Health Quality Subcommittee

Wednesday, February 11, 2015
3:30 PM - 5:30 PM
306 HOB

Steve Crisafulli
Speaker

Cary Pigman
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time:	Wednesday, February 11, 2015 03:30 pm
End Date and Time:	Wednesday, February 11, 2015 05:30 pm
Location:	306 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 3 Closing the Gap Grant Program by Powell
HB 321 HIV Testing by Avila
HB 335 Health Care Practitioners by Plasencia

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Tuesday, February 10, 2015.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, February 10, 2015.

NOTICE FINALIZED on 02/04/2015 12:53 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Closing the Gap Grant Program
SPONSOR(S): Powell
TIED BILLS: **IDEN./SIM. BILLS:** SB 94

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 Department of Health's Office of Minority Health (Office) administers multiple health promotion programs including the "Closing the Gap" (CTG) grant program. The CTG grant program was created by the Legislature in 2000 to improve health outcomes and eliminate racial and ethnic health disparities in Florida by providing grants to increase community-based health and disease prevention activities.

Grants are awarded for one year through a proposal process, and may be renewed annually subject to the availability of funds and the grantee's achievement of quality standards, objectives, and outcomes. The Office outlines required criteria for a grant proposal, including the selection of a priority area that will be addressed by the proposed project. The proposal must identify one of the following priority areas:

- Increasing adult and child immunization rates in certain racial and ethnic populations; or
- Decreasing racial and ethnic disparities in:
  - Maternal and infant mortality rates;
  - Morbidity and mortality rates relating to cancer;
  - Morbidity and mortality rates relating to HIV/AIDS;
  - Morbidity and mortality rates relating to cardiovascular disease;
  - Morbidity and mortality rates relating to diabetes; or
  - Oral health care.

HB 3 allows the CTG grant program to also fund projects directed at decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease.

The bill appears to have no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Closing the Gap Program

The Department of Health's (DOH) Office of Minority Health (Office) is the coordinating office for consultative services in the areas of cultural and linguistic competency, partnership building, and program development and implementation to address the heath needs of Florida's minority and underrepresented populations statewide. The Office administers multiple health promotion programs including the "Closing the Gap" (CTG) grant program.[1] In 2000, the Legislature created the CTG grant program to improve health outcomes and eliminate racial and ethnic health disparities in Florida by providing grants to increase community-based health and disease prevention activities.[2]

Grant Proposals

Grants are awarded for one year through a proposal process, and may be renewed annually subject to the availability of funds and the grantee's achievement of quality standards, objectives, and outcomes.[3] Proposals for grants must identify:[4]

- The purpose and objectives of the proposed project, including the particular racial or ethnic disparity the project will address;
- One of the following priority areas:
  - Increasing adult and child immunization rates in certain racial and ethnic populations; or
  - Decreasing racial and ethnic disparities in:
    - Maternal and infant mortality rates;
    - Morbidity and mortality rates relating to cancer;
    - Morbidity and mortality rates relating to HIV/AIDS;
    - Morbidity and mortality rates relating to cardiovascular disease;
    - Morbidity and mortality rates relating to diabetes; or
    - Oral health care;
- The target population and its relevance;
- Methods for obtaining baseline health status data and assessment of community health needs;
- Mechanisms for mobilizing community resources and gaining local commitment;
- Development and implementation of health promotion and disease prevention interventions;
- Mechanisms and strategies for evaluating the project's objectives, procedures, and outcomes;
- A proposed work plan, including a timeline for implementing the project; and
- The likelihood that project activities will occur and continue in the absence of funding.

Grant Funding

Projects receiving grants are required to provide local matching funds of one dollar for every three dollars awarded, except for grants awarded to Front Porch Florida communities.[5] In counties with

[1] Florida Dep't of Health, *Minority Health*, available at http://www.floridahealth.gov/%5C/programs-and-services/minority-health/index.html (last accessed February 5, 2015).
[2] Sections 381.7353 – 381.7356, F.S.
[3] Section 381.7356(4), F.S.
[4] Section 381.7355, F.S.

populations greater than 50,000, up to 50 percent of the local matching funds may be in-kind in the form of free services or human resources. In counties with populations of 50,000 or less, local matching funds may be provided entirely through in-kind contributions.[6]

In the 2014-2015 fiscal year, the Legislature appropriated $3.1 million in general revenue for minority health initiatives, including the CTG grant program. Seventeen grants have been awarded under the CTG, ranging from $125,000 to a maximum of $200,000. The appropriation also included specific funding of $100,000 for a program in the Tampa Bay area to screen and educate high school athletes about sickle cell trait.[7]

Sickle Cell Disease

Sickle cell disease (SCD) is a group of inherited red blood cell disorders.[8] Those with SCD have an abnormal type of hemoglobin[9] that causes irregular shaped red blood cells that are fragile and die earlier than healthy cells.[10] These irregular shaped "sickle" cells can slow or block blood flow and oxygen to parts of the body. People with SCD usually begin to show signs of the disease during the first 5 months of life. SCD is diagnosed with a blood test, most often during routine newborn screening tests.[11] Symptoms and complications of SCD are different for each person, can range from mild to severe, and can include:[12]

- Episodes of severe pain;
- Jaundice;
- Infections;
- Kidney problems;
- Leg sores and ulcers;
- Swollen limbs;
- Vision problems;
- Acute chest syndrome; and
- Stroke.

SCD is a genetic disorder that occurs when a child inherits the sickle cell gene from both parents. People who inherit one sickle cell gene and one normal gene have sickle cell trait (SCT). People with SCT usually do not have any of the symptoms associated with SCD but they can pass the trait on to their children.[13]

SCD and SCT occur in high frequency among people of African-American and Hispanic descent.[14] SCD occurs in approximately 1 out of every 500 African American births and approximately 1 out of

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[5] The Front Porch Florida Initiative is administered by the Office of Urban Opportunity within the Department of Economic Opportunity's Division of Community Development and encourages revitalization and redevelopment projects in urban communities. Twenty percent of CTG grant program funds go towards this program. Section 20.60(5)(b)2.g.,F.S.
[6] Section 381.7356(2)(b), F.S.
[7] Chapter 2014-51, Laws of Florida, line-item 443 and Closing the Gap 2014-2015 Awards Report from House Health Care Appropriations (on file with committee staff).
[8] Centers for Disease Control and Prevention, *Facts About Sickle Cell Disease,* available at http://www.cdc.gov/ncbddd/sicklecell/facts.html (last visited February 2, 2015).
[9] Hemoglobin is a protein in red blood cells that carries oxygen. National Institutes of Health, Medline Plus, *Hemoglobin,* available at http://www.nlm.nih.gov/medlineplus/ency/article/003645.htm (last visited February 6, 2015).
[10] University of Maryland Medical Center, *Sickle Cell Disease,* available at http://umm.edu/health/medical/reports/articles/sickle-cell-disease (last visted February 6, 2015).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Sickle Cell Disease Association of America, *Sickle Cell Trait and Athletics,* available at http://www.sicklecelldisease.org/index.cfm?page=sickle-cell-trait-athletics (last visited February 5, 2015).

every 36,000 Hispanic American births.[15] Approximately 70,000 to 100,000 persons in the United States have SCD and 3 million have SCT.[16]

Treatment

Vaccines are highly recommended for people with SCD.[17] There is no cure for SCD other than experimental transplant procedures. People with SCD require ongoing treatments that vary from person to person and aim to relieve pain, prevent infections, and manage complications.[18] Management of SCD complications can be very costly requiring surgical procedures, recurring hospital admissions, medications, and diagnostic tests.[19]

The University of Florida found that total annual health care costs for SCD-related treatments ranged from $10,000 for children aged 9 years old and under up to $34,000 in adults aged 30 to 39. For an average patient reaching the age of 45, lifetime health care costs totaled approximately $900,000. Seventy percent of patients in the University of Florida's study were of African American decent.[20]

Effect of Proposed Changes

HB 3 allows the CTG grant program to fund projects directed at decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease.

The bill establishes an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.7355, F.S., relating to project requirements; review criteria.
Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[15] National Institutes of Health, *Who Is at Risk for Sickle Cell Anemia*, available at http://www.nhlbi.nih.gov/health/health-topics/topics/sca/atrisk (last visited February 6, 2015).
[16] Sickle Cell Disease Association of America, *Sickle Cell Disease Global*, available at http://www.sicklecelldisease.org/index.cfm?page=scd-global (last visited February 5, 2015).
[17] University of Florida Health, Sickle Cell Anemia, available at https://ufhealth.org/sickle-cell-anemia (last visited February 6, 2015).
[18] *Id.*
[19] *Id.*
[20] Kauf, T., Coates, T., Huazhi, L., Mody-Patel, N., & Abrahman, H. (2009). The Cost of Health Care for Children and Adults with Sickle Cell Disease. *American Journal of Hematology, 84*(6), 323-327. available at http://onlinelibrary.wiley.com/doi/10.1002/ajh.21408/abstract (last visited February 6, 2015).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Closing the Gap grant program; amending s. 381.7355, F.S.; adding a priority area for project proposals under the grant program to address racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 381.7355, Florida Statutes, is amended to read:

381.7355 Project requirements; review criteria.—

(2) A proposal must include each of the following elements:

(a) The purpose and objectives of the proposal, including identification of the particular racial or ethnic disparity the project will address. The proposal must address one or more of the following priority areas:

1. Decreasing racial and ethnic disparities in maternal and infant mortality rates.

2. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cancer.

3. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to HIV/AIDS.

4. Decreasing racial and ethnic disparities in morbidity

and mortality rates relating to cardiovascular disease.

5. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to diabetes.

6. Increasing adult and child immunization rates in certain racial and ethnic populations.

7. Decreasing racial and ethnic disparities in oral health care.

8. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 321 HIV Testing
SPONSOR(S): Avila
TIED BILLS: **IDEN./SIM. BILLS:** SB 512

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 relates to testing for Human Immunodeficiency Virus (HIV). HIV is an immune system debilitating virus that can lead to fatal acquired immunodeficiency syndrome (AIDS). Widespread testing prevents new HIV infections through awareness, and allows infected individuals to receive early treatment, which improves the lives of those living with HIV.

The bill defines a "health care setting" and a "nonhealth care setting" for the purpose of differentiating HIV testing requirements. The bill updates the definition of "preliminary HIV test" to reflect advances in HIV testing.

The bill revises the HIV testing requirement for health care settings to no longer require informed consent from the HIV test subject and establishes new notification requirements. The bill retains the requirement to obtain informed consent from a test subject when HIV testing is performed in nonhealth care settings.

The bill applies the same notification requirements for HIV testing in a health care setting to an HIV testing program in such setting. For an HIV testing program in a nonhealth care setting, the informed consent requirements apply.

The bill makes technical changes throughout s. 384.004, F.S., to clarify existing language and makes many conforming changes.

The bill appears to have no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Immunodeficiency Virus

Human Immunodeficiency Virus (HIV) is an immune system debilitating virus that can lead to fatal acquired immunodeficiency syndrome (AIDS). HIV affects specific cells of the immune system and over time the virus can destroy so many of these cells that the body cannot fight off infections and disease. There is no cure for HIV; yet, with proper medical care, HIV can be controlled. Untreated, HIV is almost always fatal.[1]

HIV is typically spread by having unprotected sex with someone who has HIV or sharing needles, syringes, or other equipment used to prepare injection drugs with someone who has HIV.[2]

HIV Testing

In the United States, approximately 1.2 million people are living with HIV and 14 percent are unaware of their infection.[3] HIV testing is essential for improving the health of people living with HIV and reducing new HIV infections. The Centers for Disease Control and Prevention recommend that testing occur as part of a routine healthcare visit.[4] This is especially important for people who may not consider themselves at risk for HIV.[5] HIV testing is recommended for people ages 15 to 65 and pregnant women, including those in labor who have not been tested and whose HIV status is unknown.[6]

The most common types of HIV tests check for HIV antibodies in the body. In these tests, blood, oral fluid, or urine can be used to obtain results. Antibody tests are considered preliminary; if the result is positive, follow-up diagnostic testing is required to confirm the presence of the virus. Antigen tests are another, less common, form of testing. Antigen tests can diagnose an HIV infection 1 to 3 weeks after a person is first infected with HIV and require a blood sample to obtain results.[7]

Over the past several decades there have been many advances in medical technology to increase access and utilization of HIV testing. Legal and programmatic advances have streamlined testing services to provide confidentiality, and, in some cases, anonymity to test subjects, to encourage widespread testing.

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[1] Centers for Disease Control and Prevention, *About HIV/AIDS*, accessible at: http://www.cdc.gov/hiv/basics/whatishiv.html#panel0 (last accessed February 1, 2015).

[2] There are several less common ways HIV can be spread including: being born to an infected mother; being stuck with an HIV contaminated needle (which is a risk mainly for health care workers); and receiving blood transfusions, blood products, or organ/tissue transplants that are contaminated with HIV. Centers for Disease Control and Prevention, *HIV Transmission*, accessible at: http://www.cdc.gov/hiv/basics/transmission.html (last accessed February 1, 2015).

[3] Centers for Disease Control and Prevention, *HIV in the United States: At a Glance*, accessible at: http://www.cdc.gov/hiv/statistics/basics/ataglance.html#ref1 (last accessed February 1, 2015).

[4] Centers for Disease Control and Prevention, *State HIV Testing Laws: Consent and Counseling Requirements*, July 11, 2013, accessible at http://www.cdc.gov/hiv/policies/law/states/testing.html (last accessed February 2, 2015).

[5] In Florida, only 48.4% of adults under 65 reported having ever been tested for HIV. Florida Dep't of Health, Florida Charts, accessible at: http://www.floridacharts.com/charts/Brfss/DataViewer.aspx?bid=29 (last accessed February 1, 2015).

[6] U.S. Preventive Services Task Force, *Human Immunodeficiency Virus (HIV) Infection: Screening*, Aril 2013, accessible at: http://www.uspreventiveservicestaskforce.org/uspstf/uspshivi.htm (last accessed February 1, 2015).

[7] U.S. Department of Health and Human Services, *Types of HIV Tests*, accessible at: http://aids.gov/hiv-aids-basics/prevention/hiv-testing/hiv-test-types/index.html (last accessed February 1, 2015).

Most states require informed consent to test for HIV.[8] Informed consent is a process of communication between a patient and a provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. During informed consent a patient is typically provided written or oral information on:

- The risks and benefits of testing;
- The implications of HIV test results; and
- How test results will be communicated.[9]

Florida HIV Testing

The Department of Health (Department) has developed a comprehensive program for preventing the spread of HIV/AIDS with many testing options available throughout the state in a variety of settings. The Department's county health departments (CHDs)[10] are the primary sources for state-sponsored HIV programs and, in addition to testing services, CHDs provide prevention outreach and education free to the public. In 2013, CHD programs administered 428,002 HIV tests which resulted in 4,197 positive test results.[11]

Section 381.004, F.S., which governs HIV testing in Florida and requires certain procedures to be followed when tests are given, was enacted to create an environment in Florida in which people will agree to or seek out HIV testing because they are sufficiently informed about HIV infection and assured about the privacy of a decision to be tested.[12] To promote informed patient decision-making, s. 381.004, F.S., prohibits HIV testing without a person's knowledge and informed consent, except under certain defined circumstances,[13] and gives the patient special rights to control who learns of the HIV test results.[14] Informed consent for HIV testing is defined under the Florida Administrative Code and requires:[15]

- An explanation that the information identifying the test subject and the results of the test are confidential and protected against further disclosure to the extent permitted by law;
- Notice that persons who test positive will be reported to the local CHD;
- Notice that anonymous testing is available and the locations of the anonymous sites;
- Written informed consent only for the following:
    - From the potential donor or donor's legal representative prior to first donation of blood, blood components, organs, skin, semen, or other human tissue or body part;
    - For insurance purposes; and

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[8] Centers for Disease Control and Prevention, *State HIV Laws,* accessible at: http://www.cdc.gov/hiv/policies/law/states/ (last accessed February 2, 2015).

[9] Centers for Disease Control and Prevention, *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings,* September 22, 2006, accessible at: http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm (last accessed February 1, 2015).

[10] County health departments are the local sector of the Florida Dep't of Health, providing public health services in all 67 Florida counties. Their core functions are infectious disease prevention and control, basic family health services, and environmental health services. Florida Dep't of Health, *County Health Departments*, accessible at: http://www.floridahealth.gov/public-health-in-your-life/county-health-departments/index.html (last accessed February 1, 2015).

[11] Florida Dep't of Health, *2013 Couseling and Testing Database,* Counseling and Testing Data Summary Report By Selected Variables, accessible at: http://www.floridahealth.gov/diseases-and-conditions/aids/prevention/2013-testing-data.html (last accessed February 2, 2015).

[12] "Florida's Omnibus AIDS Act," Jack P Hartog, Florida Dep't of Health, accessible at: www.floridahealth.gov/diseases.../Omnibus-booklet-update-2013.pdf (last accessed February 1, 2015).

[13] Section 381.004(2)(h), F.S., lists the exceptions to the requirement to obtain informed consent, including: when a person is tested for sexually transmitted diseases; when blood, plasma, or other human fluids or tissues are donated; when a determination for appropriate emergency medical care or treatment is required; during an autopsy; when testing pregnant women; when a defendant is charged with sexual battery and is consented to by the defendant, pursuant to court order; or for certain research purposes.

[14] *Supra* fn. 11.

[15] Rule 64D-2.004, F.A.C.

- For contracts purposes in a health maintenance organization, pursuant to s. 641.3007, F.S.

Minors meeting certain requirements, such as being married, pregnant, or able to demonstrate maturity to make an informed judgment, can be tested for HIV without parental consent if the minor provides informed consent.[16]

The other exception to informed consent for HIV testing in Florida relates to pregnancy. Prior to testing, a health care practitioner must inform a pregnant woman that the HIV test will be conducted and of her right to refuse the test. If declined, the refusal will be noted in the medical record.[17]

Effect of Proposed Changes

The bill provides a definition for health care setting and nonhealth care setting to differentiate between the two for the purpose of HIV testing.

Health Care Setting

"Health care setting" is defined in the bill as a setting devoted to both the diagnosis and care of persons, such as:

- County health department clinics;
- Hospital emergency departments;
- Urgent care clinics;
- Substance abuse treatment clinics;
- Primary care settings;
- Community clinics;
- Mobile medical clinics; and
- Correctional health care facilities.

The bill changes the current requirement for informed consent for HIV testing performed in a health care setting by requiring a test subject to be notified that the test is planned and receive information on the HIV test. The test subject must also be informed that they have the right to decline the test. The bill retains the requirements in current law to explain the right to confidential treatment of information identifying the test subject and the results of the test.[18] If a test is declined, it must be documented in the test subject's medical record.

Nonhealth Care Setting

"Nonhealth care setting" is defined in the bill as a site that conducts HIV testing solely for diagnosis purposes, not treatment. Such settings do not provide medical treatment but may include:

- Community-based organizations;
- Outreach settings;
- County health department HIV testing programs; and
- Mobile health vehicles.

The bill clarifies that informed consent remains a requirement for testing performed in nonhealth care settings.

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[16] Section 384.30, F.S. and Rule 64D-2.004(4), F.A.C.
[17] Sections 381.004(2)(h)(2) and 384.31, F.S.
[18] Section 381.004(2)(e), F.S.

Programs in Health Care and Nonhealth Care Settings

Sometimes, an organization that offers HIV testing operates as both a health care and a nonhealth care setting. The bill requires that the same notification requirements for HIV testing in a health care setting be applied in a program in such setting. Informed consent requirements are applied to HIV testing programs in nonhealth care settings. For example, if a person is being seen at a CHD clinic, such as a family planning clinic, the provider must meet health care setting notification requirements. If a person is to be tested at a CHD with an HIV testing program, or a CHD sponsored outreach event, informed consent must be obtained.

Confidentiality

For both health care and nonhealth care settings, the test subject must be informed that a positive HIV test result will be reported to the local CHD with sufficient information to identify the test subject. The subject must also be informed of the availability of sites at which anonymous testing is performed and requires CHDs to maintain a list of those sites. The sites' locations, telephone numbers, and hours of operation must be kept on file with the CHD. All of these requirements exist in current law, but the bill ensures these requirements apply to both health care and nonhealth care settings.

Currently, a hospital licensed under ch. 395, F.S., may release HIV test results, but only if it has obtained written informed consent. The bill replaces the written informed consent requirement with the notification requirements related to health care setting HIV testing.

The bill updates the definition of "preliminary HIV tests" to reflect advances in HIV testing and deletes obsolete language.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.004, F.S., relating to HIV testing.
Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Health to revise rule 64D-2.004, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to HIV testing; amending s. 381.004, F.S.; revising and providing definitions; specifying the notification and consent procedures for performing an HIV test in a health care setting and a nonhealth care setting; providing an effective date.

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

Section 1. Subsection (1) of section 381.004, Florida Statutes, is reordered and amended, and paragraphs (a), (b), (g), and (h) of subsection (2) and paragraph (d) of subsection (4) of that section are amended, to read:

381.004 HIV testing.—

(1) DEFINITIONS.—As used in this section:

(a) "Health care setting" means a setting devoted to both the diagnosis and care of persons, such as county health department clinics, hospital emergency departments, urgent care clinics, substance abuse treatment clinics, primary care settings, community clinics, mobile medical clinics, and correctional health care facilities.

(b) ~~(a)~~ "HIV test" means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.

(c) ~~(b)~~ "HIV test result" means a laboratory report of a

human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a human immunodeficiency virus test. ~~As used in this section,~~ The term ~~"HIV test result"~~ does not include test results reported to a health care provider by a patient.

(d) "Nonhealth care setting" means a site that conducts HIV testing for the sole purpose of identifying HIV infection. Such setting does not provide medical treatment but may include community-based organizations, outreach settings, county health department HIV testing programs, and mobile vans.

(f) ~~(e)~~ "Significant exposure" means:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;

2. Exposure of mucous membranes to visible blood or body fluids~~,~~ to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:

a. Blood.

b. Semen.

c. Vaginal secretions.

d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

e. Synovial fluid.

f. Pleural fluid.

g. Peritoneal fluid.

h. Pericardial fluid.

i. Amniotic fluid.

j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(e) ~~(d)~~ "Preliminary HIV test" means an antibody or antibody-antigen screening test, such as the ~~enzyme-linked~~ immunosorbent assays (IA), or a rapid test approved by the United States Food and Drug Administration ~~(ELISAs) or the Single-Use Diagnostic System (SUDS)~~.

(g) ~~(e)~~ "Test subject" or "subject of the test" means the person upon whom an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

(2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(a) Before performing an HIV test:

1. In a health care setting, the person to be tested shall be provided information about the test and shall be notified that the test is planned, that he or she has the right to decline the test, and that he or she has the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law. If the person to be tested declines the test, such decision shall be

documented in his or her medical record. ~~No person in this state shall order a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in paragraph (h). Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test to the extent provided by law. Information shall also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, phone numbers, and hours of operation of the sites. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.~~

2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is being performed. Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law.

The test subject shall also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, telephone numbers, and hours of operation of the sites.

(b) Except as provided in paragraph (h), informed consent must be obtained from a legal guardian or other person authorized by law if ~~when~~ the person:

1. Is not competent, is incapacitated, or is otherwise unable to make an informed judgment; or

2. Has not reached the age of majority, except as provided in s. 384.30.

(g) Human immunodeficiency virus test results contained in the medical records of a hospital licensed under chapter 395 may be released in accordance with s. 395.3025 without being subject to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9., or paragraph (f) if~~; provided~~ the hospital has notified the patient of the limited confidentiality protections afforded to HIV test results contained in hospital medical records ~~obtained written informed consent for the HIV test in accordance with provisions of this section~~.

(h) Notwithstanding ~~the provisions of~~ paragraph (a), informed consent is not required:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule including the following situations:

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

b. HIV testing of inmates pursuant to s. 945.355 before ~~prior to~~ their release from prison by reason of parole, accumulation of gain-time credits, or expiration of sentence.

c. Testing for HIV by a medical examiner in accordance with s. 406.11.

d. HIV testing of pregnant women pursuant to s. 384.31.

2. Those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies if ~~when~~ the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, providing notification ~~obtaining informed consent~~ would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical

diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without notification ~~informed consent~~.

5. If ~~When~~ HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s. 960.003; however, the results of an ~~any~~ HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003.

7. If ~~When~~ an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0031, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. If ~~When~~ human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. 765.5185 or enucleation of the eyes as authorized by s. 765.519.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice and where a blood sample is available which ~~that~~ was taken from that individual voluntarily by medical personnel for other purposes. The term "medical personnel" includes a licensed or certified health care professional; an employee of a health care professional or health care facility; employees of a laboratory licensed under chapter 483; personnel of a blood bank or plasma center; a medical student or other student who is receiving training as a health care professional at a health care facility; and a paramedic or emergency medical technician certified by the department to perform life-support procedures under s. 401.23.

a. Before performing ~~Prior to performance of~~ an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. If consent cannot be obtained within the time necessary to perform the HIV test and begin prophylactic treatment of the exposed medical personnel, all information concerning the performance of an HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to

obtain consent shall be made, and all attempts must be documented. If the individual cannot be found or is incapable of providing consent, an HIV test may be conducted on the available blood sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after appropriate medical personnel under the supervision of a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in accordance with the written protocols based on the National Centers for Disease Control and Prevention guidelines on HIV postexposure prophylaxis and in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel.

c. Costs of an ~~any~~ HIV test of a blood sample performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the medical personnel or the employer of the medical personnel.

d. In order to use ~~utilize~~ the provisions of this subparagraph, the medical personnel must ~~either~~ be tested for HIV pursuant to this section or provide the results of an HIV

test taken within 6 months before ~~prior to~~ the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample is not available, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or notwithstanding s. 384.287, an individual who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the

nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test before ~~prior to the~~ testing. If consent cannot be obtained within the time necessary to perform the HIV test and begin prophylactic treatment of the exposed medical personnel and nonmedical personnel, all information concerning the performance of an HIV test and its result, shall be documented only in the medical personnel's or nonmedical personnel's record unless the individual gives written consent to entering this information in ~~on~~ the individual's medical record.

b. HIV testing shall be conducted only after appropriate medical personnel under the supervision of a licensed physician documents, in the medical record of the medical personnel or nonmedical personnel, that there has been a significant exposure and that, in accordance with the written protocols based on the National Centers for Disease Control and Prevention guidelines on HIV postexposure prophylaxis and in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

c. Costs of any HIV test performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel.

d. In order to use ~~utilize~~ the provisions of this subparagraph, the medical personnel or nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months before ~~prior to~~ the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample was not obtained during treatment for the medical emergency, the medical personnel, the employer of the medical personnel acting on behalf of the employee, or the nonmedical personnel may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that,

in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner or attending physician upon an individual who expired or could not be resuscitated while receiving emergency medical assistance or care and who was the source of a significant exposure to medical or nonmedical personnel providing such assistance or care.

a. HIV testing may be conducted only after appropriate medical personnel under the supervision of a licensed physician documents in the medical record of the medical personnel or nonmedical personnel that there has been a significant exposure and that, in accordance with the written protocols based on the National Centers for Disease Control and Prevention guidelines on HIV postexposure prophylaxis and in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

b. Costs of an ~~any~~ HIV test performed under this subparagraph may not be charged to the deceased or to the family of the deceased person.

c. For ~~the provisions of~~ this subparagraph to be applicable, the medical personnel or nonmedical personnel must

be tested for HIV under this section or must provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall comply with paragraph (e).

13. For the performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant as necessary to provide appropriate care and treatment of the infant if ~~when~~, after a reasonable attempt, a parent cannot be contacted to provide consent. The medical records of the infant must ~~shall~~ reflect the reason consent of the parent was not initially obtained. Test results shall be provided to the parent when the parent is located.

14. For the performance of HIV testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive.

15. For the performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

(4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS; REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM REGISTRATION.—No county health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immune deficiency syndrome or human immunodeficiency virus status without first registering with the Department of Health, reregistering each year, complying with all other applicable provisions of state

law, and meeting the following requirements:

(d) A program in a health care setting shall meet the notification criteria provided in subparagraph (2)(a)1. A program in a nonhealth care setting shall meet all informed consent criteria provided in subparagraph (2)(a)2. ~~The program must meet all the informed consent criteria contained in subsection (2).~~

Section 2. This act shall take effect July 1, 2015.

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 Avila offered the following:

Amendment (with title amendment)

Remove line 372 and insert:

Section 2. Subsection (2) of section 456.032, Florida Statutes, is amended to read:

456.032 Hepatitis B or HIV carriers.-

(2) Any person licensed by the department and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption that the illness was contracted in the course and scope of his or her employment, provided that the person, as soon as practicable, reports to the person's supervisor or the facility's risk manager any significant exposure, as that term is defined in s. 381.004 (1)(f) ~~381.004(1)(c)~~, to blood or body fluids. The

employer may test the blood or body fluid to determine if it is infected with the same disease contracted by the employee. The employer may rebut the presumption by the preponderance of the evidence. Except as expressly provided in this subsection, there shall be no presumption that a blood-borne infection is a job-related injury or illness.

Section 3. This act shall take effect July 1, 2015.

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

Remove line 6 and insert:

care setting; amending s. 456.032, F.S.; conforming a cross-reference; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 Health Care Practitioners
SPONSOR(S): Plasencia
TIED BILLS: **IDEN./SIM. BILLS:**

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 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs of individuals in the state.

The Baker Act authorizes involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to themselves or others. Involuntary examination may be initiated by courts, law enforcement officers, physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers. The individual is taken to a receiving facility and is examined by a physician or clinical psychologist. Upon the order of a physician, the individual may be given emergency treatment if it is determined that such treatment is necessary. To be released from the facility, the patient must have documented approval from a psychiatrist or clinical psychologist. If the receiving facility is a hospital, the release may be approved by an attending emergency department physician. Receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.

A psychiatric nurse is a registered nurse licensed under ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

The bill revises the definition of "psychiatric nurse" by removing the required 2 years of post-master's clinical experience under the supervision of a physician. Instead, the bill requires the individual to obtain a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

The bill authorizes a psychiatric nurse to:

- Examine a patient upon admission to a receiving facility; and
- Approve a patient to be discharged from a receiving facility.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Involuntary Examination Under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.[1] Part I of ch. 394, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:[2]

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for themselves that an examination is needed; and
- The person is likely to suffer from self-neglect, cause substantial harm to themselves, or be a danger to themselves or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.[3] A circuit court may enter an ex parte order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:[4]

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet criteria under the Baker Act.[5] Subsequent to examination at a receiving

[1] Section 1, ch. 71-131, L.O.F.
[2] Section 394.463(1), F.S.
[3] Section 394.463(2)(a), F.S.
[4] *Id.*
[5] Section 394.455(26), F.S.

facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[6]

An individual taken to a receiving facility must be examined by a physician or clinical psychologist. Upon the order of a physician, the individual may be given emergency treatment if it is determined that such treatment is necessary. To be released from the facility, the patient must have documented approval from a psychiatrist or clinical psychologist. If the receiving facility is a hospital, the release may be approved by an attending emergency department physician. Receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.

Advanced Registered Nurse Practitioners (ARNPs)

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (board). Licensure requirements to practice advanced and specialized nursing include completion of education requirements,[7] demonstration of passage of a DOH approved examination, a clean criminal background screening, and payment of applicable fees.[8] Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

A nurse who holds a license to practice advanced and specialized nursing may be certified as an ARNP under s. 464.012, F.S., if the nurse meets one or more of the following requirements as determined by the board:

- Completion of a post basic education program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board, such as a registered nurse anesthetist or nurse midwife; or
- Possession of a master's degree in a nursing clinical specialty area.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[9] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.[10] ARNPs may carry out treatments as specified in statute, including:[11]

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.[12] Further, if it is within the ARNPs established protocol, the ARNP may identify behavioral problems, make diagnosis, and recommend treatment.[13]

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[6] Section 394.455(32), F.S.
[7] Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least one year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.
[8] Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.
[9] Section 464.012(2), F.S.
[10] Section 464.012(3), F.S.
[11] *Id.*
[12] Section 464.012(4), F.S.
[13] Section 464.012(4)(c)5, F.S.

Psychiatric Nurses

Florida law requires a psychiatric nurse to be licensed as a registered nurse (RN), hold a master's or doctoral degree in psychiatric nursing, and have 2 years of post-master's clinical experience under the supervision of a physician.[14]

Currently, in Florida, psychiatric nurses are not required to hold a national advance practice certification. If an individual choses to become certified, they must meet certain eligibility requirements. To be eligible for national certification an individual must:[15]

- Hold a current, active RN license;
- Hold a master's, postgraduate, or doctoral degree from an accredited family psychiatric-mental health nurse practitioner program;
- Complete specified graduate-level courses;[16] and
- Have a minimum of 500 faculty-supervised clinical hours.

Eligible candidates may take a national certification examination developed by the American Nurses Credentialing Center. If certified, the individual must provide 1,000 clinical hours of patient care and log 75 hours of continuing education every five years. Certified psychiatric nurses must be recertified every five years.[17]

Effect of Proposed Changes

The bill amends s. 394.463, F.S., relating to involuntary examination under the Baker Act and the professionals authorized to examine and discharge patients at receiving facilities. The bill authorizes a psychiatric nurse to:

- Examine a patient upon admission to a receiving facility; and
- Approve a patient to be discharged from a receiving facility.

The bill also revises the definition of "psychiatric nurse" by removing the required 2 years of post-master's clinical experience under the supervision of a physician. Instead, the bill requires the individual to obtain a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to the definition of "psychiatric nurse".
Section 2: Amends s. 394.463, F.S., relating to involuntary examination.
Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[14] Section 394.455(23), F.S.
[15] American Nurses Credentialing Center; *Psychiatric-Mental Health Nurse Practitioner Certification Eligibility Criteria*, available at http://www.nursecredentialing.org/FamilyPsychNP-Eligibility.aspx (last visited February 6, 2015).
[16] *Id.* The individual must have completed three separate, comprehensive graduate-level courses in: Advanced physiology/pathophysiology, including general principles that apply across the life span; Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts, and approaches; and Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents; with content in Health promotion or maintenance; Differential diagnosis and disease management, including the use and prescription of pharmacologic and nonpharmacologic interventions; and clinical training in at least two psychotherapeutic treatment modalities.
[17] American Nurses Credentialing Center: *FAQs about Advanced Practice Psychiatric Nurses*, available at http://www.apna.org/i4a/pages/index.cfm?pageid=3866 (last visited February 6, 2015).

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary 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 health care practitioners; amending s. 394.455, F.S.; revising the definition of the term "psychiatric nurse" to require specified national certification; amending s. 394.463, F.S.; authorizing a psychiatric nurse to approve the involuntary examination or release of a patient from a receiving facility; providing an effective date.

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

Section 1. Subsection (23) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(23) "Psychiatric nurse" means a registered nurse certified under s. 464.012 who has a master's or doctoral degree in psychiatric nursing and holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse ~~licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician~~.

Section 2. Paragraph (f) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(f) A patient shall be examined by a physician, a ~~or~~ clinical psychologist, or a psychiatric nurse at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or a psychiatric nurse, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

Section 3. This act shall take effect July 1, 2015.