



Health Quality Subcommittee

Wednesday, December 6, 2017
8:30 AM - 10:00 AM
Mashburn Hall (306 HOB)

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Wednesday, December 06, 2017 08:30 am
End Date and Time: Wednesday, December 06, 2017 10:00 am
Location: Mashburn Hall (306 HOB)
Duration: 1.50 hrs

Consideration of the following bill(s):

HB 313 Access to Health Care Practitioner Services by Grant, M.
HB 417 Pub. Rec./Child Advocacy Center Personnel and Child Protection Team Members by Jenne
HB 429 Donation and Transfer of Human Tissue by Pigman

Implementation update on SB 8-A (2017), Medical Use of Marijuana, by Christian Bax, Director of Office of Medical Marijuana Use, Florida Department of Health



Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, December 5, 2017.

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., Tuesday, December 5, 2017.

NOTICE FINALIZED on 11/29/2017 3:08PM by Krause.Jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 313 Access to Health Care Practitioner Services
SPONSOR(S): Grant
TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

HB 313 incentivizes physicians to provide pro bono health care services to certain low-income individuals and provides an opportunity for physicians from other jurisdictions and retired physicians to provide health services to low-income and medically underserved individuals in this state.

The bill requires Department of Health (DOH) to waive the renewal fee of an allopathic or osteopathic physician who demonstrates to DOH provision of at least 160 hours of pro bono medical services to certain populations within the biennial licensure renewal period. Demonstration of 120 hours gains an exemption from the 40 hours of continuing medical education required for license renewal.

The bill authorizes both the Board of Medicine and the Board of Osteopathic Medicine to issue a limited number of restricted licenses to physicians not licensed in Florida who contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medically underserved areas. An applicant for a restricted license must hold an active, unencumbered license to practice medicine in another jurisdiction of the U. S. or Canada and pass a background screening. Prior to the end of the 36-month contract, the physician must take and pass the appropriate licensing exam to become fully licensed in this state. Breach of contract precludes full licensure.

The bill also creates a registration process for retired physicians to provide volunteer health care services if the physician held an active licensed status to practice and maintained such license in good standing in this state or in another jurisdiction of the U. S. or Canada for at least 20 years and contracts with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area. Such a physician must work under the supervision of a nonretired physician who holds an active, unencumbered license, only provide medical services of the type and within the specialty performed by the physician prior to retirement, and not perform surgery or prescribe controlled substances. These physicians are exempt from any application, licensure, and unlicensed activity fees. Registration must be renewed biennially to demonstrate compliance with registration requirements.

The "Access to Health Care Act" (Act) was enacted in 1992 to encourage health care providers to provide care to low-income persons. The bill redefines low-income persons to include individuals that do not have health insurance and have a family income that does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill may have an indeterminate positive impact and an indeterminate negative fiscal impact on DOH (see fiscal impact on state government). Current department resources are sufficient to absorb added workload. The bill will have no impact on local governments.

The bill provides an effective date of July 1, 2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Licensure and Regulation of Physicians

Allopathic Physicians

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

Allopathic Licensure by Examination

An individual seeking to be licensed by examination as an allopathic physician, must meet the following requirements:¹

- Pay an application fee;²
- 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),³ 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);

¹ Section 458.311(1), F.S.

² 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 for most practitioners and \$5,000 for obstetricians. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of licensure.

³ 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.)

- 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.

Allopathic Licensure by Endorsement

An individual who holds an active license to practice medicine in another jurisdiction may seek licensure by endorsement to practice medicine in Florida.⁴ The applicant must meet the same 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.⁵

When the allopathic board determines that any applicant for licensure by endorsement has failed to meet, to the allopathic board's satisfaction, each of the appropriate requirements for licensure by endorsement, it may enter an order requiring one or more of the following terms:⁶

- Refusal to certify to the DOH an application for licensure, certification, or registration;
- Certification to the DOH of an application for licensure, certification, or registration with restrictions on the scope of practice of the licensee; or
- Certification to the DOH of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the allopathic board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

Allopathic License Renewal

Physician licenses are renewed biennially. The current fee for the timely renewal of a license is \$389; this fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.⁷ However, if a physician holding a restricted license or temporary certificate for practice in areas of critical need submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services, the renewal fees are waived.⁸

Within each biennial licensure renewal period, a physician must complete 40 hours of continuing medical education (CME) courses approved by the allopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;⁹
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;¹⁰ and
- Two hours of CME relating to the prevention of medical errors.¹¹

⁴ Section 458.313, F.S.

⁵ Section 458.313(c), F.S.

⁶ Section 458.313(7), F.S.

⁷ Rule 64B8-3.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

⁸ Id.

⁹ Section 456.031, F.S.

¹⁰ Section 456.033, F.S.

¹¹ Section 456.013(7), F.S.

The allopathic board authorizes up to 5 hours of the required CME hours to be fulfilled by the performance of pro bono services to indigent or underserved persons or in areas of critical need.¹² The allopathic board has approved as pro bono service sites, federally funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply against the CME requirement.

DOH may not renew a license until a licensee complies with all CME requirements.¹³ The allopathic board may also take action against a license for failure to comply with CME requirements.

Osteopathic Physicians

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, general licensure requirements, including by examination for medical school graduates and licensure by endorsement requirements.

Osteopathic General Licensure

An individual seeking to be licensed as an osteopathic physician must meet the following requirements:¹⁴

- Pay an application fee;¹⁵
- Be at least 21 years of age;
- Be of good moral character;
- Complete at least 3 years of preprofessional post-secondary education;
- Has not committed, or be under investigation in any jurisdiction for, an act or offense that would constitute the basis for disciplining an osteopathic physician, unless the osteopathic board determines such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Has not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against by the licensing authority in any jurisdiction;
- Has not received less than a satisfactory evaluation from an internship, residency, or fellowship training program;
- Has submitted to a background screening by the DOH;
- Is a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Successfully completes a resident internship of at least 12 months in a hospital approved by the Board of Trustees of the American Osteopathic Association or any other internship approved by the osteopathic board; and
- Obtains a passing score, as established by rule of the osteopathic board, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the osteopathic board, no more than five years prior to applying for licensure.¹⁶

¹² Rule 64B8-13.005(9), F.A.C. Indigency is persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

¹³ Section 456.031, F.S.

¹⁴ Section 459.0055(1), F.S.

¹⁵ Pursuant to r. 64B15-10.002, F.A.C., the application fee for a person desiring to be licensed as an osteopathic physician by examination is \$200. The applicant must pay an initial license fee of \$305. 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.

¹⁶ However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.

Osteopathic Licensure by Endorsement

If an applicant for a license to practice osteopathic medicine is licensed in another state, the applicant must have actively practiced osteopathic medicine within the two years prior to applying for licensure in this state.¹⁷ If it has been more than two years since the active practice of osteopathic medicine and more than two years since completion of a resident internship, residency, or fellowship and if the osteopathic board determines that the disruption in practice has adversely affected the osteopathic physician's present ability to practice, the osteopathic board may:¹⁸

- Deny the application;
- Issue the license with reasonable restrictions or conditions; or
- Issue the license upon receipt of documentation confirming the applicant has met any reasonable conditions of the osteopathic board.

Osteopathic License Renewal

Osteopathic physician licenses are renewed biennially. The current fee for the timely renewal of a license is \$429; this fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.¹⁹ However, the renewal fees are waived if an osteopathic physician holding a restricted license or temporary certificate for practice in areas of critical need submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.²⁰

Within each biennial licensure renewal period, an osteopathic physician must complete 40 hours of CME courses approved by the osteopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;²¹
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;²²
- Two hours of CME relating to the prevention of medical errors;²³
- A one-hour course on profession and medical ethics education; and
- A one-hour course on the federal and state laws related to the prescribing of controlled substances.²⁴

The osteopathic board authorizes up to 10 hours of the required CME hours to be fulfilled by the performance of pro bono medical services to indigent or underserved persons or in areas of critical need.²⁵ The osteopathic board has approved federally-funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH as pro bono sites. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply to the CME requirement.

DOH may not renew a license until a licensee complies with all CME requirements.²⁶ The osteopathic board may also take action against a license for failure to comply with CME requirements.²⁷

¹⁷ Section 459.0055(2), F.S.

¹⁸ Id.

¹⁹ Rule 64B8-3.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

²⁰ Id.

²¹ Section 456.031, F.S.

²² Section 456.033, F.S.

²³ Section 456.013(7), F.S.

²⁴ Rule 64B15-13.001, F.A.C.

²⁵ Rule 64B15-13.005, F.A.C. Indigency is persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

²⁶ Section 456.0361, F.S.

STORAGE NAME: h0313.HQS

DATE: 12/5/2017

Financial Responsibility

Both allopathic and osteopathic physicians must carry malpractice insurance or demonstrate proof of financial responsibility as a condition of licensure or prior renewal of licensure. A physician may meet this requirement by:

- Maintaining financial liability coverage in an amount of at least \$100,000 per claim, with a minimum annual aggregate of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining financial liability coverage in an amount of at least \$250,000 per claim, with a minimum annual aggregate of at least \$750,000 if the licensee has hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$100,000 per claim, with a minimum aggregate availability of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$250,000 per claim, with a minimum aggregate availability of at least \$750,000 if the licensee has hospital privileges; or
- Not obtaining malpractice insurance or demonstrating financial ability but agreeing to satisfy any adverse judgments and prominently posting a notice in the reception area to notify all patients of such decision.²⁸

Physician Licensure for Volunteer and Low-Income Practice

Allopathic Restricted Licenses

Current law authorizes the allopathic board to issue restricted licenses to practice medicine in this state, without examination, for physicians who contracts to practice for 24 months solely in the employ of the state or a federally funded community health center or migrant health center. An applicant for a restricted license must also:²⁹

- Meet the requirements for licensure by examination; and
- Have actively practiced medicine in another jurisdiction for at least two years of the immediately preceding four years or has completed board-approved postgraduate training within the year preceding submission of the application.

A restricted licensee must take and pass the licensure examination prior to completion of the 24-month practice period.³⁰ A restricted licensee who breaches the terms of his or her contract is prohibited from being licensed as a physician in this state.³¹

The allopathic board may issue up to 100 restricted licenses annually.³²

Osteopathic Limited Licenses

Current law authorizes the osteopathic board to issue limited licenses to certain osteopathic physicians who will only practice in areas of critical need or in medically underserved areas. A limited license may be issued to an individual who:³³

²⁷ Section 456.0361(2), F.S.

²⁸ Sections 458.320, F.S., and 459.0085, F.S.

²⁹ Section 458.310, F.S.

³⁰ Section 458.310(3), F.S.

³¹ Section 458.310(4), F.S.

³² Section 458.310(2), F.S.

³³ Section 459.0075, F.S., and r. 64B15-12.005, F.A.C.

- Submits the licensure application and required application fee of \$100;
- Provides proof that he or she has been licensed to practice osteopathic medicine in any jurisdiction of the United States in good standing for at least 10 years;
- Has completed at least 40 hours of continuing education within the preceding two year period; and
- Will only practice in the employ of public agencies, nonprofit entities, or agencies or institutions in areas of critical need or in medically underserved areas.

If it has been more than three years since the applicant has actively practiced osteopathic medicine, the full-time director of the local county health department must supervise the applicant for at least six months after issuance of the limited license.³⁴

The osteopathic board must review the practice of each physician who holds a limited license at least biennially to ensure that he or she is in compliance with the practice act and rules adopted thereunder.³⁵

Temporary Certificate for Practice in Areas of Critical Need

The boards may issue a temporary certificate to practice in areas of critical need to an allopathic or osteopathic physician who will practice in an area of critical need. An applicant for a temporary certificate must:³⁶

- Be actively licensed to practice medicine in any jurisdiction of the U.S.;
- Be employed by or practice in a county health department, correctional facility, Department of Veterans' Affairs clinic, federally-funded community health care center, or any other agency or institution designated by the State Surgeon General and provides health care to underserved populations; or
- Practice for a limited time to address critical physician-specialty, demographic, or geographic needs for this state's workforce as determined by the Surgeon General.

The allopathic and osteopathic boards are authorized to administer an abbreviated oral examination to determine a physician's competency, but a written examination is not required.³⁷ The boards may deny the application, issue the temporary certificate with reasonable restrictions, or require the applicant to meet any reasonable conditions of the allopathic or osteopathic board prior to issuing the temporary certificate if it has been more than three years since the applicant has actively practiced and the board determines the applicant lacks clinical competency, adequate skills, necessary medical knowledge, or sufficient clinical decision-making.³⁸

Fees for the temporary certificate for practice in areas of critical need include a \$300 application fee and \$429 initial licensure fee; however, these fees may be waived if the individual is not compensated for his or her practice.³⁹ The temporary certificate is only valid for as long as the Surgeon General determines that critical need remains an issue in this state.⁴⁰ However, the allopathic and osteopathic boards must review the temporary certificateholder at least annually to ensure that he or she is in compliance with the practice act and rules adopted thereunder.⁴¹ The allopathic board may revoke or restrict the temporary certificate for practice in areas of critical need, if noncompliance is found.⁴²

³⁴ Section 459.0075(2), F.S.

³⁵ Section 459.0075(5), F.S.

³⁶ Sections 458.315, and 459.0076, F.S.

³⁷ Id.

³⁸ Sections 458.315(3)(b), and 459.0076(3)(b), F.S.

³⁹ Rules 64B8-3.003, and 64B15-10.002, F.A.C.

⁴⁰ Sections 458.315(3), and 459.0076(3), F.S.

⁴¹ Sections 458.315(3)(c), and 459.0076(3)(c), F.S.

⁴² Id.

Florida Volunteer Protection Act

The Florida Volunteer Protection Act (FVPA), s. 768.1355, F.S., limits the civil liability for volunteers. Under the FVPA, any person who volunteers to perform any service for any nonprofit organization, without compensation from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization when acting within the scope of any official duties.⁴³ The FVPA exempts volunteers from civil liability for any act or omission which results in personal injury or property damage if:⁴⁴

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.

If a volunteer is determined not to be liable pursuant to these provisions, the nonprofit organization for which the volunteer was performing services when the damages were caused is liable for the damages to the same extent as the nonprofit organization would have been liable if the liability limitation under the Act had not been provided.⁴⁵

Access to Health Care Act

"The Access to Health Care Act" (Act), s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons.⁴⁶ 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;⁴⁷ or
- Any eligible client of DOH who voluntarily chooses to participate in a program offered or approved by the department.

Health care providers under the Act include, among others, allopathic and osteopathic physicians.⁴⁸ DOH administers the Act through the Volunteer Health Services Program, which works with DOH entities and community and faith-based health care providers to promote access to quality health care for the medically underserved and uninsured in this state.⁴⁹

The Act grants sovereign immunity⁵⁰ to health care providers who execute a contract with a governmental contractor⁵¹ and who, as agents of the state, provide volunteer, uncompensated health

⁴³ Section 766.1355, F.S. Compensation does not include reimbursement for actual expenses, a stipend under the Domestic Service Volunteer Act of 1973 (i.e. AmeriCorps and SeniorCorps), or other financial assistance that is valued at less than two-thirds of the federal minimum wage.

⁴⁴ Section 768.1355(1), F.S.

⁴⁵ Section 768.1355(3), F.S.

⁴⁶ Section 766.115, F.S.

⁴⁷ A single individual whose annual income does not exceed \$24,120 or a family of four whose household or family income does not exceed \$49,200 is at 200 percent of the federal poverty level. U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2017*, (January 26, 2017), available at <https://aspe.hhs.gov/poverty-guidelines> (last visited November 21, 2017).

⁴⁸ Section 766.1115(3)(d), F.S.,

⁴⁹ DOH, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/index.html> (last visited November 21, 2017).

⁵⁰ The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent. 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." State governments in the United States, as sovereigns, inherently possess sovereign immunity. 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 will not be

care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., so have sovereign immunity while acting within the scope of duties required under the Act.⁵² Therefore, the state will defend the a health care provider covered under the Act in any action alleging harm or injury, and any recovery would be limited to \$200,000 for one incident and a total of \$300,000 for all recoveries related to one incident.

A contract under the Act must pertain to volunteer, uncompensated services for which the provider may not receive 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.⁵³

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 contract⁵⁴ and to have access to the patient records of any health care provider delivering services under the contract.⁵⁵ The health care provider must, under the contract, report adverse incidents and information on treatment outcomes to the governmental contractor.⁵⁶ The governmental contractor or the health care provider must make patient selection and initial referrals.⁵⁷ The health care provider is subject to supervision and regular inspection by the governmental contractor.⁵⁸

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.⁵⁹

In Fiscal Year 2016-2017, 13,538 licensed health care professionals (plus an additional 12,446 clinic staff volunteers) provided 442,608 health care services under the Act.⁶⁰

Since February 15, 2000, 10 claims have been filed against the Volunteer Health Services Program.⁶¹

Effect of Proposed Changes

Restricted Licenses to Practice Medicine or Osteopathic Medicine

The bill amends the criteria for the allopathic board to issue restricted licenses to practice allopathic medicine, and authorizes the osteopathic board to issue restricted licenses to practice osteopathic medicine to physicians who contract to practice for 36 months in certain settings. The contract must be for employment by:

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. When an officer, employee, or agency of the state is sued, the state steps in as the party litigant and defends against the claim. A person may recover no more than \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000. 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. See Black's Law Dictionary, 3rd Pocket Edition, 2006; *Kawanakoa v Polyblank*, 205 U.S. 349, 353 (1907); Fla. Jur. 2d, Government Tort Liability, Sec. 1.; Section 768.28, F.S.

⁵¹ A governmental contractor is the 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.

⁵² Section 766.1115(4), F.S.

⁵³ Section 766.1115(3)(a), F.S.

⁵⁴ Section 766.1115(4)(a), F.S.

⁵⁵ Section 766.1115(4)(b), F.S.

⁵⁶ Section 766.1115(4)(c), F.S.

⁵⁷ Section 766.1115(4)(d), F.S.

⁵⁸ Section 766.1115(4)(f), F.S.

⁵⁹ Section 766.1115(5), F.S.

⁶⁰ E-mail correspondence with DOH staff dated November 27, 2017, (on file with the Health Quality Subcommittee).

⁶¹ E-mail correspondence with DOH staff dated November 29, 2017, (on file with the Health Quality Subcommittee).

STORAGE NAME: h0313.HQS

DATE: 12/5/2017

- This state;
- A federally funded community health center;
- A migrant health center;
- A free clinic that only delivers medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or
- A health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.⁶²

To obtain a restricted license, an applicant must:

- Submit a completed application, along with a nonrefundable fee not to exceed \$50;
- Be at least 21 years old;
- Be of good moral character;
- Have not committed an act or offense that would constitute the basis for disciplining a physician pursuant to s. 458.331, F.S., or an osteopathic physician pursuant to ch. 459, F.S.;
- Submits to a background screening by DOH; however, a Canadian applicant must also provide the applicable board with a printed or electronic copy of his or her Canadian criminal history records check;
- Submits evidence of the active licensed practice of medicine or osteopathic medicine, as appropriate in another jurisdiction for at least two of the immediately preceding four years, or completion of postgraduate training approved by the appropriate board within the year preceding the filing of an application;
- Enters into a contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.

Additionally, an osteopathic physicians applying for a restricted license must demonstrate completion of at least three years of preprofessional postsecondary education, that he or she is not under investigation in any jurisdiction that would constitute a violation of the osteopathic medicine practice act, and that he or she has not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against, by the licensing authority in any jurisdiction.

Each board may issue no more than 300 restricted licenses; however, the boards may issue an unlimited number of restricted licenses to physicians who hold active unencumbered licenses in Canada.

Prior to the conclusion of the contracted practice period, an allopathic or osteopathic physician must take the appropriate licensure examination to become fully licensed in this state. However, a physician who breaches the terms of the employment contract may not be licensed as a physician in this state.

The bill also repeals the authority of the Board of Medicine to adopt rules related to the criteria for the issuance of restricted licenses. However, both the allopathic and osteopathic boards have broad grants of rulemaking authority to adopt rules implementing statutes related to the licensure and regulation of physicians.⁶³ Therefore, the boards may adopt any rules necessary to implement the restricted licenses.

The bill maintains current law authorizing limited licenses for osteopathic physicians.

⁶² As of November 2017, Florida has 641 health professional shortage areas and 128 medically underserved areas. See <https://datawarehouse.hrsa.gov/topics/shortageAreas.aspx> (last visited November 21, 2017) (hover over Florida on the map to get the number of health professional shortage areas and click on the State Summary of Medically Underserved Areas/Populations to obtain the number of medically underserved areas).

⁶³ See s. 458.309 and 459.005, F.S.

Volunteer Retired Physician Registration

The bill creates a registration program to allow retired physicians to practice medicine under contact with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area as designated by the U.S. Department of Health and Human Services.

The bill authorizes a retired physician to register as a volunteer retired physician if the physician:

- Submits an application to the board within two years of changing the license to practice from active status to retired status for an allopathic physician, or if he or she submits an application to board no more than six months before the license permanently expires and no later than two years after such expiration for an osteopathic physician;
- Provides proof of active practice medical practice for at least three of the five years immediately preceding the date on which the license changed from active status to retired status for an allopathic physician;
- Has held an active licensed status to practice and maintained such license in good standing in this state or in another jurisdiction or the United States or Canada for at least 20 years;
- Works under the supervision of a nonretired allopathic physician or osteopathic physician, as applicable, who holds an active unencumbered license;
- Only provides medical services of the type and within the specialty performed by the physician prior to retirement; and
- Does not perform surgery or prescribe controlled substances.

DOH must waive application fee, licensure fee, and unlicensed activity fee for retired physicians who qualify for registration under the provisions of the bill. Registration must be renewed biennially to demonstrate compliance with registration requirements. A board may deny, revoke, or impose restrictions or conditions on a registration if there is a violation of the practice act or the core licensing statute (ch. 456, F.S.) A board may also revoke or deny a registration for failure to comply with registration requirements.

Licensure Renewals

The bill requires DOH to waive the licensure renewal fee of an allopathic or osteopathic physician who demonstrates to DOH, in a manner provided by board rule, that he or she has provided at least 160 hours of pro bono medical services to indigent persons or medically underserved populations within the biennial renewal period.

If an allopathic or osteopathic physician provides documentation to DOH that he or she has provided at least 120 hours of pro bono medical services within the biennial licensure period, he or she is exempt from the 40 hours of continuing medical education required for license renewal. This exemption would also apply to any of the specific courses, such as the courses on domestic violence and prevention of medical errors, that are calculated as a part of the required 40 hours of continuing medical education.

A physician may receive both the waiver of the licensure renewal fee and an exemption from the continuing medical education requirements if the required number of pro bono hours are provided.

Physician Licensure by Examination

Currently, allopathic physicians who hold an active unencumbered license to practice medicine in Canada who have practiced at least 10 years may use a passing score the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure in this state. The bill clarifies the requirement that allopathic physicians licensed in Canada must practice

for 10 years to use the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure.

Access to Health Care Act

The bill increases the eligibility for services under the Act by amending the definition of low-income to mean a person without health insurance and whose family income does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.013, F.S., relating to department; general licensing provisions.

Section 2: Amends s. 458.310, F.S., relating to restricted licenses.

Section 3: Creates s. 458.3105, F.S., relating to registration of volunteer retired physicians.

Section 4: Amends s. 458.311, F.S., relating to licensure by examination; requirements; fees.

Section 5: Amends s. 458.319, F.S., relating to renewal of license.

Section 6: Creates s. 459.00751, F.S., relating to restricted licenses.

Section 7: Creates s. 459.00752, F.S., relating to registration of volunteer retired osteopathic physicians.

Section 8: Amends s. 459.008, F.S., relating to renewal of licenses and certificates.

Section 9: Amends s. 766.1115, F.S., relating to health care providers; creation of agency relationship with governmental contractors.

Section 10: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on DOH associated with the new application fees for osteopathic physician restricted licenses.⁶⁴ It is unknown how many may apply, but is not likely to be significant.

2. Expenditures:

The bill may have an insignificant, indeterminate negative fiscal impact on DOH associated with the loss of licensure application and renewal fees for those physicians who qualify for the waiver of such fees.

DOH may experience an insignificant, indeterminate negative fiscal impact for rulemaking activities, and labor costs associated with processing the restricted licenses and registrations authorized under the provisions of the bill. However, current resources are sufficient to absorb such costs.⁶⁵

DOH may experience an indeterminate, nonrecurring negative fiscal impact for modifications to its Licensing and Enforcement Information Database to accommodate requirements of the bill.⁶⁶ It is estimated current resources are sufficient to absorb these costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁶⁴ DOH, *2018 Agency Legislative Bill Analysis: House Bill 313*, (October 25, 2017), on file with the Health Quality Subcommittee.

⁶⁵ *Id.*

⁶⁶ *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Physicians performing pro bono medical services may not have to pay licensure renewal fees or pay for continuing education courses.

Entities providing continuing education courses may see a drop in enrollment if physicians provide at least 120 hours of pro bono medical services and take advantage of the continuing education exemption.

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:

Both the allopathic and osteopathic boards have broad grants of rulemaking authority to adopt rules under their respective practice acts; therefore, no additional rulemaking authority is needed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

26 prohibiting licensure if a restricted licensee
 27 breaches the terms of an employment contract; creating
 28 s. 459.00752, F.S.; establishing a registration
 29 program for volunteer retired osteopathic physicians;
 30 providing eligibility criteria for such registration;
 31 requiring biennial registration renewal; requiring the
 32 Department of Health to waive certain fees;
 33 authorizing the Board of Osteopathic Medicine to deny,
 34 revoke, or impose restrictions or conditions on a
 35 registration for certain violations; amending s.
 36 459.008, F.S.; requiring the department to waive an
 37 osteopathic physician's license renewal fee under
 38 certain circumstances; deleting an obsolete date;
 39 amending s. 766.1115, F.S.; revising the definition of
 40 the term "low-income" for purposes of the Access to
 41 Health Care Act; providing an effective date.

42
 43
 44
 45
 46
 47
 48
 49
 50

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

Section 1. Subsection (6) of section 456.013, Florida Statutes, is republished, and subsection (9) of that section is amended, to read:

456.013 Department; general licensing provisions.—

(6) As a condition of renewal of a license, the Board of Medicine, the Board of Osteopathic Medicine, the Board of

51 | Chiropractic Medicine, and the Board of Podiatric Medicine shall
52 | each require licensees which they respectively regulate to
53 | periodically demonstrate their professional competency by
54 | completing at least 40 hours of continuing education every 2
55 | years. The boards may require by rule that up to 1 hour of the
56 | required 40 or more hours be in the area of risk management or
57 | cost containment. This provision shall not be construed to limit
58 | the number of hours that a licensee may obtain in risk
59 | management or cost containment to be credited toward satisfying
60 | the 40 or more required hours. This provision shall not be
61 | construed to require the boards to impose any requirement on
62 | licensees except for the completion of at least 40 hours of
63 | continuing education every 2 years. Each of such boards shall
64 | determine whether any specific continuing education requirements
65 | not otherwise mandated by law shall be mandated and shall
66 | approve criteria for, and the content of, any continuing
67 | education mandated by such board. Notwithstanding any other
68 | provision of law, the board, or the department when there is no
69 | board, may approve by rule alternative methods of obtaining
70 | continuing education credits in risk management. The alternative
71 | methods may include attending a board meeting at which another
72 | licensee is disciplined, serving as a volunteer expert witness
73 | for the department in a disciplinary case, or serving as a
74 | member of a probable cause panel following the expiration of a
75 | board member's term. Other boards within the Division of Medical

76 Quality Assurance, or the department if there is no board, may
77 adopt rules granting continuing education hours in risk
78 management for attending a board meeting at which another
79 licensee is disciplined, for serving as a volunteer expert
80 witness for the department in a disciplinary case, or for
81 serving as a member of a probable cause panel following the
82 expiration of a board member's term.

83 (9) Any board that currently requires continuing education
84 for renewal of a license, or the department if there is no
85 board, shall adopt rules to establish the criteria for
86 continuing education courses. The rules may provide that up to a
87 maximum of 25 percent of the required continuing education hours
88 can be fulfilled by the performance of pro bono services to the
89 indigent or to underserved populations or in areas of critical
90 need within the state where the licensee practices. However, a
91 physician licensed under chapter 458 or chapter 459 who submits
92 to the department documentation proving that he or she has
93 completed at least 120 hours of pro bono services within a
94 biennial licensure period is exempt from the continuing
95 education requirements established by board rule under
96 subsection (6). The board, or the department if there is no
97 board, must require that any pro bono services be approved in
98 advance in order to receive credit for continuing education
99 under this subsection. The standard for determining indigency
100 shall be that recognized by the Federal Poverty Income

101 Guidelines produced by the United States Department of Health
102 and Human Services. The rules may provide for approval by the
103 board, or the department if there is no board, that a part of
104 the continuing education hours can be fulfilled by performing
105 research in critical need areas or for training leading to
106 advanced professional certification. The board, or the
107 department if there is no board, may make rules to define
108 underserved and critical need areas. The department shall adopt
109 rules for administering continuing education requirements
110 adopted by the boards or the department if there is no board.

111 Section 2. Subsections (2) and (3) of section 458.310,
112 Florida Statutes, are amended to read:

113 458.310 Restricted licenses.—

114 (2) The board ~~of Medicine~~ may annually, by rule, develop
115 criteria and, without examination, issue restricted licenses
116 authorizing the practice of medicine in this state to not more
117 than 300 persons and to an unlimited number of physicians who
118 hold active unencumbered licenses to practice medicine in Canada
119 if such applicants annually to up to 100 persons to practice
120 medicine in this state who:

121 (a) Submit to the department a completed application form
122 and a nonrefundable application fee not to exceed \$50;

123 (b) ~~(a)~~ Meet the requirements of s. 458.311(1)(b), (c),
124 (d), and (g). A Canadian applicant must also provide the board
125 with a printed or electronic copy of his or her Canadian

126 criminal history records check;

127 ~~(c)(b)~~ Show evidence of the active licensed practice of
 128 medicine in another jurisdiction for at least 2 years of the
 129 immediately preceding 4 years, or completion of board-approved
 130 postgraduate training within the year preceding the filing of an
 131 application; and

132 ~~(d)(e)~~ Enter into a contract to practice for a period of
 133 up to 36 ~~24~~ months ~~solely~~ in the employ of the state, ~~or~~ a
 134 federally funded community health center, or a migrant health
 135 center; a free clinic that delivers only medical diagnostic
 136 services or nonsurgical medical treatment free of charge to all
 137 low-income residents; or a health care provider in a health
 138 professional shortage area or medically underserved area
 139 designated by the United States Department of Health and Human
 140 Services, ~~at the current salary level for that position.~~ The
 141 board ~~may of Medicine shall~~ designate other areas of critical
 142 need in the state where these restricted licensees may practice.

143 (3) Before the end of the contracted ~~24-month~~ practice
 144 period, the physician must take and successfully complete the
 145 licensure examination under s. 458.311 to become fully licensed
 146 in this state.

147 Section 3. Section 458.3105, Florida Statutes, is created
 148 to read:

149 458.3105 Registration of volunteer retired physicians.—

150 (1) A physician may register under this section to

151 practice medicine as a volunteer retired physician if the
 152 physician:

153 (a) Submits an application to the board on a form
 154 developed by the department within 2 years after the date on
 155 which the physician's license changed from active status to
 156 retired status;

157 (b) Provides proof to the department that the physician
 158 actively practiced medicine for at least 3 of the 5 years
 159 immediately preceding the date on which his or her license
 160 changed from active status to retired status;

161 (c) Has held an active license to practice medicine and
 162 maintained such license in good standing in this state or in at
 163 least one other jurisdiction of the United States or Canada for
 164 at least 20 years;

165 (d) Contracts with a health care provider to provide free,
 166 volunteer health care services to indigent persons or medically
 167 underserved populations in health professional shortage areas or
 168 medically underserved areas designated by the United States
 169 Department of Health and Human Services;

170 (e) Works under the supervision of a nonretired physician
 171 who holds an active unencumbered license; and

172 (f) Only provides medical services of the type and within
 173 the specialty performed by the physician before retirement and
 174 does not perform surgery or prescribe a controlled substance as
 175 defined in s. 893.02(4).

176 (2) The registrant shall apply biennially to the board for
 177 renewal of his or her registration by demonstrating to the board
 178 compliance with this section.

179 (3) The department shall waive the application fee,
 180 licensure fee, and unlicensed activity fee for qualifying
 181 applicants under this section.

182 (4) The board may deny, revoke, or impose restrictions or
 183 conditions on a registration for any violation of this act or
 184 chapter 456 or the rules adopted under this act or chapter 456.

185 (5) The board may deny or revoke registration for
 186 noncompliance with this section.

187 Section 4. Paragraph (h) of subsection (1) of section
 188 458.311, Florida Statutes, is amended to read:

189 458.311 Licensure by examination; requirements; fees.—

190 (1) Any person desiring to be licensed as a physician, who
 191 does not hold a valid license in any state, shall apply to the
 192 department on forms furnished by the department. The department
 193 shall license each applicant who the board certifies:

194 (h) Has obtained a passing score, as established by rule
 195 of the board, on the licensure examination of the United States
 196 Medical Licensing Examination (USMLE); or a combination of the
 197 United States Medical Licensing Examination (USMLE), the
 198 examination of the Federation of State Medical Boards of the
 199 United States, Inc. (FLEX), or the examination of the National
 200 Board of Medical Examiners up to the year 2000; or for the

201 purpose of examination of any applicant who was licensed on the
 202 basis of a state board examination and who is currently licensed
 203 in at least one other jurisdiction of the United States ~~or~~
 204 ~~Canada~~, and who has practiced pursuant to such licensure for a
 205 period of at least 10 years, or for the purpose of examination
 206 of any applicant who holds an active unencumbered license to
 207 practice medicine in Canada and who has practiced pursuant to
 208 such licensure for a period of at least 10 years, use of the
 209 Special Purpose Examination of the Federation of State Medical
 210 Boards of the United States (SPEX) upon receipt of a passing
 211 score as established by rule of the board. However, for the
 212 purpose of examination of any applicant who was licensed on the
 213 basis of a state board examination before ~~prior to~~ 1974, who is
 214 currently licensed in at least three other jurisdictions of the
 215 United States or Canada, and who has practiced pursuant to such
 216 licensure for a period of at least 20 years, this paragraph does
 217 not apply.

218 Section 5. Subsection (1) of section 458.319, Florida
 219 Statutes, is amended to read:

220 458.319 Renewal of license.—

221 (1) The department shall renew a license upon receipt of
 222 the renewal application, evidence that the applicant has
 223 actively practiced medicine or has been on the active teaching
 224 faculty of an accredited medical school for at least 2 years of
 225 the immediately preceding 4 years, and a fee not to exceed \$500;

226 provided, however, that if the licensee is either a resident
227 physician, assistant resident physician, fellow, house
228 physician, or intern in an approved postgraduate training
229 program, as defined by the board by rule, the fee shall not
230 exceed \$100 per annum. If the licensee demonstrates to the
231 department in a manner set by department rule that he or she has
232 provided at least 160 hours of pro bono medical services to
233 indigent persons or medically underserved populations within the
234 biennial renewal period, the department shall waive the renewal
235 fee. If the licensee has not actively practiced medicine for at
236 least 2 years of the immediately preceding 4 years, the board
237 shall require that the licensee successfully complete a board-
238 approved clinical competency examination before ~~prior to~~ renewal
239 of the license. "Actively practiced medicine" means that
240 practice of medicine by physicians, including those employed by
241 any governmental entity in community or public health, as
242 defined by this chapter, including physicians practicing
243 administrative medicine. An applicant for a renewed license must
244 also submit the information required under s. 456.039 to the
245 department on a form and under procedures specified by the
246 department, along with payment in an amount equal to the costs
247 incurred by the Department of Health for the statewide criminal
248 background check of the applicant. The applicant must submit a
249 set of fingerprints to the Department of Health on a form and
250 under procedures specified by the department, along with payment

251 in an amount equal to the costs incurred by the department for a
252 national criminal background check of the applicant for the
253 initial renewal of his or her license after January 1, 2000. If
254 the applicant fails to submit either the information required
255 under s. 456.039 or a set of fingerprints to the department as
256 required by this section, the department shall issue a notice of
257 noncompliance, and the applicant will be given 30 additional
258 days to comply. If the applicant fails to comply within 30 days
259 after the notice of noncompliance is issued, the department or
260 board, as appropriate, may issue a citation to the applicant and
261 may fine the applicant up to \$50 for each day that the applicant
262 is not in compliance with the requirements of s. 456.039. The
263 citation must clearly state that the applicant may choose, in
264 lieu of accepting the citation, to follow the procedure under s.
265 456.073. If the applicant disputes the matter in the citation,
266 the procedures set forth in s. 456.073 must be followed.
267 However, if the applicant does not dispute the matter in the
268 citation with the department within 30 days after the citation
269 is served, the citation becomes a final order and constitutes
270 discipline. Service of a citation may be made by personal
271 service or certified mail, restricted delivery, to the subject
272 at the applicant's last known address. If an applicant has
273 submitted fingerprints to the department for a national criminal
274 history check upon initial licensure and is renewing his or her
275 license for the first time, then the applicant need only submit

276 the information and fee required for a statewide criminal
 277 history check.

278 Section 6. Section 459.00751, Florida Statutes, is created
 279 to read:

280 459.00751 Restricted licenses.-

281 (1) It is the intent of the Legislature to provide medical
 282 services to all residents of this state at an affordable cost.

283 (2) The board may annually issue restricted licenses
 284 authorizing the practice of osteopathic medicine in this state
 285 to not more than 300 persons and to an unlimited number of
 286 osteopathic physicians who hold active unencumbered licenses to
 287 practice medicine in Canada if such applicants:

288 (a) Submit to the department a completed application form
 289 and a nonrefundable application fee not to exceed \$50;

290 (b) Meet the requirements of s. 459.0055(1)(b), (c), (d),
 291 (e), (f), (g), and (j). A Canadian applicant must also provide
 292 the board with a printed or electronic copy of his or her
 293 Canadian criminal history records check;

294 (c) Provide proof to the department that the osteopathic
 295 physician has held an active license to practice osteopathic
 296 medicine and maintained such license in good standing in this
 297 state or in at least one other jurisdiction of the United States
 298 or Canada for at least 2 of the immediately preceding 4 years,
 299 or completed board-approved postgraduate training within the
 300 year immediately preceding the filing of an application; and

301 (d) Enter into a contract to practice osteopathic medicine
 302 for a period of up to 36 months in the employ of the state, a
 303 federally funded community health center, or a migrant health
 304 center; a free clinic that delivers only medical diagnostic
 305 services or nonsurgical medical treatment free of charge to all
 306 low-income residents; or a health care provider in a health
 307 professional shortage area or medically underserved area
 308 designated by the United States Department of Health and Human
 309 Services. The board may designate other areas of critical need
 310 in the state where these restricted licensees may practice.

311 (3) Before the end of the contracted practice period, the
 312 osteopathic physician must take and successfully complete the
 313 licensure examination under s. 459.0055 to become fully licensed
 314 in this state.

315 (4) If the restricted licensee breaches the terms of the
 316 employment contract, he or she may not be licensed as an
 317 osteopathic physician in this state under any licensing
 318 provisions.

319 Section 7. Section 459.00752, Florida Statutes, is created
 320 to read:

321 459.00752 Registration of volunteer retired osteopathic
 322 physicians.-

323 (1) An osteopathic physician may register under this
 324 section to practice medicine as a volunteer retired osteopathic
 325 physician if the osteopathic physician:

326 (a) Submits an application to the board on a form
327 developed by the department no earlier than 6 months before the
328 date on which the osteopathic physician's license permanently
329 expires and no later than 2 years after such expiration;

330 (b) Has held an active license to practice osteopathic
331 medicine and maintained such license in good standing in this
332 state or in at least one other jurisdiction of the United States
333 or Canada for at least 20 years;

334 (c) Contracts with a health care provider to provide free,
335 volunteer health care services to indigent persons or medically
336 underserved populations in health professional shortage areas or
337 medically underserved areas designated by the United States
338 Department of Health and Human Services;

339 (d) Works under the supervision of a nonretired
340 osteopathic physician who holds an active unencumbered license;
341 and

342 (e) Only provides medical services of the type and within
343 the specialty performed by the osteopathic physician before
344 retirement and does not perform surgery or prescribe controlled
345 substances as defined in s. 893.02(4).

346 (2) The registrant shall apply biennially to the board for
347 renewal of his or her registration by demonstrating to the board
348 compliance with this section.

349 (3) The department shall waive the application fee,
350 licensure fee, and unlicensed activity fee for qualifying

351 applicants under this section.

352 (4) The board may deny, revoke, or impose restrictions or
 353 conditions on a registration for any violation of this act or
 354 chapter 456 or the rules adopted under this act or chapter 456.

355 (5) The board may deny or revoke registration for
 356 noncompliance with this section.

357 Section 8. Subsection (1) of section 459.008, Florida
 358 Statutes, is amended to read:

359 459.008 Renewal of licenses and certificates.—

360 (1) The department shall renew a license or certificate
 361 upon receipt of the renewal application and fee. If the licensee
 362 demonstrates to the department that he or she has provided at
 363 least 160 hours of pro bono osteopathic medical services to
 364 indigent persons or medically underserved populations within the
 365 biennial renewal period, the department shall waive the renewal
 366 fee. An applicant for a renewed license must also submit the
 367 information required under s. 456.039 to the department on a
 368 form and under procedures specified by the department, along
 369 with payment in an amount equal to the costs incurred by the
 370 department ~~of Health~~ for the statewide criminal background check
 371 of the applicant. The applicant must submit a set of
 372 fingerprints to the Department of Health on a form and under
 373 procedures specified by the department, along with payment in an
 374 amount equal to the costs incurred by the department for a
 375 national criminal background check of the applicant for the

376 initial renewal of his or her license ~~after January 1, 2000~~. If
377 the applicant fails to submit either the information required
378 under s. 456.039 or a set of fingerprints to the department as
379 required by this section, the department shall issue a notice of
380 noncompliance, and the applicant will be given 30 additional
381 days to comply. If the applicant fails to comply within 30 days
382 after the notice of noncompliance is issued, the department or
383 board, as appropriate, may issue a citation to the applicant and
384 may fine the applicant up to \$50 for each day that the applicant
385 is not in compliance with the requirements of s. 456.039. The
386 citation must clearly state that the applicant may choose, in
387 lieu of accepting the citation, to follow the procedure under s.
388 456.073. If the applicant disputes the matter in the citation,
389 the procedures set forth in s. 456.073 must be followed.
390 However, if the applicant does not dispute the matter in the
391 citation with the department within 30 days after the citation
392 is served, the citation becomes a final order and constitutes
393 discipline. Service of a citation may be made by personal
394 service or certified mail, restricted delivery, to the subject
395 at the applicant's last known address. If an applicant has
396 submitted fingerprints to the department for a national criminal
397 history check upon initial licensure and is renewing his or her
398 license for the first time, then the applicant need only submit
399 the information and fee required for a statewide criminal
400 history check.

401 Section 9. Paragraph (e) of subsection (3) of section
 402 766.1115, Florida Statutes, is amended to read:

403 766.1115 Health care providers; creation of agency
 404 relationship with governmental contractors.—

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

406 (e) "Low-income" means:

407 1. A person who is Medicaid-eligible under Florida law;

408 2. A person who is without health insurance and whose
 409 family income does not exceed 400 ~~200~~ percent of the federal
 410 poverty level as defined annually by the federal Office of
 411 Management and Budget; or

412 3. Any client of the department who voluntarily chooses to
 413 participate in a program offered or approved by the department
 414 and meets the program eligibility guidelines of the department.

415 Section 10. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health Quality
 2 Subcommittee

3 Representative Grant, M. offered the following:

4
 5 **Amendment**

6 Remove lines 123-354 and insert:

7 (b) ~~(a)~~ Meet the requirements of s. 458.311(1)(b), (c),
 8 (d), and (g). A Canadian applicant must also provide the board
 9 with a printed or electronic copy of his or her fingerprint-
 10 based, national Canadian criminal history records check,
 11 conducted within 6 months of the date of application;

12 (c) ~~(b)~~ Show evidence of the active licensed practice of
 13 medicine in another jurisdiction for at least 2 years of the
 14 immediately preceding 4 years, or completion of board-approved
 15 postgraduate training within the year preceding the filing of an
 16 application; and

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

17 ~~(d)(e)~~ Enter into a contract to practice for a period of
18 up to ~~36~~ 24 months solely in the employ of the state, or a
19 federally funded community health center, or a migrant health
20 center; a free clinic that delivers only medical diagnostic
21 services or nonsurgical medical treatment free of charge to all
22 low-income residents; or a health care provider in a health
23 professional shortage area or medically underserved area
24 designated by the United States Department of Health and Human
25 Services, at the current salary level for that position. The
26 board ~~may of Medicine shall~~ designate other areas of critical
27 need in the state where these restricted licensees may practice.

28 (3) Before the end of the contracted 24-month practice
29 period, the physician must take and successfully complete the
30 licensure examination under s. 458.311 to become fully licensed
31 in this state.

32 Section 3. Section 458.3105, Florida Statutes, is created
33 to read:

34 458.3105 Registration of volunteer retired physicians.—

35 (1) A physician may register under this section to
36 practice medicine as a volunteer retired physician if the
37 physician:

38 (a) Submits an application to the board on a form
39 developed by the department within 2 years after the date on
40 which the physician's license changed from active status to
41 retired status;



Amendment No.

42 (b) Provides proof to the department that the physician
43 actively practiced medicine for at least 3 of the 5 years
44 immediately preceding the date on which his or her license
45 changed from active status to retired status;

46 (c) Has held an active license to practice medicine and
47 maintained such license in good standing in this state or in at
48 least one other jurisdiction of the United States or Canada for
49 at least 20 years;

50 (d) Contracts with a health care provider to provide free,
51 volunteer health care services to indigent persons or medically
52 underserved populations in health professional shortage areas or
53 medically underserved areas designated by the United States
54 Department of Health and Human Services;

55 (e) Works under the supervision of a nonretired physician
56 who holds an active unencumbered license; and

57 (f) Only provides medical services of the type and within
58 the specialty performed by the physician before retirement and
59 does not perform surgery or prescribe a controlled substance as
60 defined in s. 893.02(4).

61 (2) The registrant shall apply biennially to the board for
62 renewal of his or her registration by demonstrating to the board
63 compliance with this section.

64 (3) The department shall waive all application, licensure,
65 unlicensed activity, and renewal fees for qualifying applicants
66 under this section.

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

67 (4) The board may deny, revoke, or impose restrictions or
68 conditions on a registration for any violation of this chapter
69 or chapter 456 or the rules adopted under this chapter or
70 chapter 456.

71 (5) The board may deny or revoke registration for
72 noncompliance with this section.

73 Section 4. Paragraph (h) of subsection (1) of section
74 458.311, Florida Statutes, is amended to read:

75 458.311 Licensure by examination; requirements; fees.—

76 (1) Any person desiring to be licensed as a physician, who
77 does not hold a valid license in any state, shall apply to the
78 department on forms furnished by the department. The department
79 shall license each applicant who the board certifies:

80 (h) Has obtained a passing score, as established by rule
81 of the board, on the licensure examination of the United States
82 Medical Licensing Examination (USMLE); or a combination of the
83 United States Medical Licensing Examination (USMLE), the
84 examination of the Federation of State Medical Boards of the
85 United States, Inc. (FLEX), or the examination of the National
86 Board of Medical Examiners up to the year 2000; or for the
87 purpose of examination of any applicant who was licensed on the
88 basis of a state board examination and who is currently licensed
89 in at least one other jurisdiction of the United States ~~or~~
90 ~~Canada~~, and who has practiced pursuant to such licensure for a
91 period of at least 10 years, or for the purpose of examination

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

92 of any applicant who holds an active unencumbered license to
93 practice medicine in Canada and who has practiced pursuant to
94 such licensure for a period of at least 10 years, use of the
95 Special Purpose Examination of the Federation of State Medical
96 Boards of the United States (SPEX) upon receipt of a passing
97 score as established by rule of the board. However, for the
98 purpose of examination of any applicant who was licensed on the
99 basis of a state board examination before ~~prior to~~ 1974, who is
100 currently licensed in at least three other jurisdictions of the
101 United States or Canada, and who has practiced pursuant to such
102 licensure for a period of at least 20 years, this paragraph does
103 not apply.

104 Section 5. Subsection (1) of section 458.319, Florida
105 Statutes, is amended to read:

106 458.319 Renewal of license.—

107 (1) The department shall renew a license upon receipt of
108 the renewal application, evidence that the applicant has
109 actively practiced medicine or has been on the active teaching
110 faculty of an accredited medical school for at least 2 years of
111 the immediately preceding 4 years, and a fee not to exceed \$500;
112 provided, however, that if the licensee is either a resident
113 physician, assistant resident physician, fellow, house
114 physician, or intern in an approved postgraduate training
115 program, as defined by the board by rule, the fee shall not
116 exceed \$100 per annum. If the licensee demonstrates to the

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

117 department in a manner set by department rule that he or she has
118 provided at least 160 hours of pro bono medical services to
119 indigent persons or medically underserved populations within the
120 biennial renewal period, the department shall waive the renewal
121 fee. If the licensee has not actively practiced medicine for at
122 least 2 years of the immediately preceding 4 years, the board
123 shall require that the licensee successfully complete a board-
124 approved clinical competency examination before ~~prior to~~ renewal
125 of the license. "Actively practiced medicine" means that
126 practice of medicine by physicians, including those employed by
127 any governmental entity in community or public health, as
128 defined by this chapter, including physicians practicing
129 administrative medicine. An applicant for a renewed license must
130 also submit the information required under s. 456.039 to the
131 department on a form and under procedures specified by the
132 department, along with payment in an amount equal to the costs
133 incurred by the Department of Health for the statewide criminal
134 background check of the applicant. The applicant must submit a
135 set of fingerprints to the Department of Health on a form and
136 under procedures specified by the department, along with payment
137 in an amount equal to the costs incurred by the department for a
138 national criminal background check of the applicant for the
139 initial renewal of his or her license ~~after January 1, 2000~~. If
140 the applicant fails to submit either the information required
141 under s. 456.039 or a set of fingerprints to the department as

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

142 required by this section, the department shall issue a notice of
143 noncompliance, and the applicant will be given 30 additional
144 days to comply. If the applicant fails to comply within 30 days
145 after the notice of noncompliance is issued, the department or
146 board, as appropriate, may issue a citation to the applicant and
147 may fine the applicant up to \$50 for each day that the applicant
148 is not in compliance with the requirements of s. 456.039. The
149 citation must clearly state that the applicant may choose, in
150 lieu of accepting the citation, to follow the procedure under s.
151 456.073. If the applicant disputes the matter in the citation,
152 the procedures set forth in s. 456.073 must be followed.
153 However, if the applicant does not dispute the matter in the
154 citation with the department within 30 days after the citation
155 is served, the citation becomes a final order and constitutes
156 discipline. Service of a citation may be made by personal
157 service or certified mail, restricted delivery, to the subject
158 at the applicant's last known address. If an applicant has
159 submitted fingerprints to the department for a national criminal
160 history check upon initial licensure and is renewing his or her
161 license for the first time, then the applicant need only submit
162 the information and fee required for a statewide criminal
163 history check.

164 Section 6. Section 459.00751, Florida Statutes, is created
165 to read:

166 459.00751 Restricted licenses.-

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

167 (1) It is the intent of the Legislature to provide medical
168 services to all residents of this state at an affordable cost.

169 (2) The board may annually issue restricted licenses
170 authorizing the practice of osteopathic medicine in this state
171 to not more than 300 persons and to an unlimited number of
172 osteopathic physicians who hold active unencumbered licenses to
173 practice medicine in Canada if such applicants:

174 (a) Submit to the department a completed application form
175 and a nonrefundable application fee not to exceed \$50;

176 (b) Meet the requirements of s. 459.0055(1)(b), (c), (d),
177 (e), (f), (g), and (j). A Canadian applicant must also provide
178 the board with a printed or electronic copy of his or her
179 fingerprint-based, national Canadian criminal history records
180 check, conducted within 6 months of the date of application;

181 (c) Provide proof to the department that the osteopathic
182 physician has held an active license to practice osteopathic
183 medicine and maintained such license in good standing in this
184 state or in at least one other jurisdiction of the United States
185 or Canada for at least 2 of the immediately preceding 4 years,
186 or completed board-approved postgraduate training within the
187 year immediately preceding the filing of an application; and

188 (d) Enter into a contract to practice osteopathic medicine
189 for a period of up to 36 months in the employ of the state, a
190 federally funded community health center, or a migrant health
191 center; a free clinic that delivers only medical diagnostic

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

192 services or nonsurgical medical treatment free of charge to all
193 low-income residents; or a health care provider in a health
194 professional shortage area or medically underserved area
195 designated by the United States Department of Health and Human
196 Services. The board may designate other areas of critical need
197 in the state where these restricted licensees may practice.

198 (3) Before the end of the contracted practice period, the
199 osteopathic physician must take and successfully complete the
200 licensure examination under s. 459.0055 to become fully licensed
201 in this state.

202 (4) If the restricted licensee breaches the terms of the
203 employment contract, he or she may not be licensed as an
204 osteopathic physician in this state under any licensing
205 provisions.

206 Section 7. Section 459.00752, Florida Statutes, is created
207 to read:

208 459.00752 Registration of volunteer retired osteopathic
209 physicians.-

210 (1) An osteopathic physician may register under this
211 section to practice medicine as a volunteer retired osteopathic
212 physician if the osteopathic physician:

213 (a) Submits an application to the board on a form
214 developed by the department no earlier than 6 months before the
215 date on which the osteopathic physician's license permanently
216 expires and no later than 2 years after such expiration;

459689 - h0313-line123.docx

Published On: 12/5/2017 5:35:22 PM



Amendment No.

217 (b) Has held an active license to practice osteopathic
218 medicine and maintained such license in good standing in this
219 state or in at least one other jurisdiction of the United States
220 or Canada for at least 20 years;

221 (c) Contracts with a health care provider to provide free,
222 volunteer health care services to indigent persons or medically
223 underserved populations in health professional shortage areas or
224 medically underserved areas designated by the United States
225 Department of Health and Human Services;

226 (d) Works under the supervision of a nonretired
227 osteopathic physician who holds an active unencumbered license;
228 and

229 (e) Only provides medical services of the type and within
230 the specialty performed by the osteopathic physician before
231 retirement and does not perform surgery or prescribe controlled
232 substances as defined in s. 893.02(4).

233 (2) The registrant shall apply biennially to the board for
234 renewal of his or her registration by demonstrating to the board
235 compliance with this section.

236 (3) The department shall waive all application, licensure,
237 unlicensed activity, and renewal fees for qualifying applicants
238 under this section.

239 (4) The board may deny, revoke, or impose restrictions or
240 conditions on a registration for any violation of this chapter




Amendment No.

241 or chapter 456 or the rules adopted under this chapter or
242 chapter 456.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 417 Pub. Rec./Child Advocacy Center Personnel and Child Protection Team Members
SPONSOR(S): Jenne
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Langston	
2) Oversight, Transparency & Administration Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts in cases of child abuse and neglect. CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment.

Child advocacy centers (CACs) are community-based, child focused facilities where child victims of abuse or neglect are interviewed, and may receive medical exams, therapy, and other critical services.

HB 417 exempts from public records requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of:

- Certain current or former directors, managers, supervisors, and clinical employees of a CAC,
- CPT employees whose duties are related to certain types of CPT investigations or that provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

The bill also exempts the places of employment of spouses and children of these personnel as well as the names and locations of schools and day care facilities attended by these children.

The bill further requires that the agency that is the custodian of the exempt information to maintain the exempt status of the information only if the named personnel submits a written request for the maintenance of the exemption.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill also provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

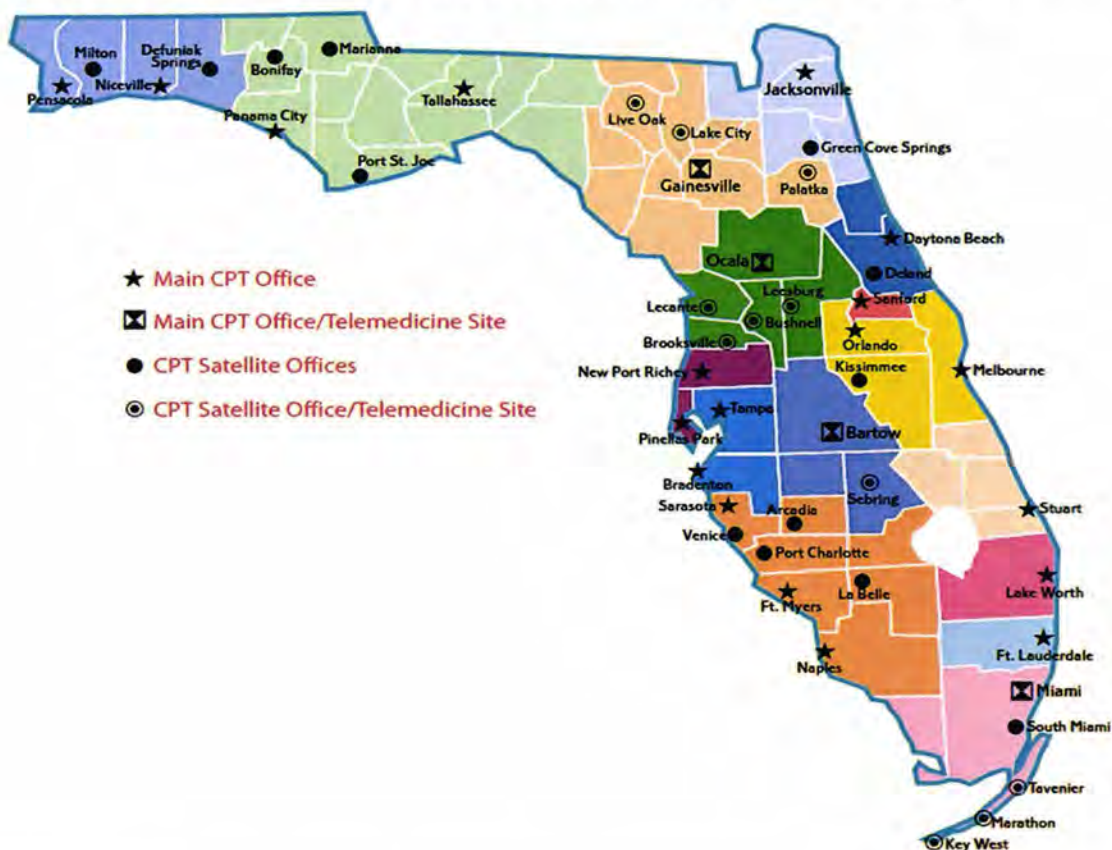
A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the Department of Children and Families (DCF) and local sheriffs' offices in cases of child abuse and neglect.¹ CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.² The Department of Health (DOH) Children's Medical Services program contracts for CPT services with local community-based programs.³

CPTs across the state are divided into 15 circuits and provide services to all 67 counties by utilizing satellite offices and telemedicine sites.⁴ Each circuit is supervised by one or more child protection team medical directors, depending on its size and the subdivision of the particular circuit.⁵



¹ Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited December 1, 2017).

² Id.

³ S.39.303, F.S.

⁴ Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf> (last accessed December 1, 2017).

⁵ Id.

Certain reports of child abuse, abandonment, and neglect to the DCF central abuse hotline must be referred to child protection teams:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁶

When a CPT accepts a referral from DCF or law enforcement, it may provide one or more of the following services:

- Medical diagnosis and evaluation;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations;
- Community awareness campaigns; and
- Expert court testimony.⁷

CPT staff also provide training services for child protection investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community.⁸

Child Advocacy Centers

Child advocacy centers (CACs) are community-based, child focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.⁹ Child advocacy centers bring together professionals to confer and conclude about investigations, treatment and prosecution of child abuse cases.¹⁰ The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.¹¹ CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment.
- Crisis intervention and emotional support for victims and non-offending family members.
- Counseling for victims and non-offending family members.
- Medical evaluations and services.
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, CPTs, prosecutors, medical professionals, mental health professionals, victim assistance staff and child advocates.

⁶ S. 39.303(4), F.S.

⁷ S. 39.303(3), F.S.

⁸ S. 39.303(3)(h), F.S.

⁹ Department of Health, *Agency Legislative Bill Analysis for 2018 House Bill 417*, (October 31, 2017), on file with the Health Quality Subcommittee.

¹⁰ *Id.*

¹¹ Florida Network of Child Advocacy Centers, *What is a CAC?*, <https://www.fnccac.org/what-cac> (last visited December 1, 2017).

- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children.
- Professional training and community education to effectively respond to child abuse.¹²

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization representing all local CACs in Florida.¹³ Membership in FNCAC requires that CACs have a written agreement that incorporates the participation and services to be considered a CPT under s. 39.3035(b), F.S.¹⁴ There are currently 27 CACs in Florida.¹⁵

The Nancy J. Cotterman Center in Broward County has received three public records requests for information relating to its CPT and CAC personnel.¹⁶

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.¹⁷ The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹⁸ The public also has a right to notice of, and access to meetings of any collegial public body of the executive branch of state government or of any local government.¹⁹ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²⁰

Florida law specifies the conditions under which public access must be provided to government records and meetings.²¹ The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³ The Sunshine Law²⁴ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.²⁵

¹² *Id.*

¹³ Florida Network of Child Advocacy Centers, *About Us*, <https://www.fncac.org/about-us> (last visited December 1, 2017).

¹⁴ *Supra*, note 9.

¹⁵ *Supra*, note 10.

¹⁶ Email from Miriam Firpo-jimenez, *RE: NJCC Public Records Exemption Question* (Nov. 9, 2017) (email on file with Health Quality Subcommittee).

¹⁷ FLA. CONST., art. I, s. 24.

¹⁸ FLA. CONST., art. I, s. 24(a).

¹⁹ FLA. CONST., art. I, s. 24(b).

²⁰ FLA. CONST., art. I, s. 24(b).

²¹ Ch. 119, F.S.

²² *Id.*

²³ "Public record" means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." S. 119.011(12), F.S. "Agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.

²⁴ S. 286.011, F.S.

²⁵ S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

The Legislature may create an exemption to public records or open meetings requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸ There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be confidential and exempt.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.³⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.³¹ The Legislature must reenact the exemption in order to save it from repeal.³²

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary³³ to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.³⁷

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ FLA. CONST., art. I, s. 24(c).

²⁹ A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

³⁰ S. 119.15, F.S. An exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

³¹ S. 119.15(3), F.S.

³² *Id.*

³³ S. 119.15(6)(b), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ FLA. CONST., art. I, s. 24(c).

³⁷ S. 119.15(7), F.S.

Effect of Proposed Changes

HB 417 exempts from public records requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, and clinical employees of a CAC that meets the requirements of s. 39.3035, F.S.,
- CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

Additionally, the bill exempts the places of employment of spouses and children of these personnel and the names and locations of schools and day care facilities attended by the children of those personnel.

The bill further requires that the agency that is the custodian of the exempt information to maintain the exempt status of the information only if the named personnel submits a written request for the maintenance of the exemption.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by such personnel. The bill further provides that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The bill also provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date.

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:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure certain identifying information of certain CPT and CAC personnel and their families to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying and
 5 location information of child advocacy center
 6 personnel or child protection team members, and their
 7 spouses and children; providing for retroactive
 8 application; providing for future legislative review
 9 and repeal of the exemption; providing a statement of
 10 public necessity; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (d) of subsection (4) of section
 15 119.071, Florida Statutes, is amended to read:

16 119.071 General exemptions from inspection or copying of
 17 public records.—

18 (4) AGENCY PERSONNEL INFORMATION.—

19 (d)1. For purposes of this paragraph, the term "telephone
 20 numbers" includes home telephone numbers, personal cellular
 21 telephone numbers, personal pager telephone numbers, and
 22 telephone numbers associated with personal communications
 23 devices.

24 2.a. The home addresses, telephone numbers, dates of
 25 birth, and photographs of active or former sworn or civilian law

26 enforcement personnel, including correctional and correctional
 27 probation officers, personnel of the Department of Children and
 28 Families whose duties include the investigation of abuse,
 29 neglect, exploitation, fraud, theft, or other criminal
 30 activities, personnel of the Department of Health whose duties
 31 are to support the investigation of child abuse or neglect, and
 32 personnel of the Department of Revenue or local governments
 33 whose responsibilities include revenue collection and
 34 enforcement or child support enforcement; the names, home
 35 addresses, telephone numbers, photographs, dates of birth, and
 36 places of employment of the spouses and children of such
 37 personnel; and the names and locations of schools and day care
 38 facilities attended by the children of such personnel are exempt
 39 from s. 119.07(1) and s. 24(a), Art. I of the State
 40 Constitution. This sub-subparagraph is subject to the Open
 41 Government Sunset Review Act in accordance with s. 119.15 and
 42 shall stand repealed on October 2, 2022, unless reviewed and
 43 saved from repeal through reenactment by the Legislature.

44 b. The home addresses, telephone numbers, dates of birth,
 45 and photographs of current or former nonsworn investigative
 46 personnel of the Department of Financial Services whose duties
 47 include the investigation of fraud, theft, workers' compensation
 48 coverage requirements and compliance, other related criminal
 49 activities, or state regulatory requirement violations; the
 50 names, home addresses, telephone numbers, dates of birth, and

51 places of employment of the spouses and children of such
52 personnel; and the names and locations of schools and day care
53 facilities attended by the children of such personnel are exempt
54 from s. 119.07(1) and s. 24(a), Art. I of the State
55 Constitution. This sub-subparagraph is subject to the Open
56 Government Sunset Review Act in accordance with s. 119.15 and
57 shall stand repealed on October 2, 2021, unless reviewed and
58 saved from repeal through reenactment by the Legislature.

59 c. The home addresses, telephone numbers, dates of birth,
60 and photographs of current or former nonsworn investigative
61 personnel of the Office of Financial Regulation's Bureau of
62 Financial Investigations whose duties include the investigation
63 of fraud, theft, other related criminal activities, or state
64 regulatory requirement violations; the names, home addresses,
65 telephone numbers, dates of birth, and places of employment of
66 the spouses and children of such personnel; and the names and
67 locations of schools and day care facilities attended by the
68 children of such personnel are exempt from s. 119.07(1) and s.
69 24(a), Art. I of the State Constitution. This sub-subparagraph
70 is subject to the Open Government Sunset Review Act in
71 accordance with s. 119.15 and shall stand repealed on October 2,
72 2022, unless reviewed and saved from repeal through reenactment
73 by the Legislature.

74 d. The home addresses, telephone numbers, dates of birth,
75 and photographs of current or former firefighters certified in

76 compliance with s. 633.408; the names, home addresses, telephone
77 numbers, photographs, dates of birth, and places of employment
78 of the spouses and children of such firefighters; and the names
79 and locations of schools and day care facilities attended by the
80 children of such firefighters are exempt from s. 119.07(1) and
81 s. 24(a), Art. I of the State Constitution. This sub-
82 subparagraph is subject to the Open Government Sunset Review Act
83 in accordance with s. 119.15, and shall stand repealed on
84 October 2, 2022, unless reviewed and saved from repeal through
85 reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone
87 numbers of current or former justices of the Supreme Court,
88 district court of appeal judges, circuit court judges, and
89 county court judges; the names, home addresses, telephone
90 numbers, dates of birth, and places of employment of the spouses
91 and children of current or former justices and judges; and the
92 names and locations of schools and day care facilities attended
93 by the children of current or former justices and judges are
94 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
95 Constitution. This sub-subparagraph is subject to the Open
96 Government Sunset Review Act in accordance with s. 119.15 and
97 shall stand repealed on October 2, 2022, unless reviewed and
98 saved from repeal through reenactment by the Legislature.

99 f. The home addresses, telephone numbers, dates of birth,
100 and photographs of current or former state attorneys, assistant

101 state attorneys, statewide prosecutors, or assistant statewide
 102 prosecutors; the names, home addresses, telephone numbers,
 103 photographs, dates of birth, and places of employment of the
 104 spouses and children of current or former state attorneys,
 105 assistant state attorneys, statewide prosecutors, or assistant
 106 statewide prosecutors; and the names and locations of schools
 107 and day care facilities attended by the children of current or
 108 former state attorneys, assistant state attorneys, statewide
 109 prosecutors, or assistant statewide prosecutors are exempt from
 110 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

111 g. The home addresses, dates of birth, and telephone
 112 numbers of general magistrates, special magistrates, judges of
 113 compensation claims, administrative law judges of the Division
 114 of Administrative Hearings, and child support enforcement
 115 hearing officers; the names, home addresses, telephone numbers,
 116 dates of birth, and places of employment of the spouses and
 117 children of general magistrates, special magistrates, judges of
 118 compensation claims, administrative law judges of the Division
 119 of Administrative Hearings, and child support enforcement
 120 hearing officers; and the names and locations of schools and day
 121 care facilities attended by the children of general magistrates,
 122 special magistrates, judges of compensation claims,
 123 administrative law judges of the Division of Administrative
 124 Hearings, and child support enforcement hearing officers are
 125 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

126 Constitution. This sub-subparagraph is subject to the Open
 127 Government Sunset Review Act in accordance with s. 119.15 and
 128 shall stand repealed on October 2, 2022, unless reviewed and
 129 saved from repeal through reenactment by the Legislature.

130 h. The home addresses, telephone numbers, dates of birth,
 131 and photographs of current or former human resource, labor
 132 relations, or employee relations directors, assistant directors,
 133 managers, or assistant managers of any local government agency
 134 or water management district whose duties include hiring and
 135 firing employees, labor contract negotiation, administration, or
 136 other personnel-related duties; the names, home addresses,
 137 telephone numbers, dates of birth, and places of employment of
 138 the spouses and children of such personnel; and the names and
 139 locations of schools and day care facilities attended by the
 140 children of such personnel are exempt from s. 119.07(1) and s.
 141 24(a), Art. I of the State Constitution.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former code enforcement officers;
 144 the names, home addresses, telephone numbers, dates of birth,
 145 and places of employment of the spouses and children of such
 146 personnel; and the names and locations of schools and day care
 147 facilities attended by the children of such personnel are exempt
 148 from s. 119.07(1) and s. 24(a), Art. I of the State
 149 Constitution.

150 j. The home addresses, telephone numbers, places of

151 employment, dates of birth, and photographs of current or former
 152 guardians ad litem, as defined in s. 39.820; the names, home
 153 addresses, telephone numbers, dates of birth, and places of
 154 employment of the spouses and children of such persons; and the
 155 names and locations of schools and day care facilities attended
 156 by the children of such persons are exempt from s. 119.07(1) and
 157 s. 24(a), Art. I of the State Constitution. This sub-
 158 subparagraph is subject to the Open Government Sunset Review Act
 159 in accordance with s. 119.15 and shall stand repealed on October
 160 2, 2022, unless reviewed and saved from repeal through
 161 reenactment by the Legislature.

162 k. The home addresses, telephone numbers, dates of birth,
 163 and photographs of current or former juvenile probation
 164 officers, juvenile probation supervisors, detention
 165 superintendents, assistant detention superintendents, juvenile
 166 justice detention officers I and II, juvenile justice detention
 167 officer supervisors, juvenile justice residential officers,
 168 juvenile justice residential officer supervisors I and II,
 169 juvenile justice counselors, juvenile justice counselor
 170 supervisors, human services counselor administrators, senior
 171 human services counselor administrators, rehabilitation
 172 therapists, and social services counselors of the Department of
 173 Juvenile Justice; the names, home addresses, telephone numbers,
 174 dates of birth, and places of employment of spouses and children
 175 of such personnel; and the names and locations of schools and

176 day care facilities attended by the children of such personnel
 177 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 178 Constitution.

179 1. The home addresses, telephone numbers, dates of birth,
 180 and photographs of current or former public defenders, assistant
 181 public defenders, criminal conflict and civil regional counsel,
 182 and assistant criminal conflict and civil regional counsel; the
 183 names, home addresses, telephone numbers, dates of birth, and
 184 places of employment of the spouses and children of such
 185 defenders or counsel; and the names and locations of schools and
 186 day care facilities attended by the children of such defenders
 187 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 188 the State Constitution.

189 m. The home addresses, telephone numbers, dates of birth,
 190 and photographs of current or former investigators or inspectors
 191 of the Department of Business and Professional Regulation; the
 192 names, home addresses, telephone numbers, dates of birth, and
 193 places of employment of the spouses and children of such current
 194 or former investigators and inspectors; and the names and
 195 locations of schools and day care facilities attended by the
 196 children of such current or former investigators and inspectors
 197 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 198 Constitution. This sub-subparagraph is subject to the Open
 199 Government Sunset Review Act in accordance with s. 119.15 and
 200 shall stand repealed on October 2, 2022, unless reviewed and

201 saved from repeal through reenactment by the Legislature.

202 n. The home addresses, telephone numbers, and dates of
 203 birth of county tax collectors; the names, home addresses,
 204 telephone numbers, dates of birth, and places of employment of
 205 the spouses and children of such tax collectors; and the names
 206 and locations of schools and day care facilities attended by the
 207 children of such tax collectors are exempt from s. 119.07(1) and
 208 s. 24(a), Art. I of the State Constitution. This sub-
 209 subparagraph is subject to the Open Government Sunset Review Act
 210 in accordance with s. 119.15 and shall stand repealed on October
 211 2, 2022, unless reviewed and saved from repeal through
 212 reenactment by the Legislature.

213 o. The home addresses, telephone numbers, dates of birth,
 214 and photographs of current or former personnel of the Department
 215 of Health whose duties include, or result in, the determination
 216 or adjudication of eligibility for social security disability
 217 benefits, the investigation or prosecution of complaints filed
 218 against health care practitioners, or the inspection of health
 219 care practitioners or health care facilities licensed by the
 220 Department of Health; the names, home addresses, telephone
 221 numbers, dates of birth, and places of employment of the spouses
 222 and children of such personnel; and the names and locations of
 223 schools and day care facilities attended by the children of such
 224 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 225 the State Constitution. This sub-subparagraph is subject to the

226 Open Government Sunset Review Act in accordance with s. 119.15
 227 and shall stand repealed on October 2, 2019, unless reviewed and
 228 saved from repeal through reenactment by the Legislature.

229 p. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former impaired practitioner
 231 consultants who are retained by an agency or current or former
 232 employees of an impaired practitioner consultant whose duties
 233 result in a determination of a person's skill and safety to
 234 practice a licensed profession; the names, home addresses,
 235 telephone numbers, dates of birth, and places of employment of
 236 the spouses and children of such consultants or their employees;
 237 and the names and locations of schools and day care facilities
 238 attended by the children of such consultants or employees are
 239 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution. This sub-subparagraph is subject to the Open
 241 Government Sunset Review Act in accordance with s. 119.15 and
 242 shall stand repealed on October 2, 2020, unless reviewed and
 243 saved from repeal through reenactment by the Legislature.

244 q. The home addresses, telephone numbers, dates of birth,
 245 and photographs of current or former emergency medical
 246 technicians or paramedics certified under chapter 401; the
 247 names, home addresses, telephone numbers, dates of birth, and
 248 places of employment of the spouses and children of such
 249 emergency medical technicians or paramedics; and the names and
 250 locations of schools and day care facilities attended by the

251 children of such emergency medical technicians or paramedics are
 252 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 253 Constitution. This sub-subparagraph is subject to the Open
 254 Government Sunset Review Act in accordance with s. 119.15 and
 255 shall stand repealed on October 2, 2021, unless reviewed and
 256 saved from repeal through reenactment by the Legislature.

257 r. The home addresses, telephone numbers, dates of birth,
 258 and photographs of current or former personnel employed in an
 259 agency's office of inspector general or internal audit
 260 department whose duties include auditing or investigating waste,
 261 fraud, abuse, theft, exploitation, or other activities that
 262 could lead to criminal prosecution or administrative discipline;
 263 the names, home addresses, telephone numbers, dates of birth,
 264 and places of employment of spouses and children of such
 265 personnel; and the names and locations of schools and day care
 266 facilities attended by the children of such personnel are exempt
 267 from s. 119.07(1) and s. 24(a), Art. I of the State
 268 Constitution. This sub-subparagraph is subject to the Open
 269 Government Sunset Review Act in accordance with s. 119.15 and
 270 shall stand repealed on October 2, 2021, unless reviewed and
 271 saved from repeal through reenactment by the Legislature.

272 s. The home addresses, telephone numbers, social security
 273 numbers, dates of birth, and photographs of current or former
 274 directors, managers, supervisors, and clinical employees of a
 275 child advocacy center that meets the requirements of s. 39.3035

276 and the members of a child protection team as provided in s.
277 39.303 whose duties include supporting the investigation of
278 child abuse or sexual abuse, child abandonment, child neglect,
279 or child exploitation or to provide services as part of a
280 multidisciplinary case review team; the home addresses,
281 telephone numbers, social security numbers, photographs, dates
282 of birth, and places of employment of the spouses and children
283 of such personnel; and the names and locations of schools and
284 day care facilities attended by the children of such personnel
285 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
286 Constitution. An agency that is the custodian of information
287 specified in this sub-subparagraph shall maintain the exempt
288 status of such information only if the current or former
289 director, manager, supervisor, or clinical employee of a child
290 advocacy center that meets the requirements of s. 39.3035 or the
291 member of a child protection team as provided in s. 39.303
292 submits a written request for the maintenance of the exemption
293 to the custodial agency. This sub-subparagraph is subject to the
294 Open Government Sunset Review Act in accordance with s. 119.15
295 and shall stand repealed on October 2, 2023, unless reviewed and
296 saved from repeal through reenactment by the Legislature.

297 3. An agency that is the custodian of the information
298 specified in subparagraph 2. and that is not the employer of the
299 officer, employee, justice, judge, or other person specified in
300 subparagraph 2. shall maintain the exempt status of that

301 information only if the officer, employee, justice, judge, other
302 person, or employing agency of the designated employee submits a
303 written request for maintenance of the exemption to the
304 custodial agency.

305 4. The exemptions in this paragraph apply to information
306 held by an agency before, on, or after the effective date of the
307 exemption.

308 Section 2. (1) The Legislature finds that it is a public
309 necessity that the following identifying and location
310 information be exempt from s. 119.07(1), Florida Statutes, and
311 s. 24(a), Article I of the State Constitution:

312 (a) The home addresses, telephone numbers, social security
313 numbers, dates of birth, and photographs of current or former
314 directors, managers, supervisors, and clinical employees of a
315 child advocacy center that meets the requirements of s. 39.3035,
316 Florida Statutes.

317 (b) The home addresses, telephone numbers, social security
318 numbers, dates of birth, and photographs of current or former
319 members of a child protection team as provided in s. 39.303,
320 Florida Statutes.

321 (c) The home addresses, telephone numbers, social security
322 numbers, photographs, dates of birth, and places of employment
323 of the spouses and children of personnel identified in
324 paragraphs (a) and (b).

325 (d) The names and locations of schools and day care
326 facilities attended by the children of such personnel.

327 (2) The Legislature finds that the release of such
328 identifying and location information may place current or former
329 directors, managers, supervisors, and clinical employees of a
330 child advocacy center that meets the requirements of s. 39.3035,
331 Florida Statutes, and the members of a child protection team as
332 provided in s. 39.303, Florida Statutes, and the family members
333 of such personnel, in danger of physical and emotional harm from
334 disgruntled individuals who may react inappropriately and
335 violently to actions taken by such personnel. These personnel
336 provide necessary and appropriate support services to abused,
337 abandoned, neglected, and exploited children who are some of the
338 state's most vulnerable residents. Despite the value of these
339 services, an individual may become dissatisfied with the
340 assistance provided, or the recommendations or decisions these
341 personnel make, which may result in a director, manager,
342 supervisor, or clinical employee of a child advocacy center, a
343 member of a child protection team, or a family member of such
344 personnel becoming a potential target for an act of revenge. The
345 risk continues after such personnel concludes his or her service
346 because a disgruntled individual may wait to commit an act of
347 revenge until such personnel no longer holds a position at a
348 child advocacy center or on a child protection team. The harm
349 that may result from the release of such personal identifying

HB 417



2018

350 | and location information outweighs any public benefit that may
351 | be derived from the disclosure of the information.

352 | Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429 Donation and Transfer of Human Tissue
SPONSOR(S): Pigman
TIED BILLS: IDEN./SIM. BILLS: SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Langston 	McElroy 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplantation in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury.

Florida law requires that every donation of blood, plasma, organs, skin, or other human tissue be tested for the human immunodeficiency virus (HIV) and other communicable diseases, prior to transfusion or transplantation. Additionally, the institution or physician overseeing the transfer must warn a prospective recipient as to the risks of contracting HIV prior to the transplant of an organ or artificial insemination.

The Zika virus is a mosquito-borne virus primarily transmitted through the bite of an infected mosquito, though it can also be transmitted prenatally, in-utero, through sexual activity, and through blood transfusion. The Zika virus may potentially be transmitted through organ and tissue donation; however, the risk of transmitting the Zika virus through solid organ transplantation is unknown at this time.

HB 429 requires the same disclosures that must be made to potential recipients of donated tissue related to HIV also be made for the Zika virus. The bill also requires that the HIV and Zika virus warnings be made prior to the transplant of an allograft. The bill defines allograft as human cells, tissues, or cellular or tissue-based products.

The bill provides an exception for the Zika virus warning if organ or allograft has been virally inactivated. The bill defines "virally inactivated" means a validated process that eliminates viral contamination in an organ or allograft.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tissue Donation and Transfer

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplantation in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Up to eight lives can be saved through organ donation, and dozens more lives may be improved through tissue donation.¹ While most organ and tissue donations occur after the donor has died, some organs, including a kidney or part of a liver or lung, and tissues can be donated while the donor is alive.² There are about as many living donors every year as there are deceased donors.³ Today, there are nearly 120,000 children and adults are waiting for organ transplants, including 5,000 in Florida.⁴

Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.⁵ Transplantable tissue includes, skin used as a temporary dressing for burns, serious abrasions and other exposed areas, heart valves used to replace defective valves, tendons used to repair torn ligaments on knees or other joints, veins used in cardiac by-pass surgery, corneas used to restore sight, and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.⁶

The Organ Procurement and Transplantation Network (OPTN) regulates how donor organs are matched and allocated to patients on the waiting list.⁷ In Florida, non-profit, federally designated organ procurement organizations (OPOs) work closely with the OPTN, hospitals, and transplant centers to facilitate the organ donation and transplantation process,⁸ including determining medical suitability.⁹

Section 381.0041, F.S., requires every donation of blood, plasma, organs, skin, or other human tissue be tested for the human immunodeficiency virus (HIV) and other communicable diseases,¹⁰ prior to transfusion¹¹ or transplantation. Additionally, the institution or physician responsible for overseeing the

¹ DONATE LIFE FLORIDA, *Frequently Asked Questions*, <https://www.donatelifeflorida.org/categories/donation/> (last visited December 4, 2017).

² U.S. GOVERNMENT INFORMATION ON ORGAN DONATION AND TRANSPLANTATION, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *How Organ Donation Works*, <https://organdonor.gov/about/process.html> (last visited December 4, 2017).

³ *Id.*

⁴ *Supra*, note 1.

⁵ *Id.*

⁶ *Id.*

⁷ U.S. GOVERNMENT INFORMATION ON ORGAN DONATION AND TRANSPLANTATION, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *The Organ Transplant Process*, <https://organdonor.gov/about/process/transplant-process.html> (last visited December 4, 2017).

⁸ DONATE LIFE FLORIDA, *Organ Procurement Organizations and Transplant Centers*, <https://www.donatelifeflorida.org/local-resources/transplant-centers/> (last visited December 4, 2017).

⁹ ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *The Basic Path of Donation*, <https://optn.transplant.hrsa.gov/learn/about-donation/the-basic-path-of-donation/> (last visited December 4, 2017).

¹⁰ Other communicable diseases must be specified in Department of Health (DOH) rules. S. 381.004(1), F.S. DOH requires donated blood, organs and tissue to be tested for infectious diseases identified in 21 CFR s. 610.40 (which also includes hepatitis B and C) and in the Federal Health Resources and Services Administration's Organ Procurement and Transplantation Network Policy 2.2, as revised 9-1-2012. Rule 64D-2.005(1), F.A.C.

¹¹ A blood transfusion is a safe, common procedure in which blood is given to you through an intravenous (IV) line in one of your blood vessels. Blood transfusions are typically done to replace blood lost during surgery or due to a serious injury. NATIONAL HEART, LUNG, AND BLOOD INSTITUTE, U.S., DEPARTMENT OF HEALTH AND HUMAN SERVICES, *What is a Blood Transfusion?*, <https://www.nhlbi.nih.gov/health/health-topics/topics/bt> (last visited December 4, 2017).

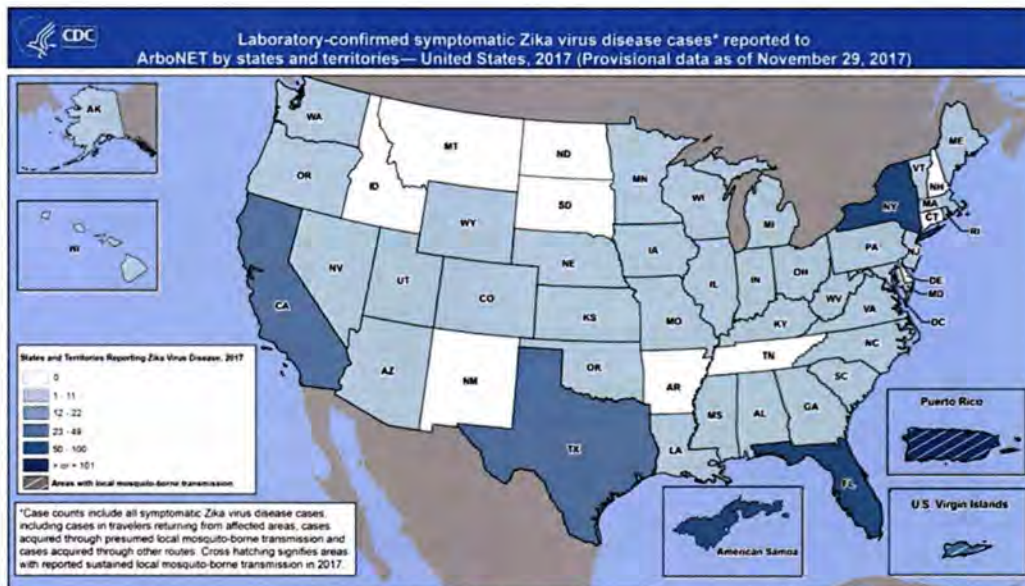
procedure warn the prospective recipient as to the risks of contracting HIV prior to the transplant of an organ or artificial insemination.^{12 13}

Zika Virus

The Zika virus is a mosquito-borne virus primarily transmitted through the bite of an infected mosquito.¹⁴ It may also be transmitted prenatally, in-utero,¹⁵ through sexual activity, and through blood transfusion.¹⁶ A blood or urine test can confirm a Zika infection.¹⁷

Many people infected with the Zika virus will not have symptoms or will only have mild symptoms, which may last from several days to a week.¹⁸ The most common symptoms of the Zika virus include fever, rash, headache, joint pain, red eyes, and muscle pain. However, the Zika virus infection during pregnancy can cause serious birth defects and is associated with other pregnancy problems, including microcephaly.¹⁹ Currently, there is no vaccine or medicine for the treatment of the Zika virus.²⁰

Cases of the Zika Virus by State and Territory²¹



¹² Artificial insemination is a fertility treatment that includes the deliberate introduction of sperm into a woman's uterus or cervix for the purpose of achieving a pregnancy through in vivo fertilization by means other than sexual intercourse.

¹³ S. 381.0041(12), F.S.

¹⁴ FLORIDA DEPARTMENT OF HEALTH, *Frequently Asked Questions: Zika Virus*, (Dec. 9, 2016), available at <http://www.floridahealth.gov/diseases-and-conditions/zika-virus/documents/120816-zika-faq.pdf> (last visited December 1, 2017).

¹⁵ Zika virus can be transmitted from a pregnant mother to her baby during pregnancy or around the time of birth; however, it is unknown how often this occurs or what stage of pregnancy is most at risk. Zika is a cause of microcephaly and other severe fetal brain defects.

¹⁶ *Supra*, note 14.

¹⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Testing for Zika*, <https://www.cdc.gov/zika/symptoms/diagnosis.html> (last visited December 1, 2017).

¹⁸ CENTERS FOR DISEASE CONTROL AND PREVENTION, *About Zika: Overview*, <https://www.cdc.gov/zika/about/overview.html> (last visited December 1, 2017).

¹⁹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Zika Health Effects & Risks*, <https://www.cdc.gov/zika/healtheffects/index.html> (last visited December 1, 2017).

²⁰ CENTERS FOR DISEASE CONTROL AND PREVENTION, *About Zika*, <https://www.cdc.gov/zika/about/index.html> (last visited December 1, 2017).

²¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Zika Cases in the US: 2017 Case Counts in the US*, <https://www.cdc.gov/zika/reporting/2017-case-counts.html> (last visited December 5, 2017).

The Zika virus has been identified in several countries in Central and South America, Mexico, and the Caribbean since 2015, and was identified in Florida in 2016.²² In February 2016, following the first travel-related cases of the Zika virus in Florida, Governor Scott directed the State Surgeon General to declare a public health emergency in the affected counties.²³ There are currently no areas of ongoing, active transmission of the Zika virus by mosquitoes in Florida;²⁴ however, 88 cases of the Zika virus have been identified in Florida this year.²⁵

Transmission of the Zika virus through organ and tissue donation

The Zika virus may potentially be transmitted through organ and tissue donation. This could occur through the transfer of an organ or tissue to a recipient from a living donor who was infected, or from a deceased who became infected prior to, or during his or her terminal illness.²⁶ The risk of transmitting the Zika virus through solid organ transplantation is unknown at this time; however, it appears to be transmissible through blood transfusion.²⁷ There have not been any reported cases of Zika virus transfusion-transmission in the United States, but there are reports of probable cases in Brazil that are currently being investigated.²⁸

In 2016, the Food and Drug Administration (FDA) issued industry guidance for reducing the risk of transmitting the Zika virus by blood transfusion in 2016.²⁹ The FDA recommended that blood collection centers screen all donations using a screening test authorized for use under an FDA investigational new drug application or use an FDA-approved pathogen-reduction device for plasma and certain platelet products.³⁰

Tissue screening for the Zika virus is currently not available outside of research settings.³¹ However, the FDA has issued guidance on donor screening for tissue-based donations and recommended using questions that include whether the donor has been diagnosed with the Zika virus, resided in or traveled to areas of active transmission or has engaged in sexual activities with someone who meets the first two risk factors.³² No guidance has been issued for organ transplant.³³

Effect of the Bill

HB 429 requires the same disclosures that must be made to potential recipients of donated tissue related to HIV also be made for the Zika virus. The bill also requires that the HIV and Zika virus

²² Id.

²³ Office of the Governor, Executive Order 16-29 (Zika Virus), Feb. 3, 2017, available at, <http://www.floridahealth.gov/diseases-and-conditions/zika-virus/documents/eo16-29.pdf> (last visited December 4, 2017).

²⁴ ZIKA FREE FLORIDA, *About Zika*, <https://zikafreefl.org/about-zika/> (last visited December 4, 2017).

²⁵ *Supra*, note 21

²⁶ U.S. GOVERNMENT INFORMATION ON ORGAN DONATION AND TRANSPLANTATION, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *Guidance on zika virus*, (updated July 28, 2016), <https://optn.transplant.hrsa.gov/news/guidance-on-zika-virus/> (last visited December 5, 2017).

²⁷ Id.

²⁸ Koo-Whang Chung, MPH, *CDC Zika IMS Sustaining the Zika Response in 2017 Blood Safety Task Force*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Mar. 30, 2017), p. 14, available at, <https://www.cdc.gov/zika/pdfs/blood-safety-tf-sustainment-webinar-slides-3-30-17.pdf> (last visited December 5, 2017).

²⁹ *Revised Recommendations for Reducing the Risk of Zika Virus Transmission by Blood and Blood Components: Guidance for Industry*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION, CENTER FOR BIOLOGICS EVALUATION AND RESEARCH, (Aug. 2016), available at, <https://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM518213.pdf> (last visited December 5, 2017).

³⁰ Id.

³¹ *Supra*, note 28 at 18.

³² *Donor Screening Recommendations to Reduce the Risk of Transmission of Zika Virus by Human Cells, Tissues, and Cellular and Tissue-Based Products: Guidance for Industry*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION, CENTER FOR BIOLOGICS EVALUATION AND RESEARCH, (Feb. 2016), available at, <https://www.fda.gov/downloads/biologicsbloodvaccines/guidancecomplianceinformation/guidances/tissue/ucm488582.pdf> (last visited December 5, 2017).

³³ *Supra*, note 28 at 19.

warnings be made prior to the transplant of an allograft. The bill defines allograft as human cells, tissues, or cellular or tissue-based products.

The bill also provides an exception for the Zika virus warning if an organ or allograft has been virally inactivated. The bill defines "virally inactivated" means a validated process that eliminates viral contamination in an organ or allograft.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.0041, F.S., relating to donation and transfer of human tissue; testing requirements.

Section 2: Provides an effective date.

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

1 A bill to be entitled
2 An act relating to donation and transfer of human
3 tissue; amending s. 381.0041, F.S.; requiring an
4 institution or physician responsible for transplanting
5 an allograft to warn the recipient as to the risks of
6 contracting the Zika virus; providing an exception to
7 the warning requirement for an organ or allograft that
8 has been virally inactivated; providing an effective
9 date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (12) of section 381.0041, Florida
14 Statutes, is amended to read:

15 381.0041 Donation and transfer of human tissue; testing
16 requirements.—

17 (12) Prior to the transplant of an organ or an allograft
18 or artificial insemination, the institution or physician
19 responsible for overseeing the procedure must provide the
20 prospective recipient a warning as to the risks of contracting
21 human immunodeficiency virus and the Zika virus. The Zika virus
22 warning is not required for an organ or an allograft that has
23 been virally inactivated. For the purpose of this subsection,
24 the term:

25 (a) "Allograft" means human cells, tissues, or cellular or

26 tissue-based products.

27 (b) "Virally inactivated" means a validated process that
28 eliminates viral contamination in an organ or allograft.

29 Section 2. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health Quality
 2 Subcommittee

3 Representative Pigman offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (13) is added to section 381.0041,
8 Florida Statutes, to read:

9 381.0041 Donation and transfer of human tissue; testing
10 requirements.—

11 (13) The department shall develop and publish on its
 12 website an educational pamphlet relating to the risks and
 13 benefits of human cells, tissue, and cellular and tissue-based
 14 product transplants. The department shall electronically notify
 15 physicians of the availability of the pamphlet. At a minimum,
 16 the pamphlet shall include:



Amendment No.

- 17 (a) An overview of the risk of infectious disease
- 18 transmission.
- 19 (b) An overview of the standards for donor testing and
- 20 screening.
- 21 (c) An overview of sterilization and inactivation processes
- 22 intended to increase viral safety of donated human cells,
- 23 tissue, or cellular or tissue-based product.
- 24 (d) The importance of providing limited recipient
- 25 transplant information to the supplier of the human cells,
- 26 tissue, or cellular or tissue-based product.
- 27 (e) The generosity of the human donor who provided the
- 28 human cells, tissue, or cellular or tissue-based product.

Section 2. This act shall take effect July 1, 2018.

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

32 Remove everything before the enacting clause and insert:
33 An act relating to donation and transfer of human tissue;
34 amending s. 381.0041, F.S.; requiring the department to develop
35 and publish on its website an educational pamphlet relating to
36 certain tissue transplants; requiring the educational pamphlet
37 to include specified information the risks and benefits of human
38 cells, tissue, and cellular and tissue-based product
39 transplants; providing an effective date.

FLORIDA DEPARTMENT OF HEALTH
Office Of Medical Marijuana Use
Low-THC Cannabis & Medical Marijuana

MedicalMarijuanaUse@FLHealth.gov



Dispensary Distribution Method and Current Dispensing Locations



Dispensary Distribution

MMTC*

Retail Dispensary Locations

- **Statewide Maximum** - Each MMTC may have up to 25 dispensaries statewide, before the patient population reaches 100,000. Each MMTC gets an additional 5 dispensaries for each additional 100,000 patients.
- **Regional Maximum** - The statewide maximum is distributed in the 5 regions (**Northwest, Northeast, Central, Southwest** and **Southeast**) based on regional population.
- MMTCs may purchase dispensary slots from other MMTCs.
- Dispensaries limits sunset on April 1, 2020.

Surterra
Therapeutics

Pensacola, Tallahassee, Tampa

Trulieve

Bradenton, Clearwater, Edgewater, Fort Meyers, Gainesville, Jacksonville, lady Lake, Miami, Orlando, Pensacola, St. Petersburg, Tallahassee, Tampa

Knox
Medical

Gainesville, Jacksonville, Lake Worth, Orlando, St. Petersburg, Tallahassee

Curaleaf

Kendall, Miami

* These are the only MMTCs currently operating retail dispensaries.

MMTC Rules and Regulations



DOH is in the process of developing rules for:

- * MMTC License Applications
- * MMTC Fines
- *Pesticide Use
- Edible standards
- MMTC License Renewals
- Labeling and packaging standards
- Dosing guidelines
- Testing Laboratory Certification

* Rule Published

Inspections and Authorizations



In the last 2 months DOH has conducted:

- 5 Cultivation Facility Inspections
- 2 Processing Facility Inspections
- 10 Dispensing Facility Inspections

OMMU Metrics



OMMU has provided a bi-weekly update regarding the status of the state's medical marijuana implementation for the past 18 months. OMMU is now issuing weekly updates, which are posted on our website. Updates track the following metrics:

- Patients in the Registry: 57,000
- Qualified Physicians: 1,233
- Approved Medical Marijuana Treatment Centers: 13
- Approved Retail Dispensing Locations: 24
- Processing Time for Complete Paper Applications: 30 Days
- Processing Time for Complete Online Applications: 18 Days
- Approved ID Card Applications: 39,000

Qualified Physicians and Registered Patients



- There are currently 1,233 qualified physicians.
 - An increase of 167 qualified physicians since the November 15th update.

- There are currently more than 57,000 patients in the Medical Marijuana Use Registry.
 - An increase of more than 6,000 patients since the November 15th update.

Identification Cards



- The OMMU has issued over 37,000 identification cards
 - This includes 7,000 identification cards issued since the November 15th update.
- The processing time for complete paper identification card applications is approximately 30 days from **receipt of a complete application.**
- OMMU is currently moving forward with the outsourcing of the medical marijuana identification cards. Card processing time will be improved by:
 - Online payments;
 - Linkage between DOH and the Department of Highway Safety and Motor Vehicle systems; and
 - Increased production capacity.
- Anticipated Call Center Deployment: 30 Business Days (1/8/2018)
- Anticipated Card Program Deployment: 60 Business Days (2/15/2018)

Legal Challenges



- Home Grow:
 - Redner v. DOH, et. al., 13th Judicial Circuit Case No. 17-CA-5677
- Smoking Ban:
 - People United for Medical Marijuana v. DOH, et. al.,
2d Judicial Circuit Case No. 2017-CA-1394
- Application Process:
 - Bill's Nursery, Inc. v. DOH, 2d Judicial Circuit Case No. 2017-CA-002411
 - Smith v. DOH, 2d Judicial Circuit Case No. 2017-CA-001972
 - Tropiflora, LLC v. DOH, 2d Judicial Circuit Case No. 2016-CA-1330
- MMTC Licensure:
 - Nature's Way v. DOH Case No. 17-5801

Questions?