of the direction in terms of its form;
- Setting in which the tasks are performed;
- Availability of the supervising physician;
- Necessity for immediate attention; and
- Number of other persons that the supervising physician must supervise.[24]

Direct supervision refers to the physical presence of the supervising physician so that the physician is immediately available to the PA when needed.[25] Indirect supervision refers to the reasonable physical proximity of the supervising physician to the PA or availability by telecommunication.[26] The decision to permit a PA to perform a task or procedure under direct or indirect supervision is made by the

[18] The application fee is $100 and the initial license fee is $200. Applicants must also pay an unlicensed activity fee of $5. *See* Rules 64B8-30.019 and 64B15-6.013, F.A.C.
[19] Sections 458.347(7) and 459.022(7), F.S.
[20] Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C. The term "scope of practice" refers to those tasks and procedures that the supervising physician is qualified by training or experience to support.
[21] Sections 458.347(2)(f) and 459.022(2)(f), F.S.
[22] Sections 458.347(3) and 459.022(3), F.S.
[23] Rules 64B8-30.001(3) and 64B15-6.001(3), F.A.C.
[24] *Id.*
[25] Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.
[26] Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.

supervising physician based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.[27]

Delegable Tasks

Rules of both the Board of Medicine and the Osteopathic Board place limitations on a supervising physician's ability to delegate certain tasks. Prescribing, dispensing, or compounding medicinal drugs and making a final diagnosis are not permitted to be delegated to a PA, except when specifically authorized by statute.[28]

Regulation of Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of advanced registered nurse practitioners (ARNPs) in Florida. Nurses are licensed by the DOH and are regulated by the Board of Nursing.[29]

In Florida, an ARNP is a licensed nurse who is certified in advanced or specialized nursing practice and may practice as a certified registered nurse anesthetist, a certified nurse midwife, or a nurse practitioner.[30] Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include the performance of advanced-level nursing acts approved by the Board of Nursing, which by virtue of postbasic specialized education, training, and experience are appropriately performed by an ARNP.[31]

Florida recognizes three types of ARNPs: nurse anesthetist, certified nurse midwife, and nurse practitioner. The Board of Nursing, created by s. 464.004, F.S., establishes the eligibility criteria for an applicant to be certified as an ARNP and the applicable regulatory standards for ARNP nursing practices.[32] To be certified as an ARNP, the applicant must:

- Have a registered nurse license;
- Have earned, at least, a master's degree; and
- Submit proof to the Board of Nursing of holding a current national advanced practice certification obtained from a board-approved nursing specialty board.[33]

Supervision of ARNPs

Pursuant to s. 464.012(3), F.S., ARNPs may only perform nursing practices delineated in an established protocol filed with the Board of Nursing that is filed within 30 days of entering into a supervisory relationship with a physician and upon biennial license renewal.[34] Florida law allows a primary care physician to supervise ARNPs in up to four offices, in addition to the physician's primary practice location.[35] If the physician provides specialty health care services, then only two medical offices, in addition to the physician's primary practice location, may be supervised.

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[27] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[28] *Supra* note 12.
[29] Pursuant to s. 464.004, F.S., the Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. The Board is comprised of three licensed practical nurses who have practiced for at least four years, seven members who are registered numbers who have practiced for at least 4 years; three Florida residents who have never been licensed as nurses, are not connected to the practice of nursing, and have no financial interest in any health care facility, agency, or insurer; and seven members who are registered nurses who have practiced at least four years. Among the seven members who are registered nurses, there must be at least one must be an ARNP, one nurse educator of an approved program, and one nurse executive.
[30] Section 464.003(3), F.S.
[31] Section 464.003(2), F.S.
[32] Section 464.012(2), F.S.
[33] Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C. A nursing specialty board must attest to the competency of nurses in a clinical specialty area, require nurses to take a written examination prior to certification, require nurses to complete a formal program prior to eligibility of examination, maintain program accreditation, and identify standards or scope of practice statements appropriate for each nursing specialty.
[34] Physicians are also required to provide notice of the written protocol and the supervisory relationship to the Board of Medicine or Board of Osteopathic Medicine, respectively. *See* ss. 458.348 and 459.025, F.S.
[35] Sections 458.348(4) and 459.025(3), F.S.

To ensure appropriate medical care, the number of ARNPs a supervising physician may supervise is limited based on consideration of the following factors:

- Risk to the patient;
- Educational preparation, specialty, and experience in relation to the supervising physician's protocol;
- Complexity and risk of the procedures;
- Practice setting; and
- Availability of the supervising physician or dentist.[36]

Delegable Tasks

Within the framework of a written physician protocol, an ARNP may:

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions;
- Order diagnostic tests and physical and occupational therapy;
- Perform certain acts within his or her specialty;
- Perform medical acts authorized by a joint committee; and
- Perform additional functions determined by rule. [37]

All ARNPs must carry malpractice insurance or demonstrate proof of financial responsibility.[38] An applicant for certification is required to submit proof of coverage or financial responsibility within sixty days of certification and with each biennial renewal.[39] An ARNP must have professional liability coverage of at least $100,000 per claim with a minimum annual aggregate of at least $300,000, or an unexpired irrevocable letter of credit, which is payable to the ARNP as beneficiary, in the amount of at least $100,000 per claim with a minimum aggregate availability of at least $300,000.[40]

Effect of Proposed Changes

The bill prohibits anyone other than a licensed physician, PA, or ARNP from performing hair restoration or transplant services, or making any incision for the purpose of performing hair restoration or transplant services. The bill defines "hair restoration or transplant" as a surgical procedure that extracts or removes hair follicles from one location on an individual living human body for the purpose of redistributing the hair follicles to another location of the body.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Creates s. 458.352, F.S., relating to hair restoration or transplant.
Section 2. Creates s. 459.027, F.S., relating to hair restoration or transplant.
Section 3. Provides an effective date of July 1, 2016.

[36] Rule 64B9-4.010, F.A.C.
[37] Section 464.012(3), F.S. Pursuant to s. 464.012(4), F.S., certified registered nurse anesthetists, certified nurse midwives, and certified nurse practitioners are authorized to perform additional acts that are within their specialty and authorized under an established supervisory protocol.
[38] Section 456.048, F.S.
[39] Rule 64B9-4.002(5), F.A.C.
[40] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to hair restoration or transplant; creating ss. 458.352 and 459.027, F.S.; defining the term "hair restoration or transplant"; prohibiting a person who is not licensed or is not certified under ch. 458, F.S., ch. 459, F.S., or s. 464.012, F.S., from performing a hair restoration or transplant or making incisions for the purpose of performing a hair restoration or transplant; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 458.352, Florida Statutes, is created to read:

458.352 Hair restoration or transplant.—

(1) As used in this section, the term "hair restoration or transplant" means a surgical procedure that extracts or removes hair follicles from one location on an individual living human body for the purpose of redistributing the hair follicles to another location on that body.

(2) A person who is not licensed under this chapter or chapter 459 or certified under s. 464.012 may not perform a hair restoration or transplant or make incisions for the purpose of performing a hair restoration or transplant.

Section 2. Section 459.027, Florida Statutes, is created

to read:

459.027 Hair restoration or transplant.—

(1) As used in this section, the term "hair restoration or transplant" means a surgical procedure that extracts or removes hair follicles from one location on an individual living human body for the purpose of redistributing the hair follicles to another location on that body.

(2) A person who is not licensed under this chapter or chapter 458 or certified under s. 464.012 may not perform a hair restoration or transplant or make incisions for the purpose of performing a hair restoration or transplant.

Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1293 Newborn Adrenoleukodystrophy Screening
SPONSOR(S): La Rosa and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Langston	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Newborn screening is a preventive public health program that is provided in every state in the United States to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death. The United States Department of Health and Human Services (HHS) Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (DACHDNC) advises HHS on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and standards. DACHDNC establishes the heritable disorders listed on the federal Recommended Uniform Screening Panel (RUSP).

In Florida, the Department of Health (DOH) is responsible for administering the statewide Newborn Screening Program (NSP), which conducts screenings for 53 disorders. Once a heritable disorder is added to the RUSP, it is reviewed by the DOH Newborn Screening Advisory Council, which recommends to DOH whether the disorder should be added to the NSP panel of disorders to be screened for in Florida.

Adrenoleukodystrophy (ALD) is a genetically determined neurological disorder that affects one in every 17,900 boys worldwide. ALD strips away the fatty coating that keeps nerve pulses confined and maintains the integrity of nerve signals. This process causes neurological deficits, including visual disturbances, auditory discrimination, impaired coordination, dementia, and seizures. To date, ALD has not been added to the RUSP and is not on the NSP's panel of disorders that are required for newborn screening.

HB 1293 requires DOH to expand statewide newborn screening to include screening for ALD as soon as ALD is added to the RUSP and the NSP panel.

The bill will have a significant negative fiscal impact on DOH and the Agency for Health Care Administration if screening for ALD is added to the RUSP, and no fiscal impact on local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Recommendations for Newborn Screening

The United States Department of Health and Human Services (HHS) Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (DACHDNC), under the Public Health Service Act,[1] fulfills the functions previously undertaken by the former Secretary's Advisory Committee on Heritable Disorders and Children (SACHDNC),[2] to reduce morbidity and mortality in newborns and children who have, or are at risk for, heritable disorders.[3] To that end, the DACHDNC advises the Secretary of HHS the most appropriate application of universal newborn and child screening tests and technical information for the development of policies and priorities that will enhance the ability of state and local health agencies to provide for screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders.[4] If the DACHDNC recommends the inclusion of a screening to the RUSP, its recommendation must be submitted in writing to the HHS Secretary, who will have final approval before the condition is added to the RUSP.

As part of this process, DACHDNC establishes the heritable disorders listed on the federal Recommended Uniform Screening Panel (RUSP). The RUSP currently provides 32 core conditions and 26 secondary conditions.[5]

Florida Newborn Screening Program

Section 383.14(5), F.S., establishes the Florida Genetics and Newborn Screening Advisory Council with the purpose to advise the Department of Health (DOH) about which disorders should be screened for under the Newborn Screening Program (NSP) and the procedures for collection and transmission of specimens. Florida's NSP currently screens for all disorders that are included on the RUSP.[6]

The intent of the NSP is to screen all newborns for hearing impairment and to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death.[7] Before a disorder is added to the NSP, the Genetics and Newborn Screening Advisory Council considers the SACHDNC's recommendation to ensure that the disorder would meet the following criteria:

- The disorder causes significant impairment in health, intellect, or functional ability, if not treated before clinical signs appear;
- The disorder can be detected using accepted screening methods;
- The disorder can be detected prior to two weeks of age, or at the appropriate age as accepted medical practice indicates; and

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[1] 42 U.S.C. 217a: Advisory councils or committees (2014).
[2] U.S. Department of Health and Human Services, *Discretionary Advisory Committee on Heritable Disorders in Newborns and Children*, http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/index.html (last visited January 28, 2016).
[3] Id.
[4] Secretary of Health and Human Services, *Charter Discretionary Advisory Committee on Heritable Disorders in Newborns and Children*, April 24, 2013, *available at* http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/about/charterdachdnc.pdf (last visited January 28, 2016).
[5] Discretionary Advisory Committee on Heritable Disorders in Newborns and Children, *Recommended Uniform Screening Panel (as of March 2015)*, *available at* http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendedpanel/uniformscreeningpanel.pdf (last visited January 28, 2016).
[6] Id.
[7] Florida Department of Health, *Agency Analysis of 2014 House Bill 591*, January 14, 2014 (on file with Health Quality Subcommittee).

- After screening for the disorder, reasonable cost benefits can be anticipated.[8]

The NSP is a comprehensive system involving coordination among several entities, including the Bureau of Laboratories Newborn Screening Laboratory in Jacksonville, Children's Medical Services (CMS) Newborn Screening Follow-up Program in Tallahassee, and referral centers throughout the state. The NSP screens for all core conditions and 22 secondary conditions (a total of 53 conditions); this includes all of the core conditions recommended by the RUSP and 50 of their recommendations overall.[9]

In Florida, once the screening takes place, the specimen card is sent to the DOH Newborn Screening Laboratory (DOH State Laboratory) in Jacksonville for testing. The DOH State Laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24 to 48 hours. The CMS program, within DOH, provides follow-up services for all abnormal screening results.

Adrenoleukodystrophy (ALD)

Adrenoleukodystrophy (ALD) is a genetically determined neurological disorder that affects one in every 17,900 boys worldwide[10]. The presentation of symptoms occurs somewhere between the ages of 4 and 10, and affects the brain with demyelination.[11] Demyelination is the stripping away of the fatty coating that keeps nerve pulses confined and maintains the integrity of nerve signals.[12] This process inhibits the nerves ability to conduct properly, thereby causing neurological deficits, including visual disturbances, auditory discrimination, impaired coordination, dementia, and seizures.[13] Demyelination is an inflammatory response and nerve cells throughout the brain are destroyed.[14]

Screening for ALD

The SACHDNC first nominated ALD to be included in RUSP to in 2012.[15] At that time, the nomination did not progress and SACHDNC did not recommend a full evidence review because sufficient prospective data was not yet available from a large pilot study at the Mayo Biochemical Genetics Laboratory.[16] In September 2013, ALD was again nominated for consideration. Following that nomination, at a January 2014 meeting of the SACHDNC, the Advisory Committee recommended a full evidence review of ALD and requested the External Evidence Review Group to present a full report to the SACHDNC.[17] The preliminary report was presented to the DACHDNC Advisory Committee on February 12, 2015;[18] following the report, the Advisory Committee submitted a recommendation that

[8] S. 383.14(5), F.S.
[9] Florida Department of Health, *Disorder List*, *available at* http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/_documents/newborn-screening-disorders.pdf (last visited January 28, 2016); this list is also maintained by DOH in Rule Rule 64C-7.002, F.A.C.
[10] Adrenoleukodystrophy Foundation, *What is ALD?*, http://www.aldfoundation.org/ald.php (last visited January 28, 2016).
[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] U.S. Department of Health and Human Services, *Letter of Secretary's Advisory Committee on Heritable Disorders in Newborns and Children*, October 1, 2012, *available at* http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/nominatecondition/reviews/alddecisionletter.pdf (last visited January 28, 2016).
[16] Id.
[17] Alex R. Kemper, *Newborn Screening for X-linked Adrenoleukodystrophy (X-ALD): Preliminary Report from the Condition Review Workgroup (CRW)*, February 12, 2015, *available at* http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/meetings/2015/sixth/crupdatealdkemper2.pdf (last visited January 28, 2016).
[18] Id.

ALD be included in the RUSP to the HHS Secretary on September 25, 2015.[19] The HHS Secretary has indicated that she will respond in mid-February 2016, to the DACHDNC's recommendation.[20]

ALD is currently screened for in California, Connecticut, New Jersey, and New York.[21] The Florida Genetics and Newborn Screening Advisory Council has not yet considered whether ALD should be added to Florida's NSP panel of disorders.[22] However, the Genetics and Newborn Screening Advisory Council will consider whether ALD should be added at its February 19, 2016, meeting.[23]

Effect of Proposed Changes

The bill amends s. 383.14, F.S., to direct DOH to expand statewide newborn screening to include screening for ALD when ALD is added to the RUSP. This will make ALD only the second disease statutorily required to be screened under the NSP.[24] The bill also removes DOH's discretion to determine that ALD meets appropriate criteria for screening. Typically, DOH has the discretion to determine which disorders must be screened after consultation with the Genetics and Newborn Screening Advisory Council.

DOH will be required to adopt rules related to newborn screening requirements for ALD if it is added to the RUSP. Specifically, Rule 64C-7.002, F.A.C., which includes the list of congenital conditions/diseases for which newborns are screened and specifies when the blood specimen is to be collected, would need to be amended to include screening for ALD once it is added to the RUSP.

The effective date of the bill is July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

For newborns with Medicaid, there will be no revenue generated if ALD is added to the screening panel because the test will be included in the existing MS/MS kit and will be part of the MS/MS CPT billing code.[25] Currently, ALD testing cannot be billed separately because there is no recognized CPT code for ALD screening in the Medicaid Independent Lab Fee Schedule.[26]

The suggested code, 82016, would need to be added and a price determined by the Agency for Health Care Administration.[27] The Medicare price for 82016 is $18.89; this is also the amount that would be billed to newborns with commercial third-party insurers.[28] DOH estimates that the

[19] Florida Department of Health, *Agency Analysis for 2016 House Bill HB 1293*, January 28, 2015 (on file with Health Quality Subcommittee).
[20] Id.
[21] *Supra*, note 17.
[22] Florida Department of Health, *Agency Analysis for 2015 House Bill HB 403*, January 28, 2015 (on file with Health Quality Subcommittee).
[23] *Supra*, note 19. ALD has been added to the agenda for the February 19, 2016, meeting for discussion and consideration.
[24] See, s. 383.14(2), F.S. (stating that DOH "shall adopt and enforce rules requiring that every newborn in this state shall, prior to becoming 1 week of age, be subjected to a test for phenylketonuria" and specifying that DOH "may deem" it necessary to screen for other disorders).
[25] *Supra*, note 19.
[26] Id.
[27] Id.
[28] Id.

potential revenue collections from third-party insurers could range from $566,700 to $850,050; however, it also notes that currently, there is only a 10 to 15 percent collection rate for newborn screening services.[29]

2. Expenditures:

The bill will have a significant negative fiscal impact on DOH if ALD screening begins. This will include an annual, recurring cost of $750,000 for the DOH State Laboratory to conduct the screening at a cost $2.50 per specimen for approximately 300,000 newborns screened.[30] In addition, DOH will incur a one-time cost of $50,000 to modify its current data system to incorporate ALD screening, follow-up, and tracking.[31]

The bill will also have an indeterminate, but significant negative, fiscal impact on the Agency for Health Care Administration (AHCA) for newborns covered under Florida Medicaid.[32] Last year AHCA assumed the screening would cost $16.50 per specimen for approximately 130,000 Medicaid infants; using DOH's assumption that the cost of the screening is $2.50 per specimen, it would cost AHCA approximately $325,000 annually to screen Medicaid infants.[33]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private insurance would bear the costs of the confirmatory testing for each covered newborn with a presumptive positive screening result, which may also include molecular testing for all positive confirmatory tests. This impact is indeterminate.[34]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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[29] Id.
[30] Id.
[31] Id.
[32] Florida Agency for Health Care Administration, *Agency Analysis for 2015 House Bill 403*, January 22, 2015 (on file with Health Quality Subcommittee).
[33] Id.
[34] *Supra*, note 19.

C. DRAFTING ISSUES OR OTHER COMMENTS:

ALD could be added to the RUSP as early as February 2016. Historically, it takes a minimum of one to two years to add a disorder to the screening panel in Florida.[35] It is therefore recommended that the implementation date for DOH to screen for ALD be moved to a later date.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[35] Id. Preparation includes obtaining budget authority for expenditures for reagents and other related expenses for data system modifications. ollow-up staff must develop policies and procedures for abnormal results and amend Referral Center contracts to include ALD follow-up which will include diagnostic evaluation for infants with critical results. Birthing facilities and physicians who care for newborns must be provided information on ALD, which would include interpretation of lab results and appropriate action.

A bill to be entitled

An act relating to newborn adrenoleukodystrophy screening; amending s. 383.14, F.S.; directing the Department of Health to expand statewide screening of newborns to include screening for adrenoleukodystrophy when adopted for inclusion on the federal recommended uniform screening panel; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(2) RULES.—After consultation with the Genetics and Newborn Screening Advisory Council, the department shall adopt and enforce rules requiring that every newborn in this state shall, before ~~prior to~~ becoming 1 week of age, be subjected to a test for phenylketonuria and, at the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time. The department shall expand statewide screening of newborns to include screening for adrenoleukodystrophy as soon as adrenoleukodystrophy is adopted for inclusion on the federal recommended uniform screening panel. After consultation with the Office of Early Learning, the department shall also adopt and

enforce rules requiring every newborn in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes. The department shall adopt such additional rules as are found necessary for the administration of this section and s. 383.145, including rules providing definitions of terms, rules relating to the methods used and time or times for testing as accepted medical practice indicates, rules relating to charging and collecting fees for the administration of the newborn screening program authorized by this section, rules for processing requests and releasing test and screening results, and rules requiring mandatory reporting of the results of tests and screenings for these conditions to the department.

Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1293 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 23-24 and insert:

newborns to include screening for adrenoleukodystrophy within one year after adrenoleukodystrophy is adopted for inclusion on the federal

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

Remove line 6 and insert:

within one year after adopted for inclusion on the federal recommended

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 Agency Relationships with Governmental Health Care Contractors
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1034

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		McElroy	O'Callaghan
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Section 766.1115, F.S., the Access to Health Care Act (Act), was enacted to provide sovereign immunity to health care professionals who contract with the state to provide free medical care for indigent persons. The contract must be for "volunteer, uncompensated services" for the benefit of low-income recipients.

HB 1431 revises the description of volunteer, uncompensated services under the Act to allow a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of the contracted services by volunteer health care providers without jeopardizing the sovereign immunity protections afforded under the Act. This would allow such funds to be used to employ health care providers to supplement, coordinate, or support the volunteer health care providers.

The bill also clarifies that employees and agents of a health care provider fall within the sovereign immunity protections of the contracted health care provider when providing health care services pursuant to the contract. Section 768.28, F.S., is likewise amended to specifically include a health care provider's employees or agents to avoid any potential ambiguity between the provisions in that section of law and the Act.

The bill appears to have no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sovereign Immunity

The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent.[1] According to United States Supreme Court Justice Oliver Wendell Holmes, citing the noted 17th century Hobbes work, *Leviathan*, "a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."[2] State governments in the United States, as sovereigns, inherently possess sovereign immunity.[3]

Sovereign Immunity in Florida

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state[4] will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.[5]

When an officer, employee, or agency of the state is sued, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[6] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[7]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[8] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity: [9]

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.

The Court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship.[10] The facts of the

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[1] Black's Law Dictionary, 3rd Pocket Edition, 2006.
[2] *Kawananakoa v Polyblank*, 205 U.S. 349, 353 (1907).
[3] *See, e.g.*, Fla. Jur. 2d, Government Tort Liability, Sec. 1.
[4] The statutes define state agencies or subdivisions to include executive departments, the legislature, the judicial branch, and independent establishments of the state, such as state university boards of trustees, counties and municipalities, and corporations primarily acting as instrumentalities or agencies of the state, including the Florida Space Authority. Section 768.28(2), F.S.
[5] Section 768.28(9)(a), F.S.
[6] Section 768.28(5), F.S.
[7] *Id.*
[8] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[9] *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).
[10] *Id.*

case demonstrated the state's control over the independent contractor physicians and, therefore, the Court held that an agency relationship existed.[11]

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (Act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.[12] The Act is administered by the Department of Health (DOH) through the Volunteer Health Services Program.[13] Volunteers complete an enrollment application with DOH which includes personal reference and background checks.[14]

This section of law extends sovereign immunity to health care providers who execute a contract with a governmental contractor[15] and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.[16]

A contract under the Act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[17]

The Act establishes several contractual requirements for government contractors and health care providers. The contract must require the government contractor to retain the right of dismissal or termination of any health care provider delivering services under the contract[18] and to have access to the patient records of any health care provider delivering services under the contract.[19] The health care provider must, under the contract, report adverse incidents and information on treatment outcomes to the governmental contractor.[20] The governmental contractor or the health care provider must make patient selection and initial referrals.[21] The health care provider is subject to supervision and regular inspection by the governmental contractor.[22]

Health care providers under the Act include:[23]

- A birth center licensed under ch. 383, F.S.
- An ambulatory surgical center licensed under ch. 395, F.S.[24]
- A hospital licensed under ch. 395, F.S.

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[11] *Id.* at 703.
[12] Low-income persons include a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of DOH who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $23,540 is at 200 percent of the federal poverty level using Medicaid data. *2015 Poverty Guidelines,* U.S. Department of Health and Human Services, September 3 2015 http://aspe.hhs.gov/poverty/15poverty.cfm (last visited Jan. 28, 2016).
[13] *Volunteer Health Services*, DOH http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html (last visited January 2 8, 2016); and Rule Chapter 64I-2, F.A.C.
[14] *Volunteer Services Policy*, DOH pp. 7-8, http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS2PolicyDOHP380-7-14.pdf (last visited January 28, 2016).
[15] A governmental contractor is DOH, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity. Section 766.1115(3)(c), F.S.
[16] Section 766.1115(4), F.S.
[17] Section 766.1115(3)(a), F.S.
[18] Section 766.1115(4)(a), F.S
[19] Section 766.1115(4)(b), F.S
[20] Section 766.1115(4)(c), F.S
[21] Section 766.1115(4)(d), F.S
[22] Section 766.1115(4)(f), F.S.
[23] Section 766.1115(3)(d), F.S.
[24] Section 766.1115(3)(d)2., F.S.

- A physician or physician assistant licensed under ch. 458, F.S.
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.
- A chiropractic physician licensed under ch. 460, F.S.
- A podiatric physician licensed under ch. 461, F.S.
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the Act.
- A dentist or dental hygienist licensed under ch. 466, F.S.
- A midwife licensed under ch. 467, F.S.
- A health maintenance organization certificated under part I of ch. 641, F.S.
- A health care professional association and its employees or a corporate medical group and its employees.
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.[25]

According to the department, from July 1, 2014, through June 30, 2015, 12,569 licensed health care volunteers (plus an additional 9,938 clinic staff volunteers) provided 373,588 health care patient visits with a total value of donated goods and services of more than $271 million, under the Act.[26] The Florida Department of Financial Services, Division of Risk Management, reported that as of January 7, 2015, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.[27]

Legislative Appropriation to Free and Charitable Clinics

The use of prior fiscal year appropriations by the Florida Association of Free and Charitable Clinics under the act had been restricted to clinic capacity building purposes via the contract with DOH which distributed the appropriations. Clinic capacity building was limited to products or processes that increase skills, infrastructure and resources of clinics. DOH did not authorize these funds to be used to build capacity through the employment of clinical personnel.[28]

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[25] Section 766.1115(5), F.S.
[26] *Volunteer Health Services 2014-2015 Annual Report*, DOH, December 1, 2015, *t* http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS1415annualreport.pdf (last visited January 28, 2016).
[27] *Id.* at A-1.
[28] Correspondence from DOH staff to the Health Quality Subcommittee dated January 29, 2016, on file with the Health Quality Subcommittee.

The Florida Association of Free and Charitable Clinics received a $9.5 million appropriation in the 2015-2016 General Appropriations Act through DOH.[29] However, this fiscal year's appropriation was vetoed by the Governor "because the funds could not be used for services, and therefore it is not a statewide priority for improving cost, quality, and access in healthcare."[30]

Effect of the Bill

Access to Health Care Act

The bill authorizes a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Act without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the Act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The bill states that the receipt and use of the appropriation or grant does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill inserts the phrase "employees or agents" in several provisions in the Act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract. The Act currently recognizes employees and agents of a health care provider under s. 766.1115(5), F.S., which requires the governmental contractor to provide written notice to each patient, or the patient's legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

Sovereign Immunity

Section 768.28, F.S., is amended to specifically include a health care provider's employees or agents so as to avoid any potential ambiguity between the provisions in that section of law and the Act.

The bill removes obsolete language and makes technical and grammatical changes.

The effective date of the bill is July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 766.1115, F.S., relating to health providers; creation of agency relationship with governmental contractors.

Section 2. Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; and risk management programs.

Section 3. Provides an effective date of July 1, 2016.

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[29] Chapter 2015-232, Laws of Fla., line item 441.

[30] Governor Rick Scott, *Veto Message to Secretary of State Ken Detzner* (June 23, 2015), p. 35, *available at* http://www.flgov.com/wp-content/uploads/2015/06/Transmittal%20Letter%206.23.15%20-%20SB%202500-A.pdf (last visited January 28, 2016).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Contracted free clinics may receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the Act. The receipt of any such funding is speculative at this point and therefore the amount is indeterminate.

Private health care providers currently delivering services to uninsured individuals may see a reduction in their uncompensated care costs as these individuals seek care in these clinics with expanded resources.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill specifies that free clinics may receive a legislative appropriation, a grant through legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of contracted services under the Act by volunteer health care providers without compromising their sovereign immunity under s. 768.28, F.S., but does not provide the same authority for the other entities or practitioners listed in the definition of "health care provider" in s. 766.1115, F.S. Consequently, it

appears that those other entities or practitioners excluded from the newly established authority to receive certain grants would compromise their sovereign immunity protection if they received such grants under the same circumstances.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to agency relationships with governmental health care contractors; amending s. 766.1115, F.S.; redefining terms; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; specifying that a receipt of certain notice must be acknowledged by a patient or the patient's representative at the initial visit; amending s. 768.28, F.S.; redefining the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows the health care provider, or any employee or agent of the health care provider, to deliver

health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services~~, except as provided in paragraph (4)(g)~~. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraph (4)(g). A free clinic as described in subparagraph (d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant received by a free clinic does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt and use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992,~~ as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent

of the health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under contract with the state, or any employee or agent of such health care provider, may not be named as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992,~~ under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action.

All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties

under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28. Thereafter, and with respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the health care provider ~~federally funded community health center~~ is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28.

Section 2. Paragraph (b) of subsection (9) of section

768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider, and its employees or agents, when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

Section 3. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1431 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Raulerson offered the following:

Amendment

Remove lines 37-45 and insert:

paragraph (4)(g). A health care provider may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant received by a health care provider does not constitute compensation under this