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# **Health & Human Services Quality Subcommittee**

**Tuesday, January 17, 2012  
8:00 AM – 10:30 AM  
306 HOB**

**Dean Cannon  
Speaker**

**John Wood  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Quality Subcommittee

**Start Date and Time:** Tuesday, January 17, 2012 08:00 am

**End Date and Time:** Tuesday, January 17, 2012 10:30 am

**Location:** 306 HOB

**Duration:** 2.50 hrs

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

HB 227 Prescription Drug Abuse by Stargel

HB 653 Health Care Fraud by Cruz

HB 799 Physical Therapy by Goodson

HB 1143 Health Care Practitioner License Suspension by Costello

HB 4163 Continuing Education for Athletic Trainers and Massage Therapists by Hudson

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 13, 2012.



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., Friday, January 13, 2012.

**NOTICE FINALIZED on 01/12/2012 16:10 by Iseminger.Bobbye**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 227 Prescription Drug Abuse  
**SPONSOR(S):** Stargel  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche 	Calamas 
2) Justice Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 227 establishes the Florida Statewide Task Force on Prescription Drug Abuse and Newborns to study the breadth and depth of Neonatal Withdrawal Syndrome in the state. Neonatal Withdrawal Syndrome is the complex group of physiological and behavioral symptoms and problems suffered by newborn children as a result of withdrawal from exposure to narcotics in the womb. Due to the prescription drug abuse problem in Florida, health care providers and facilities are experiencing a sharp increase in the number of babies born with Neonatal Withdrawal Syndrome.

The bill requires the Task Force to collect and analyze data, examine ways to increase public awareness, and explore possible solutions to the problem. The bill also specifies membership and other duties of the Task Force. The Task Force is required to submit a report to the Speaker of the House of Representatives and the President of the Senate containing policy recommendations to address the problem.

The bill has an insignificant fiscal impact on state government.

The bill provides an effective date of immediately upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Prescription Drug Abuse

Prescription drug abuse is the fastest growing drug problem in the United States, constituting an epidemic, according to the Centers for Disease Control and Prevention.<sup>1</sup> Certain prescription drugs – opioid substances, central nervous system depressants, and stimulants – when abused can alter the brain's activity and lead to dependence and possible addiction. According to research by the National Institute on Drug Abuse, the three most abused classes of prescription drugs are:

- Opioids, used to treat pain. Examples include codeine (Schedules II, III, V), oxycodone (OxyContin, Percocet – Schedule II), and morphine (Kadian, Avinza -Schedule II);
- Central nervous system depressants, used to treat anxiety and sleep disorders. Examples include barbiturates (Mebaral, Nembutal) and benzodiazepines (Valium, Xanax) (all in Schedule IV); and
- Stimulants, used to treat ADHD, narcolepsy, and obesity. Examples include dextroamphetamine (Dexedrine, Adderall) and methylphenidate (Ritalin, Concerta) (all in Schedule II).<sup>2</sup>

The Substance Abuse and Mental Health Services Administration (SAMHSA) sponsors an annual national survey on drug use and health. The most recent survey indicates there are 7 million persons aged 12 or older who used prescription-type psychotherapeutic drugs non-medically within the past month in 2010.<sup>3</sup> Of those 7 million persons, 5.1 million used pain relievers non-medically within the past month in 2010.<sup>4</sup> It is estimated that 1.9 million people in the United States meet abuse or dependence criteria for prescription opioids.<sup>5</sup> Deaths from prescription painkiller overdoses have more than tripled in the past decade.<sup>6</sup>

The prescription drug abuse problem in Florida is particularly acute. The abuse of prescription drugs is becoming more prevalent and more deadly than the abuse of illicit drugs, such as heroin, cocaine, and methamphetamine.<sup>7</sup> The Florida Medical Examiners Commission reports on drug-related deaths in Florida, and specifically tracks deaths caused by the abuse of prescription drugs. According to the Commission, prescription drugs are found in deceased persons in lethal amounts more often than illicit drugs.<sup>8</sup> The most recent report found 5,647 deaths caused by one or more prescription drugs.<sup>9</sup> The rate of deaths caused by prescription drugs during 2010 averaged more than 15 fatalities per day.<sup>10</sup>

Florida may experience a downturn in prescription drug abuse due to reduced supply. Data from the Department of Health on controlled substance purchases by Florida physicians and pharmacies

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<sup>1</sup> Centers for Disease Control and Prevention, Vital Signs, *Prescription Painkiller Overdoses in the U.S.*, November 1, 2011, available at [www.cdc.gov/vitalsigns/PainkillerOverdoses/](http://www.cdc.gov/vitalsigns/PainkillerOverdoses/) (last viewed on January 11, 2012).

<sup>2</sup> National Institutes of Health, National Institute on Drug Abuse, *Prescription Medications*, available at [www.drugabuse.gov/drugs-abuse/prescription-medications](http://www.drugabuse.gov/drugs-abuse/prescription-medications) (last viewed January 12, 2012).

<sup>3</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *2010 National Survey on Drug Use and Health: Summary of National Findings*, [www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm](http://www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm) (last viewed on January 10, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> National Institutes of Health, National Institute on Drug Abuse, *Topics in Brief: Prescription Drug Abuse*, available at [www.drugabuse.gov/publications/topics-in-brief/prescription-drug-abuse](http://www.drugabuse.gov/publications/topics-in-brief/prescription-drug-abuse) (last viewed on January 12, 2012).

<sup>6</sup> *See supra* at FN 1.

<sup>7</sup> Florida Department of Law Enforcement, Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2010 Report*, August 2011, page ii.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

indicates a sharp decline in oxycodone purchases.<sup>11</sup> In the first five months of 2010, physicians purchased over 35 million dosage units of oxycodone; in the first five months of 2011, physicians purchased only about 925,000 dosage units of oxycodone.<sup>12</sup> Similarly, in the first five months of 2010, pharmacies purchased over 236 million dosage units of oxycodone; in the first five months of 2011, pharmacies purchased only about 225 million dosage units of oxycodone.<sup>13</sup> These changes may be a result of, or market anticipation of, legislative changes in 2009 and 2011 to address the problem of prescription drug abuse in Florida.<sup>14</sup>

### Neonatal Withdrawal Syndrome

Neonatal Withdrawal Syndrome (NWS), also known to as Neonatal Abstinence Syndrome, is defined as a complex group of physiological and behavioral signs and symptoms that a newborn exhibits and experiences when withdrawing from exposure to narcotics, including prescription medication, in the womb.<sup>15</sup> It is a multisystem disorder that involves the central nervous system, the gastrointestinal system, and the respiratory system.<sup>16</sup> Most drugs used by the mother are transferred to the fetus by the placenta. The amount and rate of drug transferred depend on the properties of the drug, including its half-life, or rate at which the drug is processed by the body.

Opiates produce the most dramatic effects on both the mother and the fetus. Because of its short half-life, withdrawal from opiates may start as early as 24 hours after birth in 50 percent to 80 percent of infants born to mothers addicted to opiates.<sup>17</sup> Narcotics are the most frequent cause of NWS, including methadone, morphine, oxycodone, codeine, and buprenorphine.<sup>18</sup> NWS symptoms usually peak at three to four days following birth, but may not appear for ten to fourteen days following birth.<sup>19</sup> Complete withdrawal from opiate addiction in infants may last for four to six months.<sup>20</sup>

NWS presents as neurologic symptoms, dysfunction of the gastrointestinal system, and other conditions. The kind and severity of symptoms depend on the type of drug used by the mother, how much of the drug was taken and for how long during the pregnancy, and whether the baby was born full-term or premature.<sup>21</sup> Neurologic symptoms include:

- Tremors
- Irritability
- Increased wakefulness
- High-pitched crying
- Increased muscle tone
- Seizures
- Increased sweating
- Frequent yawning and sneezing

Dysfunction of the gastrointestinal system includes:

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<sup>11</sup> Florida Department of Health, Division of Medical Quality Assurance, *Implementation of House Bill 7095 Relating to Prescription Drugs*, PowerPoint presentation to Health and Human Services Committee on September 21, 2011 (on file with committee staff).

<sup>12</sup> *Id.* at slide 11.

<sup>13</sup> *Id.* at slide 12.

<sup>14</sup> Ch. 2009-197, Ch. 2009-198, and Ch. 2011-141, Laws of Fla.

<sup>15</sup> Hamdan, M.D., A., Rosenkrantz, M.D., T., et. al, *Neonatal Abstinence Syndrome*, Medscape Reference, Drugs, Diseases, & Procedures, March 3, 2010, available at <http://emedicine.medscape.com/article/978763-overview> (last viewed on January 10, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; see also Lucile Packard Children's Hospital at Stanford University Health Library, *Neonatal Abstinence Syndrome*, available at [www.lpch.org/DiseaseHealthInfo/HealthLibrary/hrnewborn/nas.html](http://www.lpch.org/DiseaseHealthInfo/HealthLibrary/hrnewborn/nas.html) (last viewed January 11, 2012).

<sup>18</sup> Naga, M.D., Osama, *Neonatal Abstinence Syndrome*, PowerPoint presentation, Texas Tech University Health Sciences Center, slide 3, available at [www.ttuhscc.edu/fostersom/pediatrics/neonatology/documents/NAGA-Neonatal\\_Abstinence\\_Syndrome.pdf](http://www.ttuhscc.edu/fostersom/pediatrics/neonatology/documents/NAGA-Neonatal_Abstinence_Syndrome.pdf) (last viewed on January 10, 2012).

<sup>19</sup> *Id.* at slide 4.

<sup>20</sup> *Id.*

<sup>21</sup> National Institutes of Health, National Library of Medicine, Medline Plus Medical Encyclopedia, *Neonatal abstinence syndrome*, available at [www.nlm.nih.gov/medlineplus/ency/article/007313.htm](http://www.nlm.nih.gov/medlineplus/ency/article/007313.htm) (last viewed on January 10, 2012).

- Poor feeding
- Uncoordinated and constant sucking
- Vomiting
- Diarrhea
- Dehydration
- Poor weight gain

Other conditions indicative of NWS include:

- Increased sweating
- Nasal stuffiness
- Fever
- Mottling (discolored patches on the skin)
- Temperature instability<sup>22</sup>

Treatment of infants with NWS includes gentle handling, reduction of noise and light stimuli, swaddling, and demand feeding.<sup>23</sup> Many infants must be “readdicted” to the opiate to which they were exposed in utero, usually morphine sulfate administered orally or buprenorphine, to ease the symptoms of withdrawal, then slowly weaned off of the medication.<sup>24</sup>

### Task Forces in Florida

A task force is defined in Florida statute as, in part, an advisory body created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem.<sup>25</sup> The existence of the task force ends once it completes its appointed task or duty.<sup>26</sup>

### **Effect of Proposed Changes**

House Bill 227 creates the Florida Statewide Task Force on Prescription Drug Abuse and Newborns (Task Force) within the Department of Legal Affairs in the Office of the Attorney General to study NWS as a result of maternal prescription drug abuse during pregnancy. The Task Force is charged with researching the impact of prescription drug use and NWS in the state and evaluating effective strategies for treatment and prevention of NWS. In order to complete these tasks, the bill requires the Task Force to collect and organize data relating to the nature and scope of NWS as a result of prescription drug abuse. Also, the Task Force is to collect information that reflects the costs associated with treating pregnant women and newborns suffering from NWS. The Task Force must identify federal, state, and local programs that provide services to pregnant women addicted to prescription drugs and newborns suffering from NWS. Lastly, the Task Force must evaluate methods to increase public awareness of the dangers associated with prescription drug abuse by pregnant women and the dangers posed to newborns as a result of maternal prescription drug abuse during pregnancy.

The bill specifies 10 members of the Task Force:

- The Attorney General, who will serve as chairperson;
- The State Surgeon General, who will serve as vice chairperson;
- The Secretary of the Department of Children and Family Services;
- The Secretary of the Agency for Health Care Administration;
- The Executive Director of the Department of Law Enforcement;
- One Senator, appointed by the President of the Senate;
- One Member, appointed by the Speaker of the House of Representatives;
- A representative from the Florida Medical Association;

<sup>22</sup> American Academy of Pediatrics, Committee on Drugs, *Neonatal Drug Withdrawal*, Pediatrics, vol. 101, page 1079 (1998).

<sup>23</sup> See *supra* at FN 13, slide 14.

<sup>24</sup> See *supra* at FN 13, slides 16 through 18.

<sup>25</sup> S. 20.03(8), F.S.

<sup>26</sup> *Id.*

- A representative from the Florida Hospital Association; and
- A representative from an addiction and recovery association, appointed by the Attorney General.

The Task Force is directed to submit a report to the Speaker of the House of Representatives and the President of the Senate with its policy recommendations on or before January 15, 2013.

The bill is effective upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Creates an unnumbered section of law, establishing the Florida Statewide Task Force on Prescription Drug Abuse and Newborns.

**Section 2:** Provides an effective date of immediately upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

The Department of Legal Affairs will provide staff to assist the task force in completing its duties. Further, members of the task force will be entitled to per diem payments and travel reimbursement under current law.<sup>27</sup> The Office of the Attorney General estimates a fiscal impact of approximately \$14,500, which includes per diem payments, travel reimbursement, and staff costs.<sup>28</sup> The Office of the Attorney General has identified a legal settlement that could cover all costs associated with the task force.<sup>29</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

<sup>27</sup> S. 112.061, F.S. (per diem and travel expenses); Rule 69I-42.006, F.A.C. (per diem and subsistence allowance); Rule 69I-42.007, F.A.C. (transportation by common carrier); Rule 69I-42.008, F.A.C. (transportation by private vehicle); Rule 69I-42.010, F.A.C. (other incidental traveling expenses)

<sup>28</sup> Department of Legal Affairs, *HB 227 Bill Analysis*, page 2 (January 13, 2012).

<sup>29</sup> *Id.*



### 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:

Not applicable.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to prescription drug abuse; creating  
 3 the Florida Statewide Task Force on Prescription Drug  
 4 Abuse and Newborns; providing legislative intent;  
 5 providing for purposes, membership, meetings, and  
 6 duties of the task force; providing for reimbursement  
 7 for per diem and travel expenses; requiring a report  
 8 to the Legislature; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Florida Statewide Task Force on Prescription  
 13 Drug Abuse and Newborns.—

14 (1) The Legislature declares that the purpose of this act  
 15 is to create a task force to examine and analyze the emerging  
 16 problem of Neonatal Withdrawal Syndrome, as it pertains to  
 17 prescription drugs.

18 (2) (a) The Florida Statewide Task Force on Prescription  
 19 Drug Abuse and Newborns, a task force as defined in s. 20.03(8),  
 20 Florida Statutes, is created within the Department of Legal  
 21 Affairs. The task force is created for the express purpose of  
 22 researching the impact of prescription drug use and Neonatal  
 23 Withdrawal Syndrome, evaluating effective strategies for  
 24 treatment and prevention, and providing policy recommendations  
 25 to the Legislature.

26 (b) The task force shall consist of the following members  
 27 or their designees:

- 28 1. The Attorney General, who shall serve as chair.

29        2. The State Surgeon General, who shall serve as vice  
30 chair.

31        3. The Secretary of Children and Family Services.

32        4. The Secretary of Health Care Administration.

33        5. The executive director of the Department of Law  
34 Enforcement.

35        6. A Senator appointed by the President of the Senate.

36        7. A Member appointed by the Speaker of the House of  
37 Representatives.

38        8. A representative from the Florida Medical Association.

39        9. A representative from the Florida Hospital Association.

40        10. A representative from an addiction and recovery  
41 association, appointed by the Attorney General.

42        (c) Members of the task force may be reimbursed for per  
43 diem and travel expenses as provided in s. 112.061, Florida  
44 Statutes.

45        (d) The Department of Legal Affairs shall provide the task  
46 force with staff necessary to assist the task force in the  
47 performance of its duties.

48        (3) The task force shall hold its organizational session  
49 by May 1, 2012. Thereafter, the task force shall meet at least  
50 four times per year. Additional meetings may be held if the  
51 chair determines that extraordinary circumstances require an  
52 additional meeting. A majority of the members of the task force  
53 constitutes a quorum.

54        (4) The task force shall:

55 (a) Collect and organize data concerning the nature and  
 56 extent of Neonatal Withdrawal Syndrome from prescription drugs  
 57 in the state.

58 (b) Collect and organize data concerning the costs  
 59 associated with treating expectant mothers and newborns  
 60 suffering from prescription drug withdrawal.

61 (c) Identify available federal, state, and local programs  
 62 that provide services to mothers who abuse prescription drugs  
 63 and newborns with Neonatal Withdrawal Syndrome.

64 (d) Evaluate approaches to increase public awareness of  
 65 dangers associated with prescription drug abuse, particularly  
 66 with regard to women, expectant mothers, and newborns.

67 (5) The task force shall submit a report on its findings  
 68 to the President of the Senate and the Speaker of the House of  
 69 Representatives by January 15, 2013.

70 Section 2. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Quality Subcommittee  
3 Representative Stargel offered the following:  
4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Statewide Task Force on Prescription Drug Abuse  
8 and Newborns.-

9 (1) The Legislature declares that the purpose of this act  
10 is to create a task force to examine and analyze the emerging  
11 problem of neonatal withdrawal syndrome as it pertains to  
12 prescription drugs.

13 (2)(a) There is created within the Department of Legal  
14 Affairs the Statewide Task Force on Prescription Drug Abuse and  
15 Newborns, a task force as defined in s. 20.03, Florida Statutes.  
16 The task force is created for the express purpose of researching  
17 the impact of prescription drug use and neonatal withdrawal  
18 syndrome, evaluating effective strategies for treatment and

Amendment No.

19 prevention, and providing policy recommendations to the  
20 Legislature.

21 (b) The task force shall consist of the following members,  
22 or his or her designee:

23 1. The Attorney General who shall serve as chair.

24 2. The Surgeon General who shall serve as vice chair.

25 3. The Secretary of Children and Family Services.

26 4. The Secretary of Health Care Administration.

27 5. The executive director of the Department of Law  
28 Enforcement.

29 6. A legislator appointed by the President of the Senate.

30 7. A legislator appointed by the Speaker of the House of  
31 Representatives.

32 8. A representative from the Florida Medical Association.

33 9. A representative from the Florida Hospital Association.

34 10. A representative, appointed by the Attorney General,  
35 from an addiction and recovery association.

36 11. A representative from the Florida Osteopathic Medical  
37 Association.

38 12. A representative from the March of Dimes.

39 13. A representative of Healthy Start.

40 14. A resident of this state appointed by the Attorney  
41 General.

42 (c) Members of the task force are entitled to receive  
43 reimbursement for per diem and travel expenses pursuant to s.  
44 112.061, Florida Statutes.

Amendment No.

45 (d) The Department of Legal Affairs shall provide the task  
46 force with staff necessary to assist the task force in the  
47 performance of its duties.

48 (3) The task force shall hold its organizational session  
49 by May 1, 2012. Thereafter, the task force shall meet at least  
50 four times per year. Additional meetings may be held if the  
51 chair determines that extraordinary circumstances require an  
52 additional meeting. A majority of the members of the task force  
53 constitutes a quorum.

54 (4) The task force shall:

55 (a) Collect and organize data concerning the nature and  
56 extent of neonatal withdrawal syndrome from prescription drugs  
57 in this state;

58 (b) Collect and organize data concerning the costs  
59 associated with treating expectant mothers and newborns  
60 suffering from withdrawal from prescription drugs;

61 (c) Identify available federal, state, and local programs  
62 that provide services to mothers who abuse prescription drugs  
63 and newborns who have neonatal withdrawal syndrome; and

64 (d) Evaluate methods to increase public awareness of the  
65 dangers associated with prescription drug abuse, particularly to  
66 women, expectant mothers, and newborns.

67 (5) The task force shall submit an interim report of its  
68 recommendations to the President of the Senate and the Speaker  
69 of the House of Representatives by January 15, 2013, and a final  
70 report of its recommendations by January 15, 2015.

71 Section 2. This act shall take effect upon becoming a law.  
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Amendment No.

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled



An act relating to prescription drug abuse; creating the Statewide Task Force on Prescription Drug Abuse and Newborns; providing a purpose; providing membership of the task force; providing for reimbursement of per diem and travel expenses for members of the task force; requiring that the Department of Legal Affairs provide the task force with necessary staff; specifying a date for the task force's organizational session; providing meeting times; providing the duties of the task force; requiring that the task force submit reports to the Legislature; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 653 Health Care Fraud  
**SPONSOR(S):** Cruz  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 208

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

### SUMMARY ANALYSIS

HB 653 alters current restrictions that prevent an individual who has been convicted of certain felonies, or plead guilty or no contest to certain felonies, from applying for an initial or renewal license, certification, or registration to become a health care professional. However, the bill provides exceptions to the license, certification or registration prohibitions. Currently, a person who has been convicted of, or plead guilty or no contest to, certain felonies cannot apply for a license, certificate or registration to become a health care professional within 15 years of the conviction or plea. HB 653 creates a tiered timeframe for applying for a license, certificate, or registration, depending on the degree of the violation: the lesser the felony or plea, the less time must pass between the felony or plea and the date of application.

HB 653 provides additional exceptions to licensing prohibitions in s. 456.0635, F.S. An individual convicted of certain felonies, or who plead guilty or no contest to certain felonies, may seek a license, certificate or registration if the individual successfully completed a pretrial intervention or drug diversion program. The bill excludes from the licensing prohibitions an applicant who was enrolled in an educational or training program, recognized by the Department of Health (DOH), on or before July 1, 2009 and applied for initial licensure after July 1, 2012. The bill allows an individual convicted of, or who plead guilty or no contest to, certain felonies under federal law to apply for a license, certificate, or registration if the violation occurred more than 15 years from the date of application. Lastly, the bill allows an individual to regain a renewal license, certificate or registration, denied under the provisions of the bill, by complying with the criteria established by the applicable board, or the DOH, for initial licensure. However, if an individual was denied a renewal license, certificate or registration under the provisions of section 24 of chapter 2009-223, Laws of Florida, the individual is not required to retake and pass any examination required for initial licensure.

HB 653 changes the title of s. 456.0635, F.S. from "Medicaid fraud" to "health care fraud", and expands the duty of a licensed practitioner to report an allegation of health care fraud. The bill also renders the surrender of a license due to an allegation of health care fraud or the anticipation of an allegation of health care fraud a permanent revocation of the license.

The bill has an insignificant, but indeterminate, fiscal impact on state government.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Department of Health Licensing Activities

The Department of Health (DOH) is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture);
- Chapter 458 (medical practice);
- Chapter 459 (osteopathic medicine);
- Chapter 460 (chiropractic medicine);
- Chapter 461 (podiatric medicine);
- Chapter 462 (naturopathy);
- Chapter 463 (optometry);
- Chapter 464 (nursing);
- Chapter 465 (pharmacy);
- Chapter 466 (dentistry);
- Chapter 467 (midwifery);
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics);
- Chapter 478 (electrolysis);
- Chapter 480 (massage practice);
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists);
- Chapter 484 (dispensing of optical devices and hearing aids);
- Chapter 486 (physical therapy practice);
- Chapter 490 (psychological services); or
- Chapter 491 (clinical, counseling, and psychotherapy services).

The Division of Medical Quality Assurance is responsible for the preceding boards and professions within the DOH.<sup>1</sup> Chapter 456<sup>2</sup> and the practice acts regulating health care professions under the regulatory jurisdiction of the DOH contain provisions establishing grounds for which disciplinary action may be taken against licensed health care practitioners.

##### Medicaid Fraud

Medicaid fraud in the practice of a health care profession is prohibited.<sup>3</sup> Licensed health care practitioners must report any allegation of Medicaid fraud to the DOH.<sup>4</sup> The Legislature created s. 456.0635, F.S., in 2009 with the enactment of CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida.<sup>5</sup> The bill, in part,:

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<sup>1</sup> S. 20.43(3)(g), F.S.

<sup>2</sup> S. 456.072, F.S.

<sup>3</sup> S. 456.0635(1), F.S.

<sup>4</sup> S. 456.0635(3), F.S.

<sup>5</sup> This specific section of CS/CS/CS/SB 1986 was published in section 24 of chapter 2009-223, Laws of Fla.

- Increased the Medicaid program's authority to address fraud, particularly as it relates to home health services.
- Increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida.
- Created disincentives for abusive Medicaid billing by increasing the administrative penalties, posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website, and creating additional criminal felonies for committing health care fraud, and among other anti-fraud provisions.

Specifically, the law requires each board within the jurisdiction of the DOH, or the DOH if there is no board, to refuse to issue or renew a license, certificate, or registration if the applicant has been:

- Convicted of, entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, F.S.,<sup>6</sup> ch. 817, F.S.,<sup>7</sup> ch. 893, F.S.,<sup>8</sup> 21 U.S.C. ss. 801-970,<sup>9</sup> or 42 U.S.C. ss. 1395-1396,<sup>10</sup> unless the sentence and any subsequent probation ended more than 15 years prior to the date of application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

Since s. 456.0635, F.S., became effective, through January 12, 2012, boards and the DOH have denied, or caused to have withdrawn, 336 initial applications for licensure.<sup>11</sup> Of the total number of initial licensure denials or withdrawals, 262 were applications for Certified Nursing Assistant, 17 were applications for Licensed Practical Nurse, and 15 were applications for Registered Nurse. Also, 109 renewal denials have been issued in the same time period.<sup>12</sup> Of the total number of renewal denials, 30 were for renewal of Certified Nursing Assistant, 27 were for renewal of Registered Nurse, and 19 were for renewal of Licensed Practical Nurse.

Section 456.036, F.S., contains general provisions related to licensure and delinquent licenses of health care practitioners. Each board, or the DOH if there is no board, is required to charge fees for renewal of an active or inactive or license status.<sup>13</sup> The law outlines the procedure for changing from an inactive license status to an active license status.<sup>14</sup> The law also determines delinquency of a license, outlines the process a licensee must follow to bring current a delinquent license, and requires a fee to be paid to bring current a delinquent license.<sup>15</sup> Lastly, the law provides the DOH with rule-making authority to ensure that licensees who have a delinquent, inactive or retired license status are competent to practice under the license upon application to change to an active license status.<sup>16</sup>

### Effect of Proposed Changes

<sup>6</sup> Chapter 409, F.S., relates to social and economic assistance.

<sup>7</sup> Chapter 817, F.S., relates to fraudulent practices.

<sup>8</sup> Chapter 893, F.S., relates to drug abuse prevention and control.

<sup>9</sup> This section of the U.S. Code relates to federal controlled substance regulations.

<sup>10</sup> This portion of the U.S. Code relates to public health, welfare, Medicare and Medicaid issues.

<sup>11</sup> Florida Department of Health, *456.0635 Status Report- January 12, 2012*, received Jan. 13, 2012 (on file with Health and Human Services Quality subcommittee staff).

<sup>12</sup> *Id.*

<sup>13</sup> S. 456.036(3), F.S.

<sup>14</sup> S. 456.036(4) and (5), F.S.

<sup>15</sup> S. 456.036(5), (6), and (7), F.S.

<sup>16</sup> S. 456.036(8) through (12), F.S.

HB 653 changes all references to Medicaid fraud in s. 456.0635, F.S., to health care fraud. As a result, the bill will require licensed health care practitioners to report allegations of health care fraud, rather than only allegations of Medicaid fraud. Also, the acceptance of a license by a licensing authority, offered by a licensee as a result of allegations of, or anticipation of allegations of, health care fraud, will be considered permanent revocation of the licensee.

The bill relaxes the current licensure exclusions by creating a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the date of application for licensure. The bill prohibits the department, and the boards within the department, to allow any person to sit for an examination, issue a new license, certificate, or registration to any applicant, or renew a license, certificate, or registration, if the applicant:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, ch. 817, or ch. 893, F.S., or a similar felony offense committed in another state or jurisdiction, unless the applicant or candidate successfully completed a pre-trial intervention or drug diversion program for the felony, or unless the sentence and any related period of probation for such conviction or plea ended:
  - For felonies of the **first or second degree**, more than **15 years** before the date of application;
  - For felonies of the **third degree**, more than **10 years** before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.<sup>17</sup>; and
  - For felonies of the **third degree under s. 893.13(6)(a), F.S.**,<sup>18</sup> more than **5 years** before the date of application.
- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

The bill eliminates reference to the federal Medicare program in s. 465.0635(2)(c), F.S. regarding termination for cause from that program as grounds for denying initial application for, or renewal of, a license, certification, or registration. According to AHCA, the phrase "termination for cause" does not exist in the federal Medicare program.<sup>19</sup>

If an applicant for license, certificate or registration enters a plea of guilty or no contest to a disqualifying felony in an agreement with the court to enter a pre-trial intervention or drug diversion program, the bill prevents the DOH or applicable medical board from taking action on the application until the applicant completes the intervention or diversion program. Current law does address the effect of an applicant entering a pre-trial intervention or drug diversion program on the application for licensure, certification or registration.

The bill provides that the terms of disqualification for felony convictions or pleas of guilty or no contest of the specified violations do not apply to applicants for initial licensure or certification who were enrolled in a recognized training or education program as of July 1, 2009 and who applied for initial licensure after July 1, 2012.

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<sup>17</sup> S. 893.13(6)(a), F.S., states:

"It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

<sup>18</sup> See *supra* at FN 10.

<sup>19</sup> Telephone conference between AHCA analyst and Health and Human Services Quality subcommittee staff on January 12, 2012.

Lastly, the bill allows a person denied renewal of a license, certificate or registration under the provisions listed above to regain the license, certificate or registration by meeting the criteria established by the board or the DOH for initial licensure, certification or registration. However, if a person was denied renewal under the provisions of section 24 of chapter 2009-223, Laws of Florida, between July 1, 2009 and June 30, 2012, prior to enactment of the provisions of this bill, he or she will not be required to retake and pass any examinations required for initial licensure, certification or registration. This provision will impact, at least, the 109 applicants identified by the DOH as being denied renewal of a license due to the current law, enacted by the applicable section of the Laws of Florida.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 456.0635, F.S., relating to Medicaid fraud; disqualification for license, certificate, or registration.

**Section 2:** Amends s. 456.036, F.S., relating to licenses; active and inactive status; delinquency.

**Section 3:** Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOH anticipates an overall increase in workload to implement the bill, but expects specific increase in workload to modify the Customer Oriented Medical Practitioner Administration System (COMPAS) licensure system. Also, the DOH expects to incur non-recurring costs for rulemaking associated with the provisions of the bill. Current budget authority and other resources are adequate to absorb the costs on the identified increase in workload.<sup>20</sup>

There is an indeterminate fiscal impact on AHCA to the extent that the Agency is asked by the DOH or the boards to compile background information on applicants for licensure, certification or registration.<sup>21</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>20</sup> Florida Department of Health, *HB 653 Bill Analysis, Economic Statement, and Fiscal Note*, page 6 (January 6, 2012).

<sup>21</sup> Agency for Health Care Administration, *2012 Bill Analysis & Economic Impact Statement- SB 208*, page 2 (January 6, 2012).

The bill will allow individuals who wish to become a licensed, certified, or registered health care professional, who would otherwise be disqualified due to the current provision of s. 456.0635, F.S., the opportunity to obtain a license, certification, or registration to work in the health care field. The addition of licensed health care professionals to the job market will allow employers to fill open positions with qualified individuals, leading to the availability of qualified, licensed care to more members of the public.

**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:**

Current law provides the Department of Health with necessary and appropriate rulemaking authority sufficient to implement the provisions of this bill.<sup>22</sup>

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>22</sup> S. 456.004, F.S.

1                                   A bill to be entitled  
 2           An act relating to health care fraud; amending s.  
 3           456.0635, F.S.; revising the grounds under which the  
 4           Department of Health or corresponding board is  
 5           required to refuse to admit a candidate to an  
 6           examination and refuse to issue or renew a license,  
 7           certificate, or registration of a health care  
 8           practitioner; providing an exception; amending s.  
 9           456.036, F.S.; providing that all persons who were  
 10          denied renewal of licensure, certification, or  
 11          registration under s. 456.0635(3), F.S., may regain  
 12          licensure, certification, or registration only by  
 13          completing the application process for initial  
 14          licensure; providing an exception; providing an  
 15          effective date.

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

18  
 19           Section 1. Section 456.0635, Florida Statutes, is amended  
 20           to read:

21           456.0635 Health care ~~Medicaid~~ fraud; disqualification for  
 22           license, certificate, or registration.—

23           (1) Health care ~~Medicaid~~ fraud in the practice of a health  
 24           care profession is prohibited.

25           (2) Each board within the jurisdiction of the department,  
 26           or the department if there is no board, shall refuse to admit a  
 27           candidate to any examination and refuse to issue ~~or renew~~ a  
 28           license, certificate, or registration to any applicant if the



29 candidate or applicant or any principal, officer, agent,  
 30 managing employee, or affiliated person of the applicant, ~~has~~  
 31 ~~been:~~

32 (a) Has been convicted of, or entered a plea of guilty or  
 33 nolo contendere to, regardless of adjudication, a felony under  
 34 chapter 409, chapter 817, or chapter 893, or a similar felony  
 35 offense committed in another state or jurisdiction, unless the  
 36 candidate or applicant has successfully completed a pretrial  
 37 intervention or drug diversion program for that felony. Any such  
 38 conviction or plea shall exclude the applicant or candidate from  
 39 licensure, examination, certification, or registration 21 U.S.C.  
 40 ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and  
 41 any subsequent period of probation for such conviction or plea  
 42 pleas ended; more than 15 years prior to the date of the  
 43 application;

44 1. For felonies of the first or second degree, more than  
 45 15 years before the date of application.

46 2. For felonies of the third degree, more than 10 years  
 47 before the date of application, except for felonies of the third  
 48 degree under s. 893.13(6)(a).

49 3. For felonies of the third degree under s. 893.13(6)(a),  
 50 more than 5 years before the date of application;

51 (b) Has been convicted of, or entered a plea of guilty or  
 52 nolo contendere to, regardless of adjudication, a felony under  
 53 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the  
 54 sentence and any subsequent period of probation for such  
 55 conviction or plea ended more than 15 years before the date of  
 56 the application;

57            (c)~~(b)~~ Has been terminated for cause from the Florida  
 58 Medicaid program pursuant to s. 409.913, unless the candidate or  
 59 applicant has been in good standing with the Florida Medicaid  
 60 program for the most recent 5 years;

61            (d)~~(e)~~ Has been terminated for cause, pursuant to the  
 62 appeals procedures established by the state ~~or Federal~~  
 63 ~~Government~~, from any other state Medicaid program ~~or the federal~~  
 64 ~~Medicare program~~, unless the candidate or applicant has been in  
 65 good standing with a state Medicaid program ~~or the federal~~  
 66 ~~Medicare program~~ for the most recent 5 years and the termination  
 67 occurred at least 20 years before ~~prior to~~ the date of the  
 68 application; or-

69            (e) Is currently listed on the United States Department of  
 70 Health and Human Services Office of Inspector General's List of  
 71 Excluded Individuals and Entities.

72  
 73 This subsection does not apply to candidates or applicants for  
 74 initial licensure or certification who were enrolled in an  
 75 educational or training program on or before July 1, 2009, which  
 76 was recognized by a board or, if there is no board, recognized  
 77 by the department, and who applied for licensure after July 1,  
 78 2012.

79            (3) The department shall refuse to renew a license,  
 80 certificate, or registration of any applicant if the applicant  
 81 or any principal, officer, agent, managing employee, or  
 82 affiliated person of the applicant:

83            (a) Has been convicted of, or entered a plea of guilty or  
 84 nolo contendere to, regardless of adjudication, a felony under

85 chapter 409, chapter 817, or chapter 893, or a similar felony  
 86 offense committed in another state or jurisdiction since July 1,  
 87 2009, unless the applicant is currently enrolled in or has  
 88 successfully completed a pretrial intervention or drug diversion  
 89 program for that felony. Any such conviction or plea shall  
 90 exclude the applicant from renewal of licensure, certification,  
 91 or registration unless the sentence and any subsequent period of  
 92 probation for such conviction or plea ended:

93 1. For felonies of the first or second degree, more than  
 94 15 years before the date of application.

95 2. For felonies of the third degree, more than 10 years  
 96 before the date of application, except for felonies of the third  
 97 degree under s. 893.13(6)(a).

98 3. For felonies of the third degree under s. 893.13(6)(a),  
 99 more than 5 years before the date of application.

100 (b) Has been convicted of, or entered a plea of guilty or  
 101 nolo contendere to, regardless of adjudication, a felony under  
 102 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,  
 103 2009, unless the sentence and any subsequent period of probation  
 104 for such conviction or plea ended more than 15 years before the  
 105 date of the application.

106 (c) Has been terminated for cause from the Florida  
 107 Medicaid program pursuant to s. 409.913, unless the applicant  
 108 has been in good standing with the Florida Medicaid program for  
 109 the most recent 5 years.

110 (d) Has been terminated for cause, pursuant to the appeals  
 111 procedures established by the state, from any other state  
 112 Medicaid program, unless the applicant has been in good standing

113 with a state Medicaid program for the most recent 5 years and  
 114 the termination occurred at least 20 years before the date of  
 115 the application.

116 (e) Is currently listed on the United States Department of  
 117 Health and Human Services Office of Inspector General's List of  
 118 Excluded Individuals and Entities.

119 (4)~~(3)~~ Licensed health care practitioners shall report  
 120 allegations of health care Medicaid fraud to the department,  
 121 regardless of the practice setting in which the alleged health  
 122 care Medicaid fraud occurred.

123 (5)~~(4)~~ The acceptance by a licensing authority of a  
 124 licensee's candidate's relinquishment of a license which is  
 125 offered in response to or anticipation of the filing of  
 126 administrative charges alleging health care Medicaid fraud or  
 127 similar charges constitutes the permanent revocation of the  
 128 license.

129 Section 2. Present subsections (14) and (15) of section  
 130 456.036, Florida Statutes, are renumbered as subsections (15)  
 131 and (16), respectively, and a new subsection (14) is added to  
 132 that section, to read:

133 456.036 Licenses; active and inactive status;  
 134 delinquency.—

135 (14) A person who has been denied renewal of licensure,  
 136 certification, or registration under s. 456.0635(3) may regain  
 137 licensure, certification, or registration only by meeting the  
 138 qualifications and completing the application process for  
 139 initial licensure as defined by the board, or the department if  
 140 there is no board. However, a person who was denied renewal of

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2012

141 licensure, certification, or registration under s. 24 of chapter  
142 2009-223, Laws of Florida, between July 1, 2009, and June 30,  
143 2012, is not required to retake and pass examinations applicable  
144 for initial licensure, certification, or registration.

145 Section 3. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 653 (2012)

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 Quality Subcommittee

3 Representative Cruz offered the following:

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

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 456.0635, Florida Statutes, is amended to  
8 read:

9 456.0635 Health care Medicaid fraud; disqualification for  
10 license, certificate, or registration.—

11 (1) Health care Medicaid fraud in the practice of a health  
12 care profession is prohibited.

13 (2) Each board within the jurisdiction of the department,  
14 or the department if there is no board, shall refuse to admit a  
15 candidate to any examination and refuse to issue ~~or renew~~ a  
16 license, certificate, or registration to any applicant if the  
17 candidate or applicant or any principal, officer, agent,  
18 managing employee, or affiliated person of the applicant, ~~has~~  
19 ~~been~~:

Amendment No.

20 (a) Has been convicted of, or entered a plea of guilty or  
21 nolo contendere to, regardless of adjudication, a felony under  
22 chapter 409, chapter 817, or chapter 893, or a similar felony  
23 offense committed in another state or jurisdiction, unless the  
24 candidate or applicant has successfully completed a drug court  
25 program for that felony and provides proof that the plea has  
26 been withdrawn or the charges have been dismissed. Any such  
27 conviction or plea shall exclude the applicant or candidate from  
28 licensure, examination, certification, or registration 21 U.S.C.  
29 ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and  
30 any subsequent period of probation for such conviction or plea  
31 ended: more than 15 years prior to the date of the  
32 application;

33 1. For felonies of the first or second degree, more than  
34 15 years before the date of application.

35 2. For felonies of the third degree, more than 10 years  
36 before the date of application, except for felonies of the third  
37 degree under s. 893.13(6)(a).

38 3. For felonies of the third degree under s. 893.13(6)(a),  
39 more than 5 years before the date of application;

40 (b) Has been convicted of, or entered a plea of guilty or  
41 nolo contendere to, regardless of adjudication, a felony under  
42 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the  
43 sentence and any subsequent period of probation for such  
44 conviction or plea ended more than 15 years before the date of  
45 the application;

46 (c) ~~(b)~~ Has been terminated for cause from the Florida  
47 Medicaid program pursuant to s. 409.913, unless the candidate or  
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Amendment No.

48 applicant has been in good standing with the Florida Medicaid  
49 program for the most recent 5 years;

50 ~~(d)-(e)~~ Has been terminated for cause, pursuant to the  
51 appeals procedures established by the state ~~or Federal~~  
52 ~~Government~~, from any other state Medicaid program ~~or the federal~~  
53 ~~Medicare program~~, unless the candidate or applicant has been in  
54 good standing with a state Medicaid program ~~or the federal~~  
55 ~~Medicare program~~ for the most recent 5 years and the termination  
56 occurred at least 20 years before ~~prior to~~ the date of the  
57 application; ~~or~~.

58 (e) Is currently listed on the United States Department of  
59 Health and Human Services Office of Inspector General's List of  
60 Excluded Individuals and Entities.

61  
62 This subsection does not apply to candidates or applicants for  
63 initial licensure or certification who were enrolled in an  
64 educational or training program on or before July 1, 2009, which  
65 was recognized by a board or, if there is no board, recognized  
66 by the department, and who applied for licensure after July 1,  
67 2012.

68 (3) The department shall refuse to renew a license,  
69 certificate, or registration of any applicant if the applicant  
70 or any principal, officer, agent, managing employee, or  
71 affiliated person of the applicant:

72 (a) Has been convicted of, or entered a plea of guilty or  
73 nolo contendere to, regardless of adjudication, a felony under  
74 chapter 409, chapter 817, or chapter 893, or a similar felony  
75 offense committed in another state or jurisdiction, unless the

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Amendment No.

76 applicant is currently enrolled in a drug court program that  
77 allows the withdrawal of the plea for that felony upon  
78 successful completion of that program. Any such conviction or  
79 plea excludes the applicant or candidate from licensure,  
80 examination, certification, or registration unless the sentence  
81 and any subsequent period of probation for such conviction or  
82 plea ended:

83 1. For felonies of the first or second degree, more than  
84 15 years before the date of application.

85 2. For felonies of the third degree, more than 10 years  
86 before the date of application, except for felonies of the third  
87 degree under s. 893.13(6)(a).

88 3. For felonies of the third degree under s. 893.13(6)(a),  
89 more than 5 years before the date of application.

90 (b) Has been convicted of, or entered a plea of guilty or  
91 nolo contendere to, regardless of adjudication, a felony under  
92 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,  
93 2009, unless the sentence and any subsequent period of probation  
94 for such conviction or plea ended more than 15 years before the  
95 date of the application.

96 (c) Has been terminated for cause from the Florida  
97 Medicaid program pursuant to s. 409.913, unless the applicant  
98 has been in good standing with the Florida Medicaid program for  
99 the most recent 5 years.

100 (d) Has been terminated for cause, pursuant to the appeals  
101 procedures established by the state, from any other state  
102 Medicaid program, unless the applicant has been in good standing  
103 with a state Medicaid program for the most recent 5 years and

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Amendment No.

104 the termination occurred at least 20 years before the date of  
105 the application.

106 (e) Is currently listed on the United States Department of  
107 Health and Human Services Office of Inspector General's List of  
108 Excluded Individuals and Entities.

109 ~~(4)(3)~~ Licensed health care practitioners shall report  
110 allegations of health care ~~Medicaid~~ fraud to the department,  
111 regardless of the practice setting in which the alleged health  
112 care ~~Medicaid~~ fraud occurred.

113 ~~(5)(4)~~ The acceptance by a licensing authority of a  
114 licensee's candidate's relinquishment of a license which is  
115 offered in response to or anticipation of the filing of  
116 administrative charges alleging health care ~~Medicaid~~ fraud or  
117 similar charges constitutes the permanent revocation of the  
118 license.

119 Section 2. Present subsections (14) and (15) of section  
120 456.036, Florida Statutes, are renumbered as subsections (15)  
121 and (16), respectively, and a new subsection (14) is added to  
122 that section, to read:

123 456.036 Licenses; active and inactive status;  
124 delinquency.—

125 (14) A person who has been denied renewal of licensure,  
126 certification, or registration under s. 456.0635(3) may regain  
127 licensure, certification, or registration only by meeting the  
128 qualifications and completing the application process for  
129 initial licensure as defined by the board, or the department if  
130 there is no board. However, a person who was denied renewal of  
131 licensure, certification, or registration under s. 24 of chapter  
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Amendment No.

132 2009-223, Laws of Florida, between July 1, 2009, and June 30,  
133 2012, is not required to retake and pass examinations applicable  
134 for initial licensure, certification, or registration.

135 Section 3. This act shall take effect July 1, 2012.  
136  
137

138 -----  
139 **T I T L E A M E N D M E N T**

140 Remove the entire title and insert:

141 A bill to be entitled

142 An act relating to health care fraud; amending s. 456.0635,  
143 F.S.; revising the grounds under which the Department of Health  
144 or corresponding board is required to refuse to admit a  
145 candidate to an examination and refuse to issue or renew a  
146 license, certificate, or registration of a health care  
147 practitioner; providing an exception; amending s. 456.036, F.S.;  
148 providing that all persons who were denied renewal of licensure,  
149 certification, or registration under s. 456.0635(3), F.S., may  
150 regain licensure, certification, or registration only by  
151 completing the application process for initial licensure;  
152 providing an exception; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 799 Physical Therapy

SPONSOR(S): Goodson

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Holt <i>W</i>	Calamas <i>CC</i>
2) Health Care Appropriations Subcommittee			
3) Education Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill provides the Board of Physical Therapy with the Department of Health the authority to grant a temporary permit to an individual who has graduated from an approved program of study as a physical therapist or a physical therapist assistant. The bill provides the requirements for granting a temporary permit and specifies that the temporary permit is not renewable and void if the individual does not pass the national physical therapy examination. A temporary permit holder must practice under the direct supervision of a licensed physical therapist.

The bill has an indeterminate, but likely significant negative fiscal impact to the Medical Quality Assurance Trust Fund within the Department of Health. (See Fiscal Analysis.)

The bill has an effective date of becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Medical Quality Assurance

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

##### Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>1</sup> Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

Section 456.011(3), F.S., provides that a board must meet at least once annually, but may meet as often as necessary. According to the MQA website, it appears that the Board of Physical Therapy (board) meets every 3 months, or 4 times a year.<sup>2</sup> The 2012 board meeting dates are: February 2-3; May 3-4; August 2-3; and November 2-3.<sup>3</sup> But, according to DOH, the board does not ratify or approve licenses at every meeting.<sup>4</sup>

##### Physical Therapy Practice

Physical therapy is the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities such as exercise, massage, ultrasound, ice, and heat.<sup>5</sup>

Physical therapy practitioners are regulated by ch. 486, F.S., the Physical Therapy Practice Act. A physical therapy practitioner is considered either a physical therapist (PT) or a physical therapist assistant (PTA) who is licensed and who practices physical therapy.<sup>6</sup>

Currently, Florida law doesn't authorize DOH to issue temporary permits to a physical therapy practitioner. Prior to 1997, Florida law allowed temporary permits for an applicant who submitted an application that included a statement under oath that he or she possesses the preliminary qualifications for a full license except passage of the national examination. Along with the application, applicants were required to remit a fee not to exceed \$100, and additional fee to cover the cost the department incurred to purchase the examination from the national examination organization<sup>7</sup>. Temporary permittees were required to work under the direct supervision of a licensed physical therapist. The temporary permit was valid for up to a year and was not renewable. A temporary permit automatically

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<sup>1</sup> Section 456.001, F.S.

<sup>2</sup> Florida Department of Health, Division of Medical Quality Assurance, Physical Therapy Board Meeting Information, available at: [http://www.doh.state.fl.us/mqa/physical/pt\\_meeting.html](http://www.doh.state.fl.us/mqa/physical/pt_meeting.html) (last viewed January 14, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> Email correspondence with DOH staff, dated January 14, 2012, on file with Health & Human Services Quality Subcommittee staff.

<sup>5</sup> Section 486.021(11), F.S.

<sup>6</sup> Section 486.021(7), F.S.

<sup>7</sup> Section 486.103, F.S.

expired if an applicant failed the national examination.<sup>8</sup> In 2007, the Legislature repealed the ability for DOH to issue a temporary permit for a physical therapy practitioner.<sup>9</sup> According to the board, the authority to issue temporary permits was eliminated to prevent the practice of physical therapy by unqualified individuals to ensure public protection.<sup>10</sup>

Currently, there are 5,735 PTAs and 11,295 PTs who hold active in-state license to practice in Florida.<sup>11</sup>

### The Commission on Accreditation in Physical Therapy Education

The Commission on Accreditation in Physical Therapy Education (CAPTE) is the only accreditation agency recognized by the United States Department of Education and the Council for Higher Education Accreditation to accredit entry-level physical therapist and physical therapist assistant education programs. CAPTE currently accredits over 200 physical therapist education programs and over 250 physical therapist assistant education programs in the US and three physical therapist education programs in other countries (Canada and Scotland).<sup>12</sup>

The following schools offer accredited PT or PTA programs in Florida:<sup>13</sup>

- Florida Agricultural and Mechanical University
- Florida Gulf Coast University
- Florida International University
- Nova Southeastern University
- University of Central Florida
- University of Florida
- University of Miami
- University of North Florida
- University of South Florida
- University of St Augustine for Health Sciences

Generally, in Florida graduation occurs in the beginning of December (Fall graduation) and the end of April (Spring graduation).<sup>14</sup>

### Federation of State Boards of Physical Therapy

The Florida Board of PT has certified the National Physical Therapy Examination (NPTE) developed by the Federation of State Boards of Physical Therapy (Federation) as the licensure examination required for state licensure.<sup>15</sup>

The Federation develops and administers the NPTE for both physical therapists and physical therapist assistants in 53 jurisdictions – the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. These exams assess the basic entry-level competence for first time licensure or registration

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<sup>8</sup> Section 486.103, F.S.

<sup>9</sup> Chapter 97-264, L.O.F.

<sup>10</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 799 dated January 13, 2012, on file with Health & Human Services Quality Subcommittee staff.

<sup>11</sup> Florida Department of Health, Division of Medical Quality Assurance, 201-2011 MQA Annual Report, *available at*: <http://doh.state.fl.us/mqa/reports.htm> (last viewed January 14, 2012).

<sup>12</sup> Commission on Accreditation in Physical Therapy Education, *What We Do*, *available at*: <http://www.capteonline.org/WhatWeDo/> (last viewed January 14, 2012).

<sup>13</sup> Florida Physical Therapy Association, Accredited Physical Therapy and Physical Therapy Assistant Programs, *available at*: <http://www.fpta.org/displaycommon.cfm?an=1&subarticlenbr=66> (last viewed January 14, 2012).

<sup>14</sup> Review of the academic calendars available on-line for a few of the listed PT and PTA accredited institutions. *See Academic calendars for the following institutions*: <http://www.famu.edu/index.cfm?Registrar&Calendars>, <http://www.fgcu.edu/Registrar/calresults.asp?termID=44>, and <http://calendar.fiu.edu/events/index/calendar:academic/> (last viewed January 14, 2012).

<sup>15</sup> Chapter 64B17-4.002 and 64B17-3.002, F.A.C.

as a PT or PTA within the 53 jurisdictions.<sup>16</sup> The Federation offers the examination at approximately 300 testing centers in the United States.<sup>17</sup> In addition, the Federation develops and administers jurisprudence examinations. Currently FSBPT offers jurisprudence exams for Alabama, Arizona, California, District of Columbia, Florida, Georgia, Nebraska, and Ohio.

The NPTE program has three purposes:<sup>18</sup>

1. Provide examination services to regulatory authorities charged with the regulation of physical therapists and physical therapist assistants;
2. Provide a common element in the evaluation of candidates so that standards will be comparable from jurisdiction to jurisdiction; and
3. Protect the public interest in having only those persons who have the requisite knowledge of physical therapy be licensed to practice physical therapy.

The physical therapist (PT) and physical therapist assistant (PTA) examinations are designed to assess basic entry-level competence of the licensure candidate who has graduated from an accredited program or from an equivalent non-accredited program.<sup>19</sup>

Scores are automatically reported to the jurisdiction licensing authority through which a candidate applied for initial licensure. After an initial license is received a candidate may want to become licensed in additional jurisdictions. Most jurisdictions require a score be transferred by the FSBPT to ensure that the score is authentic. Transfer of scores on the National Physical Therapy Examination may be requested any time after taking the examination.<sup>20</sup>

In order to address security concerns and protect the integrity of the National Physical Therapy Examination (NPTE), the Federation began fixed-date testing for all candidates for the PT and PTA NPTE. The Federation plans on maintaining fixed-date testing indefinitely for both the PT and PTA exams.<sup>21</sup>

According to the Federation, five testing dates will be offered in 2012 for the PT NPTE.

Test Date	Scores Reported to Jurisdictions
January 30, 2012	February 6, 2012
March 29, 2012	April 5, 2012
July 2, 2012	July 10, 2012
July 31, 2012	August 7, 2012
October 23, 2012	October 30, 2012

According to the Federation, five testing dates will be offered in 2012 for the PTA NPTE. Furthermore, the Federation believes that the three dates chosen will accommodate PTA graduation dates and provide relatively evenly-spaced retake opportunities.

<sup>16</sup> The Federation of State Boards of Physical Therapy, Welcome, available at: <https://www.fsbpt.org/index.asp> (last viewed January 14, 2012).

<sup>17</sup> The Federation of State Boards of Physical Therapy, NPTE Frequently Asked Questions, available at: <https://www.fsbpt.org/ForCandidatesAndLicensees/NPTE/FAQs/index.aspp> (last viewed January 14, 2012).

<sup>18</sup> The Federation of State Boards of Physical Therapy, National Physical Therapy Examination, available at: <https://www.fsbpt.org/ForCandidatesAndLicensees/NPTE/> (last viewed January 14, 2012).

<sup>19</sup> *Id.*

<sup>20</sup> The Federation of State Boards of Physical Therapy, Welcome to the Candidate and Licensee Services Website, available at: <https://pt.fsbpt.net/> (last viewed January 14, 2012)

<sup>21</sup> The Federation of State Boards of Physical Therapy, Fixed-date testing information for the PT and PTA NPTE, available at: <https://www.fsbpt.org/ForCandidatesAndLicensees/FixedDateTesting/> (last viewed January 14, 2012).



Test Date	Scores Reported to Jurisdictions
April 26, 2012	May 3, 2012
July 17, 2012	July 24, 2012
October 30, 2012	November 6, 2012

Sections 486.051 and 486.103, F.S., provide that if an applicant fails to pass the NPTE examination in three attempts applicant is not eligible for reexamination without completing additional educational or training requirements.

**Effects of Proposed Changes**

The bill provides DOH the authority to issue a temporary permit to a physical therapy practitioner. Such a permit must be issued on the date of graduation from a CAPTE accredited program of study in physical therapy. Before the board grants a temporary permit, the physical therapist or physical therapist assistant must file with the board documentation:

- Verifying that he or she will practice under the direct supervision a licensed physical therapist;
- Demonstrating possession of a malpractice insurance policy; and
- Verifying passage of the Florida Laws and Rules examination administered by the Federation of State Boards of Physical Therapy.<sup>22</sup>

The temporary permit is valid until the results of the permittee’s NPTE are released and published. If the individual successfully passes the NPTE then the temporary permit is valid until the next board meeting convenes and grants a full license. Currently, a licensed PT or PTA is not required as a condition of licensure, to carry medical malpractice insurance. Additionally, the bill does not specify the amount that must be carried.

The temporary permit is void if the permittee fails the NPTE. The permit is not renewable and may not be extended.

Based on the above–mentioned graduation and national examination schedules, an individual may hold a temporary permit to practice as a PT for at least five months:

An individual graduates with a degree in PT at the end of December and is issued a temporary on the date of graduation, sits for the first available offering of the NPTE exam on January 30<sup>th</sup>, and finds out he or she obtained a passing grade on the NPTE exam on February 6<sup>th</sup>, on May 3<sup>rd</sup>, the next board meeting, the board reviews and approves the individual for full licensure.

However, the bill does not specify when the individual must sit for the examination and submission of an application for full licensure is not a precondition to receive the temporary permit. So, an individual could choose not to sit for the first available test date or choose to never submit an application for licensure and practice under a temporary permit indefinitely.

A temporary permit holder may only practice under direct supervision of a licensed physical therapist. The bill requires a supervising licensed PT to supervise one physical therapist and one physical therapist assistant who is in possession of a temporary permit at any given time. A physical therapist must be licensed for at least 6 months before the supervision period begins. Furthermore, the

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<sup>22</sup> The Florida Laws and Rules examination (Jurisprudence exam) encompasses 40 questions covering the following areas: legislative intent and duties, power and duties, licensure examination, patient care, disciplinary action and unlawful practice, and consumer advocacy. See 64B17-3.002 and 64B147-4.002, F.A.C. This is offered by the Federation and is offered on the same days as the national examination.

supervising physical therapist must cosign all patient records produced by a person who holds temporary permit. Current law defines direct supervision as supervision by a licensed physical therapist requiring the physical presence for consultation and direction of the actions of a PT or PTA who is practicing under a temporary permit and who is a candidate for licensure by examination.<sup>23</sup>

The bill stipulates that submission of an application for a temporary permit does not authorize an individual to begin work as a physical therapist or physical therapist assistant. An individual is not allowed to begin work as a physical therapist or physical therapist assistant until a temporary permit is issued by the board.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 486.0715, F.S., relating to physical therapy issuance of a temporary permit.

**Section 2.** Amends s. 486.1065, F.S., relating to physical therapist assistance issuance of a temporary permit.

**Section 3.** Provides an effective date of becoming a law.

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

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

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None identified.

2. Expenditures:

None identified.

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

None identified.

**D. FISCAL COMMENTS:**

The bill does not authorize a fee to cover regulatory expenses involved in issuing a temporary permit. Last fiscal year the department issued 527 PTA and 887 PT initial licenses.<sup>24</sup> For the purpose of this analysis it is assumed that there will be approximately 1,414 individuals annually who are eligible for a temporary permit to practice as a physical therapist practitioner annually.

According to DOH, they will experience a recurring workload associated with issuing a temporary license. In addition, there will be non-recurring cost associated with rulemaking and an increase in workload to make modifications to the COMPAS licensure system. DOH believes the non-recurring costs mentioned above, may be absorbed within current resources.<sup>25</sup>

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<sup>23</sup> Section 486.021(9), F.S.

<sup>24</sup> Florida Department of Health, Division of Medical Quality Assurance, 201-2011 MQA Annual Report, *available at*: <http://doh.state.fl.us/mqa/reports.htm> (last viewed January 14, 2012).

<sup>25</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 799, dated January 13, 2012, on file with Health & Human Services Quality Subcommittee staff.

Section 216.0236(1), F.S., provides that it is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession should be borne solely by those who receive the service or who are subject to regulation.

### **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:**

The board has sufficient authority in s. 486.025, F.S., to implement the provisions of the bill.

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

On lines 34-35 and 78-79, the bill states that a supervising PT "must supervise one PT and one PTA practicing under a temporary permit". It appears that the language is attempting to limit the number of individuals that may be supervised by a PT, but the language may be interpreted to require a supervising PT to supervise a PT and a PTA. It may be advantageous to clarify this language.

The bill requires the board to issue a temporary permit on the date of graduation. This is problematic since the board meets a limited number of times per year and not on graduation dates.

The bill does not require individuals to submit an application or meet the eligibility requirements for full licensure, but requires the board to issue a license if they pass the NPTE at the next board meeting.

The bill does not specify a date by which the individual must sit for the NPTE and submission of an application for full licensure is not a precondition to receive a temporary permit. So, an individual could choose not to sit for the NPTE or choose to never submit an application for licensure and practice under a temporary permit indefinitely.

The bill requires an applicant seeking a temporary permit to file with the board documentation demonstrating that he or she possesses a malpractice insurance policy. Currently, a licensed PT or PTA is not required as a condition of licensure, to possess medical malpractice insurance. Additionally, the bill does not specify an amount that must be carried.

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

1 A bill to be entitled  
 2 An act relating to physical therapy; creating ss.  
 3 486.0715 and 486.1065, F.S.; authorizing issuance of a  
 4 temporary permit to practice as a physical therapist  
 5 or physical therapist assistant; providing  
 6 requirements for issuing a temporary permit; providing  
 7 an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. Section 486.0715, Florida Statutes, is created  
 12 to read:

13 486.0715 Physical therapist; issuance of temporary  
 14 permit.—

15 (1) A temporary permit to practice as a physical therapist  
 16 may be granted to an applicant who graduates from a physical  
 17 therapy program in the United States recognized by the  
 18 Commission on Accreditation in Physical Therapy Education,  
 19 subject to the following requirements:

20 (a) A temporary permit shall be granted to an applicant  
 21 upon his or her graduation date and shall remain in effect until  
 22 the results of the National Physical Therapy Examination are  
 23 released and published. If the applicant receives a passing  
 24 score, he or she may continue to practice as a physical  
 25 therapist with a temporary permit until a license is granted at  
 26 the next available meeting of the board. A temporary permit is  
 27 void if a passing score on the National Physical Therapy  
 28 Examination is not obtained.

29 (b) A temporary permit shall not be extended beyond the  
 30 time provided in paragraph (a) and is not renewable.

31 (c) A physical therapist who is practicing under a  
 32 temporary permit must do so under the direct supervision of a  
 33 licensed physical therapist.

34 (d) A supervising licensed physical therapist must  
 35 supervise one physical therapist who is practicing under a  
 36 temporary permit at any given time, must be licensed for a  
 37 minimum of 6 months before the supervision period begins, and  
 38 must cosign all patient records produced by the physical  
 39 therapist who is practicing under a temporary permit.

40 (2) Before the board grants a temporary permit to practice  
 41 as a physical therapist:

42 (a) Documentation verifying that the applicant will  
 43 practice under the direct supervision of a licensed physical  
 44 therapist as provided in paragraph (1)(c) must be on file with  
 45 the board, pursuant to rules adopted by the board.

46 (b) The applicant must demonstrate proof of malpractice  
 47 insurance and a passing score on the Florida Laws and Rules  
 48 examination administered by the Federation of State Boards of  
 49 Physical Therapy.

50 (3) Submission of the application for a temporary permit  
 51 to practice as a physical therapist does not authorize an  
 52 applicant to begin work as a physical therapist. An applicant  
 53 for a temporary permit shall not work as a physical therapist  
 54 until a temporary permit is issued by the board.

55 Section 2. Section 486.1065, Florida Statutes, is created  
 56 to read:

57 486.1065 Physical therapist assistant; issuance of  
 58 temporary permit.-

59 (1) A temporary permit to practice as a physical therapist  
 60 assistant may be granted to an applicant who graduates from a  
 61 physical therapy program in the United States recognized by the  
 62 Commission on Accreditation in Physical Therapy Education,  
 63 subject to the following requirements:

64 (a) A temporary permit shall be granted to an applicant  
 65 upon his or her graduation date and shall remain in effect until  
 66 the results of the National Physical Therapy Examination are  
 67 released and published. If the applicant receives a passing  
 68 score, he or she may continue to practice as a physical  
 69 therapist assistant with a temporary permit until a license is  
 70 granted at the next available meeting of the board. A temporary  
 71 permit is void if a passing score on the National Physical  
 72 Therapy Examination is not obtained.

73 (b) A temporary permit shall not be extended beyond the  
 74 time provided in paragraph (a) and is not renewable.

75 (c) A physical therapist assistant who is practicing under  
 76 a temporary permit must do so under the direct supervision of a  
 77 licensed physical therapist.

78 (d) A supervising licensed physical therapist must  
 79 supervise one physical therapist assistant who is practicing  
 80 under a temporary permit at any given time, must be licensed for  
 81 a minimum of 6 months before the supervision period begins, and  
 82 must cosign all patient records produced by the physical  
 83 therapist assistant who is practicing under a temporary permit.

84 (2) Before the board grants a temporary permit to practice

85 | as a physical therapist assistant:

86 |       (a) Documentation verifying that the applicant will  
 87 | practice under the direct supervision of a licensed physical  
 88 | therapist as provided in paragraph (1)(c) must be on file with  
 89 | the board, pursuant to rules adopted by the board.

90 |       (b) The applicant must demonstrate proof of malpractice  
 91 | insurance and a passing score on the Florida Laws and Rules  
 92 | examination administered by the Federation of State Boards of  
 93 | Physical Therapy.

94 |       (3) Submission of the application for a temporary permit  
 95 | to practice as a physical therapist assistant does not authorize  
 96 | an applicant to begin work as a physical therapist assistant. An  
 97 | applicant for a temporary permit shall not work as a physical  
 98 | therapist assistant until a temporary license is issued by the  
 99 | board.

100 |       Section 3. This act shall take effect upon becoming a law.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143 Health Care Practitioner License Suspension

SPONSOR(S): Costello

TIED BILLS: IDEN./SIM. BILLS: SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Mathieson 	Calamas 
2) Criminal Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1143 amends s. 456.074, F.S., which authorizes the Department of Health (DOH) to immediately suspend or restrict licenses of healthcare practitioners, as defined by s. 456.001(4), F.S., if the licensee has:

- Committed, is arrested for, or is under investigation or prosecution for an act under ch. 782, F.S., relating to homicide;
- Committed an act that would constitute the basis for discipline under the applicable practice act;
- Violated s. 458.331(1)(q), F.S., or s. 459.015(1)(t), F.S., relating to controlled substances;
- Violated a provision of ch. 456, F.S., relating to health professions and occupations: general provisions;
- Violated a provision of ch. 893, F.S., relating to drug abuse prevention and control; or
- Violated a provision of 21 U.S.C. ss 801-970, relating to drug abuse prevention and control.

The bill amends s. 903.046, F.S., requiring a judge to consider, at a bail determination, whether suspension or restriction of a licensed health care practitioner's license is necessary to protect the community against unreasonable danger.

The bill does not appear to have a fiscal impact to the state.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations.

##### Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>1</sup> Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

##### License Disciplinary Actions

Sections 456.072, 456.073 and 456.074 F.S., provide authority for a board to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Administration of a fine not to exceed \$10,000 per occurrence;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action.
- Imposition of an administrative fines for violations of patient rights;
- Refund of fees billed and collect from the patient or a third party on behalf of the patient; and
- Remedial education.<sup>2</sup>

The Board can take action for any legally sufficient, written and signed complaint that is filed before it. S.456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act or any rule adopted by DOH or the relevant board. DOH has the authority to investigate a complaint, even if the original complainant withdraws or the complainant is anonymous.<sup>3</sup> Further, DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute, or a rule of either the board or the department.

The subject of an investigation has 20 days to respond in writing to the complaint or document after service.<sup>4</sup> Whatever is submitted is considered by the probable cause panel of the respective board.<sup>5</sup>

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<sup>1</sup> S. 456.001, F.S.

<sup>2</sup> S. 456.072(2)

<sup>3</sup> S. 456.074(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

The right to respond does not preclude the State Surgeon General from issuing a summary emergency order, if it is necessary to protect the public.<sup>6</sup>

DOH has 6 months to complete an investigation and submit it to the appropriate probable cause panel.<sup>7</sup> A determination as to probable cause is made by a majority vote of the panel.<sup>8</sup> The panel may request additional investigative information from DOH, and this must be done within 15 days of receiving the investigative report from the department or agency.<sup>9</sup> The panel has 30 days from receiving the final investigative report to make a determination of probable cause.<sup>10</sup> The Surgeon General may grant extensions of these time limits.<sup>11</sup> If the panel does not make a determination within the statutory timeframe, DOH is directed to do so within 10 days of the expiration of the time limit.<sup>12</sup>

DOH is directed to follow the determination of the probable cause panel, and if probable cause exists is directed to file a formal complaint against the subject, and prosecute pursuant to ch. 120, F.S.<sup>13</sup> DOH may decide not to prosecute if probable cause has been found improvidently, and refer the issue back to the appropriate Board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S.<sup>14</sup> Referrals to the Division of Administrative Hearings (DOAH), must occur within 1 year of filing the complaint.<sup>15</sup> Chapter 120, F.S., provides the practitioner with the right to appeal the action.

DOH is further directed to notify the person who filed the complaint, and if probable cause is not found, provide them with an opportunity 60 days from the determination, to bring additional information to the department.<sup>16</sup>

### *Emergency Orders*

Section 120.60(6), F.S. provides DOH with broad authority to take disciplinary action in the case of immediate serious danger to the public health, safety or welfare. A license may be suspended, restricted, or limited on an emergency basis if:

- The procedure provides at least the same procedural protection as is given by other statutes, the state Constitution or the U.S. Constitution;
- The action is necessary to protect the public interest under the emergency procedure;
- There are specific facts that outline the finding of an immediate danger to public health, safety, or welfare and reasons for concluding the process was fair under the circumstances.

Section 456.074, F.S., provides DOH with separate authority from s. 120.60(6), F.S., to issue an emergency order suspending the license of certain health care practitioners under very specific circumstances. This **must** occur when:

- A medical doctor, doctor of osteopathy, chiropractor, podiatrist, naturopath, optometrist, nurse, pharmacist, dentist or hypnotist pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to:
  - A felony under:
    - ch. 409, F.S., social and economic assistance;
    - ch. 817, F.S., fraudulent practices;
    - ch. 893, F.S., drug abuse prevention or control;
    - 21 U.S.C. ss 801-970, controlled substances; or
    - 42 U.S.C. ss1395-1396, Medicaid and Medicare.
  - A misdemeanor or felony under:

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

<sup>7</sup> S. 456.074(2), F.S.

<sup>8</sup> S. 456.074(4), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

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

<sup>16</sup> S. 456.073(9)(c), F.S.

- 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, crimes; or
- 42 U.S.C. ss 1320a-7b, Medicaid.

DOH has discretionary authority pursuant s. 456.074, F.S. to issue an emergency order suspending or restricting the license of certain health care practitioners when:

- The board has found a physician or osteopathic physician in violation of s. 458.331(1)(t), F.S., or s. 459.015(1)(x), F.S., relating to medical malpractice, in regard to three or more patients and there is probable cause to find additional violations of these sections.
- A healthcare practitioner, as defined in s. 456.001(4), F.S., tests positive for a pre-employment or employer ordered drug test, when the practitioner does not have a lawful prescription and legitimate medical reason for using such a drug.
- A healthcare practitioner has defaulted on state or federally guaranteed student loans.<sup>17</sup>

While Florida law does not specify the interaction between these two sections, courts have interpreted s. 456.074, F.S. to operate independently of s. 120.60(6), F.S. Courts appear to interpret s. 456.074(1), F.S., in a way that is analogous to strict liability, such that the due process requirements of 120.60(6), F.S., including proof of immediate danger to public safety, do not apply. Courts that have interpreted s. 456.074, F.S., have applied subsection (1), which mandates the emergency suspension, leaving DOH with no discretion.<sup>18</sup> Subsection (3) of s. 456.074, F.S., for example, provides DOH with discretion as to an emergency suspension, and judicial interpretation of discretionary authority in this context is unclear.

Following the issuance of an emergency suspension, the person has an immediate right of appeal.<sup>19</sup> An emergency suspension order is effective until it is overturned by an appellate court, vacated by the Surgeon General or superseded by a final order. The department is required to initiate non-emergency administrative proceedings within 20 days of the emergency suspension.<sup>20</sup> DOH issued 326 emergency suspensions in FY 2010-11.<sup>21</sup>

## Bail

Pretrial release is an alternative to incarceration that allows an accused to be released from detention whilst they await disposition of the criminal charges. Article I, s. 24 of the Florida Constitution provides that unless a person is charged with a capital offense or one punishable by life and “the proof of guilt is evident or the presumption great,” every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. Further to this, the Legislature has determined that the presumption in favor of release on nonmonetary conditions for any accused who is granted pre-trial release unless they are charged with a dangerous crime.<sup>22</sup>

Pretrial release is granted by a court in one of three ways; release on own recognizance, supervised pretrial release or a bond.<sup>23</sup> Bail as a form pretrial release, requires an accused to pay a set sum of money to the court. If the accused released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

<sup>17</sup> S. 456.074, F.S.

<sup>18</sup> See *Mendelsohn v. Department of Health*, 68 So.3d 965 (Fla 1st DCA, 2011) (DOH could not issue emergency suspension because petitioner did not commit enumerated violation of s. 456.074(1), F.S.); *Bethencourt-Miranda v. Department of Health*, 910 So.2d 927, (Fla 1st DCA, 2005) (No findings were necessary for an emergency suspension for violation of 21 U.S.C. s. 846);

<sup>19</sup> S. 120.569(n)(2), F.S.

<sup>20</sup> Rule 28-106.501, F.A.C.

<sup>21</sup> DOH analysis for HB 1143 (2012). On file with Health and Human Services Quality Subcommittee staff.

<sup>22</sup> Dangerous crimes are described in s. 907.041(4)(a), F.S., including offenses such as arson, aggravated assault, aggravated battery, child abuse, elder abuse, abuse of a disabled adult, kidnapping, homicide, manslaughter, sexual battery or other sex offenses, robbery, carjacking, stalking, terrorism and domestic violence.

<sup>23</sup> Bail is the security, such as a bond posted by a defendant to a trial court to secure their release from detention to appear in court at a future date. Black’s Law Dictionary (9<sup>th</sup> Ed. 2009). S. 903.011(1), F.S., provides that bail and bond include any and all forms of pretrial release as used in ch. 903, F.S.

Section 903.046, F.S., provides that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the person. In the determination of whether to release a criminal defendant on bail or other conditions, the section directs the judge to consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- Family ties, length of residence in the community, employment history, financial resources and mental condition;
- The defendant's past and present conduct;
- The nature and probability of danger that the defendant poses to the community, including intimidation and danger to victims;
- The course of funds used for bail, or to secure the bond;
- Whether the defendant is on release for another pending matter;
- The street value of the drug or controlled substance, if applicable to the case;
- Whether there is probable cause to believe the defendant committed a new crime whilst on pretrial release;
- Whether the crime charged is a violation of ch. 874, F.S.; and
- Any other relevant factor.<sup>24</sup>

### **Effect of Proposed Changes**

House Bill 1143 amends s. 456.074, F.S., authorizing DOH to immediately suspend or restrict the license of a healthcare practitioner as defined by s. 456.001(4), F.S.,<sup>25</sup> who:

- Commits, is arrested for, or is under investigation or prosecution for an act under ch. 782, F.S., relating to homicide;
- Commits an act that would constitute the basis for discipline under the applicable practice act;
- Violates s. 458.331(1)(q), F.S., or s. 459.015(1)(t), F.S.;
- Violates a provision of ch. 456, F.S.;
- Violates a provision of ch. 893, F.S.; or
- Violates a provision of 21 U.S.C. ss 801-970.

Once the emergency order has been issued, the practitioner would have the right to appeal the decision, pursuant to s. 120.569(n)(2), F.S. The bill provides DOH with discretionary authority to issue an emergency suspension order based on the enumerated criteria. It is not clear how this discretionary authority will be interpreted by the courts.

The bill provides that a judge, when determining criteria for bail, shall determine whether the suspension of a license or a restriction on the ability to practice a licensed profession necessary to protect the community against unreasonable danger. This provision applies to every profession regulated by the MQA, pursuant to the definition of "profession" s. 456.001, F.S. This provision does not give the judge the ability to suspend or restrict the license, only determine whether such an action is necessary to protect the community.

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<sup>24</sup> S. 903.046, F.S.

<sup>25</sup> S. 456.001(4), F.S., defines a healthcare practitioner as any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medical doctors); ch. 459, F.S., (osteopathic physicians); ch. 460, F.S., (chiropractors); ch. 461, F.S., (podiatrists); ch. 462, F.S., (naturopaths); ch. 463, F.S., (optometrists); ch. 464, F.S., (nurses); ch. 465, F.S., (pharmacists); ch. 466, F.S., (dentists); ch. 467, F.S., (midwives); part I, ch. 468, F.S., (speech pathologists and audiologists); part II, ch. 468, F.S., (nursing home administrators); part III, ch. 468, F.S., (occupational therapists); part V, ch. 468, F.S., (respiratory therapists); part X, ch. 468, F.S., (dietetics and nutritionists), part XIII, ch. 468, F.S., (athletic trainers); part XIV, ch. 468, F.S., (orthotics, prosthetics and pedorthics); ch. 478, F.S., (electrolysis); ch. 480, F.S., (massage therapists); part III, ch. 483, F.S., (clinical laboratory personnel); part IV, ch. 483, F.S., (medical physicists); ch. 484, F.S., (dispensing of optical devices and hearing aids); ch. 486, F.S., (physical therapists); ch. 490, F.S., (psychologists); ch. 491, F.S., (clinical counseling and psychotherapy services).

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 456.074, F.S., relating to certain healthcare practitioners; immediate suspension or restriction of license.
- Section 2:** Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.
- Section 3:** Provides an effective date.

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

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

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

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

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

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

DOH has sufficient rulemaking authority in s. 456.074, F.S., to implement the provisions of the bill.

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

Lines 31-34 direct a judge to determine whether the suspension or restriction of a license during bail hearing is necessary to protect the community against unreasonable danger. However, the language does not expressly authorize the judge to suspend or restrict, merely determine this as a component of bail.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled  
 An act relating to health care practitioner license suspension; amending s. 456.074, F.S.; authorizing the Department of Health to issue an emergency order to suspend or restrict the license of a health care practitioner under specified conditions; amending s. 903.046, F.S.; providing additional criteria that a court may consider when determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Subsection (5) is added to section 456.074, Florida Statutes, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(5) The department may issue an emergency order suspending or restricting the license of any health care practitioner as defined in s. 456.001(4) who has committed, is arrested for, or is under investigation or prosecution for an act under chapter 782 or any act that would constitute the basis for discipline under the applicable practice act, s. 458.331(1)(q), s. 459.015(1)(t), this chapter, or chapter 893, or under 21 U.S.C. ss. 801-970, as applicable.

Section 2. Paragraph (m) is added to subsection (2) of section 903.046, Florida Statutes, to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on



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29 | bail or other conditions, and what that bail or those conditions  
30 | may be, the court shall consider:

31 |       (m) Whether the suspension of a license or the restriction  
32 | on the ability to practice a licensed profession as defined in  
33 | s. 456.001 is necessary to protect the community against  
34 | unreasonable danger from the criminal defendant.

35 |       Section 3. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1143 (2012)

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 Quality Subcommittee

3 Representative Costello offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (5) is added to section 456.074,

8 Florida Statutes, to read:

9 456.074 Certain health care practitioners; immediate  
10 suspension or restriction of license.—

11 (5) The department may issue an emergency order  
12 restricting any licensed health care practitioner as defined by  
13 ch. 458, ch. 459, ch. 461 and ch. 466, from prescribing  
14 controlled substances as defined by ch. 893 if the licensee has  
15 committed any act, is arrested for any act or is under criminal  
16 investigation or criminal prosecution for any act that is a  
17 violation of ch. 782, or is arrested for any act or is under  
18 criminal investigation or criminal prosecution for any act that  
19 relates to the importation, manufacture, distribution,

Amendment No. 1.

20 possession, transfer, sale, improper use or prescribing of  
21 controlled substances as defined in ch. 893, or is in violation  
22 of any federal law relating to the possession, transfer, sale or  
23 prescribing of controlled substances as defined by ch. 893 or 21  
24 U.S.C ss. 801-970.

25 Section 2. Paragraph (m) is added to subsection (2) of  
26 section 903.046, Florida Statutes, to read:

27 903.046 Purpose of and criteria for bail determination.—

28 (2) When determining whether to release a defendant on  
29 bail or other conditions, and what that bail or those conditions  
30 may be, the court shall consider:

31 (m) Whether the suspension of a license or the restriction  
32 on the ability to practice a licensed profession as defined in  
33 s. 456.001 is necessary to protect the community against  
34 unreasonable danger from the criminal defendant.

35 Section 3. This act shall take effect July 1, 2012.

36  
37  
38 -----  
39 **T I T L E A M E N D M E N T**

40 Remove the entire title and insert:

41 A bill to be entitled

42 An act relating to health care practitioner license suspension;  
43 amending s. 456.074, F.S.; authorizing the Department of Health  
44 to issue an emergency order to suspend or restrict the license  
45 of a health care practitioner under specified conditions;  
46 amending s. 903.046, F.S.; providing additional criteria that a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1143 (2012)



Amendment No. 1.

47 court may consider when determining whether to release a  
48 defendant on bail; providing an effective date.

HB 4163

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4163 Continuing Education for Athletic Trainers and Massage Therapists  
**SPONSOR(S):** Hudson  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1258

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

SUMMARY ANALYSIS

HB 4163 repeals s. 456.034, F.S. relating to requirements for Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) continuing education for Athletic Trainers and Massage Therapists.

Section 468.705, F.S. provides the Board of Athletic Training authority to promulgate rules regarding licensure and continuing education requirements for Athletic Trainers. The Board of Athletic Training has discretion to determine the topics to be included in continuing education courses. Therefore, the Board of Athletic Training has the discretion to include a course in HIV/AIDS training as part of its continuing education requirements.

Section 480.0415, F.S. provides the Board of Massage Therapy authority to promulgate rules regarding continuing education requirements for Massage Therapists. The Board of Massage Therapy has discretion to determine the topics to be included in continuing education courses. Therefore, the Board of Massage Therapy has the discretion to include a course in HIV/AIDS training as part of its continuing education requirements.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Athletic Trainers*

Athletic training is the recognition, prevention, and treatment of athletic injuries.<sup>1</sup> An athletic injury is an injury sustained during an athletic activity which affects the athlete's ability to participate or perform.<sup>2</sup> An athletic activity includes the participation in an event that is conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation requiring any of the physical attributes of strength, agility, flexibility, range of motion, speed, and stamina.<sup>3</sup>

In 1994, the Legislature began fully regulating and licensing the practice of athletic training to protect the public and ensure that athletes are assisted by individuals adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities.<sup>4</sup> Athletic Trainers are regulated by the Florida Department of Health, Division of Medical Quality Assurance and the Board of Athletic Training<sup>5</sup>, pursuant to part XIII of Ch. 468, F.S.

As of June 30, 2011, there were 1,488 active in-state licensed athletic trainers.<sup>6</sup> Between July 1, 2010 and June 30, 2011, the department received 232 applications from individuals seeking initial licensure as an athletic trainer.<sup>7</sup>

Applicants seeking licensure as an athletic trainer must:<sup>8</sup>

- Complete the application form and remit the required fees;
- Be at least 21 years of age;
- Posses a baccalaureate degree from a college or university accredited by the United States Department of Education (U.S. DOE), or the Commission on Recognition of Postsecondary Accreditation (Commission), or from a program approved by the board;
- Complete an approved athletic training curriculum from a college or university accredited by an accrediting agency recognized and approved by the U.S. DOE or the Commission, or approved by the board;
- Be certified in cardiovascular pulmonary resuscitation from the American Red Cross, the American Heart Association, or an equivalent certification entity as determined by the board;
- Submit proof of taking a two-hour course on the prevention of medical errors;
- Submit a certified copy of the National Athletic Trainers Association Board of Certification certificate or a notarized copy of examination results.<sup>9</sup>

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<sup>1</sup> S. 468.701(5), F.S.

<sup>2</sup> S. 468.701(3), F.S.

<sup>3</sup> S. 468.701(2), F.S.

<sup>4</sup> Ch. 94-119, L.O.F. and S. 468.70, F.S.

<sup>5</sup> The Board of Athletic Training is composed of nine members who are Governor appointed and confirmed by the Senate. Five of the members must be licensed athletic trainers, one must be a physician, and two are consumer-residents who are not affiliated with the industry or licensed health-care practice. See S. 768.703, F.S.

<sup>6</sup> Florida Department of Health, Division of Medical Quality Assurance: Annual Report July 1, 2010 to June 30, 2011, available at: <http://www.doh.state.fl.us/mqa/reports.htm> (last viewed January 13, 2012).

<sup>7</sup> *Id.*

<sup>8</sup> S. 468.707, F.S.

<sup>9</sup> Florida Department of Health, Division of Medical Quality Assurance, Athletic Training: Application & Licensure Requirements, available at: [http://www.doh.state.fl.us/mqa/athtrain/at\\_lic\\_req.html](http://www.doh.state.fl.us/mqa/athtrain/at_lic_req.html) (last viewed January 13, 2012).

Each applicant for licensure is required to complete a continuing education course on HIV/AIDS as part of initial licensure and one hour for biennial licensure renewal.<sup>10</sup>

Additionally, licensed athletic trainers are required to complete 24 hours of continuing education courses biannually. The courses must focus on the prevention of athletic injuries; recognition, evaluation, and immediate care of athletic injuries; rehabilitation and reconditioning of athletic injuries; health care administration; or professional development and responsibility of athletic trainers.<sup>11</sup>

### *Massage Therapists*

Massage is the manipulation of the soft tissues of the human body with the hand, foot, arm, elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.<sup>12</sup> Massage Therapists are regulated by the Florida Department of Health, Division of Medical Quality Assurance and the Board of Massage Therapy<sup>13</sup>, pursuant to Ch. 480, F.S. Currently, there are 30,323 individuals who hold an active in-state license as a massage therapist in Florida.<sup>14</sup> All massage therapists are required to renew their licenses on or before August 31 of each biennial year.<sup>15</sup> Currently, an individual is qualified for an active license as a massage therapist in Florida if the individual:<sup>16</sup>

- Completes the application form and remits the required fees;
- Is at least 18 years of age;
- Possess a high school diploma or graduate equivalency degree;
- Completes a course of study at a board approved massage school or completed an apprenticeship program that meets the standards adopted by the board;
- Receives a passing grade on national examination approved by the board;
- Completes the HIV/AIDS course requirement<sup>17</sup>;
- Completes a course relating to the prevention of medical errors<sup>18</sup>.

Each applicant for licensure is required to complete a continuing education course on HIV/AIDS as part of initial licensure and one hour for biennial licensure renewal.<sup>19</sup>

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<sup>10</sup> S. 456.034, F.S., and Rule 64B33-2.002, F.A.C.

<sup>11</sup> Rule 64B33-2.003, F.A.C

<sup>12</sup> S.480.033(3), F.S.

<sup>13</sup> The Board of Massage Therapy is composed of 7 members appointed by the Governor and approved by the Senate. 5 members of the board must be licensed massage therapists and shall have been engaged in massage therapy for at least 5 consecutive years prior to the date of appointment, the other 2 members shall be lay persons. Each member must have a high school diploma or graduate equivalency diploma. –See S.480.035, F.S.

<sup>14</sup> Department of Health, Division of Medical Quality Assurance, Annual Report for July 1, 2010 to June 30, 2011 *available at*: <http://www.doh.state.fl.us/mqa/reports.htm> (last viewed January 13, 2012).

<sup>15</sup> Rule 64B7-28.001, F.A.C.

<sup>16</sup> S. 480.041(1), F.S. and Rule 64B7-25.001, F.A.C

<sup>17</sup> Rule 64B7-25.0012, F.A.C.;

<sup>18</sup> S. 456.013(7), F.S.

<sup>19</sup> S. 456.034, F.S. and ch. 64B33-2.003, F.A.C.



Additionally, licensed massage therapists are required to complete one continuing education hour for each month or part of a month that has elapsed since the issuance of the license for which renewal is sought, up to a maximum of 24 hours.<sup>20</sup> The courses must focus on massage therapy techniques, the prevention of medical errors, professional ethics and laws and rules of massage therapy.<sup>21</sup> In addition to the above mentioned courses massage therapists may select from the following courses, as needed to meet their continuing education requirements.<sup>22</sup>

- Communications with clients and other professionals;
- Insurance related to third party payment or reimbursement of services;
- Psychological dynamics of client–therapist relationship;
- Risk management, including charting, documentation and record keeping;
- Infection control (other than the HIV/AIDS course required by s. 456.034, F.S.);
- Adult Cardiopulmonary Resuscitation (CPR).

### **Effect of Proposed Changes**

The bill repeals s. 456.034, F.S., which required each licensed Athletic Trainer and Massage Therapist to complete a continuing education course on HIV/AIDS as part of licensure renewal.

#### *Athletic Trainer*

Section 468.705, F.S. provides the Board of Athletic Training authority to promulgate rules regarding licensure and continuing education requirements for Athletic Trainers. The Board of Athletic Training has discretion to determine the topics to be included in continuing education courses. Therefore, the Board of Athletic Training has the discretion to include a course in HIV/AIDS training as part of its continuing education requirements.

#### *Massage Therapists*

Section 480.0415, F.S. provides the Board of Massage Therapy authority to promulgate rules regarding continuing education requirements for Massage Therapists. The Board of Massage Therapy has discretion to determine the topics to be included in continuing education courses. Therefore, the Board of Massage Therapy has the discretion to include a course in HIV/AIDS training as part of its continuing education requirements.

#### **B. SECTION DIRECTORY:**

**Section 1:** Repeals s. 456.034, F.S.

**Section 2:** Provides an effective date of July 1, 2012.

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<sup>20</sup> Rule 64B7-28.009, F.A.C.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

### 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

HB 4163

2012

1                                   A bill to be entitled  
 2           An act relating to continuing education for athletic  
 3           trainers and massage therapists; repealing s. 456.034,  
 4           F.S., relating to the requirement for athletic  
 5           trainers and massage therapists to complete continuing  
 6           education on the modes of transmission, infection  
 7           control procedures, clinical management, and  
 8           prevention of human immunodeficiency virus and  
 9           acquired immune deficiency syndrome; providing an  
 10          effective date.

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

13  
 14          Section 1.   Section 456.034, Florida Statutes, is repealed.  
 15          Section 2.   This act shall take effect July 1, 2012.