Health Quality Subcommittee

Meeting Packet

Tuesday, March 18, 2014
3:00 PM - 5:00 PM
306 HOB

Will Weatherford
Speaker

Kenneth L. "Ken" Roberson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time:	Tuesday, March 18, 2014 03:00 pm
End Date and Time:	Tuesday, March 18, 2014 05:00 pm
Location:	306 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 465 Hepatitis C Testing by Jones, M.
HB 531 Public Health Trusts by Richardson
HB 1041 Mental Health Counseling Interns by Murphy
HB 1065 Licensed Massage Therapists by Kerner
HB 1131 Emergency Allergy Treatment by Hudson
HB 1381 Prescription Drug Monitoring Program by Davis

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, March 17, 2014.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 17, 2014.

NOTICE FINALIZED on 03/14/2014 15:45 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 465 Hepatitis C Testing
SPONSOR(S): Jones and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 824

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

SUMMARY ANALYSIS

Persons born between the years 1945 and 1965 account for approximately 75% of those infected with the Hepatitis C Virus (HCV). HCV often goes untreated due to its asymptomatic properties.[1] HCV is a leading cause of liver cancer and the leading cause of liver transplants.[2]

The bill requires that patients born between January 1, 1945, and December 31, 1965, who receive inpatient health care services or primary care services in a hospital, or receive primary care services from a physician, physician assistant, or nurse practitioner to be offered a test that screens for HCV antibodies. A health care practitioner is not required to offer the screening test if the patient:

- Is being treated for a life threatening emergency.
- Has previously been offered the test or has been tested, unless their medical condition indicates the need for testing.
- Lacks the capacity to consent.

If a person screened for HCV tests positive for the virus, the bill requires the health care practitioner to offer follow-up health care, including a diagnostic test, or refer the person to a health care provider who can provide the care.

The bill gives the Department of Health (Department) the authority to adopt rules to implement culturally and linguistically appropriate screening procedures. The bill provides that the requirements to offer screening for HCV and follow-up care or a referral for care, do not affect the health care practitioner's scope of practice or other legal obligations or authority to offer such services.

The bill requires the State Surgeon General to submit a report evaluating the effectiveness of the HCV testing program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature.

The bill may have an indeterminate negative fiscal impact on state government and no fiscal impact on local government.

The bill provides an effective date of July 1, 2014.

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[1] Hepatitis C Why Baby Boomers Should Get Tests, CDC, *accessible at*: http://www.cdc.gov/hepatitis/Populations/AAC-HepC.htm (Last accessed February 23, 2014).

[2] In 2012 chronic liver disease and cirrhosis was the tenth leading cause of death in Florida. Florida Death County Query System, Florida Department of Health, *accessible at*: http://www.floridacharts.com/FLQUERY/Death/DeathCount.aspx (Last accessed February 23, 2014).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

The Hepatitis C Virus (HCV) is a viral disease that leads to swelling of the liver. Over time, chronic HCV can cause serious health problems including liver damage, cirrhosis, liver cancer and even death.[3] HCV is a leading cause of liver cancer and the leading cause of liver transplants.[4]

HCV disproportionately affects those persons born between the years 1945 and 1965. This age group comprises an estimated 27% of the U.S. population but they account for approximately 75% of all HCV infections, 73% of HCV-associated mortality, and are at greatest risk for HCV-related liver disease.

HCV also disproportionately affects African Americans as they have a higher rate of HCV infection than Caucasians and other ethnic groups. Chronic liver disease, often HCV related, is the leading cause of death among African Americans ages 45 to 65.[5]

Due to the virus' asymptomatic properties, many of the 2.7 to 3.9 million persons living with HCV infection are unaware they are infected and do not receive care and treatment. As of 2012, the CDC recommends all adults born from 1945 through 1965 to be tested once for HCV even without prior detection of HCV risk factors.[6]

Based on national estimates, more than 310,000 Floridians are likely infected with HCV with nearly 140,000 that are not aware of their infection. This estimate does not include the homeless or incarcerated populations. Approximately 23,000 chronic cases of HCV are reported each year in Florida. However, because the initial stages of HCV infection are either asymptomatic or associated only with mild symptoms, most new infections are undiagnosed.[7] The Florida Department of Health's (Department) Bureau of Epidemiology provides hepatitis disease surveillance.[8]

Florida Department of Health's Hepatitis Prevention Program

The Department's County Health Departments (CHDs) offer HCV screening to those with risk factors,[9] including persons born between the years 1945 and 1965, through the Department's Hepatitis Prevention Program (HPP). Adult Floridians, aged 18 years and older, who test positive for HCV are offered a Hepatitis B vaccine and counseling on nutrition, exercise, and stopping drug, alcohol, and tobacco use. All of these interventions slow the progress of HCV. While CHDs generally do not charge

[3] Hepatitis C Why Baby Boomers Should Get Tests, CDC, *accessible at*: http://www.cdc.gov/hepatitis/Populations/AAC-HepC.htm (Last accessed February 23, 2014).
[4] In 2012, chronic liver disease and cirrhosis was the tenth leading cause of death in Florida. Florida Death County Query System, Florida Department of Health, *accessible at*: http://www.floridacharts.com/FLQUERY/Death/DeathCount.aspx (Last accessed February 23, 2014).
[5] Hepatitis C in the African American Community, *accessible at*: http://www.cdc.gov/hepatitis/Populations/AAC-HepC.htm (Last accessed February 24, 2014).
[6] Recommendations for the Identification of Chronic Hepatitis C Virus Among Persons Born During 1945-1965, *accessible at:* http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6104a1.htm (Last accessed February 24, 2014).
[7] DOH Analysis of HB 465, dated February 6, 2014. On file with Health Quality Subcommittee staff.
[8] Disease surveillance involves collecting and analyzing population level health data.
[9] Risk factors include: persons born between 1945-1965, current or former injection drug users, recipients of clotting factor concentrates made before 1987, recipients of blood transfusions or solid organ transplants before July 1992, persons with HIV, children born to HCV-positive mothers, and persons with known exposures to HCV.

for HCV screening and vaccination services, some CHDs charge a small administrative fee for the vaccines, usually not exceeding $20. A CHD will waive this cost if the client cannot afford the fee.[10]

Fifteen CHDs[11] have funding for the provision of additional hepatitis services to those at increased risk for Hepatitis A, B, and/or C. Components of these services may include:

- Enhanced surveillance;
- Education of the public and health care providers;
- Immunization against Hepatitis A and B (there is no vaccine for HCV);
- Targeted interventions;
- Screening and testing for chronic Hepatitis B and C; and
- Epidemiologic investigations.

CHDs are funded at varying levels and services may vary from county to county depending on funding.[12] From January 2007 through December 2012, there were 185,096 doses of Hepatitis A, B, and A/B combination vaccine given to at-risk adults through the HPP.[13]

In fiscal years 2012-2013 and 2013-2014, the HPP received $1,413,745 in General Revenue funding. Other annual funding that supports the HPP includes $121,000 from the HIV Prevention Program for viral Hepatitis testing; $125,000 from the HIV Patient Care Program for Hepatitis A and B vaccines; and $108,287 from the CDC for a Hepatitis Prevention Coordinator and associated expenses. The HPP also received $212,169 from the CDC in October of 2012 for a two-year Hepatitis B vaccine project in six CHDs. This funding supports supplies and equipment to provide the vaccines and staff support for tracking and analyzing the data. This project ends on September 30, 2014.[14]

HCV Treatment and Costs

HCV treatment can take from six months up to a year. Most individuals undergoing treatment suffer debilitating side effects such as fever, headaches, depression, anxiety, and more.[15] In late 2013, the Food and Drug Administration approved two new HCV medications, Olysio (simeprevir) and Sovaldi (sofosbuvir), which require shorter term treatment and less extreme side effects.[16] The state HPP does not provide treatment for HCV.

Standard treatment for chronic HCV in eligible individuals costs an average of $30,000 per patient.[17] For those individuals who cannot afford treatment, there are private and nonprofit "Patient Access" programs available to provide funding for treatment purposes. Medicare has not yet decided whether the program will cover the costs of screening, testing, and treatment. Medicaid does cover screening, testing and treatment, including the current standard medications. The two new medications previously mentioned are expected to be added to the state's Medicaid Preferred Drug List later this year.[18]

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[10] DOH Analysis of HB 465, dated February 6, 2014. On file with Health Quality Subcommittee staff.
[11] Alachua, Bay, Broward, Collier, Duval, Escambia, Lee, Miami-Dade, Monroe, Okeechobee, Orange, Palm Beach, Pinellas, Polk and Seminole have additional funds from the CDC for follow-up care under the HPP.
[12] Adult Vaccination and Testing Program, *accessible at:* http://www.floridahealth.gov/diseases-and-conditions/hepatitis/hepatitis-vaccination-testing-program.html (Last accessed February 24, 2014).
[13] DOH Analysis of HB 465, dated February 6, 2014. On file with Health Quality Subcommittee staff.
[14] *Id.*
[15] Hepatitis C Treatment Side Effects Management Chart, U.S. Department of Veterans Affairs, *accessible at:* http://www.hepatitis.va.gov/products/patient/side-effects-chart.asp (Last accessed February 26, 2014).
[16] DOH Analysis of HB 465, dated February 6, 2014. On file with Health Quality Subcommittee staff.
[17] Funding for Hepatitis C Diagnosis, Medical Evaluation and Medical Care, The Florida Viral Hepatitis Council, dated February 2009. On file with Health Quality Subcommittee staff.
[18] *Id.*

Effect of Proposed Changes

The bill requires that patients born between January 1, 1945, and December 31, 1965, receiving health care services as inpatients in a general hospital, or receiving primary care services in a hospital or from a physician, physician assistant, or nurse practitioner, to be offered a test that screens for HCV antibodies. A health care practitioner is not required to offer the screening test if the patient:

- Is being treated for a life threatening emergency.
- Has previously been offered the test or has been tested, unless their medical condition indicates the need for testing.
- Lacks the capacity to consent.

If a person screened for HCV tests positive for the virus, the health care practitioner must offer follow-up health care or refer the person to a health care provider who can provide the care. The follow-up care must include an HCV diagnostic test to confirm the presence of the virus.

The bill gives the Department the authority to adopt rules to implement culturally and linguistically appropriate screening procedures. The bill provides that the requirements to offer screening for HCV and follow-up care, or a referral for care, do not affect the health care practitioner's scope of practice or other legal obligations or authority to offer such services.

The bill requires the State Surgeon General to submit a report evaluating the effectiveness of the HCV testing program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Creates s. 381.0044, F.S., relating to Hepatitis C testing.
Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   An increase in demand and utilization of Hepatitis B vaccines may result from this bill which could potentially result in increased revenues for CHDs that charge administrative fees.

2. Expenditures:

   This bill could increase the demand for Hepatitis A, B, and C screening at CHDs. All state program tests are processed by the state lab which could see an increased workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private insurance companies may see an increase in HCV-related claims because of this bill.

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:

The bill grants the Department specific authority to adopt rules to implement culturally and linguistically appropriate screening procedures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In line 18, the definition of health care practitioner does not include physician assistants but on line 33 they are included in reference to health care practitioners.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Hepatitis C testing; creating s. 381.0044, F.S.; providing definitions; requiring specified persons to be offered Hepatitis C testing; providing for followup health care for persons with a positive test result; requiring the Department of Health to adopt rules; providing for applicability with respect to Hepatitis C testing by health care practitioners; requiring a report to the Governor and Legislature; providing an effective date.

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

Section 1. Section 381.0044, Florida Statutes, is created to read:

381.0044 Hepatitis C testing.—

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

(a) "Health care practitioner" means a physician licensed under chapter 458; an osteopathic physician licensed under chapter 459; or an advanced registered nurse practitioner, registered nurse, or licensed practical nurse licensed under part I of chapter 464.

(b) "Hepatitis C diagnostic test" means a laboratory test that detects the presence of the Hepatitis C virus in the blood and provides confirmation of a Hepatitis C virus infection.

(c) "Hepatitis C screening test" means a laboratory test

that detects the presence of Hepatitis C virus antibodies in the blood.

(2) A person born between January 1, 1945, and December 31, 1965, who receives health care services as an inpatient in a general hospital as defined in s. 395.002, receives primary care services in a hospital inpatient or outpatient setting, or receives primary care services from a physician, physician assistant, or nurse practitioner shall be offered a Hepatitis C screening test unless the health care practitioner providing those services reasonably believes that the person:

(a) Is being treated for a life-threatening emergency;

(b) Has previously been offered or has been the subject of a Hepatitis C screening test; however, if the person's medical condition indicates the need for testing, a test shall be offered; or

(c) Lacks the capacity to consent to a Hepatitis C screening test.

(3) If a person accepts the offer of a Hepatitis C screening test and receives a positive test result, the health care practitioner shall offer the person followup health care or refer the person to a health care provider who can provide followup health care. The followup health care shall include a Hepatitis C diagnostic test.

(4) The Department of Health shall adopt rules to implement culturally and linguistically appropriate procedures for offering Hepatitis C screening in accordance with this

section.

(5) This section does not affect the scope of practice of a health care practitioner or diminish the authority or legal or professional obligation of any health care practitioner to offer a Hepatitis C screening test or Hepatitis C diagnostic test or to provide services or followup health care for the subject of a Hepatitis C screening test or Hepatitis C diagnostic test.

(6) On or before January 1, 2016, the State Surgeon General shall submit a report evaluating the effectiveness of the Hepatitis C testing program established in this section. The State Surgeon General shall submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature.

Section 2. This act shall take effect July 1, 2014.

Amendment No.

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Jones, M. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 381.0044, Florida Statutes, is created to read:

381.0044 Hepatitis C testing.—

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

(a) "Health care practitioner" means a person licensed under chapter 458 or chapter 459, or an advanced registered nurse practitioner certified under part I of chapter 464.

(b) "Hepatitis C diagnostic test" means a laboratory test that detects the presence of the Hepatitis C virus in the blood and provides confirmation of a Hepatitis C virus infection.

(c) "Hepatitis C screening test" means any Food and Drug

Administration (FDA) approved laboratory screening test, FDA approved rapid point-of-care test, or other FDA approved tests that detect the presence of Hepatitis C antibodies in the blood.

(2) A person born between January 1, 1945, and December 31, 1965, who receives health care services as an inpatient in a general hospital as defined in s. 395.002, receives primary care services in a hospital inpatient or outpatient setting, or receives primary care services from a health care practitioner shall be offered a Hepatitis C screening test unless the health care practitioner providing those services reasonably believes that the person:

(a) Is being treated for a life-threatening emergency;

(b) Has previously been offered or has been the subject of a Hepatitis C screening test; however, if the person's medical condition indicates the need for testing, a test shall be offered; or

(c) Lacks the capacity to consent to a Hepatitis C screening test.

(3) If a patient accepts the offer of a Hepatitis C screening test and receives a positive test result, the health care practitioner shall forward the results to the patient's primary care health care practitioner who can provide the appropriate counseling and followup health care. The followup health care shall include a Hepatitis C diagnostic test.

(4) The Department of Health shall adopt rules to implement culturally and linguistically appropriate procedures

for offering Hepatitis C screening in accordance with this section and must make available to health care practitioners a standard Hepatitis C information sheet to use when discussing and offering the screening test to patients.

(5) This section does not affect the scope of practice of a health care practitioner or diminish the authority or legal or professional obligation of any health care practitioner to offer a Hepatitis C screening test or Hepatitis C diagnostic test or to provide services or followup health care for the subject of a Hepatitis C screening test or Hepatitis C diagnostic test.

(6) On or before January 1, 2016, the State Surgeon General shall submit a status report on the Hepatitis C testing program established in this section. The State Surgeon General shall submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature.

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

Remove line 7 and insert:

Health to adopt rules and make standard Hepatitis C information sheets available to health care practitioners; providing for applicability

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 Public Health Trusts
SPONSOR(S): Richardson
TIED BILLS: **IDEN./SIM. BILLS:** SB 640

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

SUMMARY ANALYSIS

Section 154.11(f), F.S., authorizes the board of trustees of a public health trust to lease, as lessor, any real property under its control. However, pursuant to s. 125.35, F.S., any such lease is subject to approval by the board of county commissioners of the county where the public health trust is located. House Bill 531 amends s. 154.11(f), F.S., to authorize the board of trustees for a public health trust to lease, as lessor, office space controlled by the public trust without the approval of the board of county commissioners.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Health Trusts

Each county is authorized to create a public corporate body known as a public health trust.[1] A public health trust may only be created if the governing body of the county of a public health trust declares that there is a need for the trust to function.[2] The governing body of the county must then designate health care facilities to be operated and governed by the trust and appoint a board of trustees (board).[3]

The purpose of a public health trust is to exercise supervisory control over the operation, maintenance, and governance of the designated health care facilities. A designated facility is any county-owned or county-operated facility used in connection with the delivery of health care.[4] Designated facilities include: [5]

- Sanatoriums;
- Clinics;
- Ambulatory care centers;
- Primary care centers;
- Hospitals;
- Rehabilitation centers;
- Health training facilities;
- Nursing homes;
- Nurses' residence buildings;
- Infirmaries;
- Outpatient clinics;
- Mental health facilities;
- Residences for the aged;
- Rest homes;
- Health care administration buildings; and
- Parking facilities and areas serving health care facilities.

The board of each public health trust is authorized to become the operator of, and governing body for, any designated facility.[6] The board is selected by the governing body of the county where the trust is located and consists of between 7 and 21 members.[7] The members must be residents of the county in which the trust is located and are appointed on staggered terms which may not exceed 4 years.[8] The members serve without compensation, but are entitled to necessary expenses incurred in the discharge of their duties.[9]

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[1] Section 154.07, F.S.
[2] Id.
[3] Section 154.08, F.S., and s. 154.09, F.S.
[4] Section 154.08, F.S.
[5] Id.
[6] Id.
[7] Section 154.09, F.S.
[8] Id.
[9] Id.

The board of each public health trust is deemed to exercise a public and essential governmental function of both the state and the county.[10] The board is granted specific authority and powers to accomplish this function. This authority is subject to the limitation of the governing body of the county where the trust is located and includes the authority to: [11]

- Sue and be sued;
- Make and adopt bylaws and rules and regulations for the board's guidance and for the operation, governance, and maintenance of designated facilities;
- Make and execute contracts;
- Appoint and remove a chief executive officer of the trust;
- Appoint, remove, or suspend employees or agents of the board;
- Cooperate with and contract with any governmental agency or instrumentality, federal, state, municipal, or county;
- Employ legal counsel; and
- Lease, either as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property except in accordance with the requirements of s. 125.35, F.S.

Section 125.35, F.S., authorizes the board of county commissioners sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is in the best interest of the county to do so.

Public Health Trust of Miami-Dade County

Miami-Dade County is the only county to have created a public health trust. In 1973 Miami-Dade County created the Public Health Trust of Miami-Dade County (Trust).[12] The Trust's designated facilities include Jackson Memorial Hospital and all related facilities and real and personal property. The related facilities include: [13]

- Multiple primary care and specialty care centers;
- A variety of school-based clinics serving many elementary, middle and high schools;
- Two long-term care nursing facilities;
- Six corrections health services clinics;
- A network of mental health facilities;
- Holtz Children's Hospital;
- Jackson Rehabilitation Hospital;
- Jackson Behavioral Health Hospital;
- Jackson North Medical Center; and
- Jackson South Community Hospital.

Effect of Proposed Changes

Currently, s. 154.11(f), F.S., authorizes the board of trustees of a public health trust to lease, as lessor, any real property under its control. However, any such lease is subject to the approval by the board of county commissioners of the county where the public health trust is located.[14] The bill authorizes the board of trustees for a public health trust to lease, as lessor, office space controlled by the public health trust without the approval of the board of county commissioners.

[10] Section 154.11, F.S.
[11] Id.
[12] Chapter 25A of the Miami-Dade County Code.
[13] *About Jackson Health System: Overview*, http://www.jacksonhealth.org/about.asp (last visited on March 1, 2014)
[14] Section 125.35, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 154.11, F.S., relating to powers of board of trustees.
Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public health trusts; amending s. 154.11, F.S.; authorizing public health trusts to lease certain real property; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 154.11, Florida Statutes, is amended to read:

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall be deemed to exercise a public and essential governmental function of both the state and the county and in furtherance thereof it shall, subject to limitation by the governing body of the county in which such board is located, have all of the powers necessary or convenient to carry out the operation and governance of designated health care facilities, including, but without limiting the generality of, the foregoing:

(f) To lease, either as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property <u>other than office space controlled by a public health trust,</u> except in accordance with the requirements of s. 125.35<u>, Florida Statutes</u> ~~[F. S.~~ 1973~~]~~.

Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Mental Health Counseling Interns
SPONSOR(S): Murphy
TIED BILLS: **IDEN./SIM. BILLS:** SB 1388

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

SUMMARY ANALYSIS

The bill revises the requirements for registration as an intern in the fields of clinical social work, marriage and family therapy, and mental health counseling. The bill seeks to close avenues that may be utilized by some to lengthen the time period to practice in one of these fields without obtaining full licensure.

The bill provides that a person, who is registered to practice as an intern, must remain under supervision for clinical hours to count toward full licensure and may not engage in his or her own independent private practice.

Additionally, the bill provides that a registration issued before June 30, 2012, may not be renewed or reissued and expires July 1, 2017. Any licenses issued after June 30, 2012, are valid for 5 years. The bill allows for subsequent intern registration for those who have passed the theory and practice examination currently required by law for licensure.

The bill provides that a person who has held a provisional license to practice as a clinical social worker, marriage and family therapist, or mental health counselor may not apply for intern registration in the same profession.

The bill deletes obsolete language and makes technical changes to the structure of existing law to clarify language.

The bill will have an insignificant fiscal impact on state government and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) implements and enforces rules related to clinical, counseling, and psychotherapy services. The board is composed of 9 members appointed by the Governor and confirmed by the Senate within the Department of Health (Department).[1] Presently the board regulates:[2]

- 8,746 licensed clinical social workers;
- 1,840 marriage and family therapists; and
- 9,329 mental health counselors in the state.

Scope of Practice

Clinical social work is defined as the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, to prevent undesired behavior and to better mental health. The practice is based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering. Clinical social work incorporates psychotherapy, hypnotherapy, and sex therapy.[3]

Marriage and family therapy is defined as the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems. Practice involves marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. Marriage and family therapy incorporates marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy.[4]

Mental health counseling is defined as the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development. The practice is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. Mental health counseling incorporates psychotherapy, hypnotherapy, and sex therapy.[5]

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[1] Section 491.004, F.S.
[2] Email correspondence from DOH staff, March 2014, on file with Health Quality Subcommittee staff.
[3] Section 491.003(7), F.S.
[4] Section 491.003(8), F.S.
[5] Section 491.003(9), F.S.

Internship

Under ch. 491, F.S., an individual may register as an intern in the following areas: clinical social work, marriage and family therapy, or mental health counseling. Registering as an intern enables an individual to gain the required postgraduate or postmaster's degree supervised clinical experience that is required for full licensure. This clinical experience may be met by work performed on or off the premises of the supervising clinical social worker, marriage and family therapist, or mental health counselor as long as the practice is not independent and is performed while a licensed mental health professional is on the premises. Currently, 1,500 hours of face-to-face psychotherapy is required, which may not be accrued in less than 100 weeks.[6]

An applicant seeking registration as an intern must:[7]

- Submit a completed application form and the nonrefundable fee to the Department;
- Complete education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

A registered intern may renew his or her registration every biennium, with no limit to the number of times it may be renewed.[8] Currently, there are 3,239 clinical social work interns; 859 marriage and family therapy interns; and 4,237 registered mental health counselor interns. Of this total, over 700 interns have continued to renew their intern registration for more than 10 years and 150 of them since the inception of this law in 1998.[9]

Recent disciplinary cases have shown that those interns who have been registered for many years are no longer practicing under supervision as is required by law. The Department has received increasing numbers of complaints against registered interns for various infractions including filing false reports, failing to meet minimum standards, boundary violations, sexual misconduct, Medicaid fraud, false advertising, etc. To date, the Department has received 134 complaints against clinical social work interns; 51 complaints against marriage and family therapy interns and 238 complaints against mental health counselor interns. Of these, 67 have resulted in disciplinary actions and 2 of these were recent emergency restriction orders signed by the Surgeon General.[10]

Provisional license

A provisional license is a 2 year license that allows individual practice, under the supervision of a licensed mental health professional, while not meeting all of the clinical experience requirements. Individuals must met minimum coursework requirements, and possess the respective graduate degree.[11] Currently, there are 66 provisional clinical social workers, 11 provisional marriage and family therapists and 107 provisional mental health counselors. The board has accepted applications for intern registrations from practitioners whose provisional licenses have expired. Currently, there is no prohibition against a provisional licensee applying for an intern registration.[12]

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[6] Rule 64B4-2.001, F.A.C.
[7] Section 491.005, F.S.
[8] Currently, the registration renewal fee is $80.00 for the two year period. DOH Analysis of HB 1041, dated February 25, 2014 (on file with Health Quality Subcommittee staff).
[9] DOH Analysis of HB 1041, dated February 25, 2014 (on file with Health Quality Subcommittee staff).
[10] *Id.*
[11] Section 491.0046, F.S. and Rule 64B-3.0075, F.A.C.
[12] *Supra fn 8.*

Effect of Proposed Changes

The bill rewords current law to clarify that a licensed clinical social worker, marriage and family therapist, or mental health counselor is required to be on the premises when clinical services are provided by a registered intern in a private practice setting. It also states that the intern may not engage in his or her own independent private practice.

The bill provides that a person, who is registered to practice as an intern, must remain under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor for clinical hours to count toward full licensure. Additionally, this bill limits the time period for registered internship to 5 years (60 months) after the date that the intern registration is issued and does not allow for the registration to be renewed or reissued, unless an applicant has passed the theory and practice exam.[13]

The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession. The bill seeks to close avenues that may be utilized by some to lengthen the time period to practice in the fields of clinical social work, marriage and family therapy, and mental health counseling without obtaining full licensure.

The bill deletes obsolete language and makes technical changes to the structure of existing law to clarify language.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 491.0045, F.S., relating to intern registration requirements.
Section 2. Amends s. 491.005, F.S., relating to licensure by examination.
Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department will experience a decrease in revenue associated with the elimination of the biennial renewal fee for interns. However, with the internship registration limited to a one-time 5 year period, it is anticipated that interns will apply for full licensure which will offset the decrease in intern registration renewal revenue.[14]

2. Expenditures:

   The Department will update the Customer Oriented Medical Practitioner Administration System (COMPAS) licensure system to accommodate the 5 year registration period for internships. The Department's current resources are adequate to absorb the costs associated with the update.[15]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[13] DOH Analysis of HB 104, dated February 25, 2014 (on file with Health Quality Subcommittee staff).
[14] *Id.*
[15] *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Interns of clinical social work, marriage and family therapy, and mental health counseling will no longer have to pay the biennial renewal fee, yet will be required to pay initial fees and renewal for full licensure after 5 years of internship to continue to practice in these professions.[16]

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:

The Department has sufficient rule-making authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 73-75 the bill shows incorrect dates. The dates should be amended to coincide with the professions' established license renewal calendar date of March 31 and to reflect the following year's registration period, which is 2015.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[16] *Id.*

A bill to be entitled

An act relating to mental health counseling interns; amending s. 491.0045, F.S.; revising mental health intern registration requirements; revising requirements for supervision of registered interns; deleting specified education and experience requirements; establishing validity period for and providing for expiration of intern registrations; amending s. 491.005, F.S.; requiring a licensed mental health professional to be on the premises when a registered intern provides services in clinical social work, marriage and family therapy, and mental health counseling; prohibiting such a registered intern from engaging in private practice; deleting a clinical experience requirement for such registered interns; deleting a provision requiring that certain registered interns meet educational requirements for licensure; providing an effective date.

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

Section 1. Section 491.0045, Florida Statutes, is amended to read:

491.0045 Intern registration; requirements.—

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied ~~intends to practice in Florida to satisfy~~ the

postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the post-master's experience requirement or an individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, and must register as an intern in the profession for which he or she is seeking licensure prior to commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(3) An individual registered under this section must

remain under supervision while practicing under registered intern status ~~until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied~~.

~~(4) An individual who has applied for intern registration on or before December 31, 2001, and has satisfied the education requirements of s. 491.005 that are in effect through December 31, 2000, will have met the educational requirements for licensure for the profession for which he or she has applied.~~

(4)~~(5) Individuals who have commenced the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) but failed to register as required by subsection (1) shall register with the department before January 1, 2000.~~ Individuals who fail to comply with this section ~~subsection~~ shall not be granted a license under this chapter, and any time spent by the individual completing the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering as an intern does ~~shall~~ not count toward completion of the ~~such~~ requirement.

(5) An intern registration is valid for 5 years.

(6) An intern registration issued on or before June 30, 2012, shall expire July 1, 2017, and may not be renewed or reissued. A registration issued after June 30, 2012, shall expire 60 months after the date it is issued. A subsequent intern registration may not be issued unless the candidate has passed the theory and practice examination described in s.

491.005(1)(d), (3)(d), and (4)(d).

(7) A person who has held a provisional license issued by the board may not apply for an intern registration in the same profession.

Section 2. Paragraphs (a) and (c) of subsection (1), paragraphs (a) and (c) of subsection (3), paragraphs (a) and (c) of subsection (4), and subsections (5) and (6) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(c) Has had at least ~~not less than~~ 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant

to s. 491.0045 before ~~prior to~~ commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice ~~The experience requirement may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services~~.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost to the department for the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid

the appropriate fee.

(c) Has had at least ~~not less than~~ 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraphs (b)1.a.-c., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under sub-subparagraphs (b)1.a.-c., as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health

professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services~~.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(c) Has had at least ~~not less than~~ 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to

practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling that did not include all the coursework required under sub-subparagraphs (b)1.a.-b., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising mental health counselor or the equivalent, provided the off-premises work is not the independent private practice rendering of services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services~~.

~~(5) INTERNSHIP. An individual who is registered as an intern and has satisfied all of the educational requirements for the profession for which the applicant seeks licensure shall be certified as having met the educational requirements for~~

~~licensure under this section.~~

(5) ~~(6)~~ RULES.—The board may adopt rules necessary to implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 3. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1041 (2014)

Amendment No.

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Murphy offered the following:

Amendment

Remove lines 73-79 and insert:

(6) An intern registration issued on or before March 31, 2015, shall expire March 31, 2020, and may not be renewed or reissued. An intern registration issued after March 31, 2015, shall expire 60 months after the date it is issued.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1065 Licensed Massage Therapists
SPONSOR(S): Kerner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1068

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

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions.

Chapter 480, F.S., entitled the "Massage Practice Act", governs the practice of massage in Florida. Currently, an applicant for licensure as a massage therapist is not required to undergo a criminal history background screening.

The bill requires applicants for licensure as a massage therapist and individuals with ownership in or management responsibilities for a massage establishment to submit fingerprints for background screening. The bill authorizes the Board of Massage Therapy to deny the application of any individual screened and determined to have been convicted or found guilty of, or entered a plea of nolo contendere to, specified criminal acts.

The bill also requires message therapists and individuals with ownership in or management responsibilities for a message establishment who were licensed prior to July 1, 2014, to submit to the background screening requirements by January 31, 2015. The bill authorizes the Department of Health to issue an emergency order suspending the license of a massage therapist upon receipt of information that the individual has been convicted or found guilty of, or entered a plea of nolo contendere to, specified criminal acts.

The bill is expected to have a net positive fiscal impact on state government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Massage Therapists and Establishments

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage[1] in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage."[2]

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).[3] The Board's rules:[4]

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.

In order to be licensed as a massage therapist, an applicant must:[5]

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the board; and
- Pass an examination.

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.[6]

Background Screening

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among designated agencies. Designated agencies include the Agency for Health Care Administration (AHCA), DOH, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

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[1] The term "massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or 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. Section 480.033(3), F.S.

[2] Section 480.033(7), F.S.

[3] Section 480.043(1), F.S.

[4] *See* Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

[5] Sections 480.041, and 480.042, F.S.

[6] Section 480.046(1)(n), F.S.

Florida licensure laws require providers licensed by AHCA to conduct Level 2[7] criminal background screenings for:[8]

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Florida licensure laws also require certain health care practitioners licensed by DOH to submit to background screening as a condition of licensure, including, physicians[9], chiropractors[10], podiatrists[11], nurses[12], and persons licensed or registered under part XIV of ch. 468, F.S.[13] In addition, some health care practitioners may be required to undergo background screening as a condition of employment or to perform volunteer service in a facility that provides care to children, the elderly, or individuals with disabilities.[14]

Currently, massage therapists and the owners or operators of massage establishments are not required to undergo a criminal background screening prior to licensure.

Effect of Proposed Changes

The bill amends s. 456.0135, F.S., to add applicants seeking licensure under the Massage Practice Act, ch. 480, F.S., to the list of applicants required to provide electronic fingerprints to FDLE for an FBI national criminal history check. The bill requires all fingerprints submitted to FDLE to be retained by FDLE, and submitted to the national retained print arrest notification program, within the FBI, effective on the date FDLE begins participation in the program. The bill provides that DOH is not required to request FDLE to forward retained prints of an applicant for licensure renewal to the FBI if the fingerprints are already enrolled in the national retained print arrest notification program. The bill also requires all fingerprints submitted to FDLE to be entered into the Clearinghouse.

The bill amends s. 456.074, F.S., to require DOH to issue an emergency order to suspend the license of a massage therapist when DOH learns that the licensee has been convicted or found guilty of a specified felony offense, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a specified felony offense. Specifically, the bill requires emergency suspension for a criminal offense under sections:

- 787.01, F.S., relating to kidnapping;
- 787.02, F.S., relating to false imprisonment;
- 787.025, F.S., relating to luring or enticing a child;
- 787.06, F.S., relating to human trafficking;
- 787.07, F.S., relating to human smuggling;
- 794.011, F.S., relating to sexual battery;

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[7] Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of certain specified offenses under s. 435.04(2), F.S.
[8] Section 408.809, F.S.
[9] Sections 458.311(1)(g), and 459.0055(1)(j), F.S.
[10] Section 460.406(2)(f), F.S.
[11] Section 461.006(1)(e), F.S.
[12] Sections 464.008(1)(b), and 464.009(4), F.S.
[13] Orthotists, prosthetists, pedorthists, orthotic fitters, orthotic fitter assistants, and othotist and prosthetist residents.
[14] Section 943.0542, F.S.

- 794.08, F.S., relating to female genital mutilation;
- 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- 796.035, F.S., relating to the selling or buying of minors into prostitution;
- 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- 827.071, F.S., relating to sexual performance by a child;
- 847.0133, F.S., relating to the protection of minors;
- 847.0135, F.S., relating to computer pornography;
- 847.0138, F.S., relating to the transmission of harmful materials to a minor by electronic device or equipment; and
- 847.0145, F.S., relating to the selling or buying of minors.

The bill amends s. 480.041, F.S., to require applicants for licensure as a massage therapist to submit to background screening. The bill provides that massage therapists licensed before July 1, 2014, must submit to background screening by January 31, 2015. Further, the bill requires the board to deny applications for licensure if the applicant has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

The bill amends s. 480.043, F.S., to require a person who has an ownership interest in a massage establishment to submit to the background screening requirements under s. 456.0135, F.S. If a corporation submits proof of having more than $250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the establishment is required to submit to the background screening requirements. DOH is required to deny the application for a message establishment permit if the applicant, or person with an ownership interest, or a corporation that has more than $250,000 of business assets in Florida, or the owner, officer, or individual directly involved in the management of a massage establishment has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

Finally, the bill amends s. 480.0465, F.S., to conform a cross-reference.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.0135, F.S., relating to general background screening provisions.
Section 2: Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
Section 3: Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
Section 4: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.
Section 5: Amends s. 480.0465, F.S., relating to advertisement.
Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to DOH, an estimated 63,878 massage therapists and other individuals involved in overseeing, managing, or owning massage establishments will be submitting fingerprints for background screening. These individuals will be charged a one-time fee of $24.

Total Revenue:
Year 1 - $3,066,144
Year 2 - $283,008
Year 3 - $283,008

2. Expenditures:

FDLE will need one FTE to assist with the fingerprint retention processing required by the bill, but will be able to process the criminal record checks with existing staff. The projected cost of the new FTE position is $63,520 in fiscal year 2014-2015 and $59,747 in the subsequent 2 fiscal years.[15]

DOH anticipates the background screening of current licensees will result in expenses associated with enforcement actions in approximately $145,000, as they will need four OPS Investigation Specialists for a period of 6 months and one Senior Attorney for 1 year. However, DOH has indicated that those costs can be absorbed into current budget authority.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All licensed massage therapists and specified persons associated with currently licensed massage establishments will be required to submit to background screening by January 1, 2015. According to DOH, the total private sector impact expected to result from fees for background screening is $4,950,545 in the first year and $456,940 in the subsequent 2 fiscal years.[17]

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:

No additional rule-making is necessary to implement the provisions of the bill.

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[15] Florida Department of Law Enforcement, HB 1065 Bill Analysis (March 6, 2014) on file with the Health and Human Services Quality Subcommittee.
[16] Florida Department of Health, HB 1065 Bill Analysis (March 3, 2014) on file with the Health and Human Services Quality Subcommittee.
[17] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to licensed massage therapists; amending s. 456.0135, F.S.; requiring an applicant for licensure under chapter 480, F.S., to submit to certain fingerprinting requirements; requiring fingerprints to be enrolled in the national retained print arrest notification program and the Care Provider Background Screening Clearinghouse; amending s. 456.074, F.S.; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist for the commission of certain offenses; amending s. 480.041, F.S.; requiring an applicant for a massage therapist license to submit to certain background screening requirements; requiring that a massage therapist who was issued a license before a specified date meet the background screening requirements by a specified date; requiring the Board of Massage Therapy to deny an application for a massage therapy license for certain offenses; amending s. 480.043, F.S.; requiring specified persons in a massage establishment to submit to certain background screening requirements; requiring the board to deny an application for a massage establishment permit under certain circumstances; requiring that a massage establishment that was issued a license before a specified date submit to the background screening

requirements by a specified date; amending s. 480.0465, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 480 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the

fingerprints are enrolled in the national retained print arrest notification program.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and, effective on the date the Department of Law Enforcement begins participation in the program, submitted to the national retained print arrest notification program within the Federal Bureau of Investigation. The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

(4) All fingerprints received under this section shall be entered into the Care Provider Background Screening Clearinghouse as provided in s. 435.12.

Section 2. 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 shall issue an emergency order suspending the license of a massage therapist as defined in chapter 480 upon receipt of information that such therapist has been convicted or found guilty of, or has entered a plea of nolo

contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(k) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(l) Section 827.071, relating to sexual performance by a child.

(m) Section 847.0133, relating to the protection of minors.

(n) Section 847.0135, relating to computer pornography.

(o) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(p) Section 847.0145, relating to the selling or buying of minors.

Section 3. Subsections (3) and (4) of section 480.041, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) and subsections (6) and (7) are added to that section to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(3) An applicant must submit to background screening under s. 456.0135.

(6) Massage therapists who were issued a license before July 1, 2014, must submit to the background screening requirements of s. 456.0135 by January 31, 2015.

(7) The board shall deny an application for a license if an applicant has been convicted or found guilty of, or enters a plea of nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(k) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(l) Section 827.071, relating to sexual performance by a child.

(m) Section 847.0133, relating to the protection of minors.

(n) Section 847.0135, relating to computer pornography.

(o) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(p) Section 847.0145, relating to the selling or buying of minors.

Section 4. Subsections (2) through (6) of section 480.043, Florida Statutes, are renumbered as subsections (3) through (7), respectively, present subsections (7) through (9) are renumbered

as subsections (9) through (11), respectively, present subsections (5) and (6) are amended, and new subsections (2), (8), and (12) are added to that section, to read:

480.043 Massage establishments; requisites; licensure; inspection.—

(2) A person who has an ownership interest in a massage establishment shall submit to the background screening requirements under s. 456.0135. However, if a corporation submits proof of having more than $250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the establishment to submit to the background screening requirements of s. 456.0135.

(6) ~~(5)~~ If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the board under subsection (3) ~~(2)~~, the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.

(7) ~~(6)~~ If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (3) ~~(2)~~, the department shall grant the license under such restrictions

as it shall deem proper as soon as the original licensing fee is paid.

(8) The department shall deny an application for a massage establishment permit if the applicant, a person with an ownership interest in a massage establishment, or a corporation that has more than $250,000 of business assets in this state, or the owner, officer, or individual directly involved in the management of such massage establishment, has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than

16 years of age.

(k) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(l) Section 827.071, relating to sexual performance by a child.

(m) Section 847.0133, relating to the protection of minors.

(n) Section 847.0135, relating to computer pornography.

(o) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(p) Section 847.0145, relating to the selling or buying of minors.

(12) A massage establishment owner whose massage establishment was issued a license before July 1, 2014, shall submit to the background screening requirements of s. 456.0135 before January 31, 2015. However, if a corporation submits proof of having more than $250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the massage establishment to submit to the background screening requirements of s. 456.0135.

Section 5. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage

establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in a ~~any~~ newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(7) ~~480.043(6)~~, the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 6. This act shall take effect July 1, 2014.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Kerner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 480 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted

electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the fingerprints are enrolled in the national retained print arrest notification program.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation when the Department of Law Enforcement begins participation in the program. The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

(4) All fingerprints received under this section shall be entered into the Care Provider Background Screening Clearinghouse as provided in s. 435.12.

Section 2. 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 shall issue an emergency order suspending the license of a massage therapist or massage establishment as defined in chapter 480 upon receipt of information that such therapist or person with an ownership interest in the massage establishment, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 3. Present subsections (3) and (4) of section 480.041, Florida Statutes, are redesignated as subsections (4) and (5), respectively, and a new subsection (3) and subsections (6) and (7) are added to that section, to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(3) An applicant must submit to background screening under s. 456.0135.

(6) Massage therapists who were issued a license before July 1, 2014, must submit to the background screening requirements of s. 456.0135 by January 31, 2015.

(7) The board shall deny an application for a new or renewal license if an applicant has been convicted or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

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(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

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(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 4. Present subsections (2) through (6) of section 480.043, Florida Statutes, are redesignated as subsections (3) through (7), respectively, present subsections (7) through (9) of that section are redesignated as subsections (9) through (11), respectively, and new subsections (2), (8), and (12), and are added to that section, to read:

480.043 Massage establishments; requisites; licensure; inspection.—

(2) A person who has an ownership interest in a massage establishment shall submit to the background screening requirements under s. 456.0135. However, if a corporation submits proof, as determined by department rule, of having more than $250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the massage establishment to submit to the background screening requirements of s. 456.0135.

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the massage establishment, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following

provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

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(f) Section 794.011, relating to sexual battery.

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(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

(12) A person with an ownership interest, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of, a massage establishment that was issued a license before July 1, 2014, shall submit to the background screening requirements of s. 456.0135 before January 31, 2015.

Section 5. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in a ~~any~~ newspaper, airwave transmission, telephone directory, or other advertising medium.

Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(7) ~~s. 480.043(6)~~, the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 6. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert: An act relating to licensed massage therapists; amending s. 456.0135, F.S.; requiring an applicant for licensure under chapter 480, F.S., to submit to certain fingerprinting requirements; requiring fingerprints to be enrolled in the national retained print arrest notification program and the Care Provider Background Screening Clearinghouse; amending s. 456.074, F.S.; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist or massage establishment for the commission of certain offenses; amending s. 480.041, F.S.; requiring an applicant for a massage therapist license to submit to certain background screening requirements; requiring that a massage therapist who was issued a license before a specified date meet the background screening requirements by a specified date; requiring the Board of Massage

Therapy to deny an application for a massage therapy license or renewal license for certain offenses; amending s. 480.043, F.S.; requiring a person with a specified interest in a massage establishment to submit to certain background screening requirements; authorizing the department to adopt a rule related to corporate assets; requiring the department to deny an application for a massage establishment license or renewal license under certain circumstances; requiring that the owner of a massage establishment that was issued a license before a specified date submit to the background screening requirements by a specified date; amending s. 480.0465, F.S.; conforming a cross-reference; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1131 Emergency Allergy Treatment
SPONSOR(S): Hudson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1122

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

SUMMARY ANALYSIS

An allergy is a disease of the immune system that causes an overreaction to substances called allergens. An allergy is also described as a hypersensitivity disorder in which the immune system reacts to substances in the environment that are normally harmless. An antigen is any substance that causes the human immune system to produce antibodies against it. An antigen may be a foreign substance from the environment, such as pollen, pet dander, or food, which can enter the body through inhalation, ingestion, injection, or absorption. If an antigen causes an allergic reaction when it enters the body, it is considered an allergen.

Anaphylaxis is a severe, whole body allergic reaction to an allergen. The human body releases chemicals during anaphylaxis that can cause shock, resulting in a sudden drop in blood pressure and the release of histamines, which restrict breathing. Symptoms of anaphylaxis include a rapid and weak pulse, skin rash, nausea and vomiting. The number of people with severe allergies has increased significantly during that last ten years, with the current incidence rate estimated to be 49.8 per 100,000 persons. The only treatment for anaphylaxis caused by an allergy is the administration of epinephrine, usually through an auto-injector (EAI), which provides a premeasured dose of the medication based on body weight. An epinephrine auto-injector is only available by prescription.

House Bill 1131 amends the law governing insect sting emergency treatment in s. 381.88, F.S., by creating new and expanding existing provisions related to emergency allergy treatment and making EAIs available in more public places. The bill permits certain authorized entities, such as restaurants and youth sports leagues, to obtain a prescription for EAIs. Authorized entities may stock and store EAIs, and authorized entities' employees who have completed certain training and are certified may provide an EAI to a person suffering a severe allergic reaction for self-administration, administer an EAI to a person suffering a severe allergic reaction, or provide an EAI to a person to administer it to another person suffering a severe allergic reaction. The bill provides immunity from civil liability for acts or omissions associated with the provision or administration of EAIs.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Allergies

An allergy is a disease of the immune system that causes an overreaction to substances called allergens.[1] An allergy is also described as a hypersensitivity disorder in which the immune system reacts to substances in the environment that are normally harmless.[2] An antigen is any substance that causes the human immune system to produce antibodies against it.[3] An antigen may be a foreign substance from the environment, such as pollen, pet dander, or food, which can enter the body through inhalation, ingestion, injection, or absorption.[4] If an antigen causes an allergic reaction when it enters the body, it is considered an allergen. Common allergies include indoor allergies, outdoor allergies, food allergies, latex allergies, insect allergies, skin allergies, and eye allergies.[5]

Symptoms

The following are examples of symptoms associated with common allergic diseases.[6]

- Allergic rhinitis ("hay fever," "seasonal," or "nasal" allergy)
  - Nasal stuffiness
  - Sneezing
  - Nasal itching
  - Itching of the roof of the mouth
  - Itching of the ears
- Latex allergy
  - Hand dermatitis
  - Sneezing and other respiratory distress
  - Coughing
  - Wheezing
  - Shortness of breath
- Insect sting or bite allergy
  - Pain, itching, and swelling at site of sting
- Allergic conjunctivitis (eye allergy)
  - Itchy and watery eyes
  - Eyelid distress

[1] Asthma and Allergy Foundation of America, *Allergy Overview-What Causes Allergies*, available at http://aafa.org/display.cfm?id=9&cont=79 (last viewed on March 16, 2014).
[2] U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Trends in Allergic Conditions Among Children: United States, 1997-2011*, NCHS Data Brief No. 121, page 1, May 2013, available at www.cdc.gov/nchs/data/databriefs/db121.pdf (last viewed on March 16, 2014).
[3] U.S. Dept. of Health and Human Services, National Institutes of Health, U.S. National Library of Medicine, MedlinePlus, *Antigen*, available at www.nlm.nih.gov/medlineplus/ency/article/002224.htm (last viewed on March 16, 2014).
[4] See supra, FN 1.
[5] Id.
[6] Asthma and Allergy Foundation of America, *Allergy Overview-What Are Allergies*, available at http://aafa.org/display.cfm?id=9&cont=78 (last viewed on March 16, 2014).

Allergies in Children

Allergic conditions are among the most common medical conditions affecting children in the United States.[7] The most common allergies in children include food allergies, skin allergies, and respiratory allergies.[8] The prevalence of food and skin allergies have increased in children aged 0 to 17 years from 1997 to 2011.[9] For food allergies, the prevalence rose from 3.4 percent in 1997 to 1999 to 5.1 percent in 2009 to 2011.[10] For skin allergies, the prevalence rose from 7.4 percent in 1997 to 1999 to 12.5 percent in 2009 to 2011.[11]

Food Allergies

As many as 15 million people in the United States have one or more food allergies- 9 million adults and 6 million children, which translates 4 percent of all adults and 8 percent of all children.[12] Eight foods account for 90 percent of all food allergic reactions:

- Milk
- Eggs
- Peanuts
- Tree nuts, such as walnuts and pecans
- Wheat
- Soy
- Fish, such as salmon
- Shellfish, such as shrimp and lobster

In infants and children, egg, milk, peanut, tree nuts, soy and wheat are the most common food allergies, while adults have the most common food allergies to shellfish, peanut, tree nuts, and fish.[13] According to the National Institute of Allergy and Infectious Disease, children usually outgrow an allergy to egg, milk, and soy. Children do not outgrow a peanut allergy. People who develop an allergy as an adult will usually have the allergy for life.

Symptoms of food allergies appear from within a few minutes to two hours after a person has ingested the food which she or he is allergic.[14] Food allergic reactions can include:

- Hives
- Flushed skin or rash
- Tingling or itchy sensation in the mouth
- Face, tongue, or lip swelling
- Vomiting and/or diarrhea

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[7] See supra, FN 2 (citing, e.g., Friedman, AH, Morris, TL. *Allergies and anxiety in children and adolescents: A review of the literature.* J Clin Psychol Med Settings 13(3):318-31, 2006.).
[8] Id.
[9] Id.
[10] Id. at page 2.
[11] Id.
[12] Food Allergy Research and Education, *Food Allergy Facts and Statistics for the U.S.*, available at www.foodallergy.org/document.doc?id=194 (citing, e.g., Gupta, RS, Springston, MR, et al. *The prevalence, severity, and distribution of childhood food allergy in the United States.* J. Pediatrics.2011; 128.doi: 10.1542/peds.2011-0204, and Liu, AH, Jaramillo, R, et al. *National prevalence and risk factors for food allergy and relationships to asthma: Results from the National Health and Nutrition Examination Survey 2005-2006.* J Allergy ClinImmunol.2010; 126: 798-806)(last viewed on March 16, 2014).
[13] U.S. Dept. of Health and Human Services, National Institutes of Health, National Institute of Allergy and Infectious Diseases, *Common Food Allergies in Infants, Children, and Adults*, available at www.niaid.nih.gov/topics/foodallergy/understanding/Pages/foodAllergy8Allergens.aspx (last viewed on March 16, 2014).
[14] U.S. Food and Drug Administration, *Food Allergies-What You Need to Know*, page 2, available at www.fda.gov/downloads/Food/ResourcesForYou/Consumers/UCM220117.pdf (last viewed on March 16, 2014).

- Abdominal cramps
- Coughing or wheezing
- Dizziness and/or lightheadedness
- Swelling of the throat and vocal cords
- Difficulty breathing
- Loss of consciousness[15]

More severe allergic reactions can result in anaphylaxis, a life-threatening condition discussed in more detail below. Each year in the United States, it is estimated that anaphylaxis caused by food allergies result in 30,000 emergency room visits, 2,000 hospitalizations, and 150 deaths.[16]

There is no cure for food allergies. Only avoidance of food allergens and timely recognition and management of allergic reactions can prevent serious health problems.[17]

Anaphylaxis

Anaphylaxis is a severe, whole body allergic reaction to an allergen.[18] The human body releases chemicals during anaphylaxis that can cause shock, resulting in a sudden drop in blood pressure and the release of histamines, which restrict breathing.[19] Symptoms of anaphylaxis include a rapid and weak pulse, skin rash, nausea and vomiting.[20] The number of persons with a severe allergy has increased significantly during the last ten years, with the current incidence rate estimated to be 49.8 per 100,000 persons.[21]

Anaphylaxis is an emergency situation that requires immediate medical attention. If anaphylaxis is not treated, it will lead to unconsciousness and possible death. Initial treatment of anaphylaxis includes the administration of epinephrine, also known as adrenaline, to improve breathing by relaxing muscles in the airways, stimulate the heart, and tighten the blood vessels to reduce swelling. Epinephrine is classified as a sympathomimetic drug, meaning its effects mimic those of the stimulated sympathetic nervous system, which stimulates the heart and narrows the blood vessels. It is available through a prescription from a physician.

Many individuals with severe allergies that have resulted in, or can result in, anaphylaxis carry an EpiPen[22] or Auvi-Q.[23] Both products are epinephrine auto-injectors (EAIs) which consist of a syringe prefilled with an appropriate dose of epinephrine and a retractable needle that is protected by a safety guard to prevent injury or reuse. There are two dosages available for the EpiPen and Auvi-Q; for children weighing between 33 and 66 pounds, the dosage is .15 mg and for children and adults

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[15] Id.
[16] Id.
[17] See supra, FN 12.
[18] U.S. Dept. of Health and Human Services, National Institutes of Health, U.S. National Library of Medicine, National Center for Biotechnology Information, *Anaphylaxis*, available at: http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001847/ (last viewed March 16, 2014).
[19] Food Allergy Research and Education, *About Food Allergies-About Anaphylaxis*, available at www.foodallergy.org/anaphylaxis (last viewed on March 16, 2014); see also U.S. Dept. of Health and Human Services, National Institutes of Health, National Institute of Allergy and Infectious Diseases, *Food Allergy: What is Anaphylaxis?*, available at www.niaid.nih.gov/topics/foodallergy/understanding/Pages/anaphylaxis.aspx (last viewed on March 16, 2014).
[20] Id.
[21] Stephanie Guerlain, PhD, et al., *A comparison of 4 epinephrine autoinjector delivery systems: usability and patient preference*, NIH Public Access Author Manuscript, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892620/ (citing Decker WW, Campbell, RL, Luke A, et al., *The etiology and incidence of anaphylaxis in Rochester, Minnesota: a report from the Rochester Epidemiology Project,* J Allergy Clin Immunol., 2008;122:1161-1165)(last viewed on March 16, 2014).
[22] EpiPen and EpiPen Jr are manufactured for Mylan Specialty, L.P., a Pfizer company.
[23] Auvi-Q is manufactured by Sanofi.

weighing more than 66 pounds, the dosage is .30 mg.[24] Once injected into the outer thigh, epinephrine eases the symptoms of anaphylaxis until professional medical treatment is received.

Recent Florida Laws about EAIs

In 2012, the Legislature passed House Bill 509,[25] which authorizes a pharmacist to administer epinephrine using an EAI in the event of an allergic reaction from a vaccine.[26] Pharmacists who obtain certification and are authorized to provide vaccines are required to complete a 3-hour continuing education course every two years on the safe and effective administration of vaccines.[27] The 3-hour course must be offered by a statewide professional association of physicians in this state and is considered part of the 30-hour continuing education requirement for biennial licensure renewal and recertification.[28] If a pharmacist fails to take the 3-hour course, the authorization to administer vaccines or epinephrine is revoked.[29]

In 2013, the Legislature passed Senate Bill 284,[30] which gives an option to public and private schools to purchase and store EAIs on campus.[31] A school that stores EAIs must adopt a physician's protocol for administering the device.[32] The law provides that except for willful and wanton conduct, trained school employees and the physicians who develop the school's protocol on administering the EAIs are protected from liability that may result from administering EAIs.[33]

Effect of Proposed Changes

House Bill 1131 amends the law governing insect sting emergency treatment by creating new and expanding existing provisions in s. 381.88, F.S., related to emergency allergy treatment, and by creating s. 381.885, F.S. Together, these laws are to be referred to as the "Emergency Allergy Treatment Act" ("the Act").

The bill defines several terms for the purposes of the Act, including "administer," "authorized health care provider," "department," and "self-administration." The following definitions are important for the operation of the Act:

- "Authorized entity" is defined as an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. The term also includes a school for the purposes of the educational training programs for recognizing the symptoms of a severe allergic reaction and administering an epinephrine auto-injector.
- "Epinephrine auto-injector" is defined as a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body. Examples of EAIs are the EpiPen and the Auvi-Q, discussed above.

Section 381.88, F.S., provides for the certification of individuals who administer life-saving treatment to persons who have a severe adverse reaction to an insect sting. The bill deletes references to insect

[24] Mylan Specialty, L.P., *Epipen and Epipen Jr Patient Information*, available at www.epipen.com/~/media/BBAC09E9BE9346A3B9C81EC175B7FD3E.ashx (last viewed on March 16, 2014); see also Sanofi, *Auvi-Q Patient Brochure*, available at www.auvi-q.com/media/pdf/Patient-Brochure.pdf (last viewed on March 16, 2014).
[25] Ch. 2012-60, Laws of Fla.
[26] S. 465.189(3), F.S.
[27] S. 465.009(6)(a), F.S.
[28] Id.
[29] S. 465.009(6)(c), F.S.
[30] Ch. 2013-63, Laws of Fla.
[31] S. 1002.20(3)(i)2., F.S. (public schools) and s. 1002.42(17)(a), F.S. (private schools).
[32] Id.
[33] S. 1002.20(3)(i)3., F.S. (public schools) and s. 1002.42(17)(b), F.S. (private schools).

stings and includes the more general term "allergic reactions." Current law only authorizes physicians to conduct educational training programs to teach people to recognize the symptoms of a reaction to an insect sting and the proper administration of epinephrine. The bill authorizes, instead, a nationally recognized organization that trains individuals in emergency health treatment or an entity or individual approved by the Department of Health (DOH) to conduct the training programs. The bill also slightly changes the requirements for training, which must prepare persons to recognize the symptoms of a reaction to food, insect stings, and other allergens and administer an EAI.

The bill expands the category of persons who may receive a certificate of training to include a person who has, or reasonably expects to have, responsibility for or contact with at least one other person. This provision would allow anyone who works around at least one other person to obtain a certificate of training in recognizing a severe allergic reaction and administering an EAI, if necessary. Current law restricts the category of persons who may receive a certificate to only those who are responsible for someone who has severe adverse reactions to insect stings, which requires a measure of prior knowledge.

The bill permits the holder of a certificate of training to receive a prescription for EAIs from a physician or the department. The bill also authorizes a certificate holder to possess an EAI and administer it when a person is experiencing a severe allergic reaction.

The bill creates s. 381.885, F.S., relating to EAIs and the emergency administration of EAIs. The new section of law permits an authorized health care practitioner to prescribe, and a pharmacist to dispense, EAIs to authorized entities. The law permits a certificate holder, either on the premises of an authorized entity or in connection with an authorized entity, to provide and administer an EAI to a person if the certificate holder has a good faith belief the person is suffering a severe allergic reaction.

The bill allows an authorized entity to acquire and stock a supply of EAIs pursuant to a prescription and in accordance with the EAI instructions for use and any other requirements established by the DOH. An authorized entity is required to designate someone who is a certificate holder to be responsible for the EAIs storage, maintenance, and general oversight.

The bill permits an authorized entity to make an EAI available to a non-certified individual for administration to a person believed in good faith to be suffering a severe allergic reaction if the following occurs:

- The EAI is stored in a secure, locked container; and
- The EAI is provided to the non-certified person after remote authorization by an authorized health care practitioner after consulting the practitioner by audio, televideo, or other similar means of electronic communication.

The bill provides immunity from liability for civil damages that result from the administration or self-administration of an EAI, the failure to administer an EAI, or any other act or omission committed in good faith under the Act to:

- Any authorized health care practitioner who prescribes an EAI to an authorized entity certificate holder;
- Any authorized entity that possesses and makes available EAIs;
- Any certificate holder;
- Any non-certified individual who receives an EAI from an authorized entity for purposes of administering it to another person suffering from a severe allergic reaction; and
- Any person that conducts an educational training program for recognizing the symptoms of a severe allergic reaction and administering an EAI.

The bill also grants immunity from liability to an authorized entity whose employees or agents provide EAIs from out-of-state or administer EAIs out-of-state if the employees or agents would not have been

liable if the provision or administration occurred in Florida or if the laws of the state where the provision or administration occurred would not have imputed liability for the provision or administration of EAIs. This is a broad grant of immunity from liability.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.88, F.S., relating to insect sting emergency treatment.
Section 2: Creates s. 381.885, F.S., relating to epinephrine auto-injectors; emergency administration.
Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An authorized entity which opts to stock EAIs must ensure at least one individual holds a certificate from an education training program which is evidence the individual can recognize the symptoms of a severe allergic reaction and administer an EAI. Each certificate costs $25.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill grants broad immunity from civil liability to several individuals and entities involved with the provision or administration of, or the failure to provide or administer, EAIs including authorized entities, individuals suffering from a severe allergic reaction, or other individuals who administer EAIs to a person suffering from a severe allergic reaction. Immunity provisions may restrict an injured person's ability to seek redress for injury and damages in court.

The state constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." In *Kluger v. White*, the Florida Supreme Court held that:

> [w]here a right of access to the courts for redress for a particular injury has been provided...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[34]

B. RULE-MAKING AUTHORITY:

The DOH has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At line 47, the word "department" is capitalized in current law.

At line 76, the subsection cross-reference should be changed from "(4)" to "(5)."

At line 106, to clarify what instructions must be followed regarding the storage of EAIs by an authorized entity, it is suggested that the new language be changed to read, "accordance with the epinephrine auto-injector manufacturer's instructions for."

The broad grant of immunity from civil liability contained in lines 146-171 may be more effectively accomplished by a reference to s. 768.13, F.S., the Good Samaritan Act. It is suggested that language be substituted for the current immunity from liability section in the bill, to state instead that the provisions of the Good Samaritan Act apply to any act or omission undertaken pursuant to the Emergency Allergy Treatment Act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[34] See *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

A bill to be entitled

An act relating to emergency allergy treatment; amending s. 381.88, F.S.; defining terms; expanding provisions to apply to all emergency allergy reactions, rather than to insect bites only; creating s. 381.885, F.S.; authorizing certain health care practitioners to prescribe epinephrine auto-injectors to an authorized entity; authorizing such entities to maintain a supply of epinephrine auto-injectors; authorizing certified individuals to use epinephrine auto-injectors; authorizing uncertified individuals to use epinephrine auto-injectors under certain circumstances; providing immunity from liability; providing an effective date.

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

Section 1. Section 381.88, Florida Statutes, is amended to read:

381.88 ~~Insect sting~~ Emergency allergy treatment.—

(1) This section and s. 381.885 may be cited as the "~~Insect Sting~~ Emergency Allergy Treatment Act."

(2) As used in this section and s. 381.885, the term:

(a) "Administer" means to directly apply an epinephrine auto-injector to the body of an individual.

(b) "Authorized entity" means an entity or organization at

or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. However, a school as described in s. 1002.20(3)(i) is an authorized entity for the purposes of subsection (5) only.

(c) "Authorized health care practitioner" means a licensed practitioner authorized by the laws of the state to prescribe drugs.

(d) "Department" means the Department of Health.

(e) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(f) "Self-administration" means an individual's discretionary administration of an epinephrine auto-injector on herself or himself.

(3) ~~(2)~~ The purpose of this section is to provide for the certification of persons who administer lifesaving treatment to persons who have severe allergic ~~adverse~~ reactions ~~to insect stings~~ when a physician is not immediately available.

(4) ~~(3)~~ The department ~~of Health~~ may:

(a) Adopt rules necessary to administer this section.

(b) Conduct educational training programs as described in subsection (5) ~~(4),~~ and approve programs conducted by other persons or governmental agencies.

(c) Issue and renew certificates of training to persons

who have complied with this section and the rules adopted by the department.

(d) Collect fees necessary to administer this section.

(5) ~~(4)~~ Educational training programs required by this section must be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department ~~physician licensed to practice medicine in this state~~. The curriculum must include at a minimum:

(a) Recognition of the symptoms of systemic reactions to food, insect stings, and other allergens; and

(b) The proper administration of an ~~a subcutaneous injection of~~ epinephrine auto-injector.

(6) ~~(5)~~ A certificate of training may be given to a person who:

(a) Is 18 years of age or older;

(b) Has, or reasonably expects to have, responsibility for or contact with at least one other person ~~who has severe adverse reactions to insect stings~~ as a result of his or her occupational or volunteer status, including, but not limited to, a camp counselor, scout leader, school teacher, forest ranger, tour guide, or chaperone; and

(c) Has successfully completed an educational training program as described in subsection (4).

(7) ~~(6)~~ A person who successfully completes an educational training program may obtain a certificate upon payment of an

application fee of $25.

(8) ~~(7)~~ A certificate issued pursuant to this section authorizes the holder ~~thereof~~ to receive, upon presentment of the certificate, ~~from any physician licensed in this state or from the department,~~ a prescription for ~~premeasured doses of~~ epinephrine auto-injectors from an authorized health care practitioner or the department ~~and the necessary paraphernalia for administration~~. The certificate also authorizes the holder ~~thereof to possess and administer~~, in an emergency situation when a physician is not immediately available, to possess and administer a ~~the~~ prescribed epinephrine auto-injector to a person experiencing ~~suffering~~ a severe allergic ~~adverse~~ reaction ~~to an insect sting~~.

Section 2. Section 381.885, Florida Statutes, is created to read:

381.885 Epinephrine auto-injectors; emergency administration.—

(1) PRESCRIBING TO AN AUTHORIZED ENTITY.—An authorized health care practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(2) MAINTENANCE OF SUPPLY.—An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this

section. Such epinephrine auto-injectors must be stored in accordance with the epinephrine auto-injector's instructions for use and with any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who hold a certificate issued pursuant to s. 381.88 to be responsible for the storage, maintenance, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(3) USE OF EPINEPHRINE AUTO-INJECTORS.—An individual who holds a certificate issued pursuant to s. 381.88 may, on the premises of or in connection with the authorized entity, use epinephrine auto-injectors prescribed pursuant to subsection (1) to:

(a) Provide an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction for that person's immediate self-administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(b) Administer an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) EXPANDED AVAILABILITY.—An authorized entity that acquires a stock supply of epinephrine auto-injectors pursuant

to a prescription issued by an authorized health care practitioner in accordance with this section may make the auto-injectors available to individuals other than certified individuals identified in subsection (3) who may administer the auto-injector to a person believed in good faith to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked, secure container and are made available only upon remote authorization by an authorized health care practitioner after consultation with the authorized health care practitioner by audio, televideo, or other similar means of electronic communication. Consultation with an authorized health care practitioner for this purpose is not considered the practice of telemedicine or otherwise construed as violating any law or rule regulating the authorized health care practitioner's professional practice.

(5) IMMUNITY FROM LIABILITY.—

(a) The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine.

(b) Any authorized health care practitioner who prescribes epinephrine auto-injectors to an authorized entity or to an individual that holds a certificate issued pursuant to s. 381.88; any authorized entity that possesses and makes available epinephrine auto-injectors; any individual who holds a certificate issued pursuant to s. 381.88; any noncertified individual under subsection (4); and any person that conducts the training under s. 381.88 is not liable for civil damages

that result from the administration or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-injector, or any other act or omission committed, in good faith, pursuant to this section or s. 381.88.

(c) An authorized entity doing business in this state is not liable for injuries or related damages that result from the provision or administration of an epinephrine auto-injector by its employees or agents outside this state if the entity or its employees or agents would not have been liable for such injuries or related damages had the provision or administration occurred within this state, or would not have been liable under the law of the state in which such provision or administration occurred.

(d) This section does not eliminate, limit, or reduce any other immunity or defense that may be available under state law, including the immunity provided under s. 768.13.

Section 3. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1131 (2014)

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	_____

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Hudson offered the following:

Amendment

Remove line 76 and insert:

program as described in subsection (5) ~~(4)~~.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1131 (2014)

Amendment No. 2

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

Committee/Subcommittee hearing bill: Health Quality Subcommittee

Representative Hudson offered the following:

Amendment

Remove lines 146-171 and insert:

(5) IMMUNITY FROM LIABILITY.—Any person, as defined under s. 1.01, including an authorized health care practitioner, dispensing health care practitioner, an individual trainer under subsection (5), a person certified pursuant to subsection (7), and any uncertified person who administers an epinephrine auto-injector as authorized under subsection (4), is afforded the civil liability immunity protections provided under s. 768.13.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1381 Prescription Drug Monitoring Program
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Chapter 2009-197, Laws of Fla., established the Prescription Drug Monitoring Program (PDMP) within the Department of Health (DOH) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances. Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed. Dispensers must report the dispensing of a specified controlled substance to the PDMP database within seven days of dispensing the controlled substance.

House Bill 1381 makes two substantive changes to current law by requiring:

- A physician to access the PDMP database and review a new patient's prescription drug history prior to issuing a prescription for a Schedule II, III, or IV controlled substance at the initial visit with the patient. The bill also makes any failure to comply with this requirement grounds for discipline against the license of the physician. Physicians are not required to access the PDMP database under current law.
- A law enforcement agency to submit a court order to the PDMP program manager in order to indirectly access information contained in the PDMP database.

The bill also makes comprehensive, but non-substantive, changes to the current law by reorganizing and rewording s. 893.055, F.S. The changes improve the clarity and functionality of the statute.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Fla., established the Prescription Drug Monitoring Program (PDMP) within the Department of Health (DOH) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[1] The PDMP database became operational on September 1, 2011, when it began receiving prescription data, retroactive to December 1, 2010, from pharmacies and dispensing practitioners.[2]

Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.[3] Dispensers must report the dispensing of a specified controlled substance to the PDMP database within seven days of dispensing the controlled substance.[4] As of February 2014, over 100 million dispensing records have been reported to the PDMP by more than 6,100 dispensers since the program became operational.[5]

Direct access to the PDMP database is presently limited by law[6] to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.[7] More than 24,000 prescribers and pharmacists have registered with the PDMP, and over 19,200 of those practitioners, or 79% of all registered practitioners, have queried the database.[8]

Although Florida law does not require physicians to access the PDMP database to review a patient's controlled substance prescription history prior to prescribing the patient a controlled substance, many other states' laws contain such a requirement. The following map[9] shows the states (in yellow) that require prescribers or dispensers to access a "prescription management program" database, in certain circumstances.[10]

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[1] S. 893.055(2)(a), F.S.

[2] Florida Department of Health, *Overview and Status Update of the PDMP*, PowerPoint presentation before Health Quality Subcommittee, Sept. 24, 2013, page 3 (on file with Health Quality Subcommittee staff).

[3] S. 893.055(3)(a)-(c), F.S.; controlled substances listed in Schedule II, III, or IV can be found in s. 893.03(2)-(4), F.S.

[4] S. 893.055(4), F.S.

[5] Memorandum from Rebecca Poston, Program Manager for PDMP, and Bob MacDonald, Executive Director, The Florida PDMP Foundation, Inc., to Marco Paredes, Director of Legislative Planning, Florida Department of Health, February 6, 2014, page 1 (responding to request for updated information from Health Quality Subcommittee staff, on file with subcommittee).

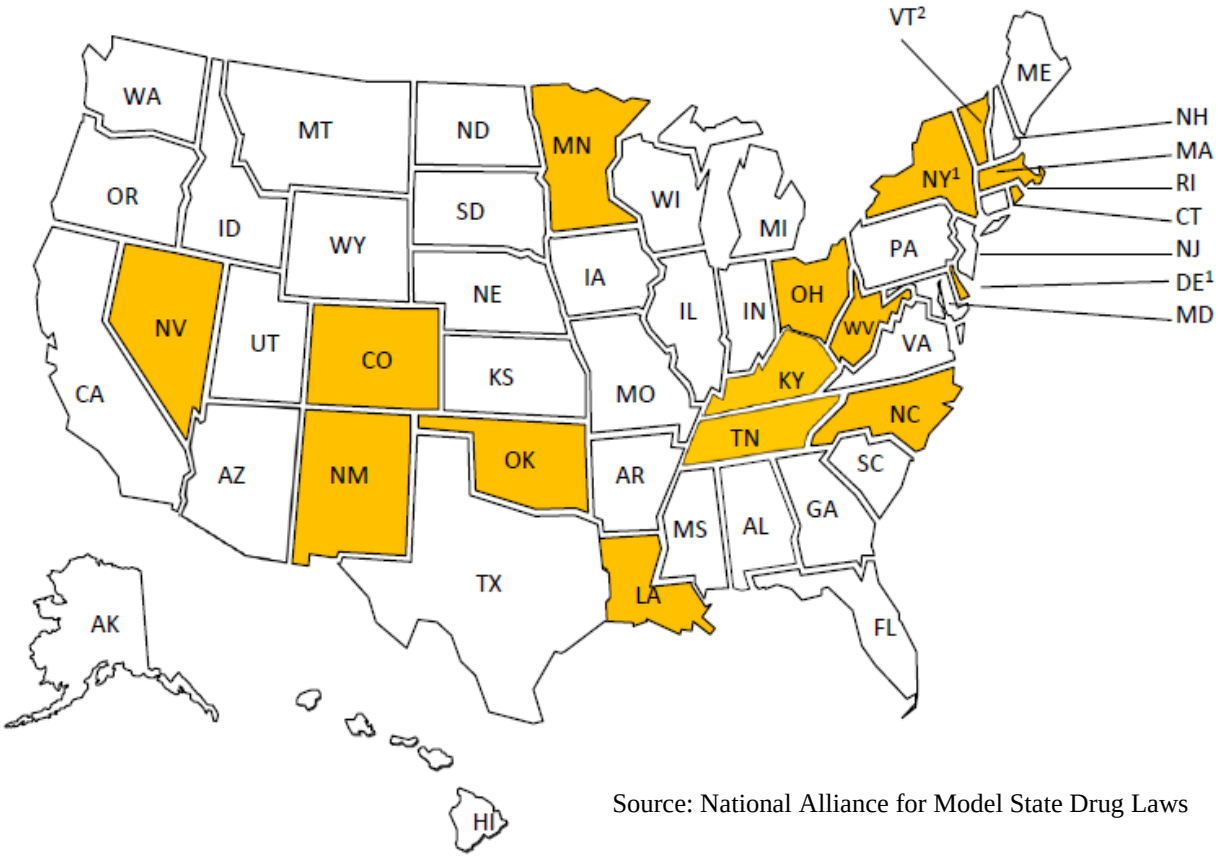
[6] S. 893.055(7)(b), F.S.

[7] Health care practitioners began accessing the PDMP database on October 17, 2011. Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), 2012-2013 Prescription Drug Monitoring Program Annual Report, December 1, 2013, page 2, available at www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf (last viewed on March 14, 2014).

[8] See *supra*, FN 5 at page 1.

[9] National Alliance for Model State Drug Laws, Prescription Drug Monitoring Programs, *States that Require Prescribers and/or Dispensers to Access PMP In Certain Circumstances*, Map, July 2013, available at www.namsdl.org/library/15016036-1C23-D4F9-74B7207D8ED67C96 (last viewed on March 14, 2014).

[10] The New York law went into effect in August 2013. Delaware began requiring dispensers to check the database in March 2014. Vermont began requiring mandatory use for replacement prescriptions in October 2013 and in other circumstances in November 2013.



Source: National Alliance for Model State Drug Laws

In Florida, indirect access to the PDMP database is provided to:

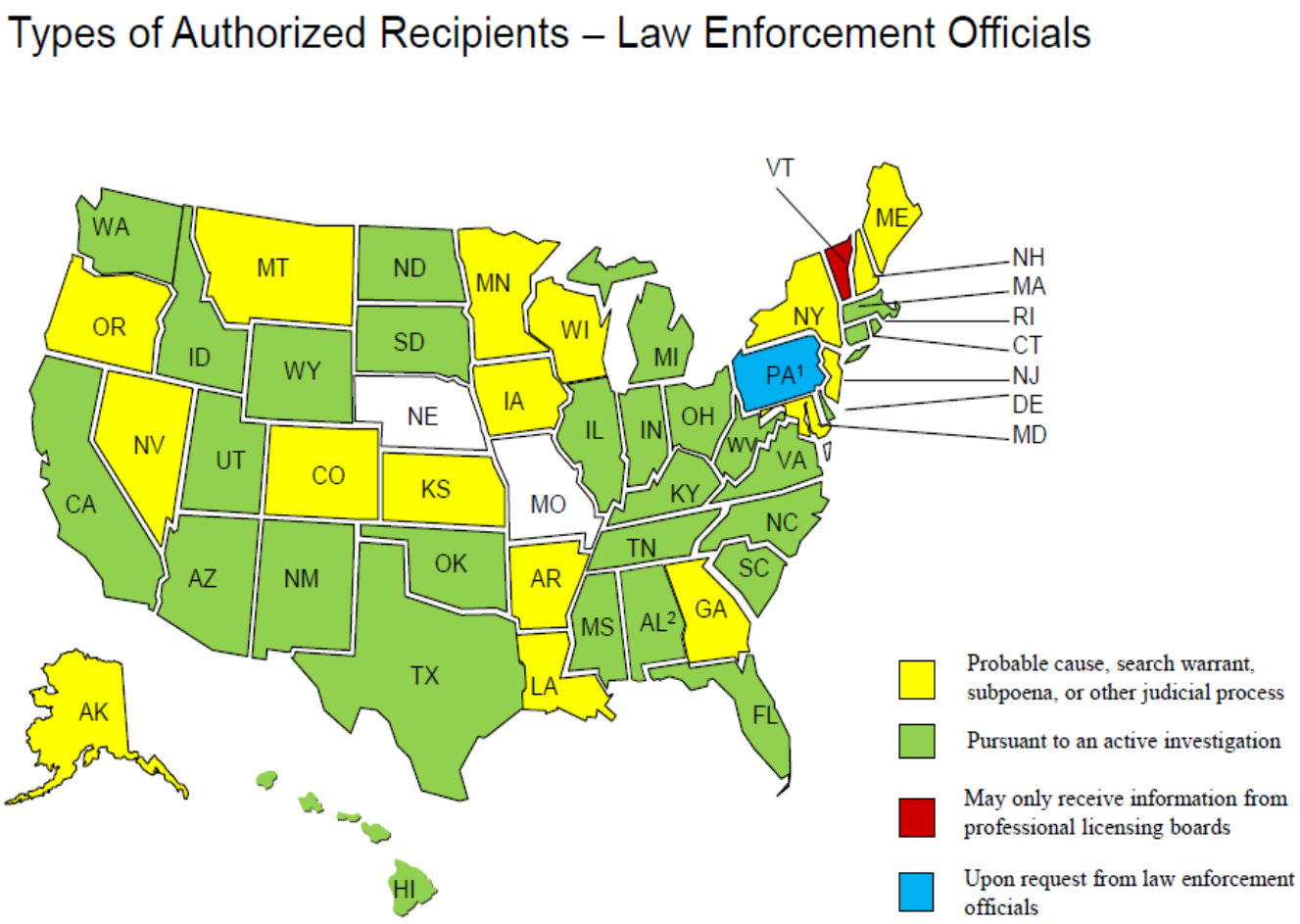
- The DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- A law enforcement agency;[11] and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient.[12]

Entities with indirect access to the PDMP database may request information from the PDMP program manager that is confidential and exempt under s. 893.0551, F.S., which is discussed below. A law enforcement agency, for example, may request such information during an active investigation regarding potential criminal activity, fraud, or theft relating to prescribed controlled substances.[13] As of February 2014, law enforcement agencies queried the PDMP database more than 36,000 times in conjunction with active criminal investigations.[14]

Florida law only requires the PDMP program manager to verify that a request from a law enforcement agency to query the database is authentic and that it is related to an active investigation, but no supporting documentation is required to be submitted to the PDMP program manager to query the database. The following map, by state, shows what documentation, if any, law enforcement agencies

[11] Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011. See *supra,* FN 7.
[12] S. 893.055(7)(c)1.-4., F.S.
[13] S. 893.055(7)(c)3., F.S.; see also 64K-1.003(2)(c), F.A.C.
[14] See *supra*, FN 5 at page 2.

across the U.S. are required to submit before information from the PDMP database is released to those agencies.[15]



Source: National Alliance for Model State Drug Laws

Funding for the PDMP

Restrictions on how the DOH may fund implementation and operation of the PDMP are also included in statute. The DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.[16] Since 2010, the PDMP has spent $1,519,297 for system and database infrastructure, personnel, and facility expenses.[17] Funding for the PDMP comes from three funding sources[18]:

[15] National Alliance for Model State Drug Laws, Prescription Drug Monitoring Programs, *Law Enforcement Access*, Map, July 2013, available at www.namsdl.org/library/17AEB855-1C23-D4F9-7464F56193EA3DEC (last viewed on March 14, 2014).
[16] S. 893.055(10) and (11)(c), F.S.
[17] Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), 2012-2013 Prescription Drug Monitoring Program Annual Report, December 1, 2013, page 8, available at www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf (on file with Health Quality Subcommittee staff); information also came from Florida Department of Health documents detailing the funding history of the PDMP, also on file with Health Quality Subcommittee staff.
[18] See *supra*, FN 5 at pages 2-4.

1. Donations procured by the Florida PDMP Foundation, Inc. (Foundation), the direct-support organization authorized by s. 893.055(11), F.S., to fund the continuing operation of the PDMP. The following amounts have been donated to the Foundation since its inception[19]:

FY 2009-2010	$125,000
FY 2010-2011	$339,443
FY 2011-2012	$120,010
FY 2012-2013	$73,910
FY 2013-2014	$134,625
TOTAL	**$792,988**

2. Federal Grants. The PDMP has been awarded four Harold Rogers Prescription Drug Monitoring Program ("Rogers") grants from the U.S. Department of Justice and one additional federal grant. The amount and purpose of each grant follows:

- A Rogers "Implementation" grant of $400,000 to implement the prescription drug monitoring system. The grant project period ended August 31, 2012.
- A Rogers "Enhancement" grant of $400,000 for system enhancements. The grant period ended March 31, 2013.
- A second Rogers "Enhancement" grant of $399,300 to enhance collaborations with law enforcement agencies, enhance the PDMP's ability to analyze collected data to identify drug abuse trends and identify and address sources of prescription drug diversion, and increase the number of PDMP users. The grant period ends September 30, 2014.
- A third Rogers "Enhancement" grant of $399,950 to form multi-disciplinary and multi-jurisdictional groups to identify areas of greatest risk for prescription drug abuse and diversion and create data-driven responses to these areas at the local level. The grant period ends March 31, 2015.
- A grant of $240,105 from the Substance Abuse and Mental Health Services Administration to integrate PDMP data into existing clinical workflow and technology and to expand interoperability. The grant period ends September 30, 2014.

The total amount of federal grants received is $1,839,355.

3. Private grants and donations. The DOH has been awarded three private grants from the National Association of State Controlled Substance Authorities. These grants, totaling $49,952, were used to create a website, to purchase office equipment, and to purchase promotional items. The grant period ended on June 30, 2011, and $44,886 was drawn down by the PDMP.

The following chart illustrates the breakdown of costs for the PDMP from FY 2012-13 through FY 2014-15.[20]

COST	FY 2012-13	FY 2013-14*	FY 2014-15*
Infrastructure	$240,086	$240,087	$240,087
Personnel (2 FTEs)	$211,016	$209,454	$209,454
Facilities	$26,186	$12,858	$12,858
PDMP Enhancements	$0	$0	$37,601
TOTAL	**$477,288**	**$494,699**	**$500,000**

* Projected

The PDMP is currently funded through fiscal year 2013-2014.[21]

[19] Information contained in a document received from Florida Department of Health, on file with subcommittee staff.
[20] See *supra*, FN 5 at page 4.
[21] See s. 10, Ch. 2013-153, Laws of Fla. (appropriating $500,000 for FY 2013-2014 for the general administration of the PDMP).

Public Records Exemption for Information in the PDMP Database

Section 893.0551, F.S.,[22] provides an exemption from public records for personal information of a patient and certain information concerning health care professionals outlined in the statute.[23] The statute details exceptions for disclosure of information after the DOH ensures the legitimacy of the person's request for the information.[24] The statute makes confidential and exempt from the Public Records Law[25] and s. 24(a), Art. 1 of the State Constitution identifying information, including, but not limited to, the name, address, telephone number, insurance plan number, government-issued identification number, provider number, Drug Enforcement Administration number, or any other unique identifying number of a patient, patient's agent, health care practitioner or practitioner as defined in s. 893.055, or an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy, which is contained in the PDMP database.

The DOH is required to disclose the confidential and exempt information to the following entities after verifying that entity's request for the information is legitimate:

- The Attorney General or his or her designee when working on Medicaid fraud cases involving prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs.
- Any relevant health care regulatory board within the DOH which is responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and is involved in a specific controlled substances investigation for prescription drugs involving a designated person.
- A law enforcement agency as defined in s. 119.011(4)(a), F.S., which enforces the laws of this state or the United States relating to controlled substances and which has initiated an ongoing and active investigation, as defined in ss. 119.011 and 893.07, F.S., involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances.
- A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055, F.S.
- A pharmacist, as defined in s. 465.003, F.S., who certifies that the requested information is to be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055, F.S.
- A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable making a request as provided in s. 893.055(7)(c), F.S.
- The patient's pharmacy, prescriber, or dispenser, as defined in s. 893.055, who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. 893.055, F.S.
- The program manager of the PDMP, the program and support staff, and individuals designated by the program manager as necessary to process validated requests for information or to perform database administrative tasks necessary to support the monitoring program.

Any agency that obtains information pursuant to s. 893.0551, F.S., must maintain the confidential and exempt status of that information.[26] However, a law enforcement agency with lawful access to such information is permitted to disclose confidential and exempt information received from the DOH to a criminal justice agency as part of an active investigation of a specific violation of law.[27]

[22] The public records exemption was established in 2009 in conjunction with the PDMP. See s. 1, ch. 2009-197, Laws of Fla.
[23] S. 893.0551(2)(a)-(h), F.S.
[24] S. 893.0551(3)(a)-(g), F.S.
[25] Ch. 119, F.S.
[26] S. 893.0551(5), F.S.
[27] S. 893.0551(4), F.S.

A person who willfully and knowingly violates the restrictions on the use of the confidential and exempt information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.803, or s. 775.084, F.S.[28]

The exemption is subject to future review and repeal on October 2, 2014, in accordance with the Open Government Sunset Review Act.[29]

Recent Disclosure of PDMP Database Information

In May 2013, members of a drug task force investigating prescription drug fraud and trafficking in central Florida queried the PDMP database for the prescription medication history of doctors and their pharmacies, and six individuals accused of forging prescriptions. The response to the query contained 3,300 patient names and prescription drug histories. The investigators uncovered, through verification by the doctors whose names were queried, 63 fictitious names and the stolen identities of seven other people. The six individuals were alleged to be using fictitious names and stolen identities to fraudulently obtain prescription drugs to be illegally distributed.

The State Attorney's Office in the Seventh Judicial Circuit of Florida, which was responsible for prosecuting the six individuals, provided defense counsel for five of the six accused persons with computer disks containing the 3,300 names and prescription drug histories. One defense counsel reviewed the information, recognized the name of a colleague, and disclosed the 3,300 names and prescription drug histories to the colleague, who was not involved in any of the six criminal cases resulting from the investigation.

The colleague, who was also a defense attorney, filed a lawsuit against the State Attorney seeking an injunction preventing the reviewing, revealing, copying, distributing, or discussing his private prescription medication history and seeking an order to require the State Attorney to notify the remaining 3,299 individuals that their names and prescription drug histories were published or disclosed by the State Attorney's Office. The lawsuit was dismissed by the circuit court in February 2014. However, the colleague refiled the lawsuit in March 2014, asking the court to declare unconstitutional s. 893.055(7)(c), F.S., and any other related provision which allows law enforcement agencies to access information in the PDMP database without a court order or search warrant. Litigation remains ongoing.

Effect of Proposed Changes

The bill makes comprehensive, but non-substantive, changes to the current law by reorganizing and rewording s. 893.055, F.S. All of the substantive provisions governing the establishment, maintenance, and operation of the PDMP that are currently in the statute are included in the bill.

However, the bill makes two substantive changes to current law. First, the bill requires a physician to access the PDMP database and review a new patient's prescription drug history prior to issuing a prescription for a Schedule II, III, or IV controlled substance at the initial visit with the patient. The bill also makes any failure to comply with this requirement grounds for discipline against the license of the physician. Physicians are not required to access the PDMP database under current law.

Second, the bill allows a law enforcement agency to receive information from the PDMP database by submitting an order from a court of competent jurisdiction with the request for release of information to the PDMP program manager. Currently, a law enforcement agency may obtain information from the PDMP database by attesting to the reason for the request for information and must include a case

[28] S. 893.0551(6), F.S.

[29] The Open Government Sunset Review Act provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. See s. 119.15, F.S.

number. Alternatively, a law enforcement agency may currently access records of dispensing histories at individual pharmacies.[30]

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

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.
Section 2: Amends s. 893.055, F.S., relating to prescription drug monitoring program.
Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires a law enforcement agency to obtain an order from a court of competent jurisdiction and provide the order to the PDMP program manager to receive information from the PDMP database. The agency may realize administrative costs in preparing a motion or request for the order, arguing in favor of the order before a judge or through filings with the court, and transmitting the order to the court.

[30] S. 893.07(4), F.S.

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 DOH has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the prescription drug monitoring program; amending s. 456.072, F.S.; providing additional grounds for discipline of a licensee of the Department of Health by a regulatory board; amending s. 893.055, F.S.; revising definitions; revising provisions relating to the database of controlled substance dispensing information; revising program funding requirements; requiring a prescriber to access and view certain patient information in the database before initially prescribing a controlled substance; providing requirements related to the release of identifying information; revising information retention requirements; revising provisions required in a contract with a direct-support organization; requiring the state to use certain properties and funds to support the program; providing for the adoption of specific rules by the department; providing an effective date.

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

Section 1. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which

the disciplinary actions specified in subsection (2) may be taken:

(oo) Failing to comply with the requirements of s. 893.055(8) by failing to access the prescription drug monitoring program database upon each initial visit and view the patient's prescription drug history before issuing a prescription for a controlled substance listed in s. 893.03(2), (3), or (4) to the patient.

Section 2. Section 893.055, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 893.055, F.S., for present text.)

893.055 Prescription drug monitoring program.—

(1) As used in this section and s. 893.0551, the term:

(a) "Active investigation" means an open investigation conducted by a law enforcement agency with a reasonable, good faith belief that it will lead to the filing of criminal charges or that is ongoing and for which there is a reasonable, good faith anticipation of obtaining an arrest or prosecution in the foreseeable future.

(b) "Administer" means to obtain and give a single dose of a medicinal drug to a patient for her or his consumption.

(c) "Controlled substance" means a substance named or described in s. 893.03(2), (3), or (4).

(d) "Dispense" means to transfer possession of one or more doses of a medicinal drug to the ultimate consumer or her or his

agent.

(e) "Dispenser" means a pharmacist or dispensing health care practitioner.

(f) "Health care practitioner" means a person licensed as a physician or physician assistant under chapter 458, as an osteopathic physician or physician assistant under chapter 459, as a podiatric physician under chapter 461, as an optometrist under chapter 463, as an advanced registered nurse practitioner under chapter 464, as a pharmacist under chapter 465, or as a dentist under chapter 466.

(g) "Law enforcement agency" means the Department of Law Enforcement, a Florida sheriff's department, a Florida police department, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and the agents and officers of which are empowered by law to conduct criminal investigations and make arrests.

(h) "Patient advisory report" means information provided by the program to a health care practitioner, dispenser, or patient concerning the dispensing of a controlled substance to a patient.

(i) "Pharmacy" means an entity permitted under chapter 465 as a pharmacy, as defined in s. 465.003(11), and a nonresident pharmacy registered under s. 465.0156.

(j) "Program" means the prescription drug monitoring program created under this section.

(2)(a) The department shall establish and maintain a database of controlled substance dispensing information. The database shall be used to provide information regarding dispensed prescriptions of controlled substances to persons with direct and indirect access to such information pursuant to this section. The database must meet the standards of the American Society for Automation in Pharmacy and must comply with the Health Insurance Portability and Accountability Act and all other relevant state and federal privacy and security laws and regulations. A transmission of information required by this section must comply with relevant state and federal privacy and security laws and regulations.

(b) The department shall designate a program manager to administer the program and ensure the program's integrity and compliance with this section. The program manager and each member of the authorized program and support staff must undergo a level 2 background screening pursuant to s. 435.04 as a condition of employment.

(c) The program shall be funded only by federal grants or private funding received by the state. The department may not commit funds for the program without ensuring that funding is available. The department shall cooperate with the direct-support organization established in subsection (16) in seeking federal grant funds, other nonstate grant funds, gifts, donations, or other private funds for the program if the costs of doing so are nonmaterial. For purposes of this paragraph,

nonmaterial costs include, but are not limited to, costs for postage and department personnel assigned to research or apply for a grant. Funds provided by prescription drug manufacturers may not be used to establish or administer the program.

(d) To the extent that funding is provided for the program through federal grant funds, other nonstate grant funds, gifts, donations, or other private funds, the department shall study the feasibility of enhancing the program for the purposes of supporting public health initiatives and improving statistical reporting. The study shall be conducted to reduce drug abuse and further the safety and quality of health care services by improving prescribing and dispensing practices related to controlled substances and incorporating advances in technology.

(e) The department shall comply with s. 287.057 for the procurement of any goods or services required by this section.

(3) Within 7 days after the date that a prescription substance is dispensed, a dispenser shall submit to the database the following information. The department shall establish a reporting procedure and format by rule and may authorize an extension of time to report such information for cause as defined by rule:

(a) The prescribing health care practitioner's full name, federal Drug Enforcement Administration registration number, and National Provider Identifier or other appropriate identifier.

(b) The full name, address, and date of birth of the person for whom the prescription was written.

(c) The date that the prescription was written.

(d) The date that the prescription was filled and the method of payment. The department may not include credit card numbers or other account numbers in the database.

(e) The name, national drug code, quantity, and strength of the controlled substance dispensed.

(f) The full name, federal Drug Enforcement Administration number, and address of the pharmacy or other location from which the controlled substance was dispensed or, if the controlled substance was dispensed by a health care practitioner other than a pharmacist, the health care practitioner's full name, federal Drug Enforcement Administration registration number, National Provider Identifier or other appropriate identifier, and address.

(g) Other appropriate identifying information as determined by rule.

(4) A dispenser shall submit the information required by this section electronically, or by another method established by rule, in a format approved by the department. The cost to the dispenser to submit the information required by this section may not be material or extraordinary.

(5) The following acts of a health care practitioner or dispenser are exempt from reporting under this section:

(a) Administering or dispensing a controlled substance to a patient in a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the

developmentally disabled.

(b) Administering or dispensing a controlled substance within the Department of Corrections health care system.

(c) Administering or dispensing a controlled substance to a person under the age of 16.

(d) Dispensing a one-time, 72-hour emergency supply of a controlled substance to a patient.

(6) A person who knowingly and willfully fails to report the dispensing of a controlled substance as required by this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) A dispenser or her or his agent, before dispensing a controlled substance to a person not known to the dispenser, shall require the person purchasing or receiving the controlled substance to present identification issued by the state or the Federal Government that contains the person's photograph, printed name, and signature, or a document considered acceptable identification under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

(a) If the person does not have such identification, the dispenser may verify the validity of the prescription and the identity of the patient with the prescribing health care practitioner or her or his agent. Verification of health plan eligibility of the person purchasing or receiving the controlled substance satisfies the requirement of this subsection.

(b) This subsection does not apply in an institutional setting or in a long-term care facility, including, but not

limited to, an assisted living facility or a hospital to which patients are admitted.

(8)(a) The program manager, and program and support staff only as directed or authorized by the program manager, shall have direct access to the database for program management in support of the requirements of this section.

(b) A health care practitioner or dispenser shall have direct access to information in the database which relates to a patient of that health care practitioner or dispenser for the purpose of reviewing the patient's controlled substance prescription history. A prescribing health care practitioner must access the database and view a patient's prescription drug history before issuing a prescription for a controlled substance to the patient upon each initial visit. A health care practitioner or dispenser acting in good faith is immune from any civil, criminal, or administrative liability for receiving or using information from the database. This section does not create a private cause of action and a person may not recover damages against a health care practitioner or dispenser who is authorized to access information from the database for accessing or failing to access such information.

(9) The following entities may not have direct access to information in the database but may request information from the program:

(a) The department for the purpose of an active investigation of a health care practitioner or dispenser who is

authorized to prescribe, administer, or dispense controlled substances.

(b) The Attorney General for the purpose of an active investigation of Medicaid fraud involving prescriptions of controlled substances.

(c) A law enforcement agency for the purpose of an active investigation regarding potential criminal activity, fraud, or theft involving prescriptions of controlled substances.

(d) A patient or the legal guardian or health care surrogate, as defined in s. 765.101(16), of an incapacitated patient. The department shall verify the identity of the incapacitated patient or the legal guardian or health care surrogate. Verification is also required for a request to change an incapacitated patient's prescription drug history or other information in the database.

(10) Upon receipt of a request from a law enforcement agency for information from the database, the program manager shall verify that the request is authentic and authorized. The program manager may release confidential and exempt information to the law enforcement agency only after the request is verified and is accompanied by an order of a court of competent jurisdiction compelling release of the information.

(11) The program manager, upon determining a pattern consistent with the rules established under subsection (17) evidencing controlled substance abuse or diversion and having cause to believe a violation of s. 893.13(7)(a)8., (8)(a), or

(8)(b) has occurred, may provide relevant information to the appropriate law enforcement agency.

(12) An authorized person or entity receiving information from the database under subsection (9) may maintain the information for no more than 24 months before purging the information from official records. Information may be maintained for more than 24 months if it is pertinent to an active investigation or criminal prosecution.

(13) Information contained in the database is not discoverable or admissible in any civil or administrative action, except in an investigation or disciplinary proceeding conducted by the department.

(14) A person who participates in preparing, reviewing, issuing, or any other activity related to a patient advisory report may not be permitted or required to testify in any civil action as to any finding, recommendation, evaluation, opinion, or other action taken in connection with preparing, reviewing, or issuing such a report.

(15) The department shall report performance measures annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1. Department staff may not have direct access to information in the database for the purpose of reporting performance measures. To measure performance and undertake public health care and safety initiatives, department staff may request data from the database that does not contain patient, health care

practitioner, or dispenser identifying information. Performance measures may include, but are not limited to:

(a) Reduction of the rate of inappropriate use of prescription drugs through department education and safety efforts.

(b) Reduction of the quantity of controlled substances obtained by individuals attempting to engage in fraud and deceit.

(c) Increased coordination among partners participating in the program.

(d) Involvement of stakeholders in achieving improved patient health care and safety and reduction of prescription drug abuse and prescription drug diversion.

(16) The department may establish a direct-support organization to provide assistance, funding, and promotional support for the activities authorized for the program.

(a) As used in this subsection, the term "direct-support organization" means an organization that is:

1. A Florida not-for-profit corporation incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures or

provide funding to or for the benefit of the program.

(b) The State Surgeon General shall appoint a board of directors for the direct-support organization consisting of at least five members. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that funds received by the direct-support organization are not from inappropriate sources. An inappropriate source includes, but is not limited to, a donor, grantor, person, or organization that may benefit from the purchase of goods or services by the department for the program.

(c) The direct-support organization shall operate under written contract with the department. The contract must, at a minimum, provide for:

1. Department approval of the articles of incorporation, bylaws, and annual budgets.

2. Department certification that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the program. Such certification must be made annually and reported in the official minutes of a direct-support organization board meeting.

3. The reversion, without penalty, to the state of all funds and property held in trust by the direct-support organization for the benefit of the program if the direct-support organization ceases to exist or if the contract is terminated. The state shall use all funds and property reverted

to it to support the program.

4. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

5. The disclosure of the material provisions of the contract to a donor of a gift, contribution, or bequest, including such disclosure on all promotional and fundraising publications, and an explanation to the donor of the distinction between the department and the direct-support organization.

6. The direct-support organization's collecting, expending, and providing of funds to the department for the operation of the program.

7. The reversion to the department of any funds of the direct-support organization held by the department in a separate depository account received from rentals of facilities and properties managed by the department for use by the direct-support organization.

(d) The direct-support organization may collect and expend funds for the function of its board of directors, as approved by the department, and provide funds to the department for:

1. Establishing and administering the database, including hardware and software.

2. Conducting studies on the efficiency and effectiveness of the program, including the feasibility study described in paragraph (2)(d).

3. Future enhancements of the program.

4. User training for the program, including the distribution of materials to promote public awareness and education and conducting workshops or other meetings for health care practitioners, pharmacists, and others.

5. Travel expenses incurred by the board.

6. Administrative costs.

7. Fulfilling all other requirements necessary to operate the program.

(e) The department may authorize, without charge, appropriate use of its administrative services, property, and facilities by the direct-support organization.

(f) The department may not authorize the use of any of its administrative services, property, or facilities by a direct-support organization if the organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(g) The direct-support organization shall provide for an independent annual financial audit in accordance with s. 215.981. A copy of the audit shall be provided to the department and the Office of Policy and Budget in the Executive Office of the Governor.

(h) The direct-support organization is not a lobbying firm for purposes of s. 11.045.

(17) The department shall adopt rules to administer this section. Such rules shall include procedures for reporting

information to the database and accessing information in the database. The department shall also adopt rules identifying the indicators of controlled substance abuse or diversion. The department may adopt rules to govern the use of its administrative services, property, or facilities by the direct-support organization established under subsection (16).

Section 3. This act shall take effect July 1, 2014.