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# **Health & Human Services Access Subcommittee**

**Tuesday, April 5, 2011  
3:00 – 6:00 PM  
12 HOB**

**Dean Cannon  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Access Subcommittee

**Start Date and Time:** Tuesday, April 05, 2011 03:00 pm

**End Date and Time:** Tuesday, April 05, 2011 06:00 pm

**Location:** 12 HOB

**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 131 Homelessness by Reed

CS/HB 301 Youth Athletes by K-20 Innovation Subcommittee, Renuart

CS/HB 405 Employment Liability for Persons with Disabilities by Civil Justice Subcommittee, Baxley

HB 843 Teaching Agency for Home and Community-Based Care by Diaz

HB 1171 Long-Term Care Ombudsman Program by Harrison

HB 1409 Public Swimming Pools and Spas by Hudson

HB 1463 Crisis Stabilization Units by Hudson, Workman

**Consideration of the following proposed committee bill(s):**

PCB HSAS 11-02 -- Health and Human Services

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, April 4, 2011.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, April 4, 2011.

**NOTICE FINALIZED on 04/01/2011 16:22 by Villar.Melissa**





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Teaching Agency for Home and Community-Based Care

SPONSOR(S): Diaz and others

TIED BILLS: IDEN./SIM. BILLS: SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Guzzo 	Schoolfield 
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates s. 430.81, F.S., which authorizes the Agency for Health Care Administration (AHCA) to designate a home health agency as a teaching agency for home and community-based care if the home health agency meets certain requirements. The bill defines the term "teaching agency for home and community-based care" as a home health agency licensed under part III of chapter 400, F.S. that has access to a resident population of sufficient size to support education, training, and research relating to geriatric care.

The bill provides that home health agencies seeking designation as a teaching agency for home and community based care may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g), F.S., in lieu of general and professional liability insurance coverage.

The bill also authorizes AHCA to charge a fee of up to \$250 for home health agencies seeking designation as a teaching agency for home and community-based care.

Finally, the bill authorizes a teaching agency to be affiliated with an academic research university in the state that meets certain criteria.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### **Lead Agencies**

The Department of Elder Affairs administers programs and services through designated planning and service areas. The department is designated as the state unit on aging as defined in the federal Older Americans Act (the act) and must exercise all responsibilities pursuant to the act.<sup>1</sup> The Older Americans Act requires the department to fund a service delivery system through designated area agencies on aging in each of the state's 11 planning and service areas. In addition, chapter 430, F.S., requires the department to fund service-delivery lead agencies that coordinate and deliver care at the consumer level in the counties comprising each planning and service area.

Lead agencies are designated by Area Agencies on Aging once every six years through a competitive procurement process.<sup>2</sup> Lead agencies provide and coordinate services for elders in designated areas. There are 58 lead agencies serving all of Florida's 67 counties.<sup>3</sup> Lead agency providers are either non-profit corporations or county government agencies. Lead agencies are the only entities that can provide fee-for-service case management on an ongoing basis.<sup>4</sup> Lead agency services include:

- Care Management
- Adult Day Care
- Adult Day Health Care
- Home Delivered Meals
- Case Aide
- Chore Service
- Companionship
- Consumer Medical Supplies
- Counseling
- Escort
- Emergency Alert Response
- Emergency Home Repair
- Home Health Aide
- Homemaker
- Home Nursing
- Information and Referral
- Legal Assistance
- Medical Therapeutic Services
- Personal Care – help with bathing, eating and dressing.
- Respite Care
- Shopping Assistance
- Transportation

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<sup>1</sup> Section 20.41(5), F.S.

<sup>2</sup> Section 430.203(9), F.S.

<sup>3</sup> Department of Elder Affairs, *Elder Services Network Components and Their Roles*, available at <http://elderaffairs.state.fl.us/english/pubs/pubs/sops2007/Files/Elder%20Services%20Network%20Components%20and%20their%20roles.pdf> (last visited April 1, 2011).

<sup>4</sup> Id.

## Home Health Agencies

“Home health agency” is defined in part III of chapter 400, F.S., as an organization that provides home health services and staffing services. Home health services are health and medical services and medical supplies furnished to an individual in the individual’s home or place of residence. These services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.

There are 2,317 licensed home health agencies in Florida as of February 23, 2011. Home health agencies must be licensed by the Agency for Health Care Administration. The licensure requirements for home health agencies are in the general provisions of part II of chapter 408, F.S., the specific home health agency provisions of part II of chapter 400, F.S., and chapter 59A-8 of the Florida Administrative Code. Florida law prohibits unlicensed activity and authorizes AHCA to fine unlicensed providers \$500 for each day of noncompliance, and authorizes state attorneys and AHCA to bring an action to enjoin unlicensed providers.<sup>5</sup> Unlicensed activity is a second-degree misdemeanor and each day of continued operation is a separate offense.<sup>6</sup>

The requirements for training of health care professionals are under the Department of Education and the requirements for licensing and continuing education are determined by the Board of Nursing and other boards under the Department of Health. Section 400.497(1), F.S., permits home health agencies to train their own home health aides. However, home health agencies must become licensed by the Department of Education as a career education school in order to train any home health aides that will be employed by other home health agencies to train certified nursing assistants or others.<sup>7</sup>

Home health agencies can become certified for Medicare and/or Medicaid, but they must meet the Medicare Conditions of Participation in 42 Code of Federal Regulations, Part 484 prior to certification. The federal regulations require applicants to comply with a complex comprehensive assessment prior to an initial certification survey.

## Academic Health and Science Centers

Academic Health and Science Centers in the State University System have three primary purposes:

- Teach students going into healthcare professions;
- Conduct research to advance healthcare knowledge; and
- Serve patients with health care problems.

These centers provide facilities, faculty and staff, curriculum, and opportunities for health science students to train in the various health science areas and get practical experience in their disciplines during their training. There are two state Academic Health and Science Centers in Florida. These centers are located at the University of Florida and the University of South Florida. Currently, there are two other medical education programs in the State University System however they are not as extensive as health centers, which include multiple health education programs.<sup>8</sup>

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<sup>5</sup> Section 408.464(4)(b) and (f), F.S.

<sup>6</sup> Section 408.464(4)(e), F.S.

<sup>7</sup> Florida Agency for Health Care Administration Bill Analysis, Economic Statement and Fiscal Note, House Bill 843 (March 22, 2011).

<sup>8</sup> “Board of Governors, State University System of Florida Academic Health and Science Centers,” Office of Program Policy Analysis and Government Accountability, Government Program Summaries. February 25, 2011.

Funding for the Academic Health and Science Centers is provided annually by the Legislature in the form of specific appropriations in the General Appropriations Act to the two centers. For Fiscal Year 2009-10, the program received a total of \$222.3 million from legislative appropriations, \$143.7 million in general revenue, and \$14.2 million in revenue from lottery, and \$52.6 million from the student fee budget authority.<sup>9</sup>

### **Teaching Nursing Home Pilot Project**

Section 430.80, F.S., was created by the Legislature in 1999 to establish a pilot project, allowing AHCA to implement a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility designated by AHCA as a teaching nursing home. Currently, there is no statute that provides a similar program for home and community-based care.

Pursuant to s. 430.80(3)(g), F.S., nursing home licensees must meet the following requirements to be designated as a teaching nursing home:

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accreditation program and hold a valid accreditation;
- Have been in business in Florida for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;
- Have a formalized contractual relationship with at least one accredited health profession education program located in Florida;
- Have senior staff members who hold formal faculty appointments at universities that have at least one accredited health profession education program; and
- Maintain insurance coverage pursuant to s. 400.141(1)(s) or proof of financial responsibility in a minimum amount of \$750,000.<sup>10</sup>

### **Special Insurance Provision**

Section 400.141(1)(s), F.S., requires all licensed nursing home facilities to maintain general and professional liability insurance coverage that is in force at all times. In lieu of general and professional liability insurance coverage, a state-designated teaching nursing home and its affiliated assisted living facilities created under s. 430.80, F.S., may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g), F.S.

In providing proof of financial ability to operate in the required minimum amount of \$750,000, such proof may include:

- Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52, F.S., or;
- Obtaining and maintaining pursuant to chapter 675, F.S., an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of Florida or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized to receive deposits in this state.

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<sup>9</sup> Id.

<sup>10</sup> Section 430.80(3), F.S.

## Effect of Proposed Changes

The bill creates s. 430.81, F.S., which authorizes AHCA to designate a home health agency as a teaching agency for home and community-based care. The requirements to receive designation as a teaching agency for home and community-based care are quite similar to the requirements for nursing homes seeking designation as a teaching nursing home under the teaching nursing home pilot project. In order to receive this designation, home health agencies must:

- Have been a not-for-profit, designated community care for the elderly lead agency for home and community-based services for more than 10 consecutive years and serve a geographic area with a minimum of 200,000 adults age 60 or older;
- Participate in a nationally recognized accreditation program and hold valid accreditation;
- Have been in business in Florida for a minimum of 30 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;
- Have a formalized affiliation agreement with at least one established academic research university with a nationally accredited health professions program in Florida;
- Have salaried academic faculty from a nationally accredited health professions program;
- Be a Medicare and Medicaid certified home health agency that has participated in the nursing home diversion program for a minimum of five consecutive years; and
- Maintain insurance coverage pursuant to s. 400.141(1)(s), F.S., or proof of financial responsibility in a minimum amount of \$750,000.

Proof of financial responsibility may include maintaining an escrow account or obtaining and maintaining an unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in the state. The bill provides that the letter of credit is to be used to satisfy the obligation of the agency to a claimant upon presentation of a final judgment against the facility or upon presentation of a settlement agreement signed by all parties to the agreement when the final judgment or settlement is a result of a liability claim against the agency.

The bill also provides a definition of the term “teaching agency for home and community-based care” as a home health agency that is licensed under part III of chapter 400, F.S. and has access to a resident population of sufficient size to support education, training, and research related to geriatric care.

The bill authorizes AHCA to charge a fee of up to \$250 to home health agencies seeking designation as a teaching agency for home and community-based care.

Finally, the bill authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of the frail and elderly population. The bill provides that a teaching agency for home and community-based care is to serve as a resource for research and for training health care professionals in providing health care services in homes and community-based settings to the frail and elderly persons.

### B. SECTION DIRECTORY:

**Section 1:** Creates s. 430.81, F.S., relating to implementation of a teaching agency for home and community-based care.

**Section 2:** Provides an effective date of July 1, 2011.

## 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:**

In order to seek designation as a teaching agency for home and community-based care, a home health agency may be required to pay AHCA a fee up to \$250.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 843

2011

28           (a) Has been a not-for-profit, designated community care  
 29 for the elderly lead agency for home and community-based  
 30 services for more than 10 consecutive years and serves a  
 31 geographic area with a minimum of 200,000 adults age 60 and  
 32 older.

33           (b) Participates in a nationally recognized accreditation  
 34 program and holds a valid accreditation, such as the  
 35 accreditation awarded by the Community Health Accreditation  
 36 Program.

37           (c) Has been in business in this state for a minimum of 30  
 38 consecutive years.

39           (d) Demonstrates an active program in multidisciplinary  
 40 education and research that relates to gerontology.

41           (e) Has a formalized affiliation agreement with at least  
 42 one established academic research university with a nationally  
 43 accredited health professions program in this state.

44           (f) Has salaried academic faculty from a nationally  
 45 accredited health professions program.

46           (g) Is a Medicare and Medicaid certified home health  
 47 agency that has participated in the nursing home diversion  
 48 program for a minimum of 5 consecutive years.

49           (h) Maintains insurance coverage pursuant to s.  
 50 400.141(1)(s) or proof of financial responsibility in a minimum  
 51 amount of \$750,000. Such proof of financial responsibility may  
 52 include:

53           1. Maintaining an escrow account consisting of cash or  
 54 assets eligible for deposit in accordance with s. 625.52; or

55           2. Obtaining and maintaining pursuant to chapter 675 an  
 56 unexpired, irrevocable, nontransferable, and nonassignable  
 57 letter of credit issued by any bank or savings association  
 58 authorized to do business in this state. This letter of credit  
 59 shall be used to satisfy the obligation of the agency to the  
 60 claimant upon presentation of a final judgment indicating  
 61 liability and awarding damages to be paid by the facility or  
 62 upon presentment of a settlement agreement signed by all parties  
 63 to the agreement when such final judgment or settlement is a  
 64 result of a liability claim against the agency.

65           (3) The Agency for Healthcare Administration may charge a  
 66 home health agency seeking designation as a teaching agency for  
 67 home and community-based care a fee, up to \$250, to comply with  
 68 this section.

69           (4) A teaching agency for home and community-based care  
 70 may be affiliated with an academic health center in this state.  
 71 The purpose of such affiliation is to foster the development of  
 72 methods for improving and expanding the capability of home  
 73 health agencies to respond to the medical, health care,  
 74 psychological, and social needs of frail and elderly persons by  
 75 providing the most effective and appropriate services. A  
 76 teaching agency for home and community-based care shall serve as  
 77 a resource for research and for training health care  
 78 professionals in providing health care services in homes and  
 79 community-based settings to frail and elderly persons.

80           Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 843 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative(s) Diaz offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 430.81, Florida Statutes, is created to  
8 read:

9 430.81 Implementation of a teaching agency for home and  
10 community-based care.-

11 (1) As used in this section, the term "teaching agency for  
12 home and community-based care" means a home health agency  
13 licensed under part III of chapter 400 that has access to a  
14 resident population of sufficient size to support education,  
15 training, and research relating to geriatric care.

16 (2) The Department of Elder Affairs may designate a home  
17 health agency as a teaching agency for home and community-based  
18 care if the home health agency:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 843 (2011)

Amendment No.

19 (a) Has been a not-for-profit, designated community care  
20 for the elderly lead agency for home and community-based  
21 services for more than 10 consecutive years.

22 (b) Participates in a nationally recognized accreditation  
23 program and holds a valid accreditation, such as the  
24 accreditation awarded by the Community Health Accreditation  
25 Program.

26 (c) Has been in business in this state for a minimum of 20  
27 consecutive years.

28 (d) Demonstrates an active program in multidisciplinary  
29 education and research that relates to gerontology.

30 (e) Has a formalized affiliation agreement with at least  
31 one established academic research university with a nationally  
32 accredited health professions program in this state.

33 (f) Has salaried academic faculty from a nationally  
34 accredited health professions program.

35 (g) Is a Medicare and Medicaid certified home health  
36 agency that has participated in the nursing home diversion  
37 program for a minimum of 5 consecutive years.

38 (h) Maintains insurance coverage pursuant to s.  
39 400.141(1)(s) or proof of financial responsibility in a minimum  
40 amount of \$750,000. Such proof of financial responsibility may  
41 include:

42 1. Maintaining an escrow account consisting of cash or  
43 assets eligible for deposit in accordance with s. 625.52; or

44 2. Obtaining and maintaining pursuant to chapter 675 an  
45 unexpired, irrevocable, nontransferable, and nonassignable  
46 letter of credit issued by any bank or savings association

Amendment No.

47 authorized to do business in this state. This letter of credit  
48 shall be used to satisfy the obligation of the agency to the  
49 claimant upon presentation of a final judgment indicating  
50 liability and awarding damages to be paid by the facility or  
51 upon presentment of a settlement agreement signed by all parties  
52 to the agreement when such final judgment or settlement is a  
53 result of a liability claim against the agency.

54 (3) A teaching agency for home and community-based care  
55 may be affiliated with an academic health center in this state.  
56 The purpose of such affiliation is to foster the development of  
57 methods for improving and expanding the capability of home  
58 health agencies to respond to the medical, health care,  
59 psychological, and social needs of frail and elderly persons by  
60 providing the most effective and appropriate services. A  
61 teaching agency for home and community-based care shall serve as  
62 a resource for research and for training health care  
63 professionals in providing health care services in home and  
64 community-based settings to frail and elderly persons.

65 Section 2. This act shall take effect July 1, 2011.  
66  
67  
68

69 -----  
70 **T I T L E A M E N D M E N T**

71 Remove the entire title and insert:

72 An act relating to a teaching agency for home and  
73 community-based care; creating s. 430.81, F.S.; providing  
74 a definition; authorizing the Department of Elder Affairs

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 843 (2011)

Amendment No.

75 | to designate a home health agency as a teaching agency for  
76 | home and community-based care; establishing criteria for  
77 | qualification; authorizing a teaching agency to be  
78 | affiliated with an academic research university in the  
79 | state that meets certain criteria; authorizing a teaching  
80 | agency to be affiliated with an academic health center;  
81 | providing an effective date.

82




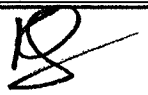


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1409 Public Swimming Pools and Spas

SPONSOR(S): Hudson and others

TIED BILLS: IDEN./SIM. BILLS: SB 1480

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor 	Schoolfield 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1409 creates s. 514. 0315, F.S., relating to safety features for public swimming pools and spas.

The bill requires that a public swimming pool or spa be equipped with an anti-entrapment system or device.

If a public pool or spa has one main drain, the bill requires that the owner or operator of the pool choose one of the following:

- A safety vacuum release system;
- A suction-limiting vent system;
- A gravity drainage system;
- An automatic pump system; or
- A device that disables the drain.

The bill incorporates into Florida Statute generally accepted industry standards and mirrors federal law.

There is no fiscal impact on the state from this bill.

The bill provides for an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Background

##### *Virginia Graeme Baker Pool and Spa Safety Act*

In 2007, the Virginia Graeme Baker Pool and Spa Safety Act was passed by the U.S. Congress.<sup>1</sup> The act was named for the 7 year old granddaughter of the former Secretary of State who died due to suction entrapment in a spa drain. The act created federal requirements for suction entrapment avoidance in pools and spas. Specifically, a pool is required to have a compliant drain cover, and one of the following five devices that would prevent entrapment:

- Safety vacuum release system;
- Suction-limiting vent system;
- Gravity drainage system;
- Automatic pump shut off system;
- Drain disablement; or
- Another system approved by the U.S. Consumer Product Safety Commission (CPSC).<sup>2</sup>

##### *DOH Rule and Statutory Authority*

Public pools and spas are regulated in Florida by the Department of Health (DOH) pursuant to chapter 514, Florida Statutes. DOH has rulemaking authority to protect the health, safety and welfare of bathers in public pools and spas.<sup>3</sup> By rule, DOH has required gravitational drainage systems with collector tanks since 1977 for public pools, and 1993 for public spas.<sup>4</sup> DOH rule provides this one option, although, other options are permitted in federal law. In 2008, DOH promulgated rules and a timetable to require retrofitting to gravitational drainage systems and collector tanks for pools and spa pools not already fitted with such a system.<sup>5</sup> For spa pools, the following implementation schedule applies:

- Built before 1977, retrofit by July 1, 2010,
- Built between 1977 and 1986, retrofit by July 1, 2011,
- Built between 1986 and 1995, retrofit by July 1, 2012.<sup>6</sup>

It is estimated that there are around 37,000 pools in Florida, and approximately 6,000 still require collector tanks to be installed to bring them into compliance with 64E-9.007(10), F.A.C.<sup>7</sup> DOH has a regulatory mechanism,<sup>8</sup> which allows the department to grant pool owners who demonstrate that they cannot comply, a variance from the rule.

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<sup>1</sup> 15 U.S.C. s. 8001.

<sup>2</sup> 15 U.S.C. s. 8004(c)(1)(A).

<sup>3</sup> S. 514.021, F.S.

<sup>4</sup> Department of Health HB 1409 Bill Analysis, Economic Statement and Fiscal Note, March 21, 2011. On file with Health and Human Services Access Subcommittee Staff.

<sup>5</sup> Ch. 64E-9.007 F.A.C., Recirculation and Treatment System Requirements.

<sup>6</sup> *Id.*

<sup>7</sup> Email from Florida Pool Association on file with Health and Human Services Access Subcommittee staff, April 1, 2011.

<sup>8</sup> Ch. 64E-9.016.

## Exemptions

Section 514.0115, F.S., provides exemptions from chapter 514 Florida Statutes requirements for pools that are associated with hospitals, medical facilities, child caring agencies, private pools for instructional purposes and condominiums with no more than 32 units. For condominiums with 32 units or less, DOH has authority to regulate water quality. If there are more than 32 units, DOH inspects the pool annually for water quality and life saving equipment.<sup>9</sup>

## Pool Industry Standards

The American Society of Mechanical Engineers (AMSE) , the American National Standards Institute (ANSI) and the American Standard for Testing and Materials (ASTM) provide industry standards and establish materials, testing and marking requirements for suction outlet fittings in swimming pools, wading pools, spas, and hot tubs, and other aquatic facilities. Suction outlet fittings include all components including the sump, body, cover, grate, and hardware. Skimmers and vacuum connection covers are excluded from the standard.<sup>10</sup>

## Effect of Proposed Changes

The bill creates s. 514.0315, F.S., related to required safety features for public swimming pools and spas. The new law would require all public pools and spas to be fitted with an anti-entrapment device that complies with AMSE, ANSI<sup>11</sup> standard A112.19.8 or ASTM standard F2387<sup>12</sup>. Currently, the DOH rule, 64E-9.007(10), F.A.C. only provides one option for anti-entrapment devices. The bill allows for increased options for public pools and spas.

The bill provides that a single drain pool or spa, other than an unblockable drain, to be equipped with at least one of the following:

- A safety vacuum release system that conforms with ASME/ANSI standard A112.19.17 or American Society for Testing and Materials (ASTM) standard F2387;
- A suction-limiting vent system with a tamper-resistant atmospheric opening;
- A gravity drainage system that uses a collector tank;
- An automatic pump system; or
- A device that disables the drain.

The bill provides that the selection of the anti-entrapment device is the sole discretion of the owner or operator of the public pool or spa.

## B.SECTION DIRECTORY:

**Section 1:** Creates s. 514.0315, F.S., relating to safety features for public swimming pools and spas.

**Section 2:** Provides an effective date of July 1, 2011.

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<sup>9</sup> s. 514.0115 (2) (b), F.S.

<sup>10</sup> AMSE Standard A112.19.8, vii.

<sup>11</sup> AMSE standards provide guidance to the industry and policy makers, and are to promote understanding in an industry. They are intended to represent the consensus of concerned parties, and are open to public comment. AMSE Standard A112.19.8, vii.

<sup>12</sup> ASTM is a voluntary standards organization that promulgates consensus driven industry benchmarks that are designed to improve product quality, enhance safety, facilitate market access and trade, and build consumer confidence. ASTM Standard F2387.

## 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:

There could be a cost savings, to the private sector, as pool owners will have more options for retrofitting their pools and spas.<sup>13</sup>

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>13</sup> Department of Health HB 1409 Bill Analysis, Economic Statement and Fiscal Note, March 21, 2011. On file with Health and Human Services Access Subcommittee Staff.

HB 1409

2011

1                   A bill to be entitled  
 2           An act relating to public swimming pools and spas;  
 3           creating s. 514.0315, F.S.; requiring public swimming  
 4           pools and spas to be equipped with certain safety  
 5           features; providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Section 514.0315, Florida Statutes, is created  
 10          to read:

11           514.0315 Required safety features for public swimming  
 12          pools and spas.—

13           (1) A public swimming pool or spa must be equipped with an  
 14          anti-entrapment system or device that complies with ASME/ANSI  
 15          standard A112.19.8, or any successor standard.

16           (2) A public swimming pool or spa with a single main drain  
 17          other than an unblockable drain must be equipped with at least  
 18          one of the following features that complies with any ASME, ANSI,  
 19          ASTM, or other applicable consumer product safety standard for  
 20          such system or device:

21           (a) A safety vacuum release system that ceases operation  
 22          of the pump, reverses the circulation flow, or otherwise  
 23          provides a vacuum release at a suction outlet when a blockage is  
 24          detected and that has been tested by an independent third party  
 25          and found to conform to ASME/ANSI standard A112.19.17, ASTM  
 26          standard F2387, or any successor standard.

27           (b) A suction-limiting vent system with a tamper-resistant  
 28          atmospheric opening.

HB 1409

2011

- 29        (c) A gravity drainage system that uses a collector tank.  
30        (d) An automatic pump shut-off system.  
31        (e) A device or system that disables the drain.  
32        (3) The determination and selection of a feature under  
33 subsection (2) is at the sole discretion of the owner or  
34 operator of the public swimming pool or spa.

35        Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1409 (2011)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative(s) Hudson offered the following:

4  
5 **Amendment**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 514.0315, Florida Statutes, is created to  
8 read:

9 514.0315 Required safety features for public swimming pools  
10 and spas.-

11 (1) All existing public swimming pools or spas must be  
12 equipped with an anti-entrapment system or device that complies  
13 with the American Society of Mechanical Engineers / American  
14 National Standards Institute standard A112.19.8, or any  
15 successor standard.

16 (2) All existing public swimming pools or spas with a  
17 single main drain other than an unblockable drain must be  
18 equipped with at least one of the following features that  
19 complies with any American Society of Mechanical Engineers /



Amendment No.1

20 American National Standards Institute, American Standard for  
21 Testing and Materials, or other applicable consumer product  
22 safety standard for such system or device:

23 (a) A safety vacuum release system that ceases operation of  
24 the pump, reverses the circulation flow, or otherwise provides a  
25 vacuum release at a suction outlet when a blockage is detected  
26 and that has been tested by an independent third party and found  
27 to conform to American Society of Mechanical Engineers/American  
28 National Standards Institute standard A112.19.17, American  
29 Standard for Testing and Materials standard F2387, or any  
30 successor standard.

31 (b) A suction-limiting vent system with a tamper-resistant  
32 atmospheric opening.

33 (c) A gravity drainage system that uses a collector tank.

34 (d) An automatic pump shut-off system.

35 (e) A device or system that disables the drain.

36 (3) The determination and selection of a feature under  
37 subsection (2) is at the sole discretion of the owner or  
38 operator of the public swimming pool or spa.

39 Section 2. This act shall take effect July 1, 2011.

HB 1463

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1463 Crisis Stabilization Units  
**SPONSOR(S):** Hudson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** HB 673, SB 1052

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Health & Human Services Committee			

**SUMMARY ANALYSIS**

The bill amends s. 394.875, F.S., increasing the current limit on the number of Crisis Stabilization Unit (CSU) beds from a maximum of 30 per facility to a maximum of 50 per facility.

This bill appears to have no fiscal impact.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *Crisis Stabilization Units (CSU's)*

A Crisis Stabilization Unit (CSU) provides assessment stabilization and treatment of individuals who are experiencing a mental health crisis.<sup>1</sup> Individuals who are involuntarily or voluntarily committed under the Baker Act may be evaluated in a CSU. The Department of Children and Families (DCF) designates both private and public facilities (CSUs) as Baker Act Receiving Facilities and has the authority to withdraw or suspend such designation.<sup>2</sup> CSUs provide service to both adults and children and are licensed by the Agency for Health Care Administration.

##### *CSU Capacity and Usage Rates*

There are currently 45 adult CSUs which include 872 beds and 21 children's CSUs which include 219 beds.<sup>3</sup> On average an individual stays 4.57 days in a CSU bed, with adults staying longer than children. Current law limits the maximum size of an individual CSU to 30 beds.<sup>4</sup> DCF reports that during fiscal year 2008-2009, CSU's for adult's averaged 84% bed capacity utilized statewide.<sup>5</sup>

DCF rule 65E-12.104(8), FAC, provides a guideline for planning CSU bed capacity of 10 beds per 100,000 people. Based on this formula, Florida should have 1,842 beds but currently has 1,091 statewide.<sup>6</sup> DCF reports that it is not uncommon for CSUs to be at their 30 bed capacity limit.<sup>7</sup> When this occurs, hospital emergency rooms are unable to access local CSU beds and individuals may be held longer than necessary in emergency rooms awaiting psychiatric evaluation and treatment.<sup>8</sup>

DCF provides CSU funding on a per bed basis and contracts for only a certain number of beds per facility.<sup>9</sup> All clients who come to a CSU are treated, regardless of their ability to pay for services.<sup>10</sup> The average cost per CSU bed day was \$438.03 for both children and adults in FY 2008-2009.<sup>11</sup>

##### *The Baker Act*

Chapter 394, Part I, Florida Statutes is the Florida Mental Health Act also known as "The Baker Act." This section provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this portion of the Baker Act through Baker Act receiving facilities (Crisis Stabilization Units) which provide for the examination of persons with evidence of a mental illness.<sup>12</sup>

#### **Effect of Proposed Changes**

The bill provides that a Crisis Stabilization Unit shall be limited in size to a maximum of 50 beds. This is an increase in capacity of 20 beds over the current 30 bed limit in statute.

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<sup>1</sup> s. 394.875(1)(a)

<sup>2</sup> s. 394.461, F.S.

<sup>3</sup> Crisis Stabilization Units, Crisis System Capacity Summary 3/4/2011, Department of Children and Families, email attachment from Jackie Beck, dated 3-4-2011.

<sup>4</sup> s. 394.875(1)(a)

<sup>5</sup> DCF Bill Analysis HB 673 (2/17/2011)

<sup>6</sup> Crisis Stabilization Units, Crisis System Capacity Summary 3/4/2011, Department of Children and Families, email attachment from Jackie Beck, dated 3-4-2011

<sup>7</sup> DCF Bill Analysis HB 673 (2/17/2011)

<sup>8</sup> Id.

<sup>9</sup> DCF Annual Report 2008-2009, Bed use in Public Receiving Facilities and Treatment Facilities.

<sup>10</sup> s. 394.875, (1)(a) F.S.

<sup>11</sup> DCF Annual Report 2008-2009, Bed use in Public Receiving Facilities and Treatment Facilities

<sup>12</sup> s. 394.455(26), F.S.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 394.875, F.S., as it relates to crisis stabilization units.

**Section 2:** Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to crisis stabilization units; amending s.  
 3           394.875, F.S.; increasing the number of client beds a  
 4           crisis stabilization unit is authorized to provide;  
 5           providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Paragraph (a) of subsection (1) of section  
 10          394.875, Florida Statutes, is amended to read:

11           394.875 Crisis stabilization units, residential treatment  
 12          facilities, and residential treatment centers for children and  
 13          adolescents; authorized services; license required.—

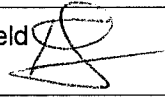
14           (1)(a) The purpose of a crisis stabilization unit is to  
 15          stabilize and redirect a client to the most appropriate and  
 16          least restrictive community setting available, consistent with  
 17          the client's needs. Crisis stabilization units may screen,  
 18          assess, and admit for stabilization persons who present  
 19          themselves to the unit and persons who are brought to the unit  
 20          under s. 394.463. Clients may be provided 24-hour observation,  
 21          medication prescribed by a physician or psychiatrist, and other  
 22          appropriate services. Crisis stabilization units shall provide  
 23          services regardless of the client's ability to pay and shall be  
 24          limited in size to a maximum of 50 ~~30~~ beds.

25           Section 2. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Youth Athletes  
SPONSOR(S): K-20 Innovation Subcommittee; Renuart and others  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N, As CS	Valenstein	Sherry
2) Health & Human Services Access Subcommittee		Prater	Schoolfield 
3) Education Committee			

SUMMARY ANALYSIS

The bill requires independent sanctioning authorities and the Florida High School Athletic Association (FHSAA) to adopt guidelines to educate athletic coaches, officials, administrators, athletes, and their parents or guardians relating to the nature and risk of concussions and head injuries. Independent sanctioning authorities and the FHSAA must also adopt bylaws or policies that require the parent or guardian of an athlete who is participating in an athletic competition or is a candidate for an athletic team to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires the independent sanctioning authority and the FHSAA to adopt bylaws or policies that require an athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition until the athlete receives written clearance to return from a physician or osteopathic physician. The bill also authorizes a physician or osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists.

This bill does not have a fiscal impact.

This bill provides an effective date of July 1, 2011.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Overview

*Youth Athletics:* Current law defines a youth athletic independent sanctioning authority as a private, nongovernmental entity that organizes, operates or coordinates a youth athletic team in Florida that includes one or more minors and is not affiliated with a private school. An independent sanctioning authority is currently required to: conduct background screenings on each current and prospective athletic coach; disqualify an athletic coach that fails the background screening; and provide written notice to a disqualified athletic coach.

*High School Athletics:* The Florida High School Athletic Association (FSHAA) is designated as the governing nonprofit organization of athletics in Florida public schools.<sup>1</sup> Currently, the FHSAA is required to adopt bylaws to:

- Establish eligibility requirements for all students;
- Prohibit recruiting students for athletic purposes; and
- Require students participating in athletics to satisfactorily pass an annual medical evaluation.

Eleven states<sup>2</sup> across the country have passed legislation that targets youth sports-related head injuries.<sup>3</sup> In addition, the Committee on Education and Labor of the U.S. House of Representatives held a hearing to discuss protecting student athletes from concussions on September 23, 2010.<sup>4</sup>

The Centers for Disease Control and Prevention (CDC) define a concussion as a type of traumatic brain injury that is caused by a bump, blow, or jolt to the head that can change the way your brain normally works. Concussions may also occur from a blow to the body that causes the head to move rapidly back and forth. In an effort to raise awareness and provide education to coaches, athletes and parents of athletes, the CDC has created free tools that provide important information on preventing, recognizing, and responding to a concussion.<sup>5</sup>

#### Effect of Proposed Changes

*Youth Athletics:* The bill requires an independent sanctioning authority to adopt guidelines to educate athletic coaches, officials, administrators, youth athletes, and their parents or guardians relating to the nature and risk of concussions and head injuries. An independent sanctioning authority must also adopt bylaws or policies that require the parent or guardian of a youth athlete who is participating in an athletic competition, or is a candidate for an athletic team, to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the youth athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires the independent sanctioning authority to adopt bylaws or policies that require a youth athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until

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<sup>1</sup> While high school is typically defined to include grades 9 through 12, for the purposes of athletics in public K-12 schools, high school is defined to include grades 6-12, s. 1006.20(1), F.S.

<sup>2</sup> The eleven states with laws that target youth sports-related head injuries are: Connecticut, Idaho, Maine, Massachusetts, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Virginia, and Washington.

<sup>3</sup> Traumatic Brain Injury Legislation, National Conference of State Legislatures, Feb. 2011, *available at* [www.ncsl.org/default.aspx?tabid=18687](http://www.ncsl.org/default.aspx?tabid=18687)

<sup>4</sup> *Available at* [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_house\\_hearings&docid=f:58256.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:58256.pdf); *see also* Concussion in High School Sports: Overall Estimate of Occurrence is Not Available, but Key State Laws and Nationwide Guidelines Address Injury Management, United States Government Accountability Office, May 20, 2010, *available at* <http://www.gao.gov/new.items/d10569t.pdf>.

<sup>5</sup> Concussion in Sports, Centers for Disease Control and Prevention, *available at* <http://www.cdc.gov/concussion/sports/index.html>.

the youth receives written clearance to return from a licensed physician or an osteopathic physician. The bill allows a physician or osteopathic physician to delegate the performance of medical acts to advanced registered nurse practitioners, physician assistants, osteopathic physician assistants, and athletic trainers with whom the physician maintains a formal supervisory relationship or established written protocol that identifies the medical acts or evaluations to be performed and the conditions for their performance, and attests to proficiency in the evaluation and management of concussions. The bill also allows physicians and osteopathic physicians to consult with, or utilize testing and evaluations performed by, neuropsychologists.

*High School Athletics:* The bill requires the FHSAA to adopt additional guidelines and bylaws or policies related to concussions and head injuries. The FHSAA must adopt guidelines to educate athletic coaches, officials, administrators, student athletes, and their parents relating to the nature and risk of concussions and head injuries. The FHSAA must also adopt either bylaws or policies that require the parent of a student athlete who is a candidate for an interscholastic athletic team or is participating in an interscholastic athletic competition to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the student athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires FHSAA to adopt bylaws or policies that require a student athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until the student receives written clearance to return from a licensed physician or an osteopathic physician. The bill allows a physician or osteopathic physician to delegate the performance of medical acts to advanced registered nurse practitioners, physician assistants, osteopathic physician assistants, and athletic trainers with whom the physician maintains a formal supervisory relationship or established written protocol that identifies the medical acts or evaluations to be performed and the conditions for their performance, and attests to proficiency in the evaluation and management of concussions. The bill also allows physicians and osteopathic physicians to consult with, or utilize testing and evaluations performed by, neuropsychologists.

The bill requires both independent sanctioning authorities and the FHSAA to adopt policies relating to concussions and head injuries. As the bill does not require the entities to develop the policies, the entities will likely be able to use policies and information made available through the CDC and other sources.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 943.0438, F.S., requiring an independent sanctioning authority for youth athletic teams to adopt bylaws or policies relating to the nature and risk of concussions and head injuries in youth athletes; requiring informed consent for participation in practice or competition; requiring removal from practice or competition under certain circumstances and certain written clearance to return.

**Section 2.** Amends s. 1006.20, F.S., requiring the Florida High School Athletic Association to adopt guidelines, bylaws, or policies relating to the nature and risk of concussions and head injuries in youth athletes; requiring informed consent for participation in practice or competition; requiring removal from practice or competition under certain circumstances and certain written clearance to return.

**Section 3.** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

- The bill requires the adoption of guidelines to educate "their parents." It is unclear whose parents need to be educated.
- Consideration might be given to changing concussions and head injuries to traumatic brain injuries, because the Center for Disease Control and Prevention refers to them as such.
- The bill refers to a student's candidacy on line 31. This should be changed to youth athlete's candidacy because this section deals with youth athletes, not student athletes.
- The bill requires the FHSAA to adopt guidelines or policies; however, the section of law being amended is entitled "Adoption of Bylaws." Change guidelines on line 56 to bylaws, and remove policies from line 60.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 15, 2011, the K-20 Innovation Subcommittee adopted two amendments and the bill was reported favorably as a Committee Substitute. The amendments made the following changes to the bill:

Amendment 1 limits the health care practitioners eligible to provide the necessary written clearance for a youth athlete to return to play after a suspected head injury by authorizing only a physician or an osteopathic physician. The amendment allows a physician or an osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists. The bill, prior to the amendment, required a student to obtain written clearance from physicians, physician assistants, anesthesiologist assistants, osteopathic physicians, osteopathic physician assistants, osteopathic anesthesiologist assistants, and advanced registered nurse practitioners prior to returning to practice or competition.

Amendment 2 limits the health care practitioners eligible to provide the necessary written clearance for a student athlete to return to play after a suspected head injury by authorizing only a physician or an osteopathic physician. The amendment allows a physician or an osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists. The bill, prior to the amendment, required a student to obtain written clearance from physicians, physician assistants, anesthesiologist assistants, osteopathic physicians, osteopathic physician assistants, osteopathic anesthesiologist assistants, and advanced registered nurse practitioners prior to returning to practice or competition.

This analysis is drafted to the Committee Substitute.

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A bill to be entitled  
An act relating to youth athletes; amending ss. 943.0438  
and 1006.20, F.S.; requiring an independent sanctioning  
authority for youth athletic teams and the Florida High  
School Athletic Association to adopt guidelines, bylaws,  
and policies relating to the nature and risk of concussion  
and head injury in youth athletes; requiring informed  
consent for participation in practice or competition;  
requiring removal from practice or competition under  
certain circumstances and written clearance to return;  
providing an effective date.

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

Section 1. Paragraphs (e), (f), and (g) are added to  
subsection (2) of section 943.0438, Florida Statutes, to read:  
943.0438 Athletic coaches for independent sanctioning  
authorities.—

(2) An independent sanctioning authority shall:

(e) Adopt guidelines to educate athletic coaches,  
officials, administrators, youth athletes, and their parents or  
guardians of the nature and risk of concussion and head injury.

(f) Adopt bylaws or policies that require the parent or  
guardian of a youth participating in athletic competition or who  
is a candidate for an athletic team to sign and return an  
informed consent that explains the nature and risk of concussion  
and head injury, including the risk of continuing to play after  
concussion or head injury, each year before participating in

29 athletic competition or engaging in any practice, tryout,  
 30 workout, or other physical activity associated with the  
 31 student's candidacy for an athletic team.

32 (g) Adopt bylaws or policies that require each youth  
 33 athlete who is suspected of sustaining a concussion or head  
 34 injury in a practice or competition to be removed from practice  
 35 or competition at that time. A youth athlete who has been  
 36 removed from practice or competition may not return to practice  
 37 or competition until the youth receives written clearance to  
 38 return from a physician licensed under chapter 458 or chapter  
 39 459. Prior to issuing a written clearance to return to play, a  
 40 physician may:

41 1. Delegate the performance of medical acts to a health  
 42 care provider licensed or certified under s. 458.347, s.  
 43 459.022, s. 464.012, or s. 468.707 with whom the physician  
 44 maintains a formal supervisory relationship or an established  
 45 written protocol that identifies the medical acts or evaluations  
 46 to be performed and conditions for their performance and that  
 47 attests to proficiency in the evaluation and management of  
 48 concussions.

49 2. Consult with, or utilize testing and evaluation of  
 50 cognitive functions performed by, a neuropsychologist licensed  
 51 under chapter 490.

52 Section 2. Paragraphs (e), (f), and (g) are added to  
 53 subsection (2) of section 1006.20, Florida Statutes, to read:

54 1006.20 Athletics in public K-12 schools.—

55 (2) ADOPTION OF BYLAWS.—

56 (e) The organization shall adopt guidelines to educate

57 athletic coaches, officials, administrators, student athletes,  
 58 and their parents of the nature and risk of concussion and head  
 59 injury.

60 (f) The organization shall adopt bylaws or policies that  
 61 require the parent of a student who is participating in  
 62 interscholastic athletic competition or who is a candidate for  
 63 an interscholastic athletic team to sign and return an informed  
 64 consent that explains the nature and risk of concussion and head  
 65 injury, including the risk of continuing to play after  
 66 concussion or head injury, each year before participating in  
 67 interscholastic athletic competition or engaging in any  
 68 practice, tryout, workout, or other physical activity associated  
 69 with the student's candidacy for an interscholastic athletic  
 70 team.

71 (g) The organization shall adopt bylaws or policies that  
 72 require each student athlete who is suspected of sustaining a  
 73 concussion or head injury in a practice or competition to be  
 74 removed from practice or competition at that time. A student  
 75 athlete who has been removed from practice or competition may  
 76 not return to practice or competition until the student receives  
 77 written clearance to return from a physician licensed under  
 78 chapter 458 or chapter 459. Prior to issuing a written clearance  
 79 to return to play, a physician may:

80 1. Delegate the performance of medical acts to a health  
 81 care practitioner licensed or certified under s. 458.347, s.  
 82 459.022, s. 464.012, or s. 468.707 with whom the physician  
 83 maintains a formal supervisory relationship or an established  
 84 written protocol that identifies the medical acts or evaluations

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85 | to be performed and conditions for their performance and that  
86 | attests to proficiency in the evaluation and management of  
87 | concussions.

88 | 2. Consult with, or utilize testing and evaluation of  
89 | cognitive functions performed by, a neuropsychologist licensed  
90 | under chapter 490.

91 | Section 3. This act shall take effect July 1, 2011.



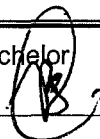
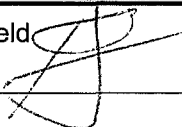


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 131 Homelessness

SPONSOR(S): Reed and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor 	Schoolfield 
2) Transportation & Highway Safety Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates and revises multiple sections of Florida Statutes relating to homelessness. The bill:

- Authorizes the collection of voluntary contributions in the amount of \$1 to be added to motor vehicle registration and drivers license fees, both initial and renewal fees, to aid the homeless.
- Replaces s.414.16, F.S., as it relates to Emergency Financial Assistance Program for Families with s. 414.161, F.S., establishing a homeless prevention grant program to be administered by local homeless continuums of care to provide emergency financial assistance to families facing the loss of their current home due to financial or other crises.
- Limits the amount a lead agency may spend on administrative costs under a Challenge Grant.

The Department of Children and Families estimates a savings of \$170,000 from the replacement of the Emergency Financial Assistance Grant with the Homeless Prevention Grant.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Council on Homelessness (council) and the State Office on Homelessness (office) were created in 2001 within the Department of Children and Family Services (DCF)<sup>1</sup>. The office coordinates state agency responses to homelessness, serves as a single point of contact on homeless issues in the state, and administers state-funded grant programs that support the activities of the 27 local homeless coalitions<sup>2</sup>. The 17-members council is comprised of representatives of state agencies, counties, homeless advocacy organizations, and volunteers.<sup>3</sup> The council's duties include developing policy and advising the office.<sup>4</sup>

The office administers all homelessness grants through lead agencies. The lead agency has the responsibility for continuum of care plans, community based plans that help communities or regions envision, plan and implement comprehensive and long term solutions to the problem of homelessness in the community.<sup>5</sup> Lead agencies are also authorized applicants for the Challenge Grant and the Homeless Housing Assistance Grant. If a grant is awarded; the lead agency becomes the grantee and is responsible for the financial and performance accountability of the agencies funded by the respective grant.<sup>6</sup>

The office administers two federal and three state grant programs to address the problem of homelessness:

##### *The Emergency Shelter Grant*<sup>7</sup>

This is a federal grant program to improve the quality and quantity of emergency shelters and transitional facilities for homeless persons. Funding is available annually and is awarded by DCF through a grant application process. Non-profit agencies and government entities are eligible to apply for the funds.

##### *Homeless Prevention and Rapid Re-Housing Program*<sup>8</sup>

The Homeless Prevention and Rapid Re-Housing Program, is a one-time federal grant program, funded by the American Recovery and Reinvestment Act of 2009, and funds must be used by September 30, 2012. This grant aims to help homeless families move into rental housing, and current renters whose families are facing eviction because of past due rent or utilities.

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<sup>1</sup> Chapter 2001-98, L.O.F

<sup>2</sup> s.420.622(3), F.S.

<sup>3</sup> s.420.622(2), F.S.

<sup>4</sup> *Id*

<sup>5</sup> s. 420.642(2), F.S.

<sup>6</sup> Email from Joe Anson from DCF (HB 131 Questions) dated 2/3/2011 (on file with committee staff)

<sup>7</sup> *Id*

<sup>8</sup> *Id*

## *Emergency Financial Assistance Program*

This is a state grant program to provide support to families, with at least one minor child, who are currently without shelter or face the loss of shelter because of the following:<sup>9</sup>

- Nonpayment of rent or mortgage resulting in eviction or notice of eviction;
- Household disaster, which renders the home uninhabitable;
- Other emergency situations defined in rule.<sup>10</sup>

Families may receive up to \$400 during 1 period of 30 consecutive days in any 12 consecutive months.<sup>11</sup> DCF serves approximately 4,000 families a year under this program and utilizes OPS staff to assess eligibility and process payments.<sup>12</sup> The fiscal year 2010-2011 appropriation for this grant program is \$4,610,380.

## *Housing Assistance Grants*

This state grant program provides homeless housing assistance grants up to \$750,000 annually to lead agencies to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.<sup>13</sup> Administrative costs are capped at 5% of the funds awarded.<sup>14</sup> The fiscal year 2010-2011 appropriation for this grant program is \$3,250,000.

## *Challenge Grant*

The challenge grant is a state program which includes grants of up to \$500,000 to lead agencies who have developed and implemented a local homeless assistance continuum of care plan to provide services including outreach, emergency shelter, support services, and permanent shelter in the area.<sup>15</sup> The state currently has 28 local homeless Continuum of Care planning areas that receive state aid in grant assistance. Currently, state law does not provide for a limit on or use of grant funds for grant administration costs incurred by lead agencies. The fiscal year 2010-2011 appropriation for this grant program is \$2,031,354.

## **Housing First**

The 2009 Legislature established the Housing First Method in s. 420.6275, F.S., to address the long term needs of homeless individuals and families.<sup>16</sup> Solutions to homelessness in both the public and private sectors have primarily been focused on providing individuals and families experiencing homelessness with housing.<sup>17</sup> While emergency shelter may provide access to services for individuals and families in crisis, it often fails to address long-term needs.<sup>18</sup> The "housing first" approach is premised on the belief that vulnerable and at-risk individuals and families who are homeless are more responsive to interventions and social services support after they are in their own housing, rather than while living in temporary/transitional facilities or housing programs.<sup>19</sup>

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<sup>9</sup> s.414.16, F.S.

<sup>10</sup> s.414.16(1), F.S.

<sup>11</sup> 65A-33.011, F.A.C

<sup>12</sup> Staff Analysis (HB 131), Department of Children and Families. (On file with committee staff).

<sup>13</sup> s.420.622(5), F.S.

<sup>14</sup> s. 420.62295)(f), F.S.

<sup>15</sup> s. 420.622(4), F.S.

<sup>16</sup> HB 597 (2009)

<sup>17</sup> s. 420.6275(1)(b), F.S.

<sup>18</sup> *Id*

<sup>19</sup> Beyond Shelter. Founded in 1998. The mission of Beyond Shelter is to develop systematic approaches to combat poverty and homelessness among families with children and enhance family economic security and well-being.

## Voluntary Checkoffs

Voluntary checkoffs provide the opportunity for citizens to make a voluntary donation by checking a box on a form when registering a vehicle or applying for a drivers license. Current statute provides that an organization must seek authorization from the Department of Highway Safety and Motor Vehicles (DHSMV) prior to establishing a voluntary contribution check off. Organizations must submit the request to DHSMV, pay an application fee and submit a marketing strategy prior to seeking Legislative authorization for the creation of a new voluntary contribution fee on motor vehicle registration applications.<sup>20</sup>

Additionally, current statute provides that an organization must seek authorization from the Department of Highway Safety and Motor Vehicles (DHSMV) prior to establishing a voluntary contribution check off. Organizations must submit the request to DHSMV, pay an application fee and submit a marketing strategy prior to seeking Legislative authorization for the creation of a new voluntary contribution fee on driver's license applications.<sup>21</sup>

The Department of Highway Safety and Motor Vehicles must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent 5-year period.<sup>22</sup>

### Effect of Proposed Changes

The bill authorizes the collection of voluntary contributions in the amount of \$1.00 to be added to the motor vehicle and drivers license fees - initial and renewal fees - to aid the homeless. The bill does not require the voluntary contributions be subject to the check-off procedures and limitations of s. 320.023, F.S., and s. 322.081, F.S. Funds will be placed in a grants and donations trust fund for use by the office to supplement Challenge Grants and Homeless Housing Assistance Grants and to provide information on homelessness to the public. The effect of this change is estimated to generate an additional \$20,000 a year.<sup>23</sup>

The bill repeals s.414.16, F.S., relating to the Emergency Assistance Program and replaces it with a Homelessness Prevention Grant Program under s.414.161, F.S. The new program will be administered by the Office on Homelessness at DCF, with the concurrence of the Council on Homelessness. The office may provide prevention grants through contracts with local lead agencies for homeless assistance continuums of care. The bill specifies the grant application process and certain preferences for applicants who can leverage additional funds and demonstrate effective programs. Eligibility for the grant program is limited to lead agencies who have implemented a local homeless assistance plan for their area. The grants are capped at \$300,000 and may be used to assist families facing the loss of their current home to pay past due rent and mortgage payments, past due utility bills, and case management. Program administrative costs are capped at 3 percent of the grant award.

The bill caps administrative costs for lead agencies administering Challenge Grants at 8 percent. Challenge Grant awards are up to \$500,000 per lead agency.

The bill amends s.420.6275, F.S. as it relates to the Housing First Methodology, deleting the requirement for the homeless individual or household to complete a background check and any rehabilitation services for alcoholism or substance abuse as a condition of permanent housing. The Housing First Methodology seeks to place the homeless individual into permanent housing as quickly as possible.

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<sup>20</sup> s. 320.023, F.S.

<sup>21</sup> s. 322.081, F.S.

<sup>22</sup> s.320.023 (4)(a), F.S and s. 322.081(4)(a), F.S.

<sup>23</sup> Staff Analysis (HB 131), Department of Children and Families. (On file with committee staff).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 320.02, F.S, relating to registration required; application for registration; forms.

**Section 2:** Amends s. 322.08, F.S, relating to application for license; requirements for license and identification card forms.

**Section 3:** Amends s. 322.18, F.S, relating to original applications, licenses, and renewals; expiration of licenses; delinquent licenses.

**Section 4:** Creates s. 414.161, F.S, relating to Homelessness Prevention Grants Program.

**Section 5:** Amends s. 420.622, F.S, relating to State Office on Homelessness; Council on Homelessness.

**Section 6:** Amends s. 420.625, F.S, relating to Grant in aid program.

**Section 7:** Amends s. 420.6275, F.S, relating to the Housing First Methodology.

**Section 8:** Repeals s. 414.16, F.S., relating to the Emergency assistance program.

**Section 9:** Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

It is expected that the voluntary contributions will increase revenues for aid to the homeless. However, an exact amount is not known. DCF estimates revenue of approximately \$20,000 a year, based on the history of other voluntary contributions.<sup>24</sup>

**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:**

DCF estimates \$170,000 will be saved and 5 OPS positions will be eliminated by replacing the Emergency Assistance Program with the Homelessness Prevention Program.<sup>25</sup>

<sup>24</sup> Staff Analysis (HB 131), Department of Children and Families. (On file with committee staff).

<sup>25</sup> Email from Joe Anson from DCF (HB 131 Questions) dated 2/3/2011 (on file with committee staff)

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





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29 for families with children that have lost shelter or face  
 30 loss of shelter due to an emergency; providing an  
 31 effective date.

32

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

34

35 Section 1. Paragraph (o) is added to subsection (15) of  
 36 section 320.02, Florida Statutes, to read:

37 320.02 Registration required; application for  
 38 registration; forms.—

39 (15)

40 (o) Notwithstanding s. 320.023, the application form for  
 41 motor vehicle registration and renewal of registration must  
 42 include language permitting a voluntary contribution of \$1 per  
 43 applicant to aid the homeless. Contributions made pursuant to  
 44 this paragraph shall be deposited into the Grants and Donations  
 45 Trust Fund of the Department of Children and Family Services and  
 46 used by the State Office on Homelessness to supplement grants  
 47 made under s. 420.622(4) and (5), provide information to the  
 48 public about homelessness in the state, and provide literature  
 49 for homeless persons seeking assistance.

50

51 For the purpose of applying the service charge provided in s.  
 52 215.20, contributions received under this subsection are not  
 53 income of a revenue nature.

54 Section 2. Subsection (7) of section 322.08, Florida  
 55 Statutes, is amended to read:

56 322.08 Application for license; requirements for license

57 and identification card forms.—

58 (7) The application form for an original, renewal, or  
59 replacement driver's license or identification card shall  
60 include language permitting the following:

61 (a) A voluntary contribution of \$1 per applicant, which  
62 contribution shall be deposited into the Health Care Trust Fund  
63 for organ and tissue donor education and for maintaining the  
64 organ and tissue donor registry.

65 (b) A voluntary contribution of \$1 per applicant, which  
66 contribution shall be distributed to the Florida Council of the  
67 Blind.

68 (c) A voluntary contribution of \$2 per applicant, which  
69 shall be distributed to the Hearing Research Institute,  
70 Incorporated.

71 (d) A voluntary contribution of \$1 per applicant, which  
72 shall be distributed to the Juvenile Diabetes Foundation  
73 International.

74 (e) A voluntary contribution of \$1 per applicant, which  
75 shall be distributed to the Children's Hearing Help Fund.

76 (f) A voluntary contribution of \$1 per applicant, which  
77 shall be distributed to Family First, a nonprofit organization.

78 (g) A voluntary contribution of \$1 per applicant to Stop  
79 Heart Disease, which shall be distributed to the Florida Heart  
80 Research Institute, a nonprofit organization.

81 (h) A voluntary contribution of \$1 per applicant to Senior  
82 Vision Services, which shall be distributed to the Florida  
83 Association of Agencies Serving the Blind, Inc., a not-for-  
84 profit organization.

85 (i) A voluntary contribution of \$1 per applicant for  
 86 services for persons with developmental disabilities, which  
 87 shall be distributed to The Arc of Florida.

88 (j) A voluntary contribution of \$1 to the Ronald McDonald  
 89 House, which shall be distributed each month to Ronald McDonald  
 90 House Charities of Tampa Bay, Inc.

91 (k) Notwithstanding s. 322.081, a voluntary contribution  
 92 of \$1 per applicant, which shall be distributed to the League  
 93 Against Cancer/La Liga Contra el Cancer, a not-for-profit  
 94 organization.

95 (l) A voluntary contribution of \$1 per applicant to  
 96 Prevent Child Sexual Abuse, which shall be distributed to  
 97 Lauren's Kids, Inc., a nonprofit organization.

98 (m) A voluntary contribution of \$1 per applicant, which  
 99 shall be distributed to Prevent Blindness Florida, a not-for-  
 100 profit organization, to prevent blindness and preserve the sight  
 101 of the residents of this state.

102 (n) Notwithstanding s. 322.081, a voluntary contribution  
 103 of \$1 per applicant to the state homes for veterans, to be  
 104 distributed on a quarterly basis by the department to the State  
 105 Homes for Veterans Trust Fund, which is administered by the  
 106 Department of Veterans' Affairs.

107 (o) Notwithstanding s. 322.081, a voluntary contribution  
 108 of \$1 per applicant to aid the homeless. Contributions made  
 109 pursuant to this paragraph shall be deposited into the Grants  
 110 and Donations Trust Fund of the Department of Children and  
 111 Family Services and used by the State Office on Homelessness to  
 112 supplement grants made under s. 420.622(4) and (5), provide

113 information to the public about homelessness in the state, and  
 114 provide literature for homeless persons seeking assistance.  
 115

116 A statement providing an explanation of the purpose of the trust  
 117 funds shall also be included. For the purpose of applying the  
 118 service charge provided in s. 215.20, contributions received  
 119 under paragraphs (b)-(o) ~~(b)-(n)~~ are not income of a revenue  
 120 nature.

121 Section 3. Subsection (9) is added to section 322.18,  
 122 Florida Statutes, to read:

123 322.18 Original applications, licenses, and renewals;  
 124 expiration of licenses; delinquent licenses.-

125 (9) The application form for a renewal issuance or renewal  
 126 extension shall include language permitting a voluntary  
 127 contribution of \$1 per applicant to aid the homeless.

128 Contributions made pursuant to this paragraph shall be deposited  
 129 into the Grants and Donations Trust Fund of the Department of  
 130 Children and Family Services and used by the State Office on  
 131 Homelessness to supplement grants made under s. 420.622(4) and  
 132 (5), provide information to the public about homelessness in the  
 133 state, and provide literature for homeless persons seeking  
 134 assistance. For the purpose of applying the service charge  
 135 provided in s. 215.20, contributions received under this  
 136 paragraph are not income of a revenue nature.

137 Section 4. Section 414.161, Florida Statutes, is created  
 138 to read:

139 414.161 Homelessness prevention grants.-

140 (1) ESTABLISHMENT OF PROGRAM.-There is created a grant

141 | program to provide emergency financial assistance to families  
 142 | facing the loss of their current home due to a financial or  
 143 | other crisis. The State Office on Homelessness, with the  
 144 | concurrence of the Council on Homelessness, may accept and  
 145 | administer moneys appropriated to it to provide homelessness  
 146 | prevention grants annually to lead agencies for local homeless  
 147 | assistance continuums of care, as recognized by the State Office  
 148 | on Homelessness. These moneys shall consist of any sums that the  
 149 | state may appropriate, as well as money received from donations,  
 150 | gifts, bequests, or otherwise from any public or private source  
 151 | that is intended to assist families to prevent them from  
 152 | becoming homeless.

153 |       (2) GRANT APPLICATIONS.—Grant applicants shall be ranked  
 154 | competitively. Preference shall be given to applicants who  
 155 | leverage additional private funds and public funds, who  
 156 | demonstrate the effectiveness of their homelessness prevention  
 157 | programs in keeping families housed, and who demonstrate the  
 158 | commitment of other assistance and services to address family  
 159 | health, employment, and education needs.

160 |       (3) ELIGIBILITY.—In order to qualify for a grant, a lead  
 161 | agency must develop and implement a local homeless assistance  
 162 | continuum of care plan for its designated catchment area. The  
 163 | homelessness prevention program must be included in the  
 164 | continuum of care plan.

165 |       (4) GRANT LIMITS.—The maximum grant amount per lead agency  
 166 | may not exceed \$300,000. The grant assistance may be used to pay  
 167 | past due rent or mortgage payments, past due utility costs,  
 168 | other past due bills creating a family's financial crisis,

169 provision of case management services, and program  
 170 administration costs not to exceed 3 percent of the grant award.  
 171 The homelessness prevention program must develop a case plan for  
 172 each family to be assisted setting forth what costs will be  
 173 covered and the maximum level of assistance to be offered.

174 (5) PERFORMANCE.—The lead agency shall be required to  
 175 track, monitor, and report on each family assisted for at least  
 176 12 months after the last assistance provided to the family. The  
 177 goal for the homelessness prevention program shall be to enable  
 178 at least 85 percent of the families assisted to remain in their  
 179 homes and avoid becoming homeless during the ensuing year.

180 Section 5. Paragraph (d) is added to subsection (4) of  
 181 section 420.622, Florida Statutes, to read:

182 420.622 State Office on Homelessness; Council on  
 183 Homelessness.—

184 (4) Not less than 120 days after the effective date of  
 185 this act, the State Office on Homelessness, with the concurrence  
 186 of the Council on Homelessness, may accept and administer moneys  
 187 appropriated to it to provide "Challenge Grants" annually to  
 188 lead agencies for homeless assistance continuums of care  
 189 designated by the State Office on Homelessness. A lead agency  
 190 may be a local homeless coalition, municipal or county  
 191 government, or other public agency or private, not-for-profit  
 192 corporation. Such grants may be up to \$500,000 per lead agency.

193 (d) A lead agency may spend a maximum of 8 percent of its  
 194 funding on administrative costs.

195 Section 6. Paragraph (d) of subsection (3) of section  
 196 420.625, Florida Statutes, is amended to read:

197 420.625 Grant-in-aid program.—

198 (3) ESTABLISHMENT.—There is hereby established a grant-in-  
 199 aid program to help local communities in serving the needs of  
 200 the homeless through a variety of supportive services, which may  
 201 include, but are not limited to:

202 (d) Emergency financial assistance for persons who are  
 203 totally without shelter or facing loss of shelter, ~~but who are~~  
 204 ~~not eligible for such assistance under s. 414.16.~~

205 Section 7. Paragraph (a) of subsection (2) of section  
 206 420.6275, Florida Statutes, is amended to read:

207 420.6275 Housing First.—

208 (2) HOUSING FIRST METHODOLOGY.—

209 (a) The Housing First approach to homelessness differs  
 210 from traditional approaches by providing housing assistance,  
 211 case management, and support services responsive to individual  
 212 or family needs after housing is obtained. By using this  
 213 approach when appropriate, communities can significantly reduce  
 214 the amount of time that individuals and families are homeless  
 215 and prevent further episodes of homelessness. Housing First  
 216 emphasizes that social services provided to enhance individual  
 217 and family well-being can be more effective when people are in  
 218 their own home, and:

219 1. The housing is not time-limited.

220 2. The housing is not contingent on compliance with  
 221 services. Instead, participants must comply with a standard  
 222 lease agreement and are provided with the services and support  
 223 that are necessary to help them do so successfully.

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224           ~~3. A background check and any rehabilitation necessary to~~  
225 ~~combat an addiction related to alcoholism or substance abuse has~~  
226 ~~been completed by the individual for whom assistance or support~~  
227 ~~services are provided.~~

228           Section 8. Section 414.16, Florida Statutes, is repealed.

229           Section 9. This act shall take effect July 1, 2011.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 131 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee

3 Representative(s) Reed offered the following:

4

5 **Amendment**

6 Remove line 145 and insert:

7 administer moneys appropriated to the Department of Children and  
8 Family Services to provide homelessness


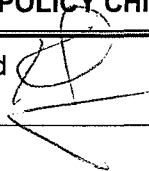


**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1171 Long-Term Care Ombudsman Program

**SPONSOR(S):** Harrison and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Guzzo 	Schoolfield 
2) Health & Human Services Committee			

**SUMMARY ANALYSIS**

House Bill 1171 removes language requiring local long-term care ombudsman councils to conduct administrative assessments of nursing homes, assisted living facilities (ALFs) and adult family care homes. Currently, the Ombudsman Council is required to conduct onsite administrative assessments of these facilities, at least annually, to review the conditions that impact the rights, health, safety, and welfare of facility residents.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the State Long-Term Care Ombudsman Program. Currently, this section of statute does not include language describing the source of complaints. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill amends s. 400.0081, F.S., relating to access to facilities, residents, and records. The bill requires the Office of the State Long-Term Care Ombudsman to obtain and present written permission of the resident or legal representative before reviewing medical and social records at a long term care facility.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities in an effort to identify and resolve significant problems.

The bill removes language in s. 400.19, F.S., requiring the Agency for Health Care Administration (AHCA) to conduct onsite reviews of nursing homes following written verification of licensee non compliance by the Long-Term Care Ombudsman Council.

Section 400.235, F.S., requires facilities to meet certain additional criteria to be recognized as a Gold Seal Program Facility. The bill removes the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the state long-term care ombudsman council within 30 months preceding application.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The Office of State Long-Term Care Ombudsman (Office) is created by s. 400.0063, F.S., and is headed by the State Long-Term Care Ombudsman, appointed by the Secretary of the Department of Elder Affairs (DOEA). The ombudsman designates local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program (Program) within local communities. There must be at least one local council operating in each of DOEA's planning and service areas.

#### Local Councils

Duties of the local councils include:<sup>1</sup>

- Serving as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents;
- Discovering, investigating, and determining the existence of abuse or neglect in any long-term care facility;
- Eliciting, receiving, investigating, responding to, and resolving complaints made by or on behalf of residents;
- Reviewing and commenting on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents;
- Reviewing personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem;
- Recommending that the ombudsman and the legal advocate seek administrative, legal, and other remedies to protect residents;
- Carrying out activities that the ombudsman determines to be appropriate.

#### State Long-Term Care Ombudsman Council

The State Long-Term Care Ombudsman Council is created within the office by s. 400.0067, F.S. The council serves an advisory body to assist the ombudsman in reaching a consensus among local councils on issues affecting and impacting the operation of the program. The council also serves as an appellate body in receiving complaints from local councils that are unresolved at the local level. In addition, the council helps the ombudsman discover, investigate, and determine the existence of abuse or neglect in any long-term care facility.<sup>2</sup>

#### Complaint Procedures

Section 400.0071, F.S., provides complaint procedures for the program, and rule making authority to DOEA. The rules must include procedures for receiving complaints against, and conducting investigations of a long-term care facility or an employee of a long-term care facility.

#### Administrative Assessments

Currently, s. 400.0074, F.S., requires the council to conduct onsite administrative assessments of nursing homes, assisted living facilities (ALFs), and adult family care homes at least annually. The council also identifies, investigates and resolves complaints made by, or on behalf of, residents of long-

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<sup>1</sup> S. 400.0069(1), F.S. (2010)

<sup>2</sup> S. 400.0067(2), F.S. (2010)

term care facilities. Members of a local council are authorized to enter any long-term care facility without notice or first obtaining a warrant. The Agency for Health Care Administration (AHCA) conducts routine licensure and complaint surveys of nursing homes, ALFs, and adult day care homes. The Center's for Medicare and Medicaid Services (CMS) State Operations Manual for nursing homes' investigative protocol requires AHCA, as part of its survey process, to perform offsite survey preparation. This preparation includes review of information about the facility prior to the survey. One of the sources of this information is the ombudsman. The ombudsman can contribute information in the areas of resident rights, review of clinical records, transfer and discharge, access and visitation, and admission and involvement in care planning. This information is taken into consideration as the survey team identifies areas to focus its review to determine facility compliance.

#### Access to Facilities, Residents, and Records

Section 400.0081, F.S., requires long-term care facilities to provide the office, council, and the local councils to provide access to any portion of the facility, any resident, and medical and social records of a resident as necessary to investigate or resolve a complaint. Facilities must also provide access to administrative records, policies, and documents that are accessible to residents and the general public. Upon request, facilities must provide copies of all licensing and certification records maintained by the state with respect to a facility.

#### Complaint Data Reports

Complaint data reports are utilized to identify and resolve significant problems. Section 400.0089, F.S., requires the office to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities. This section also requires the office to publish information quarterly, relating to the number and types of complaints received by the program. The information is required to be included in the annual report required under s. 400.0065, F.S.

#### Right of Entry and Inspection

Section 400.19, F.S., provides the authority to AHCA, and members of the council or local council to enter facilities in order to determine compliance with part II of chapter 400, F.S. AHCA is required to complete its investigation and provide its findings to the resident within 60 days after receipt of a complaint. Section 400.19(4), F.S., requires AHCA to conduct unannounced onsite facility reviews following written verification of licensee noncompliance when the council receives a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents.

#### Gold Seal Program

Section 400.235, F.S., contains provisions of the Gold Seal Program as it relates to nursing home quality and licensure status. The Governor's Panel on Excellence in Long-term Care (Panel) developed and implemented the Gold Seal Program. The Gold Seal Program was created in 2002 to award and recognize nursing home facilities that demonstrate excellence in long-term care over a sustained period of time. Section 400.235(3)(a), F.S., provides the composition of the panel is to consist of individuals appointed by the Governor's Office, AHCA, the Department of Health, DOEA, Florida Association of Homes for the Aging, Florida Health Care Association, Florida Life Care residents Association and the State Long Term-Care Ombudsman. As of January 1, 2011, there were 675 licensed nursing homes in Florida.<sup>3</sup> Of the 675 facilities, 19 facilities are currently designated as a Gold Seal Facility.<sup>4</sup> There have been a total of 35 facilities that have received the Gold Seal Award designation, since the program was created in 2002.<sup>5</sup>

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<sup>3</sup> AHCA, *Staff Analysis and Economic Impact, House Bill Number 1171* (March 18, 2011).

<sup>4</sup> Id.

<sup>5</sup> Id.

Section 400.235(4), F.S., requires the panel to consider the quality of care provided to residents when evaluating a facility for the Gold Seal Program, and determine the procedures for measuring the quality of care. There are two annual review periods when nursing home facilities can apply for the Gold Seal award designation. The required criteria to be recognized as a Gold Seal Program facility is provided in s. 400.235, F.S., and Rule 59A-4.201-206, F.A.C. One of the requirements is that facilities must display evidence of an outstanding record regarding the number and types of substantiated complaints reported to the Ombudsman Council within the 30 months preceding submission of an application.

### **Effects of the Bill**

The bill repeals s. 400.0074, F.S., which requires local long-term care ombudsman councils to conduct administrative assessments of nursing homes, ALFs and adult family care homes. Currently, the Ombudsman council is required to conduct onsite administrative assessments of these facilities, at least annually, to review the conditions that impact the rights, health, safety, and welfare of facility residents. AHCA reports that the repeal of s. 400.0074, F.S., will not affect the survey process conducted by AHCA for long-term care facilities.<sup>6</sup> AHCA's responsibility to use information from the ombudsman remains intact because of its duty to act as the State Agency having oversight of these long-term care facilities.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the long-term care ombudsman program. Currently, this section of statute does not include language describing the source of the complaint. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill amends s. 400.0081, F.S., relating to access to facilities, residents, and records. The bill requires the Office of the State Long-Term Care Ombudsman to obtain and present written permission of the resident or legal representative before reviewing medical and social records at a long term care facility.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to publish quarterly the information related to complaints.

The bill removes language in s. 400.19, F.S., which pertains to one of the conditions requiring AHCA to conduct onsite reviews of nursing homes. The condition is a written verification of a complaint by the ombudsman council related to deficiencies in residents care or the physical plant of the facility that threatens the health safety or security of residents. AHCA reports that the removal of this language will not affect AHCA's survey process or reduce its ability to regulate facilities to ensure the health, safety or security of residents.<sup>7</sup> The ombudsman council will continue to be able to file complaints with AHCA's complaint administration unit if they have concerns while visiting a facility.

Finally, the bill amends s. 400.235, F.S., relating to the Gold Seal Facility Program, to remove the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the ombudsman council within 30 months preceding their application. All of the Gold Seal criteria requirements can be consistently measured by the panel,

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<sup>6</sup> Id.

<sup>7</sup> Id.

except for determining if a facility has an "outstanding record" regarding the number and types of complaints reported to the ombudsman council. The removal of this requirement will help remove subjectivity from the determination of the Gold Seal Award recommendations

According to s. 400.235(3)(a), F.S., the Ombudsman is required to serve on the Governor's Panel on Excellence in Long-Term Care. This allows the Ombudsman to have a vote in the Panel's recommendation and input into any rules developed for the Gold Seal Program.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 400.0060, F.S., relating to administrative assessments.
- Section 2:** Amends s. 400.0061, F.S., relating to Legislative findings and intent; long-term care facilities.
- Section 3:** Amends s. 400.0067, F.S., relating to duties and membership of the State Long-Term Care Ombudsman Council.
- Section 4:** Amends s. 400.0069, F.S., relating to duties and membership of local long-term care ombudsman councils.
- Section 5:** Amends s. 400.0071, F.S., relating to State Long-Term Care Ombudsman Program complaint procedures.
- Section 6:** Repeals s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 7:** Amends s. 400.0081, F.S., relating to access to facilities, residents, and records.
- Section 8:** Repeals s. 400.0089, F.S., relating complaint data reports.
- Section 9:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 10:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
- Section 11:** Provides an effective date of July 1, 2011.

**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:**

The bill does not appear to have a fiscal impact.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Rule-making authority for DOEA and AHCA will not be affected as a result of the bill. However, AHCA rule 59A-4.205, F.A.C., will not be necessary anymore as it requires the State Long-Term Care Ombudsman Council to provide a profile of substantiated ombudsman program complaints against licensees applying for the Gold Seal Award.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



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A bill to be entitled  
 An act relating to the Long-Term Care Ombudsman Program;  
 amending ss. 400.0060 and 400.0067, F.S.; removing  
 references to onsite administrative assessments and  
 conforming cross-references to changes made by the act;  
 amending s. 400.0061, F.S.; revising legislative intent;  
 amending s. 400.0069, F.S.; providing additional duties of  
 the local long-term care ombudsman councils; amending s.  
 400.0071, F.S.; revising rules relating to State Long-Term  
 Care Ombudsman Program complaint procedures; repealing s.  
 400.0074, F.S., relating to a requirement that local  
 ombudsman councils conduct onsite administrative  
 assessments; amending s. 400.0081, F.S.; requiring written  
 consent of a resident of a long-term care facility for  
 release of medical records; repealing s. 400.0089, F.S.,  
 relating to data reports regarding complaints about and  
 conditions in long-term care facilities; amending s.  
 400.19, F.S.; revising conditions under which the Agency  
 for Health Care Administration is required to conduct  
 unannounced onsite facility reviews; amending s. 400.235,  
 F.S.; eliminating the role of the State Long-Term Care  
 Ombudsman Council in evaluating a nursing facility for the  
 Gold Seal Program; providing an effective date.

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

Section 1. Subsections (2) through (10) of section  
 400.0060, Florida Statutes, are renumbered as subsections (1)

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29 | through (9), respectively, and present subsection (1) of that  
 30 | section is amended to read:

31 |       400.0060 Definitions.—When used in this part, unless the  
 32 | context clearly dictates otherwise, the term:

33 |       ~~(1) "Administrative assessment" means a review of~~  
 34 | ~~conditions in a long-term care facility which impact the rights,~~  
 35 | ~~health, safety, and welfare of residents with the purpose of~~  
 36 | ~~noting needed improvement and making recommendations to enhance~~  
 37 | ~~the quality of life for residents.~~

38 |       Section 2. Subsection (2) of section 400.0061, Florida  
 39 | Statutes, is amended to read:

40 |       400.0061 Legislative findings and intent; long-term care  
 41 | facilities.—

42 |       (2) It is the intent of the Legislature, therefore, to  
 43 | utilize voluntary citizen ombudsman councils under the  
 44 | leadership of the ombudsman, and through them to operate an  
 45 | ombudsman program which shall, without interference by any  
 46 | executive agency, undertake to discover, investigate, and  
 47 | determine the presence of conditions or individuals which  
 48 | constitute a threat to the rights, health, safety, or welfare of  
 49 | the residents of long-term care facilities. To ensure that the  
 50 | effectiveness and efficiency of such investigations are not  
 51 | impeded by advance notice or delay, the Legislature intends that  
 52 | the ombudsman and ombudsman councils and their designated  
 53 | representatives not be required to obtain warrants in order to  
 54 | enter into a long-term care facility to conduct the duties of  
 55 | the Office of State Long-Term Care Ombudsman, the State Long-  
 56 | Term Care Ombudsman Council, or a local long-term care ombudsman

57 ~~council or conduct investigations or onsite administrative~~  
 58 ~~assessments of long-term care facilities.~~ It is the further  
 59 intent of the Legislature that the environment in long-term care  
 60 facilities be conducive to the dignity and independence of  
 61 residents and that investigations by ombudsman councils shall  
 62 further the enforcement of laws, rules, and regulations that  
 63 safeguard the health, safety, and welfare of residents.

64 Section 3. Paragraph (b) of subsection (2) of section  
 65 400.0067, Florida Statutes, is amended to read:

66 400.0067 State Long-Term Care Ombudsman Council; duties;  
 67 membership.-

68 (2) The State Long-Term Care Ombudsman Council shall:

69 (b) Serve as an appellate body in receiving from the local  
 70 councils complaints not resolved at the local level. Any  
 71 individual member or members of the state council may enter any  
 72 long-term care facility involved in an appeal, ~~pursuant to the~~  
 73 ~~conditions specified in s. 400.0074(2).~~

74 Section 4. Subsection (3) of section 400.0069, Florida  
 75 Statutes, is amended, and paragraphs (h) and (i) are added to  
 76 subsection (2) of that section, to read:

77 400.0069 Local long-term care ombudsman councils; duties;  
 78 membership.-

79 (2) The duties of the local councils are to:

80 (h) Ensure that residents have regular, timely access to  
 81 the ombudsman through visitations and that residents and  
 82 complainants receive timely responses to their complaints.

83 (i) Provide technical support for the development of  
 84 resident and family councils to protect the well-being and

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85 | rights of residents.

86 |       (3) In order to carry out the duties specified in  
87 | subsection (2), a member of a local council is authorized to  
88 | enter any long-term care facility without notice or first  
89 | obtaining a warrant, ~~subject to the provisions of s.~~  
90 | ~~400.0074(2).~~

91 |       Section 5. Section 400.0071, Florida Statutes, is amended  
92 | to read:

93 |       400.0071 State Long-Term Care Ombudsman Program complaint  
94 | procedures.—The department shall adopt rules implementing state  
95 | and local complaint procedures. The rules must include  
96 | procedures for:

97 |       (1) Receiving complaints made by or on behalf of long-term  
98 | care facility residents ~~against a long-term care facility or an~~  
99 | ~~employee of a long-term care facility.~~

100 |       (2) Conducting complaint investigations on behalf of long-  
101 | term care facility residents ~~of a long-term care facility or an~~  
102 | ~~employee of a long-term care facility subsequent to receiving a~~  
103 | ~~complaint.~~

104 |       ~~(3) Conducting onsite administrative assessments of long-~~  
105 | ~~term care facilities.~~

106 |       Section 6. Section 400.0074, Florida Statutes, is  
107 | repealed.

108 |       Section 7. Paragraph (b) of subsection (1) of section  
109 | 400.0081, Florida Statutes, is amended to read:

110 |       400.0081 Access to facilities, residents, and records.—

111 |       (1) A long-term care facility shall provide the office,  
112 | the state council and its members, and the local councils and

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113 their members access to:

114 (b) Medical and social records of a resident for review as  
 115 necessary to investigate or resolve a complaint, if:

116 1. The office has the written permission of the resident  
 117 or the legal representative of the resident and presents that  
 118 permission to the long-term care facility; or

119 2. The resident is unable to consent to the review and has  
 120 no legal representative.

121 Section 8. Section 400.0089, Florida Statutes, is  
 122 repealed.

123 Section 9. Subsection (4) of section 400.19, Florida  
 124 Statutes, is amended to read:

125 400.19 Right of entry and inspection.—

126 (4) The agency shall conduct unannounced onsite facility  
 127 reviews ~~following written verification of licensee noncompliance~~  
 128 ~~in instances in which a long-term care ombudsman council,~~  
 129 ~~pursuant to ss. 400.0071 and 400.0075, has received a complaint~~  
 130 ~~and has documented deficiencies in resident care or in the~~  
 131 ~~physical plant of the facility that threaten the health, safety,~~  
 132 ~~or security of residents, or when the agency documents through~~  
 133 inspection that conditions in a facility present a direct or  
 134 indirect threat to the health, safety, or security of residents.  
 135 However, the agency shall conduct unannounced onsite reviews  
 136 every 3 months of each facility while the facility has a  
 137 conditional license. Deficiencies related to physical plant do  
 138 not require followup reviews after the agency has determined  
 139 that correction of the deficiency has been accomplished and that  
 140 the correction is of the nature that continued compliance can be

141 reasonably expected.

142 Section 10. Paragraphs (f) and (g) of subsection (5) of  
 143 section 400.235, Florida Statutes, are amended to read:

144 400.235 Nursing home quality and licensure status; Gold  
 145 Seal Program.—

146 (5) Facilities must meet the following additional criteria  
 147 for recognition as a Gold Seal Program facility:

148 ~~(f) Evidence an outstanding record regarding the number~~  
 149 ~~and types of substantiated complaints reported to the State~~  
 150 ~~Long-Term Care Ombudsman Council within the 30 months preceding~~  
 151 ~~application for the program.~~

152 (f) ~~(g)~~ Provide targeted inservice training provided to  
 153 meet training needs identified by internal or external quality  
 154 assurance efforts.

155

156 A facility assigned a conditional licensure status may not  
 157 qualify for consideration for the Gold Seal Program until after  
 158 it has operated for 30 months with no class I or class II  
 159 deficiencies and has completed a regularly scheduled relicensure  
 160 survey.

161 Section 11. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1171 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative(s) Harrison offered the following:

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

6 Remove lines 108-120  
7  
8  
9

10 -----  
11 **T I T L E A M E N D M E N T**

12 Remove lines 13-15 and insert:  
13 assessments; repealing s. 400.0089, F.S.,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1171 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative(s) Harrison offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 106-107 and insert:

7 Section 6. Section 400.0074, F.S., is amended to read:

8 400.0074 Local ombudsman council resident focused ~~onsite~~  
9 ~~administrative~~ assessments.-

10 (1) In addition to any specific investigation conducted  
11 pursuant to a complaint, the local council shall conduct  
12 resident focused assessments of a, ~~at least annually, an onsite~~  
13 ~~administrative assessment of each~~ nursing home, assisted living  
14 facility, and adult family-care home within its jurisdiction.  
15 This administrative assessment shall focus on factors affecting  
16 the rights, health, safety, and welfare of the residents. Each  
17 local council is encouraged to conduct a similar onsite  
18 administrative assessment of each additional long-term care  
19 facility within its jurisdiction.



Amendment No. 2

20       (2) The development of a resident focused assessment  
21 process shall be completed by a workgroup of one representative  
22 from each of the following organizations: the State Long Term  
23 Care Ombudsman, the State Long Term Care Ombudsman Council,  
24 Local Long Term Care District Council, Florida Health Care  
25 Association, Florida Association of Homes and Services for the  
26 Aging, the Florida Assisted Living Association, and the Governor  
27 by October 1, 2011.

28 ~~(3)(2) An onsite administrative assessment conducted by a local~~  
29 ~~council shall be subject to the following conditions:~~

30       ~~(a) To the extent possible and reasonable, the~~  
31 ~~administrative assessments shall not duplicate the efforts of~~  
32 ~~the agency surveys and inspections conducted under part II of~~  
33 ~~this chapter and parts I and II of chapter 429.~~

34       ~~(b) An administrative assessment shall be conducted at a~~  
35 ~~time and for a duration necessary to produce the information~~  
36 ~~required to carry out the duties of the local council.~~

37       ~~(c) Advance notice of an administrative assessment may not~~  
38 ~~be provided to a long-term care facility, except that notice of~~  
39 ~~followup assessments on specific problems may be provided.~~

40       (a)(d) A local council member physically present for the  
41 administrative resident focused assessment shall identify  
42 himself or herself to the facility administrator and cite the  
43 specific statutory authority for his or her assessment of the  
44 facility.

45       (b)(e) An administrative assessment may not unreasonably  
46 interfere with the programs and activities of residents.

Amendment No. 2

47        ~~(c)(f)~~ A local council member may not enter a single-  
48 family residential unit within a long-term care facility during  
49 an ~~administrative~~ assessment without the permission of the  
50 resident or the representative of the resident.

51        ~~(d)(g)~~ An ~~administrative~~ assessment must be conducted in a  
52 manner that will impose no unreasonable burden on a long-term  
53 care facility.

54        ~~(4)(3)~~ Regardless of jurisdiction, the ombudsman may  
55 authorize a state or local council member to assist another  
56 local council to perform the ~~administrative~~ assessments  
57 described in this section.

58        ~~(5)(4)~~ An ~~onsite administrative~~ assessment may not be  
59 accomplished by forcible entry. However, if the ombudsman or a  
60 state or local council member is not allowed to enter a long-  
61 term care facility, the administrator of the facility shall be  
62 considered to have interfered with a representative of the  
63 office, the state council, or the local council in the  
64 performance of official duties as described in s. 400.0083(1)  
65 and to have committed a violation of this part. The ombudsman  
66 shall report the refusal by a facility to allow entry to the  
67 agency, and the agency shall record the report and take it into  
68 consideration when determining actions allowable under s.  
69 400.102, s. 400.121; s. 429.14, s. 429.19, s. 429.69, or s.  
70 429.71.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1171 (2011)

Amendment No. 2

75

**T I T L E   A M E N D M E N T**

76

Remove lines 10-13 and insert:

77

Care Ombudsman Program complaint procedures; amending s.

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400.0074, F.S.; revising the current administrative assessment

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process from a facility focused inspection to a resident focused

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inspection; amending s. 400.0081, F.S.; requiring written


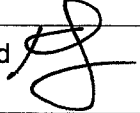


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 405 Employment Liability for Persons with Disabilities

**SPONSOR(S):** Civil Justice Subcommittee; Baxley and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Woodburn	Bond
2) Health & Human Services Access Subcommittee		Prater 	Schoolfield 
3) Judiciary Committee			

**SUMMARY ANALYSIS**

Supported employment services are offered to help an individual with a developmental disability gain or maintain employment. The bill provides that an employer who employs a person with a developmental disability who received supported employment services is not liable for a negligent or intentional act or omission of the employee provided that the employer did not have actual notice of an act or omission creating an unsafe condition in the workplace.

The bill also provides that a not-for-profit supported employment service that has provided employment services to a person with a developmental disability is not liable for the actions or conduct of that person as an employee.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Developmental Disability

"Developmental Disability" is a term that is defined in s. 393.063, F.S., as:

A disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

The Agency for Persons with Disabilities (APD)<sup>1</sup> has been specifically tasked with serving the needs of Floridians with developmental disabilities. The agency works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. The agency also provides assistance in identifying the needs of people with developmental disabilities.

#### Supported Employment Services

Supported employment services are services offered to help an individual gain or maintain employment. Generally, services involve job coaching, intensive job training, and follow-up services. The federal Department of Education State Supported Employment Services Program defines "supported employment services" as on-going support services provided by the designated state unit to achieve job stabilization.<sup>2</sup>

The Division of Vocational Rehabilitation (DVR) specifically defines "supported employment services" as "ongoing support services and other appropriate services needed to support and maintain a person who has a severe disability in supported employment."<sup>3</sup> The service provided is based upon the needs of the eligible individual as specified in the person's individualized written rehabilitation program. Generally, supported employment services are provided in such a way as to assist eligible individuals in entering or maintaining integrated, competitive employment.<sup>4</sup>

Both DVR and APD provide supported employment services. They also connect individuals with private organizations that supply such services. There are several entities in Florida dedicated to such services. However, these entities do not share information about their customers with the employers that employ their customers as supported employment. This is due to various reasons, including confidentiality concerns and contract agreements between the employer and the organization.

#### Employer Liability, In General

Under common law principles, an employer is liable for an act of its employee that causes injury to another person if the wrongful act was done while the employee was acting within the apparent scope

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<sup>1</sup> For more information see <http://apd.myflorida.com/> (last visited March 3, 2011).

<sup>2</sup> 34 C.F.R. s. 363.6(c)(2)(iii). "What is the State Supported Employment Services Program? Under the State Supported Employment Services Program, the Secretary [of Education] provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most severe disabilities who require supported employment services to enter or retain competitive employment. (Authority: 29 U.S.C. 795j)." 34 C.F.R. s. 363.1. See also, Supported Employment State Grants, at <http://www.ed.gov/programs/rsasupemp/index.html> (last visited 3/11/2009).

<sup>3</sup> For DVR: "Supported employment" means competitive work in integrated working settings for persons who have severe disabilities and for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or is intermittent as a result of a severe disability. Persons who have severe disabilities requiring supported employment need intensive supported employment services or extended services in order to perform such work. Section 413.20(22), F.S. For APD: "Supported employment" means employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance. Section 393.063(37), F.S.

<sup>4</sup> Section 413.20(27), F.S.

of employment and serving the interests of his or her employer. An employee is not acting within the scope of his or her employment, and thereby the employer is not liable, if the employee is acting to accomplish his or her own purposes and not to serve the interests of the employer.<sup>5</sup> The test for determining if the conduct complained of occurred within the scope of employment is:

- Whether the employee was performing the kind of conduct he was employed to perform;
- The conduct occurred within the time and space limits of the employment; and
- The conduct was activated at least in part by a purpose to serve the employer.<sup>6</sup>

An employer may be held liable for an intentional act of an employee when that act is committed within the real or apparent scope of the employer's business.<sup>7</sup> An employer may be held liable for a negligent act of an employee committed within the scope of his or her employment even if the employer is without fault.<sup>8</sup> An employer is liable for an employee's acts, intentional or negligent, if the employer had control over the employee at the time of the acts. "Absent control, there is no vicarious liability for the act of another, even for an employee. Florida courts do not use the label 'employer' to impose strict liability under a theory of respondent superior<sup>9</sup> but instead look to the employer's control or right of control over the employee at the time of the negligent act."<sup>10</sup> Employer fault is not an element of vicarious liability claims.<sup>11</sup>

Employers may also be liable for the negligent hiring of an employee. Negligent hiring is defined as "an employer's lack of care in selecting an employee who the employer knew or should have known was unfit for the position, thereby creating an unreasonable risk that another person would be harmed."<sup>12</sup> An action for negligent hiring is based on the direct negligence of the employer. However, in order to be liable for an employee's act based upon a theory of negligent hiring, the plaintiff must show that the employee committed a wrongful act that caused the injury. "The reason that negligent hiring is not a form of vicarious liability is that unlike vicarious liability, which requires that the negligent act of the employee be committed within the course and scope of the employment, negligent hiring may encompass liability for negligent acts that are outside the scope of the employment."<sup>13</sup> In *Williams v. Feather Sound, Inc.*, the Florida 2nd District Court of Appeal, in a case regarding negligent hiring, discussed the responsibility of the employer to be aware of an employee's propensity to commit an act at issue:

Many of these cases involve situations in which the employer was aware of the employee's propensity for violence prior to the time that he committed the tortious assault. The more difficult question, which this case presents, is what, if any, responsibility does the employer have to try to learn pertinent facts concerning his employee's character. Some courts hold the employer chargeable with the knowledge that he could have obtained upon reasonable investigation, while others seem to hold that an employer is only responsible for his actual prior knowledge of the employee's

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<sup>5</sup> *Gowan v. Bay Count*, 744 So.2d 1136, 1138 (Fla. 1st DCA 1999).

<sup>6</sup> *Id.*

<sup>7</sup> *Garcy v. Broward Process Servers, Inc.* 583 So.2d 714, 716 (Fla. 4th DCA 1991). The term "intentional" means done with the aim of carrying out the act. Black's Law Dictionary (9th ed. 2010), intentional.

<sup>8</sup> "This is based on the long-recognized public policy that victims injured by the negligence of employees acting within the scope of their employment should be compensated even though it means placing vicarious liability on an innocent employer." *Makris v. Williams*. 426 So.2d 1186, 1189 (Fla. 4th DCA 1983). The term "negligent" is characterized by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance. Black's Law Dictionary (9th ed. 2010), negligent. A negligent act is one that creates an unreasonable risk of harm to another. Black's Law Dictionary (9th ed. 2010), act.

<sup>9</sup> Respondent superior" means the doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. Black's Law Dictionary (9th ed. 2010), respondent superior.

<sup>10</sup> *Vasquez v. United Enterprises of Southwest Florida, Inc.* 811 So.2d 759, 761 (Fla. 3rd DCA 2002).

<sup>11</sup> *Makris v. Williams*. 426 So.2d 1186, 1189 (Fla. 4th DCA 1983).

<sup>12</sup> Black's Law Dictionary (9th ed. 2010), negligent hiring.

<sup>13</sup> *Anderson Trucking Service, Inc. v. Gibson*. 884 So.2d 1046, 1052 (Fla. 5th DCA 2004).

propensity for violence. The latter view appears to put a premium upon failing to make any inquiry whatsoever.<sup>14</sup>

Section 768.096, F.S., provides an employer presumption against negligent hiring, "if, before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or for the employment in general."<sup>15</sup>

#### Effect of the Bill

The bill creates s. 768.0965, F.S., entitled "Employees with Disabilities Opportunity Act," to provide that an employer is not liable, under certain conditions, for negligent or intentional acts or omissions by an employee with a developmental disability, as defined in s. 393.063, F.S. The employer is not liable if:

- The employee has received supported employment services through a public or private not-for-profit provider; and
- The employer does not have actual notice of an action or omission of the employee which creates an unsafe condition in the workplace.

The bill also provides that a not-for-profit supported employment services provider who provides supported employment services to an individual with a developmental disability is not liable for the actions or conduct of that individual that occurs within the scope of such individual's employment.

The bill provides an effective date of July 1, 2011. The act applies only to causes of action that occur on or after the effective date.

#### B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 creates s. 768.0965, F.S., regarding employer and not-for-profit supported employment service provider liability.

Section 3 provides an effective date of July 1, 2011.

## 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.

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<sup>14</sup> *Williams v. Feather Sound, Inc.*, 386 So.2d 1238, 1239 - 1240 (Fla. 2nd DCA 1980).

<sup>15</sup> Section 768.096, F.S., defines what a background investigation must include, like contacting references, interviewing the employee, and obtaining a criminal background check from the Florida Department of Law Enforcement. However, the election by an employer not to conduct the investigation is not a presumption that the employer failed to use reasonable care in hiring an employee.



2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 14, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment amends the effective date to provide that the act applies to causes of action that occur on or after the effective date. The bill was then reported favorably.

1                                   A bill to be entitled  
 2           An act relating to employment liability for persons with  
 3           disabilities; providing a short title; creating s.  
 4           768.0965, F.S.; limiting the liability of employers of  
 5           persons with developmental disabilities for acts or  
 6           omissions of such employees in certain circumstances;  
 7           providing that a not-for-profit supported employment  
 8           service provider who has provided supported employment  
 9           services to an individual with a developmental disability  
 10          is not liable for the actions or conduct of that  
 11          individual occurring within the scope of his or her  
 12          employment; providing applicability; providing an  
 13          effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. This act may be cited as the "Employees with  
 18 Disabilities Opportunity Act."

19           Section 2. Section 768.0965, Florida Statutes, is created  
 20 to read:

21           768.0965 Limitation of employment liability for persons  
 22 with disabilities.-

23           (1) An employer employing a person with a developmental  
 24 disability as defined in s. 393.063 is not liable for the acts  
 25 or omissions, negligent or intentional, of the employee, if:

26           (a) The employee has received supported employment  
 27 services through a public or private not-for-profit provider;  
 28 and

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29        (b) The employer does not have actual notice of actions or  
30        omissions of the employee which create unsafe conditions in the  
31        workplace.

32        (2) A not-for-profit supported employment service provider  
33        who has provided supported employment services to an individual  
34        with a developmental disability as defined in s. 393.063 is not  
35        liable for the actions or conduct of the individual occurring  
36        within the scope of such individual's employment.

37        Section 3. This act shall take effect July 1, 2011, and  
38        shall apply to causes of action occurring on or after that date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB HSAS 11-02 Health and Human Services  
**SPONSOR(S):** Health & Human Services Access Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Access Subcommittee		AP Prater	Schoolfield

### SUMMARY ANALYSIS

The bill amends sections of Chapter 393 and Chapter 916, F.S., relating to the Agency for Persons with Disabilities (APD). The bill:

- Requires that APD's monitoring regulations do not require facilities that serve APD clients to make pornographic materials available to residents at such facilities.
- Requires that an individual who is subject to an involuntary admission order to an APD residential facility be released by the court to APD. APD will then make arrangements for the appropriate residential facility, rather than a court directly placing an individual in a specific facility.
- Requires APD to notify the court and counsel of transfers between residential facilities.
- Requires APD to ensure that there are sufficient facilities that provide community-based training for defendants charged with sex offenses.
- Creates a taskforce to set guidelines and procedures for residential facilities, in relation to sexual activity.

The bill will have a minimal fiscal impact related to travel by the created task force.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.<sup>1</sup> A developmental disability is defined in chapter 393, Florida Statutes, as “a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome that manifests before the age of 18, and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”<sup>2</sup> Children who are at “high risk<sup>3</sup>” of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.

#### *Involuntary Commitment*

The circuit court after a hearing and in accordance with the procedures in s. 393.11, F.S., may involuntarily admit a person with a diagnosis of mental retardation or autism to an APD residential facility for care and treatment.<sup>4</sup> After APD receives the court order, and within 45 days upon receipt, must provide the court with the person’s family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs.<sup>5</sup> In addition, the agency shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential setting.<sup>6</sup> The court which issues the initial order for involuntary admission to residential services has continuing jurisdiction to ensure that the person is receiving adequate care. Upon request, the court may transfer the jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued.<sup>7</sup>

A defendant who is charged with a felony and been found incompetent to proceed due to mental retardation or autism may be involuntarily committed for training upon a finding by the court.<sup>8</sup> The court may order the individual into a forensic facility operated by APD. If the felony charges are dropped for the defendant, the court must consider a petition for involuntary admission to residential services provided by APD which may include a secure placement.<sup>9</sup>

#### *Monitoring*

Through its licensing authority and by rule, APD is required to provide the following regulations for foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients:

- license application procedures;
- provider qualifications;
- facility and client care standards;
- requirements for client records;
- requirements for staff qualifications and training; and

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<sup>1</sup> S. 20.197(3), F.S.

<sup>2</sup> S. 393.063(9), F.S.

<sup>3</sup> S. 393.063(19), F.S., defines “high-risk child” as a child from 3 to 5 years of age with one or more of the following characteristics: a developmental delay in cognition, language, or physical development; a child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated; a child with a parent or guardian with developmental disabilities who requires assistance in meeting the child’s developmental needs; or a child who has a physical or genetic anomaly associated with developmental disability.

<sup>4</sup> S. 393.11, (8)(b)1, F.S.

<sup>5</sup> S. 393.11(8)(e), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 393.11(11), F.S.

<sup>8</sup> S.916.302, F.S.

<sup>9</sup> S.916.3025(3), F.S.

- requirements for monitoring.<sup>10</sup>

In addition, the Agency for Health Care Administration contracts with the Delmarva Foundation, a nonprofit organization, to conduct quality assurance monitoring activities that includes licensed residential facilities who receive Medicaid waiver funding.<sup>11</sup>

There are approximately 1,600 APD licensed residential facilities in the state, covering a broad range of needs. There is no provision in APD procedures for residential providers that regulates sexual activity among residents of its facilities.<sup>12</sup>

In December 2010, the St. Petersburg Times reported that the Human Development Center (HDC) in Seffner, FL, a facility that provides services to APD clients, promoted the use of pornography and sexual activity among male residents as a part of their treatment plan.<sup>13</sup> The parent of an involuntarily committed resident to HDC alleged that this policy was included in his treatment plan over their objections.<sup>14</sup> Because the individual was accused of committing a sexual offense prior to commitment, transfer to an alternative facility was difficult to achieve.<sup>15</sup>

### Effects of Proposed Changes

The bill provides that monitoring requirements for foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs, which are licensed by APD, may not mandate the availability of pornography in residential facilities licensed by APD.

The bill provides that an individual who is subject to an involuntary admission to an APD residential facility be released to the agency, and then placed in an appropriate facility. The bill prevents the court from ordering a person directly to a facility. APD may transfer an involuntarily committed individual under civil commitment from one facility to another, and must notify the court and counsel within 30 days after the transfer is completed.

The bill requires APD to ensure that there are sufficient facilities that provide community-based training for defendants charged with sex offenses so that alternative placements are available. Where there are two or fewer, APD must immediately procure additional facilities.

The bill provides that the Legislature recognizes the rights of individuals with developmental disabilities and the obligation of the state to protect vulnerable individuals from sexual abuse. In order to protect these individuals, the bill establishes a task force to provide input to APD to set guidelines and procedures for residential facilities, in relation to sexual activity.

The task force is composed of the following members:

- The director of the Agency for Persons with Disabilities or his or her designee.
- The director of Adult Protective Services in the Department of Children and Family Services.
- The executive director of The Arc of Florida.
- An Arc of Florida family board member appointed by the executive director of The Arc of Florida.
- The chair of the Family Care Council Florida.
- A parent representative from the Family Care Council Florida appointed by the chair of the Family Care Council Florida.
- A representative from the Developmental Disabilities Council, Inc.
- A representative from Disability Rights Florida.
- A representative from the Florida courts.

<sup>10</sup> S. 393.067(1), F.S.

<sup>11</sup> See: <http://www.dfmc-florida.org/> (last viewed April 2, 2011).

<sup>12</sup> APD Bill Analysis SB 2062, on file with Health and Human Services Access Subcommittee Staff, March 31, 2011.

<sup>13</sup> See: *Group Home's Unorthodox Sex Policy Disquiets Mother*, St. Petersburg Times, December 27, 2010.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

- A representative from the Florida Prosecuting Attorneys Association.
- A representative from the Florida Public Defender Association.
- A staff member of the University Center for Excellence in Developmental Disabilities at the University of South Florida/Center for Inclusive Communities.
- A self-advocate.
- A representative from an intensive behavior residential habilitation provider.

The members of the task force must hear from self-advocates, family members, experts at universities and colleges, and other entities with expertise pertinent to this issue. Members of the task force serve without compensation, but are entitled to per diem and travel as provided in s. 112.061, F.S. APD is to provide administrative support for the task force, and the task force must report its findings to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 393.067, F.S., relating to facility licensure.  
**Section 2:** Amends s. 393.11, F.S. relating to involuntary admission to residential services.  
**Section 3:** Amends s. 916.1093, F.S. relating to operation and administration; rules.  
**Section 4:** Amends s. 916.3025, F.S. relating to jurisdiction of committing court.  
**Section 5:** Creates an unnumbered section of law creating a taskforce.  
**Section 6:** Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.
2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.



### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to health and human services; amending s.  
 3 393.067, F.S.; prohibiting monitoring requirements that  
 4 mandate pornographic materials be available in residential  
 5 facilities that serve clients of the Agency for Persons  
 6 with Disabilities; amending s. 393.11, F.S.; requiring the  
 7 court to order a person involuntarily admitted to  
 8 residential services to be released to the agency for  
 9 appropriate residential services; forbidding the court  
 10 from ordering that such person be released directly to a  
 11 residential service provider; authorizing the agency to  
 12 transfer a person from one residential setting to another;  
 13 requiring the agency to notify the committing court of a  
 14 person's transfer within a specified time; amending s.  
 15 916.1093, F.S.; requiring the agency to ensure that there  
 16 are sufficient community-based placements for defendants  
 17 charged with sex offenses; amending s. 916.3025, F.S.;  
 18 requiring that the court order a person involuntarily  
 19 admitted to residential services after criminal charges  
 20 have been dismissed be released to the agency for  
 21 appropriate residential services; creating a task force to  
 22 develop input for the creation of certain guidelines and  
 23 procedures for providers of residential services;  
 24 providing for membership of the task force; requiring the  
 25 task force to seek input from certain pertinent entities;  
 26 requiring the Agency for Persons with Disabilities to  
 27 provide administrative support to the task force;  
 28 requiring the task force to submit its findings to the

29 Legislature; providing an effective date.

30

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

32 Section 1. Subsection (1) of section 393.067, Florida  
33 Statutes, is amended to read:

34 393.067 Facility licensure.—

35 (1) The agency shall provide through its licensing  
36 authority and by rule license application procedures, provider  
37 qualifications, facility and client care standards, requirements  
38 for client records, requirements for staff qualifications and  
39 training, and requirements for monitoring foster care  
40 facilities, group home facilities, residential habilitation  
41 centers, and comprehensive transitional education programs that  
42 serve agency clients. However, monitoring requirements for  
43 foster care facilities, group home facilities, residential  
44 habilitation centers, and comprehensive transitional education  
45 programs may not mandate that pornographic materials be  
46 available in residential facilities that serve the clients of  
47 the agency.

48 Section 2. Present paragraph (e) of subsection (8) of  
49 section 393.11, Florida Statutes, is redesignated as paragraph  
50 (f) and amended, and a new paragraph (e) is added to that  
51 subsection, to read:

52 393.11 Involuntary admission to residential services.—

53 (8) ORDER.—

54 (e) If an order of involuntary admission to residential  
55 services provided by the agency is entered by the court, the  
56 court shall order that the person be released to the agency for

57 | receipt of appropriate residential services and may not order  
 58 | the person to be released directly to a residential service  
 59 | provider.

60 |        ~~(f)(e)~~ Upon receiving the order, the agency shall, within  
 61 | 45 days, provide the court with a copy of the person's family or  
 62 | individual support plan and copies of all examinations and  
 63 | evaluations, outlining the treatment and rehabilitative  
 64 | programs. The agency shall document that the person has been  
 65 | placed in the most appropriate, least restrictive and cost-  
 66 | beneficial residential setting. A copy of the family or  
 67 | individual support plan and other examinations and evaluations  
 68 | shall be served upon the person and the person's counsel at the  
 69 | same time the documents are filed with the court. The agency may  
 70 | transfer a person from one residential setting to another  
 71 | residential setting and must notify the court and the person's  
 72 | counsel of the transfer within 30 days after the transfer is  
 73 | completed.

74 |        Section 3. Section 916.1093, Florida Statutes, is amended  
 75 | to read:

76 |        916.1093 Operation and administration; rules.—

77 |        (1) The department or agency may enter into contracts and  
 78 | do such things as may be necessary and incidental to assure  
 79 | compliance with and to carry out the provisions of this chapter  
 80 | in accordance with the stated legislative intent.

81 |        (2) The agency shall ensure that there are a sufficient  
 82 | number of civil facilities providing community-based training  
 83 | for defendants charged with sex offenses so that alternative  
 84 | placement options are available. If the agency determines that

85 there are two or fewer facilities available to provide  
 86 community-based training for defendants charged with sex  
 87 offenses, the agency shall immediately procure additional  
 88 facilities.

89 ~~(3)-(2)~~ The department and agency are authorized to adopt  
 90 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
 91 provisions of this chapter. Such rules must address the use of  
 92 restraint and seclusion in forensic facilities and must be  
 93 consistent with recognized best practices; prohibit inherently  
 94 dangerous restraint or seclusion procedures; establish  
 95 limitations on the use and duration of restraint and seclusion;  
 96 establish measures to ensure the safety of clients and staff  
 97 during an incident of restraint or seclusion; establish  
 98 procedures for staff to follow before, during, and after  
 99 incidents of restraint or seclusion; establish professional  
 100 qualifications of and training for staff who may order or be  
 101 engaged in the use of restraint or seclusion; provide data  
 102 reporting and data collection procedures relating to the use of  
 103 restraint and seclusion; and provide for the documentation of  
 104 the use of restraint or seclusion in the client's facility  
 105 record.

106 Section 4. Subsection (3) of section 916.3025, Florida  
 107 Statutes, is amended to read:

108 916.3025 Jurisdiction of committing court.—

109 (3) The committing court shall consider a petition to  
 110 involuntarily admit a defendant whose charges have been  
 111 dismissed to residential services provided by the agency and,  
 112 when applicable, to continue secure placement of such person as

113 provided in s. 916.303. If a defendant whose criminal charges  
 114 have been dismissed is involuntarily committed to residential  
 115 services provided by the agency, the committing court shall  
 116 order that the defendant be released to the agency for receipt  
 117 of appropriate residential services and may not order that the  
 118 defendant be released directly to a residential service  
 119 provider. The committing court shall retain jurisdiction over  
 120 such person so long as he or she remains in secure placement or  
 121 is on conditional release as provided in s. 916.304. However,  
 122 upon request, the court may transfer continuing jurisdiction to  
 123 the court in the circuit where the defendant resides. The  
 124 defendant may not be released from an order for secure placement  
 125 except by order of the court.

126 Section 5. The Legislature recognizes the rights of  
 127 individuals who are developmentally disabled to lead full and  
 128 rewarding lives. The Legislature also recognizes the state's  
 129 obligation to protect vulnerable adults from sexual abuse.

130 (1) In recognition of the social, legal, and environmental  
 131 complexities associated with this issue, the Agency for Persons  
 132 with Disabilities shall establish a task force to gather input  
 133 for the creation of guidelines and procedures for providers of  
 134 residential services relating to sexual activity among the  
 135 residents of its facilities.

136 (2) The task force shall consist of the following members:

137 (a) The director of the Agency for Persons with  
 138 Disabilities or his or her designee.

139 (b) The director of Adult Protective Services in the  
 140 Department of Children and Family Services.

- 141        (c) The executive director of The Arc of Florida.
- 142        (d) A family board member of The Arc of Florida appointed  
143 by the executive director of The Arc of Florida.
- 144        (e) The chair of the Family Care Council Florida.
- 145        (f) A parent representative from the Family Care Council  
146 Florida appointed by the chair of the Family Care Council  
147 Florida.
- 148        (g) A representative from the Developmental Disabilities  
149 Council.
- 150        (h) A representative from Disability Rights Florida.
- 151        (i) A representative from the Florida courts.
- 152        (j) A representative from the Florida Prosecuting  
153 Attorneys Association.
- 154        (k) A representative from the Florida Public Defender  
155 Association.
- 156        (l) A staff member of the University Center for Excellence  
157 in Developmental Disabilities at the University of South  
158 Florida/Center for Inclusive Communities.
- 159        (m) A self-advocate.
- 160        (n) A representative from an intensive behavior  
161 residential habilitation provider.
- 162        (3) The task force shall seek input from self-advocates,  
163 family members, universities and colleges, and other pertinent  
164 entities.
- 165        (4) The agency shall provide administrative support to the  
166 task force.
- 167        (5) Members of the task force shall serve without  
168 compensation, but are entitled to reimbursement for per diem and

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169 | travel expenses as provided in s. 112.061, Florida Statutes.

170 |       (6) The task force shall submit a report of its findings  
171 | to the President of the Senate and the Speaker of the House of  
172 | Representatives by November 1, 2011.

173 |       Section 6. This act shall take effect July 1, 2011.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB HSAS 11-02 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Harrell offered the following:

4  
5 **Amendment**

6 Remove lines 167-169 and insert:  
7 (5) Members of the task force shall serve without  
8 compensation.