



Committee on Health Quality

**Tuesday, March 20, 2007
9:00 AM – 12:00 PM
306 HOB**

COMMITTEE MEETING PACKET

**Marco Rubio
Speaker**

**Gayle Harrell
Chair**



House of Representatives

Committee on Health Quality

A G E N D A

**March 20, 2007
9:00 AM – 12:00 PM
(306 HOB)**

- I. Opening Remarks**
- II. Consideration of the following bills:**
 - **HB 0051 by D. Davis - - Transitional Services for Adolescents and Young Adults with Disabilities**
 - **HB 0739 by Holder - - Treatment Programs for Impaired Practitioners**
 - **HB 0893 by Harrell - - Controlled Substances**
 - **HB 1141 by Kendrick - - Osteopathic Physicians**
 - **HB 1485 by Long - - Chiropractic Medicine**
- III. Workshop on the following:**
 - **HB 1239 by Homan - - Alcohol Abuse by an Expectant Mother**
 - **HB 1425 by Baxley - - Child Sexual Abuse Reporting and Evidence Collection**
- IV. Closing Remarks & Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 51 **Transitional Services for Adolescents and Young Adults with Disabilities**
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS: SB 394**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Health Quality		Guy J	Lowell A
2) Healthcare Council			
3) Policy & Budget Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 51 creates the Health and Transition Services Program in the Children's Medical Services program within the Department of Health. This program will serve 14-26 year old persons with chronic health-related or developmental conditions in transitioning from children's health and education services to adult health care and employment. The bill requires the program to provide enrollees with specified services and referral information.

The bill appears to have a significant fiscal impact to state government, however, the cost is indeterminate at this time. (See fiscal analysis.)

The bill provides for an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – this bill will create the Health and Transition Services Program within the Department of Health to provide young adults with chronic health-related or developmental conditions with services that facilitate the transition from pediatric to adult health care, education and vocational programs.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Children with special health care or educational needs face significant obstacles as they age out of child health care and educational service programs. Many states, universities, organizations, and health care providers are developing plans to assist youth with special health care and educational needs to successfully transition into multiple aspects of adult life.

Transitioning into adulthood is a difficult process for all adolescents, but the transition presents additional challenges for young people with health care and educational disabilities. “Transition services” is the term used to describe a set of services and supports designed to assist adolescents in adjusting to the change from the home and school environment to independent living and meaningful employment. Students with health or educational disabilities often face this transition unprepared for further vocational training, post secondary education, gainful employment, or the ability to navigate the non-pediatric health care system.

Children’s Medical Services

Chapter 391, Florida Statutes, governs the Children's Medical Services (“CMS”) program within the Department of Health (“department”). CMS provides children with special health care needs with a managed system of care. CMS serves children under age 21 whose serious or chronic physical, developmental, behavioral or emotional conditions require extensive preventive and maintenance care beyond that required by typically healthy children.¹

CMS provides a comprehensive continuum of medical and supporting services to medically and financially eligible children and high-risk pregnant women. The continuum of care includes prevention and early intervention programs, primary care, medical and therapeutic specialty care and long-term care. Services are provided through an integrated statewide system that includes local, regional, and tertiary care facilities and providers.

The CMS website does contain some information regarding transition into adult health care services.² However, the CMS only provides services for enrollees from birth to 21 years of age.

Health Care Transitioning

Persons with special health care needs or disabilities are more than twice as likely to postpone needed health care because they cannot afford it. Furthermore, people with disabilities are four times more likely to have special needs that are not covered by their health insurance. Children and adolescents with special health care needs face significant challenges in transitioning into the adult health care system. Primarily, this is because of the complexity of their health care needs and their high utilization of medical services relative to other adults.

¹ Section 391.029, F.S.

² <http://www.cms-kids.com/CMSNTtransition.htm>

Currently, in Florida, there are a number of initiatives that conduct research and provide information to patients and their families on how to transition children and adolescents into the non-pediatric health care system. These initiatives include the following:

- Health Care Transitions—The Promising Practices in Health Care Transition Project is a research and training initiative of the Institute for Child Health Policy at the University of Florida. The website includes tools, resources, and links that deal with transition issues and how other youth and families are meeting this goal. It is also the site of a Transition Listserv that provides international communication for youth, families, and professionals who would like to communicate and share ideas and resources with each other.³
- The Transition Center—The Transition Center, located at the University of Florida in Gainesville, aims to enrich the lives of students through self-advocacy, access to contacts, proper resources, and by providing an opportunity for students to interact with one another as they make decisions and discover what they want out of life. They are also a resource for family members and professionals.⁴
- The Jacksonville Health and Transition Services (“JaxHATS”) program, based at the University of Florida Shands-Jacksonville campus, serves young adults age 14-25 in Northeast Florida with chronic medical or developmental disabilities. The program provides a “medical home” for health care services and has collaborative agreements with many providers in the area. JaxHATS also provides staff and referral information for other transition services issues.⁵ For FY 2006-2007, the program was funded through CMS within the department.⁶

Educational and Vocational Transitioning

Advocates for persons with disabilities emphasize that education is the key to independence and future success, is critical to obtaining work, and affects how much money an individual can earn. Recently, there have been several statewide initiatives focused on helping to identify challenges faced by young adults with disabilities as they transition from high school to adult life and to develop strategies to create an effective transition system. The state agencies involved in these interagency activities include the Agency for Persons with Disabilities, the Department of Education, the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, and the Department of Juvenile Justice.

A variety of private organizations and individuals have also been involved in these activities, including the Able Trust, the Advocacy Center for Persons with Disabilities, Inc., the ADA Working Group, Center for Autism and Related Disabilities at the University of South Florida, Family Network on Disabilities of Florida, Inc., the Florida Developmental Disabilities Council, Inc., the Florida Independent Living Council, Inc., the Florida Institute for Family Involvement, the Florida Recreation and Parks Association, the Florida Rehabilitation Council, the Florida Schools Health Association, the Transition Center at the University of Florida, the Transition to Independence Process Project, Workforce Florida, Inc., parents, self-advocates, and teachers from throughout the state.⁷

Effect of Proposed Changes

The bill creates the Health and Transition Services Program (“program”) in CMS within the department. The program is for 14-26 year old persons with chronic health-related or developmental conditions. The program is tasked with assisting young adults with special health care, educational and vocational needs in transitioning from the child health care and education system to adult health care and

³ http://hctransitions.ichp.edu/about_us.html

⁴ <http://www.thetransitioncenter.org/mission.htm>

⁵ <http://www.jaxhats.ufl.edu/about.php>

⁶ The FY 2006-2007 \$300,000 appropriation was funded through Line Item 623.

⁷ <http://www.partnersintransition.org/members>

employment. The program must provide services that facilitate the transition from pediatric to adult health care providers, including:

- A consultative partnership between adult and pediatric health care providers in either a major medical health care center or an academic medical setting for training and transferring adolescents to adult health care services;
- A primary care clinic in a major medical health care organization to foster the partnership between pediatric and adult health care providers; and
- Community-based health care services, provided by either a major medical health care center or an academic medical center, that provide consultation regarding special needs health care management.

The bill requires the program to offer the following services to enrollees:

- An assessment of health, educational, and vocational needs and health insurance status;
- A transition plan that includes health care, health insurance, living, and employment items;⁸
- A “medical home” that provides multidisciplinary care and focuses on engaging adult health care providers in the care and treatment of young adults; and
- Disease self-management programs.

The bill requires the program to have at least two staff members: a medical director, who has experience in adolescent health, and a project coordinator who assists the medical director in developing and implementing the program.

The bill requires an evaluation of the program to be performed by an organization or university that has expertise in evaluating health care programs. The bill authorizes the evaluation results to be used to replicate the program statewide.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of Florida Statute which creates the Health and Transition Services Program within the Department of Health.

Section 2. Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁸This service must be developed in coordination with education and vocational systems and community-based organizations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill encourages the participation of community-based organizations in order to ensure a successful Health and Transition Services Program, and thus, may provide potential income for organizations that decide to participate. In addition, the bill will extend health care services to enrolled CMS individuals between 22-26 years of age.

D. FISCAL COMMENTS:

There will be a fiscal impact on the department, however, there is no appropriation provided for the program. CMS will be required to contract with outside entities for development and provision of the required services and evaluation of the program. The language in the bill regarding staffing for the program is vague; therefore, it is not possible to determine the fiscal impact at this time. However, there could be a significant fiscal impact depending on further clarification of the requirements in the bill.

According to a telephone conversation with Department of Education staff, the Division of Vocational Rehabilitation is not projecting a significant impact due to changes in enrollment. The Division of Vocational Rehabilitation currently provides services statewide to the population outlined in the bill, if the individuals have a goal of going to work. The Vocational Rehabilitation Program is designed to provide services to individuals with disabilities who have significant barriers to employment. The average cost to provide these services is approximately \$3,400 annually for a person with a significant or most significant disability.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 51 expands the existing Jax Health & Transition Program (Jax Hats) to a statewide program which establishes a medical home providing primary care for all youth/young adults with chronic medical or developmental problems in Florida. It will adapt current transition services to meet the needs of local communities and develop a reliable referral network of adult medical and surgical specialists.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
 An act relating to transitional services for adolescents and young adults with disabilities; creating the Health and Transition Services Program; assigning the program for administrative purposes to Children's Medical Services in the Department of Health; providing purposes of the program; delineating the target population; describing participating service providers and the services that they are to provide; providing for an evaluation of the program; providing an effective date.

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

Section 1. Health and Transition Services Program; creation; purposes; participating agencies and services provided; evaluation.--

(1) The Health and Transition Services Program is created for the purpose of assisting adolescents and young adults who have special needs relating to health care and educational and vocational services in making a smooth transition from the child health care and educational system to the adult health care system and employment. For administrative purposes, the program is located in Children's Medical Services in the Department of Health.

(2) The target population for the program comprises persons who are at least 14 but not more than 26 years of age and have chronic health-related or developmental conditions.

(3) The following elements must be in place in order to

29 ensure the success of the Health and Transition Services

30 Program:

31 (a) A consultative partnership between adult and pediatric
 32 health care providers in a major medical health care
 33 organization or academic medical setting for the purpose of
 34 training and transferring adolescents and young adults to adult
 35 health care services.

36 (b) A primary care clinic established in a major medical
 37 health care organization for the purpose of fostering the
 38 partnership between adult and pediatric health care providers.

39 (c) Community-based health care services that are provided
 40 pursuant to agreements with major health care organizations or
 41 academic medical centers for purposes of providing consultation
 42 concerning the management of special health care needs.

43 (d) Community-based support organizations that can provide
 44 assistance with services such as supported living and
 45 employment, health insurance, and support services to maintain
 46 the young adults in the community.

47 (4) The following services shall be offered to individuals
 48 who are enrolled in the Health and Transition Services Program:

49 (a) An assessment of health needs, educational and
 50 vocational status and needs, and health insurance status.

51 (b) In coordination with the educational system,
 52 community-based organizations, and the vocational system, a plan
 53 for transition which includes adult health services, education,
 54 habilitative services, independent living, adult employment, and
 55 health insurance.

56 (c) A medical home that provides for coordinated and

57 multidisciplinary care and focuses on engaging adult health care
 58 providers in the care and treatment of the adolescents or young
 59 adults.

60 (d) Disease self-management programs.

61 (5) The Health and Transition Services Program shall be
 62 directed by a medical director having experience in adolescent
 63 health. A project coordinator shall assist the medical director
 64 in developing and implementing the program. Other staff may be
 65 included in order to provide a full range of health and
 66 transition services.

67 (6) The Health and Transition Services Program shall be
 68 evaluated by an organization or university that has expertise
 69 and experience in evaluating health care programs. The
 70 evaluation must be formative and cumulative and must include
 71 program process and outcome measures as well as client outcomes.
 72 The results of the evaluation may be used to improve and
 73 replicate the Health and Transition Services Program statewide.

74 Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

Bill No. 0051

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Committee on Health Quality
2 Representative(s) D. Davis offered the following:
3
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Health and Transition Services Program;
8 creation; purposes; participating agencies and services
9 provided; evaluation.--

10 (1) A Health and Transition Services Program is created
11 for the purpose of assisting adolescents and young adults who
12 have chronic special health care needs in making a smooth
13 transition from the child health care and educational systems to
14 the adult health care system and to employment.

15 (2) For administrative purposes, the program is located in
16 Children's Medical Services in the Department of Health. The
17 department may enter into contracts, contingent upon a specific
18 appropriation provided in the General Appropriations Act for
19 this purpose, with local health and transition services programs
20 that meet the requirements of this section.

03/19/2007, 2:02 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

21 (3) The target population for the program consists of
22 persons who are 14 through 26 years of age and who have chronic
23 special health care needs.

24 (4) The program structure and design must be adapted to
25 the needs of the local community and health services delivery
26 system; however, the following elements should be in place in
27 order to ensure the success of a local health and transition
28 services program:

29 (a) A consultative partnership between adult and pediatric
30 health care providers in a major medical health care
31 organization or academic medical setting for the purpose of
32 training and transferring adolescents and young adults to adult
33 health care services.

34 (b) A primary care clinic established in a major medical
35 health care organization for the purpose of fostering a
36 partnership between adult and pediatric health care providers.

37 (c) Community-based health care services that are provided
38 under agreements with major health care organizations or
39 academic medical centers for the purpose of providing
40 consultation concerning the management of special health care
41 needs.

42 (d) Community-based support organizations that can provide
43 assistance with services such as supported living and
44 employment, health insurance, and support services to maintain
45 the young adult in the community.

46 (5) The following services may be offered by the local
47 health and transition services program to individuals who are
48 served in the local health and transition services program:

49 (a) An assessment of health needs, educational and
50 vocational status and needs, and health insurance status.

03/19/2007, 2:02 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

51 (b) In coordination with the educational system,
52 community-based organizations, and the vocational system, a plan
53 for transition which includes adult health care services,
54 education, habilitative services, independent living, adult
55 employment, and health insurance.

56 (c) A medical home that provides for coordinated and
57 multidisciplinary care and focuses on engaging adult health care
58 providers in the care and treatment of the adolescent or young
59 adults.

60 (d) Disease self-management programs.

61 (6) The local health and transition services program must
62 be directed by a medical director having experience in
63 adolescent health. A project coordinator shall assist the
64 medical director in developing and implementing the program.
65 Other staff may be included in order to provide a full range of
66 health and transition services.

67 (7) There may be up to 11 sites statewide, with the
68 Jacksonville program (JaxHATS) being the first site. Each
69 additional site must be organized in a substantially similar
70 manner as the JaxHATS program and have flexibility with regard
71 to staffing and costs in rural areas of the state.

72 (8) The local health and transition services program must
73 be evaluated by an organization or university that has expertise
74 and experience in evaluating health care programs. The
75 evaluation must be formative and cumulative and must include
76 program process and outcome measures as well as client outcomes.
77 The results of the evaluation may be used to improve and develop
78 other local health and transition services programs.

79 Section 2. This act shall take effect July 1, 2007.
80

03/19/2007, 2:02 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

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



82 Remove the entire title and insert:

83 A bill to be entitled

84 An act relating to transitional services for young adults with
85 disabilities; creating a Health and Transition Services Program;
86 assigning the program for administrative purposes to Children's
87 Medical Services in the Department of Health; authorizing the
88 department to enter into certain contracts, contingent upon an
89 appropriation; providing purposes of the program; delineating
90 the target population; describing participating service
91 providers and the services that they are to provide; creating an
92 operational site in a designated locality in the state;
93 providing for expansion of program sites; providing for an
94 evaluation of the program; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 739 Treatment Programs for Impaired Practitioners
SPONSOR(S): Holder
TIED BILLS: IDEN./SIM. BILLS: SB 2096

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Health Quality		Guy 	Lowell 
2) Healthcare Council			
3) Policy & Budget Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 739 revises provisions relating to the impaired practitioner program within the Department of Health. The bill requires the Department of Health to contract with impaired practitioner program consultants to provide services to students enrolled in schools that provide training for professions licensed under Chapter 456, F.S.

The bill grants sovereign immunity to an impaired practitioner consultant, its officers, employees, and agents for actions taken within the scope of a contract with the Department of Health.

The Department of Health estimates the bill will cost \$157,000 annually.

The bill provides for an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – this bill will grant sovereign immunity to contractor consultants for actions taken within the scope of a contract with the Department of Health.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Impaired Practitioner Programs

Healthcare professions are established within individual practice acts and are further regulated by Chapter 456, Florida Statutes, within the Department of Health (“department”) in the Division of Medical Quality Assurance (“division”). Section 456.076, F.S., authorizes the department to contract with impaired practitioner consultants for services relating to intervention, evaluation, referral, and monitoring of impaired practitioners who have voluntarily agreed to treatment through an impaired practitioner program.¹ Impaired practitioner programs are available to licensed healthcare providers under Chapter 456, F.S., or other licensed professionals regulated by the division.

Consultants do not provide medical treatment, nor do they have the authority to render decisions relating to licensure of a particular practitioner. However, the consultant is required to make recommendations to the department regarding a practitioner patient’s ability to practice.² Consultants are required by department rules to refer practitioner patients to department-approved treatment programs and providers. They have specified case management duties with regards to practitioner patient progress in a treatment program. Further, the consultant acts as the records custodian for all treatment information on the practitioner patients they are contracted to monitor. A typical contract between a consultant and an impaired practitioner under treatment is 5 years.

Currently, the department contracts with two groups for impaired practitioner consulting services: the Intervention Project for Nurses (“IPN”) for nurses licensed under Chapter 464, F.S., and the Professionals Resource Network (“PRN”) for other health care professionals, including allopathic and osteopathic physicians licensed under Chapters 458 and 459, F.S., respectively. According to the department, there are approximately 2,700 participants enrolled in the programs: 1,500 in the IPN and 1,200 in the PRN.

Sovereign Immunity

Sovereign immunity is the legal doctrine which provides that a government may not be sued for a claim without its consent. However, the federal government and most states have waived their immunity from suit in varying degrees in certain cases. Article X, section 13 of the Florida Constitution establishes that laws may be enacted in the statutes for suits to be brought against the state for its liabilities. Accordingly, s. 768.28(1), F.S., provides that the state “waives sovereign immunity for liability for torts, but only to the extent specified in this act.”

Specifically, s. 768.28(5), F.S., provides that the state has limited its financial liability for a tort action by any one person to \$100,000 or to \$200,000 for additional claims and judgments arising from the same incident or occurrence. If a judgment is rendered by a court in excess of those amounts, the plaintiff may pursue a claim bill in the Legislature for the amount in excess of the statutory limit.

Section 768.28(9)(a) F.S., further provides that the exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state is an action against the

¹ Rules 64B31-10.10.001 and 64B31-10.002, F.A.C.

² Section 456.076(5)(a), F.S.

governmental entity, the head of such entity in his or her official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless the act or omission was committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In addition, an officer, employee, or agent of the state or any of its subdivisions may not be held personally liable or named as a defendant for an injury or damage if the act occurred in the scope of his or her employment unless the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner that exhibited a wanton and willful disregard of human rights, safety, or property. "Officer, employee or agent" is defined in s. 768.28(9), F.S., to include any health care provider providing services pursuant to s. 766.1115, F.S.,³ any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by the department, and any public defender or his or her employee or agent, including among others, an assistant public defender and an investigator.

Among other things, the Bureau of State Liability Claims ("bureau") within the Department of Financial Services was established to provide general liability claims investigations and coverage through the State Risk Management Trust Fund as established in s. 284.30, F.S. The bureau provides protection against general liability claims and suits filed pursuant to Section 768.28, Florida Statutes.⁴

Effect of Proposed Changes

The bill requires all impaired practitioner program consultants to be a practitioner or recovered practitioner licensed under chapters 458, 459, or Part I of 464, or an entity that employs a medical director who is a practitioner or recovered practitioner licensed as an allopathic or osteopathic physician or nurse under chapters 458, 459 or part I of 464, F.S., respectively.

The bill requires the department to contract with impaired practitioner program consultants to provide services to students enrolled in schools that provide training for professions licensed under Chapter 456, F.S.

The bill grants sovereign immunity for actions taken by an impaired practitioner consultant, its officers, employees, and agents, within the scope of a contract with the department. The bill directs the Department of Legal Affairs to defend the consultant, its officers, employees or agents from any legal action brought as a result of contracted program activities.

C. SECTION DIRECTORY:

Section 1. Amends s. 456.076, F.S., requiring impaired practitioner programs for students and extending sovereign immunity for impaired practitioner program consultants, their officers, employees and agents, for actions performed under contract with the department.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department estimates that approximately \$25,000 will be spent per year for the first two years in marketing efforts and additional programmatic startup costs. The start-up costs of the programs

³ Otherwise known as the "Access to Health Care Act."

⁴ <http://www.fldfs.com/Risk/SLC/index.htm>

may include consultant expenses, staff training, meeting and travel expenses, additional equipment, and printing and postage costs. Costs are allocated in the following manner: 25% to OPS; 75% to Contracted Services.

According to the department, contracts between the department and impaired practitioner consultants in FY 2006-2007 total \$2,644,311. This amount is paid out of the Medical Quality Assurance Trust Fund which is funded by the fees of all licensed practitioners under chapter 456, F.S. Given the current annual contracted cost of the program, the approximate per participant cost is \$980 annually.

Estimated expenditures by the department are based on an increased enrollment of 5% or 135 participants per year.

Estimated Expenditures	1st Year	2nd Year (Annualized/Recurr.)
Salaries	-	-
Other Personal Services	\$ 39,325	\$ 39,325
Contracted Services	\$ 117,975	\$ 117,975
Operating Capital Outlay		
Total Estimated Expenditures	\$ 157,300	\$ 157,300

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Approved treatment providers may experience an increase in demand for services with the addition of medical profession students in impaired practitioner programs.

D. FISCAL COMMENTS:

According to the department, the fiscal impact of this bill is ultimately indeterminate as it is not possible to predict how many students would use the services of the impaired practitioners program. In addition, according to the department, the increase in costs related to the defense of impaired practitioner consultants is unknown, but could be significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears that the bill may be overbroad with respect to the extension of sovereign immunity to impaired practitioner consultants' officers, employees, and agents. Extension of sovereign immunity to this degree places the state at risk for the actions of individuals that the state does not necessarily have control over (such as agents of the consultant).

The bill requires the Department of Legal Affairs to defend any legal actions brought against an impaired practitioner consultant, or its officers, employees or agents, as a result of actions taken while acting under a contract with the department. This may conflict with current law which allows the Department of Financial Services to "assign or reassign the claim to counsel."⁵

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁵ Section 284.385, F.S.

1 A bill to be entitled
 2 An act relating to treatment programs for impaired
 3 practitioners; amending s. 456.076, F.S.; revising
 4 requirements for program consultants; requiring
 5 consultants to provide treatment services for all health
 6 professions and occupations students alleged to be
 7 impaired; providing limited sovereign immunity for certain
 8 program consultants; requiring the Department of Legal
 9 Affairs to defend actions against program consultants;
 10 providing an effective date.

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

13
 14 Section 1. Subsections (1) and (2) of section 456.076,
 15 Florida Statutes, are amended, and subsection (7) is added to
 16 that section, to read:

17 456.076 Treatment programs for impaired practitioners.--
 18 (1) For professions that do not have impaired practitioner
 19 programs provided for in their practice acts, the department
 20 shall, by rule, designate approved impaired practitioner
 21 programs under this section. The department may adopt rules
 22 setting forth appropriate criteria for approval of treatment
 23 providers. The rules may specify the manner in which the
 24 consultant, retained as set forth in subsection (2), works with
 25 the department in intervention, requirements for evaluating and
 26 treating a professional, and requirements for ~~the~~ continued care
 27 and monitoring ~~of a professional~~ by the consultant ~~by an~~
 28 ~~approved treatment provider.~~

29 (2) The department shall retain one or more impaired
 30 practitioner consultants. A consultant shall be a licensee under
 31 the jurisdiction of the Division of Medical Quality Assurance
 32 within the department ~~who, and at least one consultant~~ must be a
 33 practitioner or recovered practitioner licensed under chapter
 34 458, chapter 459, or part I of chapter 464 or an entity that
 35 employs a medical director who must be a practitioner or
 36 recovered practitioner licensed under chapter 458, chapter 459,
 37 or part I of chapter 464. The consultant shall assist the
 38 probable cause panel and department in carrying out the
 39 responsibilities of this section. This shall include working
 40 with department investigators to determine whether a
 41 practitioner is, in fact, impaired. The consultant shall also
 42 provide, pursuant to contract with the department for
 43 appropriate compensation, services for students enrolled in
 44 schools for licensure under chapter 456 who are alleged to be
 45 impaired as a result of the misuse or abuse of alcohol or drugs,
 46 or both, or due to a mental or physical condition.

47 (7) (a) An impaired practitioner consultant, and its
 48 officers, employees, and agents, retained pursuant to subsection
 49 (2) shall be considered an agent of the department for purposes
 50 of s. 768.28, while acting within the scope of its duties under
 51 the contract with the department.

52 (b) The Department of Legal Affairs shall defend any
 53 claim, suit, action, or proceeding against the consultant or its
 54 officers, employees, or agents brought as a result of any act or
 55 omission of action of any of its officers, employees, or agents

HB 739

2007

56 | for an act or omission arising out of and in the scope of the
57 | consultant's duties under its contract with the department.

58 | Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

Bill No. 0739

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Committee on Health Quality
2 Representative(s) Holder offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (1) and (2) of section 456.076,
7 Florida Statutes, are amended and subsection (7) is added to
8 that section, to read:

9 456.076 Treatment programs for impaired practitioners.--

10 (1) For professions that do not have impaired practitioner
11 programs provided for in their practice acts, the department
12 shall, by rule, designate approved impaired practitioner
13 programs under this section. The department may adopt rules
14 setting forth appropriate criteria for approval of treatment
15 providers. The rules may specify the manner in which the
16 consultant, retained as set forth in subsection (2), works with
17 the department in intervention, requirements for evaluating and
18 treating a professional, and requirements for ~~the~~ continued care
19 and monitoring ~~of a professional by the consultant by an~~
20 ~~approved treatment provider.~~

21 (2) The department shall retain one or more impaired
22 practitioner consultants. TheA consultant shall be either a

03/19/2007, 5:59 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

23 licensee under the jurisdiction of the Division of Medical
24 Quality Assurance within the department ~~who, and at least one~~
25 ~~consultant~~ must be a practitioner or recovered practitioner
26 licensed under chapter 458, chapter 459, or part I of chapter
27 464 or an entity that employs a medical director who must be a
28 practitioner or recovered practitioner licensed under chapter
29 458, chapter 459, or part I or chapter 464. The consultant shall
30 assist the probable cause panel and department in carrying out
31 the responsibilities of this section. This shall include working
32 with department investigators to determine whether a
33 practitioner is, in fact, impaired. The department may contract
34 with the consultant, for appropriate compensation, for services
35 to be provided, if requested by the school, for students
36 enrolled in schools for licensees listed in s. 456.073(12)(a)
37 who are alleged to be impaired as a result of the misuse or
38 abuse of alcohol or drugs, or both, or due to a mental or
39 physical condition. No medical school accredited by the Liaison
40 Committee on Medical Education or Commission on Osteopathic
41 College Accreditation, or other school, that provides for the
42 education of students in health care professions listed in
43 456.073(12)(a), that is governed by accreditation standards that
44 require notice and the provision of due process procedures to
45 students, shall be held liable in any civil action for referring
46 a student to the consultant retained by the department or for
47 taking actions in reliance of the recommendations, reports or
48 conclusions provided by such consultant, without intentional
49 fraud in carrying out the provisions of this section.

50 (7)(a) An impaired practitioner consultant retained
51 pursuant to subsection (2), and its officers and employees,
52 shall be considered agents of the department for purposes of s.
53 768.28, while acting within the scope of its duties under the

03/19/2007, 5:59 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

54 contract with the department, if the contract complies with the
55 requirements of this section. The contract must provide:

56 1. That the impaired practitioner consultant establish a
57 quality assurance program to monitor services delivered under
58 the contract.

59 2. Quarterly evaluations of the impaired practitioner
60 consultant's quality assurance program, treatment, and
61 monitoring records.

62 3. That the impaired practitioner consultant's quality
63 assurance program is subject to review and approval by the
64 department.

65 4. That the impaired practitioner consultant operate under
66 policies and procedures approved by the department.

67 5. That the impaired practitioner consultant provide to the
68 department for approval a policy and procedure manual that
69 comports to all statutes, rules and contract provisions approved
70 by the department.

71 6. That the department be entitled to review the records
72 relating to the impaired practitioner consultant's performance
73 under the contract for the purpose of management audits,
74 financial audits, or program evaluation.

75 7. That all performance measures and standards be subject
76 to verification and approval by the department.

77 8. That the department may terminate the contract with the
78 impaired practitioner consultant for non compliance with the
79 contract.

80 (b) In accordance with s. 284.385, the Department of
81 Financial Services shall defend any claim, suit, action or
82 proceeding against the consultant or its officers and employees
83 brought as a result of any act or omission of action of any of
84 its officers or employees for an act or omission arising out of

03/19/2007, 5:59 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

85 and in the scope of the consultant's duties under its contract
86 with the department.

87 (c) If the impaired practitioner consultant retained
88 pursuant to this section is retained by any other state agency,
89 and if the contract between the state agency and the consultant
90 complies with the requirements of this section, then the
91 consultant, and its officers and employees shall be considered
92 agents of the State of Florida for the purposes of this section,
93 while acting within the scope of and pursuant to guidelines
94 established in the contract between the state agency and the
95 consultant.

96 Section 2. This act shall take effect July 1, 2007.

97
98
99 ===== T I T L E A M E N D M E N T =====

100 Remove the entire title and insert:

101 A bill to be entitled

102 An act relating to treatment programs for impaired
103 practitioners; amending s. 456.076, F.S.; revising
104 requirements for program consultants; authorizing the
105 Department of Health to contract with consultants to
106 provide treatment services for all health professions and
107 occupations students alleged to be impaired; providing for
108 absence of liability in civil actions of certain schools
109 for referring students to such consultants or taking
110 certain actions without intentional fraud; providing
111 limited sovereign immunity for certain program consultants
112 under specific contractual conditions; requiring the
113 Department of Financial Services to defend actions against
114 program consultants; providing an effective date.


03/19/2007, 5:59 p.m.

Page 4 of 4

h0739-hq-01 strike-all amendment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 893 Controlled Substances
SPONSOR(S): Harrell and others
TIED BILLS: HB 895 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Quality</u>	_____	<u>Lowell</u>	<u>Lowell</u> 
2) <u>Healthcare Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

House Bill 893 requires the Department of Health to contract for the design, establishment, and maintenance of an electronic prescription monitoring database by June 30, 2008. The database will include Schedule II, III, and IV drugs prescribed by health care practitioners in Florida. The bill provides for exemptions from reporting. Unless reenacted by the Legislature, this portion of the bill will sunset October 2, 2010. HB 893 is linked to HB 895 to provide a public records exemption for the information in the monitoring database. HB 895 provides a list of entities that have access to the information in the database.

The bill also requires the development and adoption of a counterfeit-resistant prescription blank to be used voluntarily by physicians to prescribe Schedule II, Schedule III, or Schedule IV controlled substances. The bill prohibits the sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks. The bill provides additional requirements for the dispensing of a controlled substance.

Further, the bill provides that if a person dies of an apparent overdose, a law enforcement agency must prepare a report identifying each prescribed controlled substance listed in Schedule II, III or IV that is found on or near the deceased or among the deceased's possessions.

The Department of Health estimates the cost to implement the bill will be \$4,818,803 in the first year, \$3,251,597 in the second year, and \$3,726,645 in the third year.

The effective date of the bill is July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates additional regulation regarding the dispensing of schedule II-IV prescription drugs; creates reporting requirements for law enforcement and medical examiners when a person dies of an apparent drug overdose; and creates a penalty for violations involving certain prescription blanks for controlled substances in schedules II-IV. The bill requires the Department of Health to develop an electronic prescription monitoring system.

Safeguard Individual Liberty – The bill may limit an individual's freedom by requiring the monitoring of private medical information.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Pharmaceutical Drug Dispensing

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. Controlled substances are classified into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Section 893.05, F.S., allows a practitioner, in good faith and in the course of his or her professional practice only, to prescribe, administer, dispense, mix, or otherwise prepare a controlled substance. Section 893.02, F.S., defines practitioner to mean a licensed medical physician, a licensed dentist, a licensed veterinarian, a licensed osteopathic physician, a licensed naturopathic physician, or a licensed podiatrist, if such practitioner holds a valid federal controlled substance registry number.

Section 893.04, F.S., authorizes a pharmacist, in good faith and in the course of professional practice to dispense controlled substances upon a written or oral prescription under specified conditions:

- An oral prescription must be promptly reduced to writing by the pharmacist;
- The written prescription must be dated and signed by the prescribing practitioner on the date issued; and
- The face of the prescription or written record for the controlled substance must include:
 - The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed;
 - The full name and address of the prescribing practitioner and the prescriber's federal controlled substance registry number;
 - If the prescription is for an animal, the species of animal for which the controlled substance is prescribed;
 - The name of the controlled substance prescribed and the strength, quantity, and directions for the use thereof;
 - The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filed; and
 - The initials of the pharmacist filling the prescription and the date filled.

Section 893.04(1)(d), F.S., requires the proprietor of the pharmacy in which a prescription for controlled substances is filled to retain the prescription on file for a period of 2 years.

The original container in which a controlled substance is dispensed must bear a label with the following information:

- The name and address of the pharmacy from which the controlled substance was dispensed;
- The date on which the prescription for the controlled substance was filled;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled;
- The name of the prescribing practitioner;
- The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed;
- The directions for the use of the controlled substance prescribed in the prescription; and
- A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

Chapter 893, F.S., imposes other limitations on controlled substance prescriptions. A prescription for a Schedule II controlled substance may be dispensed only upon a written prescription of a practitioner, except in an emergency situation, as defined by rule of the department, when such controlled substance may be dispensed upon oral prescription. No prescription for a Schedule II controlled substance may be refilled.¹ No prescription for a controlled substance listed in Schedules III, IV, or V may be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.² A pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication for any medicinal drug other than a medicinal drug listed in Schedule II.³

Prescription Drug Abuse

According to the Substance Abuse and Mental Health Services Administration, more than 6.3 million Americans reported using prescription drugs for nonmedical reasons in 2003.⁴ The National Institute on Drug Abuse seeks to reverse this trend by increasing awareness and promoting additional research on the topic.

Most people who take prescription medications take them responsibly; however, the nonmedical use or abuse of prescription drugs remains a serious public health concern in the United States. Certain prescription drugs – opioid substances, central nervous system depressants, and stimulants – when abused can alter the brain's activity and lead to dependence and possible addiction.

Doctor Shopping

Prescription drug abuse also occurs when a person illegally obtains a legal prescription drug for non-medical use. People obtain these drugs in a variety of ways, including "doctor shopping," in which the person continually switches physicians so that they can obtain enough of the drug to feed their addiction. By frequently switching physicians, the doctors are unaware that the patient has already been prescribed the same drug and may be abusing it.

A data search indicated that no studies in the United States have specifically addressed the profile of a doctor shopper. A search of international data produced a report and findings from a study in Australia, which indicated that most doctor shoppers switch only sporadically. However, the top 25 percent shop very actively, travel widely, and see many different practitioners, often on the same day. Doctor

¹ Section 893.04(1)(f), F.S.

² Section 893.04(1)(g), F.S.

³ See 21 CFR 1306.11 (d)(1) which provides that in an emergency situation, a pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization of a prescribing practitioner if the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

⁴ Overview of Findings from the 2003 National Survey on Drug Use and Health (viewed March 16, 2007)

<http://oas.samhsa.gov/nhsda/2k3nsduh/2k3Overview.htm>

shoppers generally take the medicine themselves. Compared to the number of doctors consulted, in a recent survey most doctor shoppers have their prescriptions dispensed at few pharmacies.⁵

Prescription Monitoring Systems

In an effort to control the diversion of controlled substances, twenty-four states have established prescription monitoring systems.⁶ Prescription monitoring systems collect prescription data from pharmacies in either paper or electronic format. The data may be reviewed and analyzed for educational, public health, and investigational purposes. The goals of prescription monitoring systems are dependent on the mission of the state agency that operates the program or uses the data. Each state that has implemented a prescription monitoring program has its own set of goals for its program. Prescription monitoring systems may cover a specified number of controlled substances. Several states cover only controlled substances listed in Schedule II; while others cover a range of controlled substances listed in Schedules II through V.

Potential Advantages of an Electronic Prescription Data Collection System

Potential advantages of an electronic prescription data collection system include the following:

- Identifies “doctor shoppers” by tracking all their prescribing physicians and purchases from pharmacies. Doctor shopping is when a person continually switches physicians so that they can obtain enough of a drug to feed their addiction;
- Provides complete and reliable information on prescribing and dispensing activities so that investigators can identify, rank, and set priorities for cases;
- Maximizes investigators’ effectiveness by providing prescription data in a convenient, comprehensive, and timely method;
- Reduces intrusion into professional practices because investigators no longer need to make office visits to gather information on practitioner prescribing patterns; and
- Reduces the need for investigators to make pharmacy visits in order to gather data on pharmacy or pharmacists’ dispensing patterns.

Potential Disadvantages of an Electronic Prescription Data Collection System

Some opponents of prescription monitoring systems dislike the concept of mandatory disclosure of protected health information and point to federal and state privacy laws as barriers to these monitoring systems. There is a possibility that the tracking system could violate the Florida Constitution’s Right to Privacy. In 1980, the citizens of Florida approved an amendment to Florida’s Constitution, which grants Florida citizens an explicit right of privacy. Contained in Article I, Section 23, the Constitution provides as follows:

Right of privacy--Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.

This right to privacy protects Florida’s citizens from the government’s uninvited observation of or interference in those areas that fall within the range of the zone of privacy afforded under this provision.

Unlike the implicit privacy right of the Federal Constitution, Florida’s privacy provision is, in and of itself, a fundamental one that, once implicated, demands evaluation under a compelling state interest standard. The federal right of privacy, is more limited than the state provision, and extends only to such fundamental interests as marriage, procreation, contraception, family relationships, and the rearing and educating of children. Since the people of this state have exercised their prerogative and enacted an amendment to the Florida Constitution that expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it is much broader in scope than that of the Federal

⁵ www.hic.gov.au

⁶ Status of State Prescription Drug Monitoring Programs (viewed March 16, 2007)

<http://www.natlalliance.org/pdfs/Status%20of%20States%20-%20Web%20Version9.pdf>

Constitution. Subsequently, the court has consistently held that Article I, section 23 was adopted in an effort to grant Floridians greater privacy protection than that available under the Federal Constitution.⁷

Effect of Proposed Changes

Electronic Monitoring of Schedule II, III, and IV Prescriptions

HB 893 creates s. 893.055, F.S., creating an electronic monitoring system for the prescription of controlled substances listed in Schedules II, III, and IV, pursuant to chapter 893, F.S. The bill specifies that the Department of Health ("department") shall contract for the design, establishment and maintenance of the electronic monitoring system. The system must be consistent with the standards of the American Society for Automation in Pharmacy (ASAP).

The bill requires that a controlled substance listed in Schedule II, Schedule III, or Schedule IV that is dispensed in this state must be reported to the department no more than thirty-five days after each time the controlled substance is dispensed. The reporting does not apply if the controlled substance is:

- Directly administered by a health care practitioner to the patient;
- Dispensed directly to the patient by a health care practitioner for a treatment supply of no more than 72 hours;
- Dispensed by a practitioner or pharmacist to an inpatient of a facility with an institutional pharmacy;
- Ordered from an institutional pharmacy permitted under section 465.019, F.S.;
- Dispensed to a patient or resident receiving care from a hospital, nursing home, assisted living facility, home health agency, hospice, or intermediate care facility for the developmentally disabled; or
- Prescribed for a patient less than 16 years of age.

The bill allows the department to develop the data required to be reported by rule. In addition, the bill requires a dispenser to submit the information to the department in an electronic or other format determined by the department. The act also specifies that the cost to the dispenser associated with submitting the information is limited to actual reporting costs.

The department must determine by rule the data required to be reported under the prescription monitoring system, and such data may include any data required under s. 893.04, F.S. Any person who knowingly fails to report the dispensing of a controlled substance listed in Schedule II, Schedule III, or Schedule IV is liable for a first degree misdemeanor punishable by jail up to 1 year and a fine of up to \$1,000. It is a third degree felony for the knowing and willful violation of this section.

The bill requires the contract vendor maintaining and administering the database to maintain confidentiality of the data. The bill authorizes release of information to certain persons. Authorized persons may maintain the prescription information for up to a maximum of 2 years. If the information is pertinent to an ongoing investigation or prosecution it may be kept longer than 2 years. If there is an unauthorized release of information the contractor is liable.

This bill also includes a "sunset" provision for the tracking system created in s. 893.055, F.S., of October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Prescribing Practices for Schedule II, III, and IV Drugs

The bill amends section 893.04, F.S., by:

- Authorizing a pharmacist to record an oral prescription for controlled substances electronically;
- Providing that any controlled substance listed in Schedule III or Schedule IV may be dispensed by a pharmacist upon oral prescription if, before filling the prescription, the pharmacist reduces it to writing or records the prescription electronically. Such prescriptions must contain the date of the oral authorization;

⁷ See *In re T.W.*, 551 So.2d 1186 (Fla. 1989).

- Limiting a pharmacist from dispensing more than a 30-day supply of a Schedule III controlled substance based upon an oral prescription;
- Limiting the dispensing of Schedule II drugs in an emergency situation based upon an oral prescription to a 72-hour supply;
- Prohibiting a pharmacist from dispensing a controlled substance in Schedule II, Schedule III, or Schedule IV to any patient or the patient's agent without first determining, in the exercise of her or his professional judgment, that the order is valid. The pharmacist may dispense a controlled substance in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent;
- Providing that each written prescription prescribed by a practitioner in Florida for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and numerical notation of the quantity and a notation of the date with the abbreviated month written out on the face of the prescription; and
- Prohibiting a pharmacist from knowingly filling a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

Counterfeit-Resistant Blanks

HB 895 also specifies that the department will develop counterfeit-resistant blanks for controlled substances that may be used by practitioners to prescribe controlled substances listed in Schedule II, Schedule III, or Schedule IV. DOH may require the prescription blanks to be printed on distinctive, watermarked paper and to bear the preprinted name, address, and category of professional licensure of the practitioner and that practitioner's federal registry number for controlled substances.

The bill creates a third degree felony offense for any person who, with the intent to injure or defraud any person or to facilitate any violation of specified prohibited acts under the Florida Comprehensive Drug Abuse Prevention and Control Act, sells, manufactures, alters, delivers, utters, or possesses any counterfeit-resistant prescription blanks for controlled substances adopted by rule by the Department of Health.

Law Enforcement – Drug Overdose Requirements

If a person dies of an apparent drug overdose, the bill requires that a law enforcement agency shall prepare a report, which will be provided to the medical examiner, identifying each prescribed controlled substance that is found on or near the deceased or among the deceased's possession, and requires the law enforcement agency to identify the person who prescribed the drugs. The bill also requires that a medical examiner include in his or her report pursuant to s. 406.11, F.S., information identifying any Schedule II, Schedule III, or Schedule IV drug which is found in, on, or near the deceased or the deceased possessions.

C. SECTION DIRECTORY:

Section 1. Creates s. 831.311, F.S., to provide violations involving certain prescription blanks.

Section 2. Amends s. 893.04, F.S., relating to pharmacist prescribing practices.

Section 3. Creates s. 893.055, F.S., relating to an electronic monitoring system for prescription of controlled substances listed in Schedules II-IV.

Section 4. Creates s. 893.065, F.S., relating to counterfeit-resistant prescription blanks.

Section 5. Provides that the penalties created in s. 831.311, F.S., are effective only upon adoption of certain rules.

Section 6. Creates an unnumbered section of law relating to drug overdose.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Health will incur costs to design and establish an electronic prescription-monitoring system; and to develop counterfeit-resistant prescription banks for controlled substances listed in Schedules II, III, and IV.

	1st Year (07-08)	2nd Year (08-09) (Annualized /Recurr.)	3 rd Year (09-10) (Annualized/ Recurr.)
Salaries			
1 Operations & Mgmt Consultant II PG 423	\$ 54,858	\$ 54,858	\$ 54,858
Expense			
Expense package professional level- 1 FTEs (non-recurring)	\$ 3,426		
Recurring expense package with limited travel- 1 FTE	\$ 12,057	\$ 12,057	\$ 12,057
Marketing and Public Education (recurring)	\$ 25,000	\$ 25,000	\$ 25,000
Printing (recurring)	\$ 5,000	\$ 5,000	\$ 5,000
Contracted Services - Development			
Contract to develop the electronic system (non-recurring)	\$ 2,090,400		
Contractor infrastructure costs	\$ 250,000		
Contracted Services - Administration			
Data Contractor	\$ 325,000	\$ 505,000	\$ 510,250
Database Administrator	\$ 125,000	\$ 137,500	\$ 151,250
System/Network Administrator 24/7 support	\$ 600,000	\$ 660,000	\$ 726,000
Security Administration Contractor	\$ 250,000	\$ 275,000	\$ 302,500
Security Admin., Software, Licensing	\$ 600,000	\$ 900,000	\$ 1,200,000
Oracle License (non-recurring)	\$ 319,968		
Oracle Maintenance (recurring)	\$ 70,393	\$ 70,393	\$ 80,952
Network Equipment (recurring)	\$ 25,000	\$ 25,000	\$ 25,000
Secure Data Circuit (recurring)	\$ 60,000	\$ 60,000	\$ 60,000
Software Maintenance & Defect Remediation		\$ 459,888	\$ 505,877
Back up Tapes		\$ 60,000	\$ 66,000
Computer Hardware	\$ 1,000	\$ 1,500	\$ 1,500
Operating Capital Outlay			
OCO standard package 1 FTE (non-recurring)	\$ 1,300		

Right of privacy—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

This right to privacy protects Florida's citizens from the government's uninvited observation of or interference in those areas that fall within the range of the zone of privacy afforded under this provision.

B. RULE-MAKING AUTHORITY:

The department is provided rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

"The strike-all amendment removes the creation of a controlled substance database within the Department of Health in favor of requiring the Agency for Health Care Administration to create a website for health care practitioners and pharmacies to access, with the patient's permission, private-sector patient medication history for all legend drugs—not just controlled substances—further bolstering our efforts in promoting e-prescribing and electronic medical records."

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

29 requiring the department to develop and adopt by rule the
 30 form and content for a counterfeit-resistant prescription
 31 blank for voluntary use by practitioners to prescribe a
 32 controlled substance listed in Schedule II, Schedule III,
 33 or Schedule IV; providing contingent applicability of
 34 penalties; requiring reports of law enforcement agencies
 35 and medical examiners to include specified information if
 36 a person dies of an apparent overdose of a controlled
 37 substance listed in Schedule II, Schedule III, or Schedule
 38 IV; providing an effective date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Section 831.311, Florida Statutes, is created
 43 to read:

44 831.311 Violations involving certain prescription blanks
 45 for controlled substances in Schedules II-IV.--

46 (1) It is unlawful for any person with the intent to
 47 injure or defraud any person or to facilitate any violation of
 48 s. 893.13 to sell, manufacture, alter, deliver, utter, or
 49 possess any counterfeit-resistant prescription blank for
 50 controlled substances as provided in s. 893.065.

51 (2) Any person who violates this section commits a felony
 52 of the third degree, punishable as provided in s. 775.082, s.
 53 775.083, or s. 775.084.

54 Section 2. Section 893.04, Florida Statutes, is amended to
 55 read:

56 893.04 Pharmacist and practitioner.--

57 (1) A pharmacist, in good faith and in the course of
 58 professional practice only, may dispense controlled substances
 59 upon a written or oral prescription of a practitioner, under the
 60 following conditions:

61 (a) Oral prescriptions must be promptly reduced to writing
 62 or recorded electronically by the pharmacist.

63 (b) The written prescription must be dated and signed by
 64 the prescribing practitioner on the day when issued.

65 (c) There shall appear on the face of the prescription or
 66 written record thereof for the controlled substance the
 67 following information:

68 1. The full name and address of the person for whom, or
 69 the owner of the animal for which, the controlled substance is
 70 dispensed.

71 2. The full name and address of the prescribing
 72 practitioner and the practitioner's federal controlled substance
 73 registry number shall be printed thereon.

74 3. If the prescription is for an animal, the species of
 75 animal for which the controlled substance is prescribed.

76 4. The name of the controlled substance prescribed and the
 77 strength, quantity, and directions for use thereof.

78 5. The number of the prescription, as recorded in the
 79 prescription files of the pharmacy in which it is filled.

80 6. The initials of the pharmacist filling the prescription
 81 and the date filled.

82 (d) The prescription shall be retained on file by the
 83 proprietor of the pharmacy in which it is filled for a period of
 84 2 years.

85 (e) Affixed to the original container in which a
 86 controlled substance is delivered upon a prescription or
 87 authorized refill thereof, as hereinafter provided, there shall
 88 be a label bearing the following information:

89 1. The name and address of the pharmacy from which such
 90 controlled substance was dispensed.

91 2. The date on which the prescription for such controlled
 92 substance was filled.

93 3. The number of such prescription, as recorded in the
 94 prescription files of the pharmacy in which it is filled.

95 4. The name of the prescribing practitioner.

96 5. The name of the patient for whom, or of the owner and
 97 species of the animal for which, the controlled substance is
 98 prescribed.

99 6. The directions for the use of the controlled substance
 100 prescribed in the prescription.

101 7. A clear, concise warning that it is a crime to transfer
 102 the controlled substance to any person other than the patient
 103 for whom prescribed.

104 (f) A prescription for a controlled substance listed in
 105 Schedule II may be dispensed only upon a written prescription of
 106 a practitioner, except that in an emergency situation, as
 107 defined by regulation of the Department of Health, such
 108 controlled substance may be dispensed upon oral prescription but
 109 is limited to a 72-hour supply. No prescription for a controlled
 110 substance listed in Schedule II may be refilled.

111 (g) No prescription for a controlled substance listed in
 112 Schedule ~~Schedules~~ III, Schedule IV, or Schedule V may be filled

113 or refilled more than five times within a period of 6 months
 114 after the date on which the prescription was written unless the
 115 prescription is renewed by a practitioner.

116 (2) (a) A pharmacist may not dispense a controlled
 117 substance listed in Schedule II, Schedule III, or Schedule IV to
 118 any patient or patient's agent without first determining, in the
 119 exercise of her or his professional judgment, that the order is
 120 valid. The pharmacist may dispense the controlled substance, in
 121 the exercise of her or his professional judgment, when the
 122 pharmacist or pharmacist's agent has obtained satisfactory
 123 patient information from the patient or the patient's agent.

124 (b) Any pharmacist who dispenses by mail a controlled
 125 substance listed in Schedule II, Schedule III, or Schedule IV
 126 shall be exempt from the requirement to obtain suitable
 127 identification for the prescription dispensed by mail.

128 (c) Any controlled substance listed in Schedule III or
 129 Schedule IV may be dispensed by a pharmacist upon an oral
 130 prescription if, before filling the prescription, the pharmacist
 131 reduces the prescription to writing or records it
 132 electronically. Such prescriptions must contain the date of the
 133 oral authorization.

134 (d) Each written prescription from a practitioner in this
 135 state for a controlled substance listed in Schedule II, Schedule
 136 III, or Schedule IV must include both a written and a numerical
 137 notation of the quantity on the face of the prescription and a
 138 notation of the date with the abbreviated month written out on
 139 the face of the prescription. A pharmacist may, upon
 140 verification by the prescriber, document any information

141 required by this paragraph.

142 (e) A pharmacist may not dispense more than a 30-day
 143 supply of a controlled substance listed in Schedule III upon an
 144 oral prescription issued in this state.

145 (f) A pharmacist may not knowingly fill a prescription
 146 that has been forged for a controlled substance listed in
 147 Schedule II, Schedule III, or Schedule IV.

148 (3)-(2) Notwithstanding the provisions of subsection (1), a
 149 pharmacist may dispense a one-time emergency refill of up to a
 150 72-hour supply of the prescribed medication for any medicinal
 151 drug other than a medicinal drug listed in Schedule II, in
 152 compliance with the provisions of s. 465.0275.

153 (4)-(3) The legal owner of any stock of controlled
 154 substances in a pharmacy, upon discontinuance of dealing in
 155 controlled substances, may sell said stock to a manufacturer,
 156 wholesaler, or pharmacy. Such controlled substances may be sold
 157 only upon an order form, when such an order form is required for
 158 sale by the drug abuse laws of the United States or this state,
 159 or regulations pursuant thereto.

160 Section 3. Section 893.055, Florida Statutes, is created
 161 to read:

162 893.055 Electronic monitoring system for prescription of
 163 controlled substances listed in Schedules II-IV.--

164 (1) As used in this section, the term "pharmacy" means any
 165 pharmacy subject to licensure or regulation by the department
 166 under chapter 465 that dispenses or delivers a controlled
 167 substance listed in Schedule II, Schedule III, or Schedule IV to
 168 a patient in this state.

169 (2) By June 30, 2008, the department shall contract for
170 the design, establishment, and maintenance of an electronic
171 system consistent with standards of the American Society for
172 Automation in Pharmacy to monitor the prescribing and dispensing
173 of controlled substances listed in Schedules II, III, and IV by
174 health care practitioners within the state and the dispensing of
175 such controlled substances to an individual at a specific
176 address within the state by a pharmacy permitted or registered
177 by the Board of Pharmacy. The contracted vendor shall maintain
178 the database within the United States.

179 (3) Any controlled substance listed in Schedule II,
180 Schedule III, or Schedule IV that is dispensed to an individual
181 in this state must be reported to the department's contract
182 vendor through the system established under this section as soon
183 thereafter as possible, but not more than 35 days after the date
184 the controlled substance is dispensed, each time the controlled
185 substance is dispensed. A pharmacy may meet the reporting
186 requirements of this section by providing to the department's
187 contract vendor an exchangeable electronic disc, file, or tape
188 containing the required data concerning each controlled
189 substance listed in Schedule II, Schedule III, or Schedule IV
190 that the pharmacy dispenses.

191 (4) This section does not apply to controlled substances:

192 (a) Administered by a health care practitioner directly to
193 a patient.

194 (b) Dispensed by a health care practitioner authorized to
195 prescribe controlled substances directly to a patient and
196 limited to an amount adequate to treat the patient for a period

197 of no more than 72 hours.

198 (c) Dispensed by a health care practitioner or a
 199 pharmacist to an inpatient of a facility that holds an
 200 institutional pharmacy permit.

201 (d) Ordered from an institutional pharmacy holding a
 202 permit under s. 465.019 in accordance with the institutional
 203 policy for such controlled substances or drugs.

204 (e) Dispensed by a pharmacist or administered by a health
 205 care practitioner to a patient or resident receiving care from a
 206 hospital, nursing home, assisted living facility, home health
 207 agency, hospice, or intermediate care facility for the
 208 developmentally disabled that is licensed in this state.

209 (f) Prescribed by a health care practitioner for a patient
 210 younger than 16 years of age.

211 (5) The data required to be reported under this section
 212 shall be determined by the department by rule and may include
 213 any data required under s. 893.04.

214 (6) A practitioner or pharmacist who dispenses a
 215 controlled substance under this section must submit the
 216 information required by this section in an electronic or other
 217 format approved by rule of the department. The cost to the
 218 dispenser in submitting the information required by this section
 219 may not be material or extraordinary. Costs not considered to be
 220 material or extraordinary include, but are not limited to,
 221 regular postage, compact discs, zip drive storage, regular
 222 electronic mail, magnetic tapes, diskettes, and facsimile
 223 charges. The information submitted to the department's contract
 224 vendor under this section may be transmitted to any person or

225 agency authorized to receive such information under s. 893.056
 226 and that person or agency may maintain the information received
 227 for up to 24 months before purging the information from its
 228 records. All transmissions required by this subsection must
 229 comply with relevant federal and state privacy and security
 230 laws. However, any authorized agency receiving such information
 231 may maintain the information for longer than 24 months if the
 232 information is pertinent to an ongoing investigation or
 233 prosecution.

234 (7) Any contractor entering into a contract under this
 235 section is liable in tort for the improper release of any
 236 confidential information received in addition to any breach of
 237 contract liability. Sovereign immunity may not be raised by the
 238 contractor, or the insurer of that contractor on the
 239 contractor's behalf, as a defense in any action arising out of
 240 the performance of any contract entered into under this section
 241 or as a defense in tort, or any other application, for the
 242 maintenance of confidentiality of information and for any breach
 243 of contract.

244 (8) Any person who knowingly fails to report the
 245 dispensing of a controlled substance listed in Schedule II,
 246 Schedule III, or Schedule IV as required by this section commits
 247 a misdemeanor of the first degree, punishable as provided in s.
 248 775.082 or s. 775.083.

249 (9) The department and the regulatory boards for the
 250 health care practitioners subject to this section shall adopt
 251 rules under ss. 120.536(1) and 120.54 to administer this
 252 section.

253 (10) All costs incurred by the department in administering
 254 the prescription monitoring system shall be borne by the
 255 department, and an amount necessary to cover such costs shall be
 256 appropriated annually, subject to the availability of funds,
 257 from the Grants and Donations Trust Fund. The Medical Quality
 258 Assurance Trust Fund shall not be used to administer or
 259 otherwise fund this program.

260 (11) A practitioner or pharmacist authorized to obtain
 261 information under this section is not liable for accessing or
 262 failing to access such information.

263 (12) This section is repealed effective October 2, 2010,
 264 unless reviewed and saved from repeal through reenactment by the
 265 Legislature.

266 Section 4. Section 893.065, Florida Statutes, is created
 267 to read:

268 893.065 Counterfeit-resistant prescription blanks for
 269 controlled substances listed in Schedules II-IV.--The department
 270 shall develop and adopt by rule the form and content for a
 271 counterfeit-resistant prescription blank that may be used by
 272 practitioners to prescribe a controlled substance listed in
 273 Schedule II, Schedule III, or Schedule IV. The department may
 274 require the prescription blanks to be printed on distinctive,
 275 watermarked paper and to bear the preprinted name, address, and
 276 category of professional licensure of the practitioner and that
 277 practitioner's federal registry number for controlled
 278 substances. The prescription blanks may not be transferred.

279 Section 5. The penalties created in s. 831.311(2), Florida
 280 Statutes, by this act shall be effective only upon the adoption

281 of the rules required pursuant to s. 893.065, Florida Statutes,
 282 as created by this act.

283 Section 6. If a person dies of an apparent drug overdose:

284 (1) A law enforcement agency shall prepare a report
 285 identifying each prescribed controlled substance listed in
 286 Schedule II, Schedule III, or Schedule IV of s. 893.03, Florida
 287 Statutes, that is found on or near the deceased or among the
 288 deceased's possessions. The report must identify the person who
 289 prescribed the controlled substance, if known or ascertainable.
 290 Thereafter, the law enforcement agency shall submit a copy of
 291 the report to the medical examiner.

292 (2) A medical examiner who is preparing a report pursuant
 293 to s. 406.11, Florida Statutes, shall include in the report
 294 information identifying each prescribed controlled substance
 295 listed in Schedule II, Schedule III, or Schedule IV of s.
 296 893.03, Florida Statutes, that was found in, on, or near the
 297 deceased or among the deceased's possessions.

298 Section 7. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

Bill No. 893

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Committee on Health Quality
2 Representative(s) Harrell offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line(s) 162-265 and insert:

6 893.055 Prescription Drug History.--

7 (1) Definitions.--

8 (a) "Agency" means the Agency for Health Care

9 Administration.

10 (b) "Department" means the Department of Health.

11 (c) "Federal privacy laws" means the provisions relating
12 to the disclosure of patient privacy information under federal
13 law, including, but not limited to, the Health Insurance
14 Portability and Accountability Act of 1996 (HIPAA), Pub. L. No.
15 104-91, and its implementing regulations, the Federal Privacy
16 Act, 5 U.S.C. s. 552(a), and its implementing regulations, and
17 any other federal law, including, but not limited to, federal
18 common law and decisional law, that would prohibit the
19 disclosure of patient privacy information.

03/19/2007, 6:22 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

20 (d) "Health care practitioner" means, with the exception
21 of a pharmacist, a practitioner licensed under chapter 456 and
22 authorized by law to prescribe drugs.

23 (e) "Pharmacy" means a pharmacy subject to licensure or
24 regulation by the department under chapter 465 that dispenses or
25 delivers a controlled substance listed in Schedule II, Schedule
26 III, or Schedule IV to a patient in this state.

27 (2) (a) By June 30, 2008, the agency shall contract with a
28 vendor for the design and operation of a secure, privacy-
29 protected website that shall provide a health care practitioner,
30 pharmacy, or pharmacist access to comprehensive patient
31 medication history. In order to provide comprehensive patient
32 medication history, the agency shall require the contracted
33 vendor to subcontract with private-sector organizations that
34 currently operate electronic prescribing networks that provide
35 such medication history.

36 (b) The contracted vendor shall comply with all applicable
37 state and federal privacy laws and maintain the website within
38 the United States.

39 (c) The contracted vendor must create a system to verify
40 with the department that each health care practitioner,
41 pharmacy, or pharmacist requesting access to the website holds a
42 valid, active license under the appropriate practice act.

43 (3) A health care practitioner authorized to access the
44 website may only use the website to obtain medication history
45 for a current patient for prescribing purposes with the written
46 permission of the patient.

47 (4) A pharmacy or pharmacist authorized to access the
48 website may only use the website to obtain medication history in
49 dispensing a current prescription for Schedule II, Schedule III,

03/19/2007, 6:22 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

50 or Schedule IV medicinal drugs with the written permission of
51 the patient. The pharmacy or pharmacist shall not have access to
52 pharmacy identifying information within a patient's medication
53 history.

54 (5) No recovery shall be allowed in any court in this
55 state against a health care practitioner, pharmacy, or
56 pharmacist authorized to obtain information under this section
57 for accessing or failing to access such information.

58 (6) A violation of this section by a health care
59 practitioner, pharmacy, or pharmacist shall constitute grounds
60 for disciplinary action under each respective licensing chapter
61 and s. 456.072(1)(k).

62 (7) Any contractor entering into a contract under this
63 section is liable in tort for the improper release of any
64 confidential information received in addition to any breach of
65 contract liability. Sovereign immunity may not be raised by the
66 contractor, or the insurer of that contractor on the
67 contractor's behalf, as a defense in any action arising out of
68 the performance of any contract entered into under this section
69 or as a defense in tort, or any other application, for the
70 maintenance of confidentiality of information and for any breach
71 of contract.

72
73 ===== T I T L E A M E N D M E N T =====

74 Remove line(s) 11-28 and insert:
75 893.055, F.S.; requiring the Agency for Health Care
76 Administration to contract for creation of a website to
77 provide private-sector medication history to certain
78 pharmacies and health care practitioners; providing
79 limitations on use; providing liability for the improper

03/19/2007, 6:22 p.m.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

80 | release of any confidential information; precluding the use
81 | of a specified defense by specified defendants in certain
82 | actions; providing penalties; creating s. 893.065, F.S.;

03/19/2007, 6:22 p.m.

Page 4 of 4

h0893-hq-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141

Osteopathic Physicians

SPONSOR(S): Kendrick

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Quality</u>		Guy <i>G</i>	Lowell <i>P</i>
2) <u>Healthcare Council</u>			
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 1141 revises the criteria for licensure and internship training as an osteopathic physician. The bill additionally revises penalties for hospital reporting on osteopathic physician training.

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

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Osteopathic Licensure

The Florida Osteopathic Physician Practice Act, Chapter 459, Florida Statutes, governs the licensure and regulation of osteopathic physicians. Osteopathic physicians are licensed by the Department of Health ("department") and regulated by the Board of Osteopathic Medicine ("board"). Section 459.0055, F.S., contains general provisions relating to licensure as an osteopathic physician. Specific provisions related to licensure by examination and licensure by endorsement are contained within s. 459.006, and 459.007, F.S., respectively. Both processes share general licensure requirements which include:

- Completion of the department application form;
- Payment of the \$200 application fee;¹
- Proof of age – at least 21 years old;
- Possession of good moral character;
- Completion of at least 3 years of preprofessional postsecondary education;
- Demonstration that applicant has not violated or is under investigation for violation of any provisions of the Practice Act;²
- Demonstration by applicant that any previous license he held to practice osteopathic medicine was in good standing and that he has not been denied an osteopathic medical license;³
- Submission to the department of fingerprints and authorization of and payment for a criminal background check;
- Completion of an internship training program which must be at least 12 months in length;⁴
- Graduation from an American Osteopathic Association recognized and approved college; and
- Passage of the National Board of Osteopathic Medical Examiners or other board-approved examination, as given and administered by the board.

Out-of-state osteopathic physicians who wish to practice in Florida must be licensed through endorsement. In addition to the requirements above, requirements for licensure by endorsement include:⁵

- Demonstration of a valid, current osteopathic medical license in a jurisdiction in the United States which has similar or more stringent licensure requirements than Florida; and
- Demonstration of the active practice of osteopathic medicine for a specified period of time.

The board is required to utilize an investigative process to review applications for licensure in a time period as prescribed in s. 120.60, F.S.⁶

¹ Application and licensure fees are set by the board and are included in Rule 64B15-10.002, F.A.C.

² In the event of an applicant's violation of any provision of the Practice Act, the board may make a determination that such an act does not adversely affect the applicant's ability to practice osteopathic medicine, according to s. 459.0055(e), F.S.

³ The board may make a determination that any previous denial or violations of good standing does not adversely affect the applicant's ability to practice osteopathic medicine, according to s. 459.0055(g), F.S.

⁴ This requirement may be satisfied either by completion of a program in a hospital approved by the Board of Trustees of the American Osteopathic Association, or any internship program approved by the board.

⁵ Section 459.007, F.S.

⁶ Section 459.0055(4), F.S.

Section 459.021, F.S., relating to the registration of osteopathic physician residents, assistant residents, house physicians, interns, and fellows specifies that any practitioner who wishes to practice in an internship training program must register with the department within 30 days before beginning the program. The fee for initial registration is \$100.⁷ Practitioners in internship training programs must re-register annually and may only register for an aggregate of 5 years. Registration is terminated upon receipt of an active license to practice under Chapter 459, F.S.

Hospitals that utilize osteopathic residents, assistant residents, house physicians, interns, or fellows must provide the department with a list of practitioners who have served in the hospital's internship training program for the preceding 6 months. It is a misdemeanor of the second degree for any hospital that utilizes any such person who has not registered with the department or who does not hold a license to practice under Chapter 459, F.S.

Effect of Proposed Changes

The bill repeals licensure by examination provisions contained in s. 459.006, F.S., and licensure by endorsement provisions in s. 459.007, F.S. The bill places provisions contained in those sections in the general licensure section in s. 459.0055, F.S. This section, as amended, provides that requirements for licensure include:

- Completion of the department application form;
- Payment of the \$200 application fee;
- Proof of age – at least 21 years old;
- Possession of good moral character;
- Completion of at least 3 years of preprofessional postsecondary education;
- Demonstrate that applicant has not violated or is under investigation for violation of any provisions of the Practice Act;
- Demonstrate by applicant that any previous license he held to practice osteopathic medicine was in good standing and that he has not been denied an osteopathic medical license;
- Submission to the department of fingerprints and authorization of and payment for a criminal background check;
- Graduation from an American Osteopathic Association recognized and approved college; and
- Completion of an internship training program which must be at least 12 months in length;
- Passage of the National Board of Osteopathic Medical Examiners or other board-approved examination.

Applicants who hold a valid out-of-state osteopathic medical license must also demonstrate passage of the National Board of Osteopathic Medical Examiners or other board-approved examination. Initial licensure must have occurred within 5 years of passage of the examination. Should an out-of-state applicant have not practiced for more than 2 years at any one time, the board may make a determination that such interruption has not adversely affected the physician's ability and fitness to practice osteopathic medicine.

The bill requires the board to utilize an investigative process to review applications for licensure in the time period as prescribed in s. 120.60, F.S.

The bill amends s. 459.021, F.S., to allow any person who has graduated from an American Osteopathic Association-approved college to begin an internship training program upon registration with the department. In addition, the bill raises the criminal penalty to a first degree misdemeanor for a hospital or administrator that employs an osteopathic physician resident, assistant resident, house physician, intern, or fellow who is not registered with the department or the holder of a license to practice under Chapter 459, F.S.

The bill authorizes the board to set a registration renewal fee of no more than \$300.

⁷ Rule 64B15-10.005, F.A.C.

C. SECTION DIRECTORY:

Section 1. Amends s. 459.0055, F.S., to include licensure by examination and licensure by endorsement requirements in general licensure requirements.

Section 2. Amends s. 459.021, F.S., to clarify provisions relating to internship training program registration.

Section 3. Amends s. 395.7015, F.S., to correct a cross reference.

Section 4. Amends s. 459.0092, F.S., to correct a cross reference.

Section 5. Repeals ss. 459.006 and 459.007, F.S.

Section 6. Provides for an effective date of July 1, 2007.

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:

Currently a doctor in a residency, fellowship, or internship training program must submit an initial registration application form and a fee (not to exceed \$300) each year. The bill will streamline this process, so the doctor will not have to resubmit their initial application form each year. Instead they will be able to renew their original application and pay the appropriate fee (not to exceed \$300).

The bill also deletes the 30-day window to pay the fee. The bill will require doctors to pay the fee at the commencement of their training.

D. FISCAL COMMENTS:

The department has a contract rate for the initial and renewal licensure process; streamlining will not impact their workload or cut costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department has requested rule-making authority for the general licensure section to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to osteopathic physicians; amending s.
 3 459.0055, F.S.; revising requirements for licensure or
 4 certification as an osteopathic physician in this state;
 5 amending s. 459.021, F.S.; requiring a renewal fee for
 6 registering as a resident osteopathic physician; revising
 7 the degree of a specified penalty; requiring consideration
 8 of intent in order to classify certain actions within the
 9 practice of osteopathic medicine as misdemeanors; amending
 10 ss. 395.7015 and 459.0092, F.S.; correcting cross-
 11 references; repealing s. 459.006, F.S., relating to
 12 licensure by examination; repealing s. 459.007, F.S.,
 13 relating to licensure by endorsement; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 459.0055, Florida Statutes, is amended
 19 to read:

20 459.0055 General licensure requirements.--

21 (1) Except as otherwise provided herein, any person
 22 desiring to be licensed or certified as an osteopathic physician
 23 pursuant to this chapter shall:

24 (a) Complete an application form and submit the
 25 appropriate fee to the department;

26 (b) Be at least 21 years of age;

27 (c) Be of good moral character;

28 (d) Have completed at least 3 years of preprofessional

29 postsecondary education;

30 (e) Have not previously committed any act that ~~which~~ would
31 constitute a violation of this chapter, unless the board
32 determines that such act does not adversely affect the
33 applicant's present ability and fitness to practice osteopathic
34 medicine;

35 (f) Not be under investigation in any jurisdiction for an
36 act that ~~which~~ would constitute a violation of this chapter. If,
37 upon completion of such investigation, it is determined that the
38 applicant has committed an act that ~~which~~ would constitute a
39 violation of this chapter, the applicant is ~~shall be~~ ineligible
40 for licensure unless the board determines that such act does not
41 adversely affect the applicant's present ability and fitness to
42 practice osteopathic medicine;

43 (g) Have not had an application for a license to practice
44 osteopathic medicine denied or a license to practice osteopathic
45 medicine revoked, suspended, or otherwise acted against by the
46 licensing authority of any jurisdiction unless the board
47 determines that the grounds on which such action was taken do
48 not adversely affect the applicant's present ability and fitness
49 to practice osteopathic medicine. A licensing authority's
50 acceptance of a physician's relinquishment of license,
51 stipulation, consent order, or other settlement, offered in
52 response to or in anticipation of the filing of administrative
53 charges against the osteopathic physician, shall be considered
54 action against the osteopathic physician's license;

55 (h) Not have received less than a satisfactory evaluation
56 from an internship, residency, or fellowship training program,

57 unless the board determines that such act does not adversely
 58 affect the applicant's present ability and fitness to practice
 59 osteopathic medicine. Such evaluation shall be provided by the
 60 director of medical education from the medical training
 61 facility.

62 (i)~~(h)~~ Have met the criteria set forth in s. ~~459.006, s.~~
 63 ~~459.007,~~ s. 459.0075, s. 459.0077, or s. 459.021, whichever is
 64 applicable;

65 (j)~~(i)~~ Submit to the department a set of fingerprints on a
 66 form and under procedures specified by the department, along
 67 with a payment in an amount equal to the costs incurred by the
 68 Department of Health for the criminal background check of the
 69 applicant;:-

70 (k) Demonstrate that he or she is a graduate of a medical
 71 college recognized and approved by the American Osteopathic
 72 Association;

73 (l) Demonstrate that he or she has successfully completed
 74 a resident internship of not less than 12 months in a hospital
 75 approved for this purpose by the Board of Trustees of the
 76 American Osteopathic Association or any other internship program
 77 approved by the board upon a showing of good cause by the
 78 applicant. This requirement may be waived for an applicant who
 79 matriculated in a college of osteopathic medicine during or
 80 before 1948; and

81 (m) Demonstrate that he or she has obtained a passing
 82 score, as established by rule of the board, on all parts of the
 83 examination conducted by the National Board of Osteopathic
 84 Medical Examiners or other examination approved by the board no

85 more than 5 years before making application.

86 (2) For an applicant holding a valid active license in
 87 another state, he or she shall submit evidence of the active
 88 licensed practice of medicine in another jurisdiction in which
 89 initial licensure must have occurred no more than 5 years after
 90 the applicant obtained a passing score on the examination
 91 conducted by the National Board of Medical Examiners or other
 92 substantially similar examination approved by the board;
 93 however, such practice of osteopathic medicine may have been
 94 interrupted for a period totaling no more than 2 years or for a
 95 longer period if the board determines that the interruption of
 96 the osteopathic physician's practice of osteopathic medicine for
 97 such longer period has not adversely affected the osteopathic
 98 physician's present ability and fitness to practice osteopathic
 99 medicine.

100 (3) The department and the board shall ensure through an
 101 investigative process that an applicant for licensure meets the
 102 criteria in this section.

103 (4)~~(2)~~ The board may require a personal appearance of any
 104 applicant for licensure or certification under the provisions of
 105 this chapter. Any applicant of whom a personal appearance is
 106 required must be given adequate notice of the appearance as to
 107 time and place of the appearance, as well as a statement of the
 108 purpose for the appearance and the reasons requiring such
 109 appearance.

110 (5)~~(3)~~ If an applicant has committed an act that ~~which~~
 111 would constitute a violation of this chapter or has had an
 112 application for a license to practice osteopathic medicine

113 revoked, suspended, or otherwise acted against by the licensing
 114 authority of any jurisdiction, notwithstanding the board's
 115 determination that the applicant's present ability and fitness
 116 to practice osteopathic medicine have not been adversely
 117 affected, the board may certify the application to the
 118 department with restrictions.

119 ~~(6) (4) The department and the board shall assure that~~
 120 ~~applicants for licensure meet applicable criteria in this~~
 121 ~~chapter through an investigative process.~~ When the investigative
 122 process is not completed within the time set out in s. 120.60(1)
 123 and the department or board has reason to believe that the
 124 applicant does not meet the criteria, the secretary or the
 125 secretary's designee may issue a 90-day licensure delay which
 126 shall be in writing and sufficient to notify the applicant of
 127 the reason for the delay. The provisions of this subsection
 128 shall control over any conflicting provisions of s. 120.60(1).

129 Section 2. Subsections (1), (2), and (5) of section
 130 459.021, Florida Statutes, are amended to read:

131 459.021 Registration of resident physicians, interns, and
 132 fellows; list of hospital employees; penalty.--

133 (1) Any person who holds a degree of Doctor of Osteopathic
 134 Medicine from a college of osteopathic medicine recognized and
 135 approved by the American Osteopathic Association who desires to
 136 practice as a resident physician, assistant resident physician,
 137 house physician, intern, or fellow in fellowship training which
 138 leads to subspecialty board certification in this state, or any
 139 person desiring to practice as a resident physician, assistant
 140 resident physician, house physician, intern, or fellow in

HB 1141

2007

141 fellowship training in a teaching hospital in this state as
 142 defined in s. 408.07(45) or s. 395.805(2), who does not hold an
 143 active license issued under this chapter shall apply to the
 144 department to be registered, on an application provided by the
 145 department, before ~~within 30 days of~~ commencing such a training
 146 program and shall remit a fee not to exceed \$300 as set by the
 147 board.

148 (2) Any person required to be registered under this
 149 section shall renew such registration annually and shall remit a
 150 renewal fee not to exceed \$300 as set by the board. Such
 151 registration shall be terminated upon the registrant's receipt
 152 of an active license issued under this chapter. A ~~No~~ person may
 153 not shall be registered under this section for an aggregate of
 154 more than 5 years, unless additional years are approved by the
 155 board.

156 (5) It is a misdemeanor of the first ~~second~~ degree,
 157 punishable as provided in s. 775.082 or s. 775.083, for any
 158 hospital or teaching hospital, and also for the superintendent,
 159 administrator, and other person or persons having administrative
 160 authority in such hospital to willfully:

161 (a) ~~To~~ Employ the services in such hospital of any person
 162 listed in subsection (3), unless such person is registered with
 163 the department under the law or the holder of a license to
 164 practice osteopathic medicine under this chapter.

165 (b) ~~To~~ Fail to furnish to the department the list and
 166 information required by subsection (3).

167 Section 3. Paragraph (b) of subsection (2) of section
 168 395.7015, Florida Statutes, is amended to read:

169 395.7015 Annual assessment on health care entities.--
 170 (2) There is imposed an annual assessment against certain
 171 health care entities as described in this section:
 172 (b) For the purpose of this section, "health care
 173 entities" include the following:
 174 1. Ambulatory surgical centers and mobile surgical
 175 facilities licensed under s. 395.003. This subsection shall only
 176 apply to mobile surgical facilities operating under contracts
 177 entered into on or after July 1, 1998.
 178 2. Clinical laboratories licensed under s. 483.091,
 179 excluding any hospital laboratory defined under s. 483.041(6),
 180 any clinical laboratory operated by the state or a political
 181 subdivision of the state, any clinical laboratory which
 182 qualifies as an exempt organization under s. 501(c)(3) of the
 183 Internal Revenue Code of 1986, as amended, and which receives 70
 184 percent or more of its gross revenues from services to charity
 185 patients or Medicaid patients, and any blood, plasma, or tissue
 186 bank procuring, storing, or distributing blood, plasma, or
 187 tissue either for future manufacture or research or distributed
 188 on a nonprofit basis, and further excluding any clinical
 189 laboratory which is wholly owned and operated by 6 or fewer
 190 physicians who are licensed pursuant to chapter 458 or chapter
 191 459 and who practice in the same group practice, and at which no
 192 clinical laboratory work is performed for patients referred by
 193 any health care provider who is not a member of the same group.
 194 3. Diagnostic-imaging centers that are freestanding
 195 outpatient facilities that provide specialized services for the
 196 identification or determination of a disease through examination

197 and also provide sophisticated radiological services, and in
 198 which services are rendered by a physician licensed by the Board
 199 of Medicine under s. 458.311, s. 458.313, or s. 458.317, or by
 200 an osteopathic physician licensed by the Board of Osteopathic
 201 Medicine under s. 459.0055 ~~459.006~~, ~~s. 459.007~~, or s. 459.0075.
 202 For purposes of this paragraph, "sophisticated radiological
 203 services" means the following: magnetic resonance imaging;
 204 nuclear medicine; angiography; arteriography; computed
 205 tomography; positron emission tomography; digital vascular
 206 imaging; bronchography; lymphangiography; splenography;
 207 ultrasound, excluding ultrasound providers that are part of a
 208 private physician's office practice or when ultrasound is
 209 provided by two or more physicians licensed under chapter 458 or
 210 chapter 459 who are members of the same professional association
 211 and who practice in the same medical specialties; and such other
 212 sophisticated radiological services, excluding mammography, as
 213 adopted in rule by the board.

214 Section 4. Subsections (1) and (2) of section 459.0092,
 215 Florida Statutes, are amended to read:

216 459.0092 Fees.--The board shall set fees according to the
 217 following schedule:

218 (1) The fee for application or certification pursuant to
 219 ss. 459.0055(2) ~~459.007~~, 459.0075, and 459.0077 shall not exceed
 220 \$500.

221 (2) The fee for application and examination pursuant to s.
 222 459.0055(1)(m) ~~459.006~~ shall not exceed \$175 plus the actual per
 223 applicant cost to the department for purchase of the examination

HB 1141

2007

224 | from the National Board of Osteopathic Medical Examiners or a
225 | similar national organization.

226 | Section 5. Sections 459.006 and 459.007, Florida Statutes,
227 | are repealed.

228 | Section 6. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1485

Chiropractic Medicine

SPONSOR(S): Long

TIED BILLS:

IDEN./SIM. BILLS: SB 2858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Health Quality		Guy <i>[Signature]</i>	Lowell <i>[Signature]</i>
2) Healthcare Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 1485 revises multiple provisions relating to the Florida Chiropractic Physician Practice Act. Specifically, the bill authorizes a chiropractic physician student to file an application for licensure while in his final year of study. The bill revises the criteria to apply for a chiropractic medical faculty certificate. The bill also revises provisions relating to certified chiropractic physician assistants.

The bill creates s. 460.4167, Florida Statutes, to regulate ownership duties and responsibilities of chiropractic clinics.

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

The bill provides an effective date of July, 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill will restrict the ability of unlicensed persons to employ chiropractic physicians.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 460, Florida Statutes, governs the practice of chiropractic medicine in Florida. Chiropractic physicians are licensed by the Department of Health (“department”) and regulated by the Board of Chiropractic Medicine (“board”). The board has the authority to adopt rules to implement provisions in Ch. 460, F.S., including the setting of application fees. The chapter defines the practice of chiropractic medicine to mean a noncombative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body¹. The chapter authorizes chiropractic physicians to adjust, manipulate or treat the human body by manual, mechanical, electrical, or natural methods. However, chiropractic physicians are prohibited from prescribing or administering any legend drugs with limited exceptions.²

Numerous other provisions regarding the practice of chiropractic medicine are contained within Ch. 460, F.S. Licensure requirements for chiropractic physicians include: graduation from a chiropractic college that is accredited by the Council on Chiropractic Education; passage of the National Board of Chiropractic Examiners certification examination; and submission of an application and fees to the department. The chapter also provides for the certification of chiropractic medical faculty at publicly-funded state universities or colleges, continuing chiropractic education requirements, and penalties for the unlicensed practice of chiropractic medicine.

Chapter 460, F.S., also provides for the regulation of certified chiropractic physician assistants. Certified chiropractic physician assistants must be certified by the board under specific procedures and must have a supervisory relationship with a chiropractic physician. They may practice under both direct and indirect supervision. Training programs for certified chiropractic physician assistants are certified by the board and the curriculum must consist of at least 200 didactic hours and cover a period of 24 months.

Effect of Proposed Changes

The bill allows a student to sit for his or her certification examination while in the final year of study at a chiropractic school or college. All other provisions for licensure as a chiropractic physician still apply to a student who sits for the certification examination at this time. The bill specifies that an applicant for licensure may not be licensed before graduation.

The bill amends s. 460.4062, F.S., criteria to apply for a chiropractic medical faculty certificate, to include the acceptance of full-time teaching positions at any chiropractic college located in Florida and accredited by the Council on Chiropractic Education. All other provisions for certification remain the same.

The bill allows a certified chiropractic physician assistant to perform chiropractic services under the indirect supervision of a chiropractic physician only at the physician’s principal place of practice. The bill requires a certified chiropractic physician assistant who performs services at a clinic licensed by the

¹ s. 460.403(9)(a).

² s. 460.403(9)(c)

Agency for Health Care Administration³ to only work under the direct supervision of a specified chiropractic physician.

The bill also revises application requirements for certified chiropractic physician assistants to require the applicant to file a work arrangement proposal. The board is required to interview both the applicant and the supervising chiropractic physician for whom he will be working about the work proposal.

The bill creates a new subsection of Chapter 460, F.S., to enact limits on directing, controlling, and interfering with a chiropractic physician's clinical judgment and his or her ability to maintain care, custody, and control over equipment or materials. The bill further limits the ability of any unlicensed person to exercise control over a course of treatment for a patient, patient records, and certain office policies. Violation of this section is a third degree felony offense. Contracts entered into or renewed after October 1, 2010, would be subject to the provisions of this section.

C. SECTION DIRECTORY:

Section 1. Amends s. 460.406, F.S., to allow a chiropractic physician student to file an application for licensure while in his final year of study.

Section 2. Amends s. 460.4062, F.S., to revise the criteria to apply for a chiropractic medical faculty certificate.

Section 3. Amends s. 460.4162, F.S., to revise provisions relating to certified chiropractic physician's assistants.

Section 4. Creates s. 460.4167, F.S., to regulate the ownership practices of chiropractic clinics.

Section 5. Provides an effective date of July, 1, 2007.

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:

³ Section 400.9905(4)(g), F.S., governs the licensure of clinics that provide health care services by practitioners under Chapter, 460, F.S., or chiropractic physicians.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 1485 includes four main revisions to the Chiropractic Physicians Practice Act (Chapter 460) supported by the Florida Board of Chiropractic Medicine in the Department of Health.

Two of the provisions assist chiropractic education at a new private college located in Port Orange, Florida, providing licensure exemptions for faculty members and allowing students to sit for their state licensing examination during their final year of study. Currently students must wait for as long as six months or more following graduation before they may take the exam offered only twice annually. This places an unnecessary financial hardship on many students.

The other two provisions, also supported by the Board, are primarily in response to ongoing efforts to fight fraud particularly in the area of unscrupulous clinics providing services to auto accident victims under personal injury protection/no-fault insurance coverage. The changes provide limits and more stringent supervision requirements on licensed certified chiropractic physician assistants. At the same time, new restrictions are being added to address fraud issues associated with the ownership of some clinics by non-doctors.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to chiropractic medicine; amending s.
 3 460.406, F.S.; providing requirements for students
 4 relating to licensure as a chiropractic physician by
 5 examination; amending s. 460.4062, F.S.; revising
 6 provisions relating to chiropractic medicine faculty
 7 certificates; amending s. 460.4165, F.S.; revising
 8 conditions under which a certified chiropractic
 9 physician's assistant may perform services; revising
 10 provisions relating to certified chiropractic physician's
 11 assistant licensure application; restricting the place of
 12 practice of certified chiropractic physician's assistants
 13 performing services under indirect supervision; creating
 14 s. 460.4167, F.S.; providing requirements for
 15 proprietorships owned by persons other than licensed
 16 chiropractic physicians; providing prohibitions; providing
 17 penalties; providing a purpose; providing an effective
 18 date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Subsection (5) is added to section 460.406,
 23 Florida Statutes, to read:

24 460.406 Licensure by examination.--

25 (5) A student in a school or college of chiropractic
 26 accredited by the Council on Chiropractic Education or its
 27 successor in the final year of the program may file an
 28 application pursuant to subsection (1), take all examinations

29 required for licensure, submit a set of fingerprints, and pay
 30 all fees required for licensure. A chiropractic student who
 31 successfully completes the licensure examinations and who
 32 otherwise meets all requirements for licensure as a chiropractic
 33 physician during the student's final year must have graduated
 34 before being certified for licensure pursuant to this section.

35 Section 2. Paragraph (e) of subsection (1) and subsection
 36 (2) of section 460.4062, Florida Statutes, are amended to read:

37 460.4062 Chiropractic medicine faculty certificate.--

38 (1) The department may issue a chiropractic medicine
 39 faculty certificate without examination to an individual who
 40 remits a nonrefundable application fee, not to exceed \$100 as
 41 determined by rule of the board, and who demonstrates to the
 42 board that he or she meets the following requirements:

43 (e)1. Has been offered and has accepted a full-time
 44 faculty appointment to teach in a program of chiropractic
 45 medicine at a publicly funded state university or college or at
 46 a college of chiropractic located in the state and accredited by
 47 the Council on Chiropractic Education; and

48 2. Provides a certification from the dean of the
 49 appointing college acknowledging the appointment.

50 (2) The certificate shall authorize the holder to practice
 51 only in conjunction with his or her faculty position at a
 52 publicly funded state university or college and its affiliated
 53 clinics that are registered with the board as sites at which
 54 holders of chiropractic medicine faculty certificates will be
 55 practicing. Except as provided in subsection (4), such
 56 certificate shall automatically expire upon termination of the

57 holder's relationship with the university or college ~~school~~ or
 58 after a period of 2 years, whichever occurs first.

59 Section 3. Paragraph (b) of subsection (2) and subsection
 60 (6) of section 460.4165, Florida Statutes, are amended, and
 61 subsection (14) is added to that section, to read:

62 460.4165 Certified chiropractic physician's assistants.--

63 (2) PERFORMANCE BY CERTIFIED CHIROPRACTIC PHYSICIAN'S
 64 ASSISTANT.--Notwithstanding any other provision of law, a
 65 certified chiropractic physician's assistant may perform
 66 chiropractic services in the specialty area or areas for which
 67 the certified chiropractic physician's assistant is trained or
 68 experienced when such services are rendered under the
 69 supervision of a licensed chiropractic physician or group of
 70 chiropractic physicians certified by the board. Any certified
 71 chiropractic physician's assistant certified under this section
 72 to perform services may perform those services only:

73 (b) Under indirect supervision if the indirect supervision
 74 occurs at the principal place of practice of the chiropractic
 75 physician to whom she or he is assigned as defined by rule of
 76 the board;

77 (6) APPLICATION APPROVAL.--Any person desiring to be
 78 licensed as a certified chiropractic physician's assistant must
 79 apply to the department. The application shall include a work
 80 arrangement proposal and, as part of the application process,
 81 the board shall interview the proposed supervising chiropractic
 82 physician and the applicant about the work arrangement proposal.
 83 The department shall issue a certificate to any person certified
 84 by the board as having met the following requirements:

85 (a) Is at least 18 years of age.
 86 (b) Is a graduate of an approved program or its equivalent
 87 and is fully certified by reason of experience and education, as
 88 defined by board rule, to perform chiropractic services under
 89 the responsible supervision of a licensed chiropractic physician
 90 and when the board is satisfied that the public will be
 91 adequately protected by the arrangement proposed in the
 92 application.

93 (c) Has completed the application form and remitted an
 94 application fee set by the board pursuant to this section. An
 95 application for certification made by a chiropractic physician's
 96 assistant must include:

- 97 1. A certificate of completion of a physician's assistant
 98 training program specified in subsection (5).
- 99 2. A sworn statement of any prior felony conviction in any
 100 jurisdiction.
- 101 3. A sworn statement of any previous revocation or denial
 102 of licensure or certification in any state or jurisdiction.

103 (14) SUPERVISION OF CERTIFIED CHIROPRACTIC PHYSICIAN'S
 104 ASSISTANTS AT LICENSED CLINICS.--A certified chiropractic
 105 physician's assistant certified under this section to perform
 106 services at a clinic licensed under part X of chapter 400 may
 107 perform those services only under direct supervision of the
 108 chiropractic physician to whom she or he is assigned.

109 Section 4. Section 460.4167, Florida Statutes, is created
 110 to read:

111 460.4167 Proprietorship by persons other than licensed
 112 chiropractic physicians.--

113 (1) Effective July 1, 2008, no person other than a sole
 114 proprietorship, group practice, partnership, or corporation that
 115 is wholly owned by one or more chiropractic physicians licensed
 116 under this chapter or by a chiropractic physician licensed under
 117 this chapter and the spouse, parent, child, or sibling of that
 118 chiropractic physician may employ a chiropractic physician
 119 licensed under this chapter or engage a chiropractic physician
 120 licensed under this chapter as an independent contractor to
 121 provide services authorized by this chapter to be offered by a
 122 chiropractic physician licensed under this chapter, except for:

123 (a) A sole proprietorship, group practice, partnership, or
 124 corporation that is wholly owned by a physician or physicians
 125 licensed under this chapter, chapter 458, chapter 459, or
 126 chapter 461.

127 (b) Entities that are owned, directly or indirectly, by an
 128 entity licensed or registered by the state under chapter 395.

129 (c) Clinical facilities affiliated with a college of
 130 chiropractic accredited by the Council on Chiropractic Education
 131 at which training is provided for chiropractic students.

132 (d) A public or private university or college.

133 (e) An entity that is exempt from federal taxation under
 134 s. 501(c)(3) or (4) of the Internal Revenue Code, any community
 135 college or university clinic, and any entity owned or operated
 136 by the Federal Government or by state government, including any
 137 agency, county, municipality, or other political subdivision
 138 thereof.

139 (f) An entity owned by a corporation the stock of which is
 140 publicly traded.

141 (g) A clinic licensed under part X of chapter 400 that
 142 provides health care services by physicians licensed under
 143 chapter 458, chapter 459, or chapter 460, the medical director
 144 of which is licensed under chapter 458 or chapter 459.

145 (h) A state-licensed insurer.

146 (2) No person other than a chiropractic physician licensed
 147 under this chapter shall direct, control, or interfere with a
 148 chiropractic physician's clinical judgment. For purposes of this
 149 subsection, a chiropractic physician's clinical judgment does
 150 not apply to chiropractic services contractually excluded, the
 151 application of alternative services that may be appropriate
 152 given the chiropractic physician's prescribed course of
 153 treatment, or determinations comparing contractual provisions
 154 and scope of coverage with a chiropractic physician's prescribed
 155 treatment on behalf of a covered person by an insurer, health
 156 maintenance organization, or prepaid limited health service
 157 organization.

158 (3) Any lease agreement, rental agreement, or other
 159 arrangement between a person other than a licensed chiropractic
 160 physician and a chiropractic physician whereby the person other
 161 than a licensed chiropractic physician provides the chiropractic
 162 physician with chiropractic equipment or chiropractic materials
 163 shall contain a provision whereby the chiropractic physician
 164 expressly maintains complete care, custody, and control of the
 165 equipment or practice.

166 (4) The purpose of this section is to prevent a person
 167 other than a licensed chiropractic physician from influencing or
 168 otherwise interfering with the exercise of a chiropractic

169 | physician's independent professional judgment. In addition to
 170 | the acts specified in subsection (1), a person other than a
 171 | licensed chiropractic physician and any entity other than a sole
 172 | proprietorship, group practice, partnership, or corporation that
 173 | is wholly owned by one or more chiropractic physicians licensed
 174 | under this chapter or by a chiropractic physician licensed under
 175 | this chapter and the spouse, parent, child, or sibling of that
 176 | physician, may not employ a chiropractic physician licensed
 177 | under this chapter or enter into a contract or arrangement with
 178 | a chiropractic physician pursuant to which such unlicensed
 179 | person or such entity exercises control over the following:

180 | (a) The selection of a course of treatment for a patient,
 181 | the procedures or materials to be used as part of such course of
 182 | treatment, and the manner in which such course of treatment is
 183 | carried out by the licensee;

184 | (b) The patient records of a chiropractor;

185 | (c) Policies and decisions relating to pricing, credit,
 186 | refunds, warranties, and advertising; or

187 | (d) Decisions relating to office personnel and hours of
 188 | practice.

189 | (5) Any person who violates this section commits a felony
 190 | of the third degree, punishable as provided in s. 775.081, s.
 191 | 775.083, or s. 775.035.

192 | (6) Any contract or arrangement entered into or undertaken
 193 | in violation of this section shall be void as contrary to public
 194 | policy. This section applies to contracts entered into or
 195 | renewed on or after October 1, 2010.

196 | Section 5. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

Bill No. **1485**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Committee on Health Quality
2 Representative(s) Long offered the following:

3

4 **Amendment**

5 Remove line 52 and insert:

6 ~~publicly funded state~~ university or college and its affiliated

03/19/2007, 5:15 p.m.

House Bill 1239
Relating to Alcohol Abuse by an Expectant Mother
By Rep. Homan

- Requires the Department of Health to contract with the Florida Center for Child and Family Development to establish Fetal Alcohol Spectrum Disorders and Intervention Centers in Duval, Hillsborough, Miami-Dade, and Sarasota Counties. The Centers shall develop and provide training for any groups that work with children and pregnant women.
- Requires the Department of Health, in conjunction with the Department of Children & Families, to establish the Fetal Alcohol Syndrome Prevention Network (“Network”) which shall consist of licensed service providers and the Fetal Alcohol Spectrum Disorders Diagnostic and Intervention Centers who have agreed to participate in the Network. The Network shall provide counseling, education and support to pregnant women regarding the effects of prenatal exposure to alcohol.
- Directs the Department of Health to develop a public education and information program on the Fetal Alcohol Syndrome Prevention Network. The bill requires the Department of Health, the Department of Children and Families, and the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation to provide access to program information on their respective websites.
- Requires the Department of Health to establish a telephone information hotline to distribute information on service providers.
- Creates procedures for an expectant mother’s voluntary admission for Fetal Alcohol Syndrome evaluation and treatment services.
- Amends existing Florida Statutes relating to involuntary admissions procedures to include the consumption of alcohol while pregnant as a criteria for involuntary admission. Amends numerous existing Florida Statutes relating to the process for involuntary admission to include specific procedures for pregnant women who consume alcohol and thereby expose the unborn child to Fetal Alcohol Syndrome.
- Requires every licensed vendor who sells alcohol for consumption on or off premises to post a health warning sign that says Fetal Alcohol Syndrome birth defects can be caused by the consumption of alcohol while pregnant.

Fiscal Note

The Department of Children and Families has provided a cost of approximately \$15.5 million for the first two years for the establishment of services centers, training, and substance abuse treatment for pregnant women.

The Department of Health has provided a cost of approximately \$2 million for the first two years of programming for public education and funding for the Fetal Alcohol Spectrum Disorders and Intervention Centers.

1 A bill to be entitled
 2 An act relating to alcohol abuse by an expectant mother;
 3 providing a short title; creating the "Fetal Alcohol
 4 Syndrome Prevention Act"; providing legislative findings;
 5 directing the Department of Health to develop a public
 6 education program, including a telephone information
 7 hotline, to provide information regarding Fetal Alcohol
 8 Syndrome; directing the Department of Health in
 9 conjunction with the Department of Children and Families
 10 to develop and maintain a Fetal Alcohol Syndrome
 11 Prevention Network consisting of service providers and
 12 Fetal Alcohol Spectrum Disorders Diagnostic and
 13 Intervention Centers; requiring establishment of a system
 14 for assessing charges for certain services; requiring the
 15 Department of Health, the Department of Children and
 16 Families, and the Division of Alcoholic Beverages and
 17 Tobacco of the Department of Business and Professional
 18 Regulation to provide access to such information on their
 19 respective Internet websites; creating s. 397.602, F.S.;
 20 providing for the voluntary admission of an expectant
 21 mother for alcohol abuse treatment services; providing
 22 evaluation procedures; removing disability of minority
 23 solely for voluntary admission; amending s. 397.675, F.S.;
 24 providing criteria for involuntary admission of an
 25 expectant mother, including protective custody, emergency
 26 admission, and other involuntary assessment, involuntary
 27 treatment, and alternative involuntary assessment for
 28 minors for purposes of assessment and stabilization and

29 for involuntary treatment; amending s. 397.6772, F.S.;
 30 providing that an expectant mother may not be detained in
 31 protective custody at any municipal or county jail for
 32 purposes of Fetal Alcohol Syndrome prevention; amending s.
 33 397.6791, F.S.; specifying certain persons who may request
 34 emergency involuntary admission; amending s. 397.6793,
 35 F.S.; providing criteria for a physician's certificate for
 36 emergency admission; amending s. 397.681, F.S.; providing
 37 for jurisdiction over petitions for involuntary
 38 assessment, stabilization, and treatment; specifying the
 39 respondent's right to counsel; amending s. 397.6811, F.S.;
 40 specifying certain persons who may petition the court for
 41 involuntary assessment and stabilization; amending s.
 42 397.6814, F.S.; providing for content of a petition for
 43 involuntary assessment and stabilization; amending s.
 44 397.6815, F.S.; providing procedures for disposition of a
 45 petition for involuntary assessment and stabilization;
 46 amending s. 397.695, F.S.; specifying certain persons who
 47 may petition the court for involuntary treatment; amending
 48 s. 397.6951, F.S.; providing for content of a petition for
 49 involuntary treatment; amending s. 397.6955, F.S.;
 50 providing procedures for disposition of a petition for
 51 involuntary treatment; amending s. 397.6957, F.S.;
 52 providing for a hearing on a petition for involuntary
 53 treatment; amending s. 397.697, F.S.; providing for effect
 54 of court order for involuntary substance abuse treatment;
 55 creating s. 562.063, F.S.; requiring described health
 56 warning signs to be displayed on the premises of alcohol

57 beverage vendors; providing penalties; requiring the
 58 Division of Alcoholic Beverages and Tobacco of the
 59 Department of Business and Professional Regulation to
 60 produce and distribute the signs; providing for a fee and
 61 collection of the fee for costs of the signs; directing
 62 the Department of Health to contract with the Florida
 63 Center for Child and Family Development to establish Fetal
 64 Alcohol Spectrum Disorders Diagnostic and Intervention
 65 Centers and to develop and provide professional training;
 66 providing effective dates.

67
 68 WHEREAS, the Centers for Disease Control and Prevention has
 69 reported a rise of nearly 27 times in the rate of Fetal Alcohol
 70 Syndrome (F.A.S.), with the current rate being 26.8 infants with
 71 Fetal Alcohol Syndrome for every 10,000 births and each F.A.S.
 72 infant representing a cost to society of more than \$4 million
 73 over the course of the infant's lifetime, and

74 WHEREAS, Fetal Alcohol Syndrome is the leading cause of
 75 mental retardation in the United States, and

76 WHEREAS, the full spectrum of birth defects caused by
 77 alcohol, referred to as Fetal Alcohol Spectrum Disorders,
 78 results in as many as 270 infants with Fetal Alcohol Spectrum
 79 Disorders for every 10,000 births, and

80 WHEREAS, according to the National Institute of Health,
 81 only 39 percent of women of childbearing age know about Fetal
 82 Alcohol Syndrome, and

83 WHEREAS, according to the 1996 Report to Congress of the
 84 Institute of Medicine, of all the substances of abuse, including

HB 1239

2007

85 heroin, cocaine, and marijuana, alcohol produces by far the most
 86 serious neurobehavioral effects in the fetus, resulting in
 87 permanent disorders of memory function, impulse control, and
 88 judgment, and

89 WHEREAS, there are no health warnings in television
 90 commercials and other alcohol advertising that impact the
 91 majority of young people and their parents, and

92 WHEREAS, the Legislature, in recognition of these facts,
 93 finds it necessary to require the immediate treatment of
 94 pregnant women found to be under the influence of alcohol and to
 95 further require the posting of health warning signs on the
 96 premises of package alcoholic beverage outlets in the state,
 97 NOW, THEREFORE,

98

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

100

101 Section 1. This act may be referred to as the "Fetal
 102 Alcohol Syndrome Prevention Act."

103 Section 2. Fetal Alcohol Syndrome; legislative findings.--

104 (1) The Legislature finds that Fetal Alcohol Syndrome is a
 105 serious, permanent, and life-altering condition that
 106 substantially and adversely impacts persons born with Fetal
 107 Alcohol Syndrome as well as their parents, siblings, and
 108 children.

109 (2) The Legislature also finds that Fetal Alcohol Syndrome
 110 is an extremely costly condition when the total amount of
 111 medical, psychiatric, respite, and other care is calculated over
 112 the course of an affected person's lifetime.

113 (3) The Legislature finds that instances of Fetal Alcohol
 114 Syndrome can be prevented or reduced by taking steps necessary
 115 to the greatest extent possible to protect a developing fetus
 116 from the detrimental effects of alcohol consumption by an
 117 expectant mother.

118 Section 3. Public information on Fetal Alcohol Syndrome;
 119 Fetal Alcohol Syndrome Prevention Network.--

120 (1) The Department of Health is directed to develop a
 121 public education program to provide information to the public
 122 regarding the detrimental effects of Fetal Alcohol Syndrome. The
 123 information shall include the following information regarding
 124 Fetal Alcohol Syndrome:

125 (a) That Fetal Alcohol Syndrome is the leading cause of
 126 mental retardation in the United States and Florida.

127 (b) The neurological damage and symptoms of Fetal Alcohol
 128 Syndrome.

129 (c) The permanency of the damage to the brain from Fetal
 130 Alcohol Syndrome.

131 (d) The physiological characteristics and defects of Fetal
 132 Alcohol Syndrome.

133 (e) The developmental delays of Fetal Alcohol Syndrome.

134 (f) The psychological impact of Fetal Alcohol Syndrome.

135 (g) The lifetime issues due to Fetal Alcohol Syndrome such
 136 as difficulty maintaining successful independence, sustaining
 137 healthy relationships, maintaining employment, and the need for
 138 long-term support.

139 (h) The economic impact to the affected person, his or her
 140 family, and the people of Florida as a whole due to Fetal
 141 Alcohol Syndrome.

142 (2) The Department of Health, in conjunction with the
 143 Department of Children and Families, shall develop, establish,
 144 and maintain a Fetal Alcohol Syndrome Prevention Network, which
 145 shall consist of licensed service providers as defined in s.
 146 397.311, Florida Statutes, and Fetal Alcohol Spectrum Disorders
 147 Diagnostic and Intervention Centers that have agreed to
 148 participate in providing counseling, education, and support to
 149 pregnant women regarding the effects of prenatal exposure to
 150 alcohol. The Department of Health shall also establish a
 151 telephone information hotline for persons to call to obtain
 152 information regarding Fetal Alcohol Syndrome, local licensed
 153 service providers participating in the network, or the nearest
 154 Fetal Alcohol Spectrum Disorders Diagnostic and Intervention
 155 Center participating in the network.

156 (3) Licensed service providers and Fetal Alcohol Spectrum
 157 Disorders Diagnostic and Intervention Centers participating in
 158 the Fetal Alcohol Syndrome Prevention Network shall establish a
 159 system for assessing charges for services rendered pursuant to
 160 statutorily authorized involuntary or court-ordered services in
 161 accordance with a client's ability to pay used by providers that
 162 receive state funds.

163 (4) The Department of Health, the Department of Children
 164 and Families, and the Division of Alcoholic Beverages and
 165 Tobacco of the Department of Business and Professional
 166 Regulation shall provide access to the public information

167 developed pursuant to subsection (1) on their respective
 168 Internet websites.

169 Section 4. Section 397.602, Florida Statutes, is created
 170 to read:

171 397.602 Voluntary admission for Fetal Alcohol Syndrome
 172 prevention.--

173 (1) An expectant mother who requests an evaluation for the
 174 necessity of counseling or treatment services to minimize the
 175 risk of alcohol exposure to her unborn child may obtain such
 176 evaluation at any licensed service provider or Fetal Alcohol
 177 Spectrum Disorders Diagnostic and Intervention Center
 178 participating in the Fetal Alcohol Syndrome Prevention Network.
 179 The service provider's evaluation must recommend the least
 180 restrictive course of action, plan, or service reasonably
 181 necessary to remove or minimize the risk of alcohol exposure to
 182 the unborn child that is appropriate to meet the expectant
 183 mother's needs.

184 (2) (a) The disability of minority for expectant mothers
 185 who have not attained 18 years of age is removed solely for the
 186 purpose of obtaining voluntary alcohol or substance abuse
 187 treatment services from a licensed service provider, and consent
 188 to such services by a minor has the same force and effect as if
 189 executed by a client who has reached the age of majority. Such
 190 consent is not subject to later disaffirmance based on minority.

191 (b) Except for purposes of law enforcement activities in
 192 connection with protective custody, the disability of minority
 193 is not removed if there is an involuntary admission for alcohol

194 | or substance abuse treatment services, in which case parental
 195 | participation may be required as the court finds appropriate.

196 | Section 5. Section 397.675, Florida Statutes, is amended
 197 | to read:

198 | 397.675 Criteria for involuntary admissions, including
 199 | protective custody, emergency admission, and other involuntary
 200 | assessment, involuntary treatment, and alternative involuntary
 201 | assessment for minors, for purposes of assessment and
 202 | stabilization, and for involuntary treatment.--

203 | (1) A person meets the criteria for involuntary admission
 204 | if there is good faith reason to believe the person is substance
 205 | abuse impaired and, because of such impairment, +

206 | ~~(1)~~ has lost the power of self-control with respect to
 207 | substance use; and ~~either~~

208 | ~~(2)~~(a) Has inflicted, or threatened or attempted to
 209 | inflict, or unless admitted is likely to inflict, physical harm
 210 | on himself or herself or another; or

211 | (b) Is in need of substance abuse services and, by reason
 212 | of substance abuse impairment, his or her judgment has been so
 213 | impaired that the person is incapable of appreciating his or her
 214 | need for such services and of making a rational decision in
 215 | regard thereto; however, mere refusal to receive such services
 216 | does not constitute evidence of lack of judgment with respect to
 217 | his or her need for such services.

218 | (2) (a) A person also may meet the criteria for involuntary
 219 | admission if the court finds that the person is an expectant
 220 | mother who, while knowing she is pregnant, has continued to
 221 | consume alcoholic beverages to such a degree that there is a

222 reasonable possibility that the unborn child, when born, may be
 223 diagnosed with Fetal Alcohol Syndrome unless the expectant
 224 mother ceases the consumption of alcoholic beverages and that
 225 there is good cause to believe she will continue to consume
 226 alcoholic beverages if not involuntarily admitted to a treatment
 227 facility. Sections 397.501 and 397.581 apply to persons meeting
 228 the criteria for involuntary admission under this subsection.
 229 For persons involuntarily admitted under this subsection, only
 230 licensed service providers, as defined in s. 397.311, that have
 231 agreed to participate in providing counseling, detoxification,
 232 residential treatment, or any other licensable service component
 233 listed in s. 397.311(18) to expectant mothers shall be used for
 234 purposes of involuntary admission.

235 (b) In determining whether an expectant mother meets the
 236 criteria for involuntary admission under paragraph (a), a court
 237 may consider the following facts in support of its findings:

238 1. Whether the expectant mother was notified of the
 239 effects of Fetal Alcohol Syndrome and was counseled against the
 240 consumption of alcoholic beverages.

241 2. Whether after being warned against the consumption of
 242 alcoholic beverages she continued to consume alcoholic
 243 beverages.

244 3. Whether the expectant mother has been offered and
 245 refused alcohol or substance abuse treatment or, if enrolled in
 246 alcohol or substance abuse treatment, failed to make a good
 247 faith effort to participate in the treatment program.

248 4. Whether the expectant mother exhibits a lack of self-
 249 control in the consumption of alcoholic beverages.

250 5. The quantity and frequency of alcoholic beverage
 251 consumption by the expectant mother.

252 6. Whether the expectant mother has been recommended for
 253 alcohol or substance abuse treatment prior to or during her
 254 pregnancy by her physician, spouse, or any relative or friend.

255 7. Medical expert testimony concerning the estimated
 256 alcohol-related risk to the health of the unborn child based on
 257 the expectant mother's continued consumption of alcoholic
 258 beverages.

259 8. Any other evidence the court considers relevant to
 260 determining whether the expectant mother's involuntary admission
 261 is necessary to prevent the continued consumption of alcoholic
 262 beverages by the expectant mother and that, absent such
 263 intervention, there exists a reasonable possibility that the
 264 unborn child, when born, may be diagnosed with Fetal Alcohol
 265 Syndrome.

266 Section 6. Subsection (1) of section 397.6772, Florida
 267 Statutes, is amended to read:

268 397.6772 Protective custody without consent.--

269 (1) If a person in circumstances which justify protective
 270 custody as described in s. 397.677 fails or refuses to consent
 271 to assistance and a law enforcement officer has determined that
 272 a hospital or a licensed detoxification or addictions receiving
 273 facility is the most appropriate place for the person, the
 274 officer may, after giving due consideration to the expressed
 275 wishes of the person:

276 (a) Take the person to a hospital or to a licensed
 277 detoxification or addictions receiving facility against the
 278 person's will but without using unreasonable force; or

279 (b) In the case of an adult, detain the person for his or
 280 her own protection in any municipal or county jail or other
 281 appropriate detention facility, except an expectant mother may
 282 not be detained at any municipal or county jail for purposes of
 283 Fetal Alcohol Syndrome prevention.

284
 285 Such detention is not to be considered an arrest for any
 286 purpose, and no entry or other record may be made to indicate
 287 that the person has been detained or charged with any crime. The
 288 officer in charge of the detention facility must notify the
 289 nearest appropriate licensed service provider within the first 8
 290 hours after detention that the person has been detained. It is
 291 the duty of the detention facility to arrange, as necessary, for
 292 transportation of the person to an appropriate licensed service
 293 provider with an available bed. Persons taken into protective
 294 custody must be assessed by the attending physician within the
 295 72-hour period and without unnecessary delay, to determine the
 296 need for further services.

297 Section 7. Section 397.6791, Florida Statutes, is amended
 298 to read:

299 397.6791 Emergency admission; persons who may
 300 initiate.--The following persons may request an emergency
 301 admission:

302 (1) In the case of an adult, the certifying physician, the
 303 person's spouse or guardian, any relative of the person, or any

304 other responsible adult who has personal knowledge of the
 305 person's substance abuse impairment.

306 (2) In the case of an adult expectant mother consuming
 307 alcoholic beverages so as to place her unborn child at risk of
 308 Fetal Alcohol Syndrome, the certifying physician joined by the
 309 expectant mother's spouse, parent or guardian, or sibling,
 310 provided the certifying physician and other person joining in
 311 the request sign an affidavit stating that such emergency
 312 admission is necessary to avert a substantial alcohol-related
 313 risk to the health of the unborn child and that the expectant
 314 mother has been offered and refused alcohol or other substance
 315 abuse treatment services.

316 (3)~~(2)~~ In the case of a minor, including any unemancipated
 317 minor who is an expectant mother, the minor's parent, legal
 318 guardian, or legal custodian.

319 Section 8. Section 397.6793, Florida Statutes, is amended
 320 to read:

321 397.6793 Physician's certificate for emergency
 322 admission.--

323 (1) The physician's certificate must include the name of
 324 the person to be admitted, the relationship between the person
 325 and the physician, the relationship between the applicant and
 326 the physician, any relationship between the physician and the
 327 licensed service provider, and a statement that the person has
 328 been examined and assessed within 5 days of the application
 329 date, and must include factual allegations with respect to the
 330 need for emergency admission, including:

331 (a) The reason for the physician's belief that the person
 332 is substance abuse impaired; and

333 (b) The reason for the physician's belief that because of
 334 such impairment the person has lost the power of self-control
 335 with respect to substance abuse; and either

336 (c)1. The reason the physician believes that the person
 337 has inflicted or is likely to inflict physical harm on himself
 338 or herself or others unless admitted; or

339 2. The reason the physician believes that the person's
 340 refusal to voluntarily receive care is based on judgment so
 341 impaired by reason of substance abuse that the person is
 342 incapable of appreciating his or her need for care and of making
 343 a rational decision regarding his or her need for care.

344 (2) When the emergency admission is for an expectant
 345 mother consuming alcoholic beverages so as to place her unborn
 346 child at risk of Fetal Alcohol Syndrome, the physician's
 347 certificate must include the name of the person to be admitted,
 348 the relationship between the person and the physician, the
 349 relationship between the applicant and the physician, any
 350 relationship between the physician and the licensed service
 351 provider, a statement that the person has been examined and
 352 assessed within 5 days of the application date, and a statement
 353 of facts based on the expectant mother's consumption of
 354 alcoholic beverages that indicates the need for emergency
 355 admission to avert or reduce a substantial alcohol-related risk
 356 to the health of the unborn child, that the expectant mother has
 357 been counseled against the consumption of alcoholic beverages

358 during pregnancy, and that she has been offered and refused
 359 alcohol or other substance abuse treatment services.

360 ~~(3)(2)~~ The physician's certificate must recommend the
 361 least restrictive type of service that is appropriate for the
 362 person. The certificate must be signed by the physician.

363 ~~(4)(3)~~ A signed copy of the physician's certificate shall
 364 accompany the person, and shall be made a part of the person's
 365 clinical record, together with a signed copy of the application.
 366 The application and physician's certificate authorize the
 367 involuntary admission of the person pursuant to, and subject to
 368 the provisions of ss. 397.679-397.6797.

369 ~~(5)(4)~~ The physician's certificate must indicate whether
 370 the person requires transportation assistance for delivery for
 371 emergency admission and specify, pursuant to s. 397.6795, the
 372 type of transportation assistance necessary.

373 Section 9. Section 397.681, Florida Statutes, is amended
 374 to read:

375 397.681 Involuntary petitions; general provisions; court
 376 jurisdiction and right to counsel.--

377 (1) JURISDICTION.--The courts have jurisdiction of
 378 involuntary assessment and stabilization petitions and
 379 involuntary treatment petitions for substance abuse impaired
 380 persons, and for expectant mothers consuming alcoholic beverages
 381 so as to place their unborn child at risk for Fetal Alcohol
 382 Syndrome. ~~such~~ Petitions must be filed with the clerk of the
 383 court in the county where the person is located. The chief judge
 384 may appoint a general or special magistrate to preside over all

385 or part of the proceedings. The alleged impaired person is named
 386 as the respondent.

387 (2) RIGHT TO COUNSEL.--A respondent has the right to
 388 counsel at every stage of a proceeding relating to a petition
 389 for his or her involuntary assessment and a petition for his or
 390 her involuntary treatment authorized in this chapter ~~for~~
 391 ~~substance abuse impairment~~. A respondent who desires counsel and
 392 is unable to afford private counsel has the right to court-
 393 appointed counsel and to the benefits of s. 57.081. If the court
 394 believes that the respondent needs the assistance of counsel,
 395 the court shall appoint such counsel for the respondent without
 396 regard to the respondent's wishes. If the respondent is a minor
 397 not otherwise represented in the proceeding, the court shall
 398 immediately appoint a guardian ad litem to act on the minor's
 399 behalf.

400 Section 10. Section 397.6811, Florida Statutes, is amended
 401 to read:

402 397.6811 Involuntary assessment and stabilization.--A
 403 person determined by the court to appear to meet the criteria
 404 for involuntary admission under s. 397.675 may be admitted for a
 405 period of 5 days to a hospital or to a licensed detoxification
 406 facility or addictions receiving facility, for involuntary
 407 assessment and stabilization or to a less restrictive component
 408 of a licensed service provider for assessment only upon entry of
 409 a court order or upon receipt by the licensed service provider
 410 of a petition. Involuntary assessment and stabilization may be
 411 initiated by the submission of a petition to the court.

HB 1239

2007

412 (1) If the person upon whose behalf the petition is being
 413 filed is an adult, a petition for involuntary assessment and
 414 stabilization may be filed by the respondent's spouse or
 415 guardian, any relative, a private practitioner, the director of
 416 a licensed service provider or the director's designee, or any
 417 three adults who have personal knowledge of the respondent's
 418 substance abuse impairment. If the person upon whose behalf the
 419 petition is being filed is an adult expectant mother consuming
 420 alcoholic beverages so as to place her unborn child at risk of
 421 Fetal Alcohol Syndrome, a petition for involuntary assessment
 422 and stabilization may be filed by the respondent's spouse,
 423 parent or guardian, or sibling, and joined by a physician.

424 (2) If the person upon whose behalf the petition is being
 425 filed is a minor, including any unemancipated minor who is an
 426 expectant mother, a petition for involuntary assessment and
 427 stabilization may be filed by a parent, legal guardian, legal
 428 custodian, or licensed service provider.

429 Section 11. Section 397.6814, Florida Statutes, is amended
 430 to read:

431 397.6814 Involuntary assessment and stabilization;
 432 contents of petition.--

433 (1) A petition for involuntary assessment and
 434 stabilization must contain the name of the respondent; the name
 435 of the applicant or applicants; the relationship between the
 436 respondent and the applicant; the name of the respondent's
 437 attorney, if known, and a statement of the respondent's ability
 438 to afford an attorney; and must state facts to support the need
 439 for involuntary assessment and stabilization, including:

440 ~~(a)(1)~~ The reason for the petitioner's belief that the
441 respondent is substance abuse impaired; and

442 ~~(b)(2)~~ The reason for the petitioner's belief that because
443 of such impairment the respondent has lost the power of self-
444 control with respect to substance abuse; and ~~either~~

445 ~~(c)1.(3)(a)~~ The reason the petitioner believes that the
446 respondent has inflicted or is likely to inflict physical harm
447 on himself or herself or others unless admitted; or

448 ~~2.(b)~~ The reason the petitioner believes that the
449 respondent's refusal to voluntarily receive care is based on
450 judgment so impaired by reason of substance abuse that the
451 respondent is incapable of appreciating his or her need for care
452 and of making a rational decision regarding that need for care.
453 If the respondent has refused to submit to an assessment, such
454 refusal must be alleged in the petition.

455 (2) When a petition for involuntary assessment and
456 stabilization is for an expectant mother consuming alcoholic
457 beverages so as to place her unborn child at risk of Fetal
458 Alcohol Syndrome, the petition must contain the name of the
459 person to be assessed, the relationship between the person and
460 the physician, the relationship between the applicant and the
461 physician, any relationship between the physician and the
462 licensed service provider, and a statement of facts based on the
463 expectant mother's consumption of alcoholic beverages that
464 indicates the need for involuntary assessment and stabilization
465 to avert or reduce a substantial alcohol related risk to the
466 health of her unborn child, that the expectant mother has been
467 counseled against the consumption of alcoholic beverages during

468 pregnancy, and that she has been offered and refused alcohol or
 469 other substance abuse treatment services.

470 Section 12. Section 397.6815, Florida Statutes, is amended
 471 to read:

472 397.6815 Involuntary assessment and stabilization;
 473 procedure.--Upon receipt and filing of the petition for the
 474 involuntary assessment and stabilization of a substance abuse
 475 impaired person or an expectant mother consuming alcoholic
 476 beverages so as to place her unborn child at risk for Fetal
 477 Alcohol Syndrome by the clerk of the court, the court shall
 478 ascertain whether the respondent is represented by an attorney,
 479 and if not, whether, on the basis of the petition, an attorney
 480 should be appointed; and shall:

481 (1) Provide a copy of the petition and notice of hearing
 482 to the respondent; the respondent's parent, guardian, or legal
 483 custodian, in the case of a minor; the respondent's attorney, if
 484 known; the petitioner; the respondent's spouse or guardian, if
 485 applicable; and such other persons as the court may direct, and
 486 have such petition and notice personally delivered to the
 487 respondent if he or she is a minor. The court shall also issue a
 488 summons to the person whose admission is sought and conduct a
 489 hearing within 10 days; or

490 (2) Without the appointment of an attorney and, relying
 491 solely on the contents of the petition, enter an ex parte order
 492 authorizing the involuntary assessment and stabilization of the
 493 respondent. The court may order a law enforcement officer or
 494 other designated agent of the court to take the respondent into

495 custody and deliver him or her to the nearest appropriate
 496 licensed service provider.

497 Section 13. Section 397.695, Florida Statutes, is amended
 498 to read:

499 397.695 Involuntary treatment; persons who may petition.--

500 (1) If the respondent is an adult, a petition for
 501 involuntary treatment may be filed by the respondent's spouse or
 502 guardian, any relative, a service provider, or any three adults
 503 who have personal knowledge of the respondent's substance abuse
 504 impairment and his or her prior course of assessment and
 505 treatment. If the respondent on whose behalf the petition is
 506 being filed is an adult expectant mother consuming alcoholic
 507 beverages so as to place her unborn child at risk of Fetal
 508 Alcohol Syndrome, a petition for involuntary treatment may be
 509 filed by the respondent's spouse, parent or guardian, or
 510 sibling, and joined by a physician.

511 (2) If the respondent is a minor, including any
 512 unemancipated minor who is an expectant mother, a petition for
 513 involuntary treatment may be filed by a parent, legal guardian,
 514 or service provider.

515 Section 14. Section 397.6951, Florida Statutes, is amended
 516 to read:

517 397.6951 Contents of petition for involuntary treatment.--

518 (1) A petition for involuntary treatment must contain the
 519 name of the respondent to be admitted; the name of the
 520 petitioner or petitioners; the relationship between the
 521 respondent and the petitioner; the name of the respondent's
 522 attorney, if known, and a statement of the petitioner's

HB 1239

2007

523 knowledge of the respondent's ability to afford an attorney; the
524 findings and recommendations of the assessment performed by the
525 qualified professional; and the factual allegations presented by
526 the petitioner establishing the need for involuntary treatment,
527 including:

528 ~~(a)(1)~~ The reason for the petitioner's belief that the
529 respondent is substance abuse impaired; and

530 ~~(b)(2)~~ The reason for the petitioner's belief that because
531 of such impairment the respondent has lost the power of self-
532 control with respect to substance abuse; and ~~either~~

533 ~~(c)1.(3)(a)~~ The reason the petitioner believes that the
534 respondent has inflicted or is likely to inflict physical harm
535 on himself or herself or others unless admitted; or

536 ~~2.(b)~~ The reason the petitioner believes that the
537 respondent's refusal to voluntarily receive care is based on
538 judgment so impaired by reason of substance abuse that the
539 respondent is incapable of appreciating his or her need for care
540 and of making a rational decision regarding that need for care.

541 (2) When a petition for involuntary treatment is for an
542 expectant mother consuming alcoholic beverages so as to place
543 her unborn child at risk of Fetal Alcohol Syndrome, the petition
544 must contain the name of the person to be assessed, the
545 relationship between the person and the physician, the
546 relationship between the applicant and the physician, any
547 relationship between the physician and the licensed service
548 provider, and a statement of facts based on the expectant
549 mother's consumption of alcoholic beverages that indicate the
550 need for involuntary treatment to avert or reduce a substantial

551 alcohol-related risk to the health of her unborn child, that the
 552 expectant mother has been counseled against the consumption of
 553 alcoholic beverages during pregnancy, and that she has been
 554 offered and refused alcohol or other substance abuse treatment
 555 services.

556 Section 15. Section 397.6955, Florida Statutes, is amended
 557 to read:

558 397.6955 Duties of court upon filing of petition for
 559 involuntary treatment.--Upon the filing of a petition for the
 560 involuntary treatment of a substance abuse impaired person or an
 561 expectant mother consuming alcoholic beverages so as to place
 562 her unborn child at risk for Fetal Alcohol Syndrome with the
 563 clerk of the court, the court shall immediately determine
 564 whether the respondent is represented by an attorney or whether
 565 the appointment of counsel for the respondent is appropriate.
 566 The court shall schedule a hearing to be held on the petition
 567 within 10 days. A copy of the petition and notice of the hearing
 568 must be provided to the respondent; the respondent's parent,
 569 guardian, or legal custodian, in the case of a minor; the
 570 respondent's attorney, if known; the petitioner; the
 571 respondent's spouse or guardian, if applicable; and such other
 572 persons as the court may direct, and have such petition and
 573 order personally delivered to the respondent if he or she is a
 574 minor. The court shall also issue a summons to the person whose
 575 admission is sought.

576 Section 16. Section 397.6957, Florida Statutes, is amended
 577 to read:

578 397.6957 Hearing on petition for involuntary treatment.--

579 (1) At a hearing on a petition for involuntary treatment,
 580 the court shall hear and review all relevant evidence, including
 581 the review of results of the assessment completed by the
 582 qualified professional in connection with the respondent's
 583 protective custody, emergency admission, involuntary assessment,
 584 or alternative involuntary admission. The respondent must be
 585 present unless the court finds that his or her presence is
 586 likely to be injurious to himself or herself or others, in which
 587 event the court must appoint a guardian advocate to act in
 588 behalf of the respondent throughout the proceedings.

589 (2) For a petition seeking treatment based on substance
 590 abuse impairment, the petitioner has the burden of proving by
 591 clear and convincing evidence:

- 592 (a) The respondent is substance abuse impaired, and
- 593 (b) Because of such impairment the respondent has lost the
- 594 power of self-control with respect to substance abuse; and
- 595 either

596 1. The respondent has inflicted or is likely to inflict
 597 physical harm on himself or herself or others unless admitted;
 598 or

599 2. The respondent's refusal to voluntarily receive care is
 600 based on judgment so impaired by reason of substance abuse that
 601 the respondent is incapable of appreciating his or her need for
 602 care and of making a rational decision regarding that need for
 603 care.

604 (3) For a petition seeking treatment of an expectant
 605 mother consuming alcoholic beverages so as to place her unborn
 606 child at risk for Fetal Alcohol Syndrome, the petitioner has the

607 burden of proving by clear and convincing evidence that the
 608 expectant mother, while knowing she is pregnant, has continued
 609 to consume alcoholic beverages to such a degree that there is a
 610 reasonable possibility that the unborn child, when born, may be
 611 diagnosed with Fetal Alcohol Syndrome unless the expectant
 612 mother ceases the consumption of alcoholic beverages and that
 613 there is good cause to believe she will continue to consume
 614 alcoholic beverages if not involuntarily admitted to a treatment
 615 facility.

616 (4)~~(3)~~ At the conclusion of the hearing the court shall
 617 either dismiss the petition or order the respondent to undergo
 618 involuntary substance abuse treatment, with the respondent's
 619 chosen licensed service provider to deliver the involuntary
 620 substance abuse treatment where possible and appropriate.

621 Section 17. Section 397.697, Florida Statutes, is amended
 622 to read:

623 397.697 Court determination; effect of court order for
 624 involuntary substance abuse treatment.--

625 (1) When the court finds that the conditions for
 626 involuntary ~~substance abuse~~ treatment have been proved by clear
 627 and convincing evidence, it may order the respondent to undergo
 628 involuntary treatment by a licensed service provider for a
 629 period not to exceed 60 days. If the court finds it necessary,
 630 it may direct the sheriff to take the respondent into custody
 631 and deliver him or her to the licensed service provider
 632 specified in the court order, or to the nearest appropriate
 633 licensed service provider, for involuntary treatment. When the
 634 conditions justifying involuntary treatment no longer exist, the

635 client must be released as provided in s. 397.6971. When the
 636 conditions justifying involuntary treatment are expected to
 637 exist after 60 days of treatment, a renewal of the involuntary
 638 treatment order may be requested pursuant to s. 397.6975 prior
 639 to the end of the 60-day period.

640 (2) In all cases resulting in an order for involuntary
 641 ~~substance abuse~~ treatment, the court shall retain jurisdiction
 642 over the case and the parties for the entry of such further
 643 orders as the circumstances may require. The court's
 644 requirements for notification of proposed release must be
 645 included in the original treatment order.

646 (3) An involuntary treatment order authorizes the licensed
 647 service provider to require the client to undergo such treatment
 648 as will benefit him or her, including treatment at any
 649 licensable service component of a licensed service provider.

650 Section 18. Effective October 1, 2007, section 562.063,
 651 Florida Statutes, is created to read:

652 562.063 Health warning signs; posting requirement;
 653 penalty.--

654 (1) (a) Each vendor licensed to sell alcoholic beverages
 655 for consumption on or off the vendor's premises shall cause a
 656 health warning sign that complies with the provisions of
 657 paragraph (b) to be posted on the licensed premises where
 658 alcoholic beverages are sold, at a location in each room where
 659 the alcoholic beverages are available for sale, and in such a
 660 fashion as to be clearly visible to the patrons of the licensed
 661 vendor.

689 second degree, punishable as provided in s. 775.082 and s.
 690 775.083.

691 Section 19. The Division of Alcoholic Beverages and
 692 Tobacco of the Department of Business and Professional
 693 Regulation shall produce and distribute health warning signs in
 694 compliance with s. 562.063, Florida Statutes, as created by this
 695 act.

696 Section 20. Establishment of Fetal Alcohol Spectrum
 697 Disorders Diagnostic and Intervention Centers; professional
 698 training.--The Department of Health shall contract with the
 699 Florida Center for Child and Family Development to establish
 700 Fetal Alcohol Spectrum Disorders Diagnostic and Intervention
 701 Centers and develop and provide professional training for
 702 Healthy Families, Healthy Start, child protection, child care,
 703 domestic violence, behavioral health care, education, and
 704 physical health care professionals as well as any other groups
 705 working with children or pregnant women. The Fetal Alcohol
 706 Spectrum Disorders Diagnostic and Intervention Centers shall be
 707 located in Sarasota, Hillsborough, Duval, and Miami-Dade
 708 Counties and other counties to be added as need arises and funds
 709 are sufficient for staffing.

710 Section 21. Except as otherwise expressly provided in this
 711 act, this act shall take effect July 1, 2007.

HB 1425
Relating to Child Sexual Abuse Reporting
and Evidence Collection
By Rep. Baxley

- Requires any health care practitioner, or person acting under the supervision of a health care practitioner, who knows or reasonably should know that a child under 16 years of age is pregnant, to report the pregnancy of a person under 16 years of age to the appropriate sheriff or municipal law enforcement agency within 24 hours of treatment.
- Requires any employee, volunteer, or other person acting on behalf of an abortion clinic or an abortion referral or counseling agency who knows or reasonably should know that a child under 16 years of age is pregnant, to report the pregnancy of a person under 16 years of age to the appropriate sheriff or municipal law enforcement agency within 24 hours of treatment.
- Requires the collection of DNA material from any aborted fetus and the transmission of said DNA material to the Department of Law Enforcement, which is required to test the DNA material in an effort to confirm the identity of the father of the fetus. Specifies the type of sample needed for the collection of DNA material.
- Authorizes the use of collected DNA material for prosecution for any criminal or civil proceeding connected to the pregnancy, including prosecution of a health care provider for failure to make a report or collect evidence as required in the bill.
- Authorizes the Department of Health to revoke or suspend a health care practitioner's license for up to 2 years for violations of any provision of the bill.
- Exempts health care practitioners from collection and reporting requirements when the patient demonstrates a valid marriage license or court-ordered removal of the disability of nonage.
- Abrogates the privileged quality of communication between any professional person and a patient who is under 16 years of age for compliance with provisions of the bill.
- Provides an effective date of July 1, 2007.

Fiscal Note

According to the Department of Health, the fiscal impact of this bill is unknown. The department is unable to estimate the cost associated with a potential increase of enforcement and disciplinary actions. Further, FDLE has determined that there will be a fiscal impact, but it is indeterminate at this time.

28 WHEREAS, the Florida Supreme Court has previously noted
29 "...that the legislature had enacted numerous statutes to
30 protect minors from harmful sexual conduct, and that those laws
31 clearly invoke a policy that 'any type of sexual conduct
32 involving a child constitutes an intrusion upon the rights of
33 that child, whether or not the child consents ... [therefore]
34 society has a compelling interest in intervening to stop such
35 misconduct.'" J.A.S. v. State, 705 So.2d 1381 (Fla. 1998), and

36 WHEREAS, the Legislature agrees with the conclusion of the
37 Florida Supreme Court in J.A.S. v. State, supra, that "whatever
38 the extent of a minor's privacy rights, those rights 'do not
39 vitiate the legislature's efforts and authority to protect
40 [minors] from conduct of others.' (citation omitted).", and

41 WHEREAS, the Legislature finds that a child who is pregnant
42 and also under 16 years of age embodies evidence that a crime
43 has been committed, and

44 WHEREAS, the Legislature finds that successful criminal
45 prosecution of sexual offenders who prey upon and impregnate
46 children under 16 years of age is in the best interests of such
47 children and also furthers a compelling state interest in
48 preserving the public safety by increasing the likelihood that
49 such sexual offenders will be imprisoned and therefore unable to
50 continue to sexually abuse children, and

51 WHEREAS, the Legislature finds that the successful criminal
52 prosecution of sexual offenders who prey on children may depend
53 heavily on the preservation of physical evidence, including DNA
54 evidence, in order to identify or confirm the identity of a

HB 1425

2007

55 person responsible for impregnating a child under 16 years of
 56 age, and

57 WHEREAS, the Legislature finds that where an impregnated
 58 child under 16 years of age seeks an abortion without
 59 voluntarily notifying her parent or guardian of the pregnancy or
 60 her intent to obtain an abortion, the state may be precluded
 61 from effectively preserving physical evidence of a sexual
 62 offense committed against the child by less intrusive means,
 63 NOW, THEREFORE,

64

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

66

67 Section 1. Mandatory reporting of child sexual abuse;
 68 collection of evidence.--

69 (1) As used in this section, the term:

70 (a) "Abortion clinic" has the same meaning as in s.
 71 390.011, Florida Statutes.

72 (b) "Abortion referral or counseling agency" has the same
 73 meaning as in s. 390.025, Florida Statutes.

74 (c) "Health care practitioner" has the same meaning as in
 75 s. 456.001, Florida Statutes.

76 (2) Any health care practitioner, or any person acting
 77 under the supervision or direction of a health care
 78 practitioner, who knows or reasonably should know that a child
 79 under 16 years of age is pregnant shall report the pregnancy of
 80 the child to the appropriate sheriff or municipal law
 81 enforcement agency within 24 hours after the time the person

82 ascertained or reasonably should have ascertained such
 83 knowledge.

84 (3) Any employee, volunteer, or other person acting on
 85 behalf of an abortion clinic or an abortion referral or
 86 counseling agency who knows or reasonably should know that a
 87 child under 16 years of age is pregnant shall report the
 88 pregnancy of such child to the appropriate sheriff or municipal
 89 law enforcement agency within 24 hours after the time the person
 90 ascertained or reasonably should have ascertained such
 91 knowledge.

92 (4) Any health care practitioner who performs an abortion
 93 on a child under 16 years of age shall collect, in accordance
 94 with rules of the Department of Law Enforcement, a sample of DNA
 95 suitable for testing from the child and the fetus. In the case
 96 of the child, a sample is suitable for testing if it consists of
 97 properly preserved blood or oral swabbings containing DNA. In
 98 the case of the fetus, a sample is suitable for testing if it
 99 consists of properly preserved blood or fetal tissue containing
 100 DNA. Samples collected pursuant to this section shall be
 101 immediately forwarded to the Department of Law Enforcement for
 102 testing in an effort to identify or confirm the identity of the
 103 person responsible for impregnating the child.

104 (5) All evidence derived pursuant to the provisions of
 105 this section may be used in any prosecution under ss. 794.011,
 106 800.04, and 827.04, Florida Statutes, or in any other criminal
 107 or civil proceeding arising in connection with the pregnancy,
 108 including any action arising out of any failure to make a report
 109 or collect evidence as required by this section.

110 (6) The Department of Health may revoke or suspend the
 111 license of any person or entity subject to the provisions of
 112 this section for a period not to exceed 2 years, or the
 113 department may refuse to renew such license, if it is determined
 114 in accordance with the provisions of chapter 120, Florida
 115 Statutes, that any provision of this section has been violated
 116 by that person or entity.

117 (7) This section does not apply when the child provides to
 118 the health care practitioner or abortion clinic personnel a
 119 certified copy of a marriage license that is recognizable under
 120 the laws of Florida or a certified copy of a court order
 121 indicating that the child has had the disability of nonage
 122 removed under s. 743.015, Florida Statutes, or a substantially
 123 similar statute of another jurisdiction.

124 (8) The Department of Law Enforcement is authorized to
 125 adopt rules for the administration and implementation of this
 126 section pursuant to ss. 120.536(1) and 120.54, Florida Statutes.

127 (9) The privileged quality of communication between any
 128 professional person and his or her child patient or client under
 129 16 years of age is abrogated to facilitate compliance with the
 130 requirements of this section.

131 Section 2. This act shall take effect July 1, 2007.